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Zoning--Townships--Complete Exclusion of Trailer Camps and Parks

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ZONING—TOWNSHIPS—COMPLETE EXCLUSION OF TRAILER CAMPS AND PARKS—Plaintiff challenged the validity of an amendment to the zoning ordinance of the defendant township which barred all trailer camps and parks from its industrial district. As trailer parks had previously been zoned out of the business, residential, and agricultural districts, this amendment had the effect of completely excluding them from the entire township, although approximately half of its twenty-three square miles consisted of open rural area. The parties stipulated that the plans of the plaintiff, who wanted to develop a trailer park on his premises, met all of the applicable health standards. The trial court sustained the amendment, but its decision was reversed by the appellate division.[1] On appeal by the township to the New Jersey Supreme Court, *held*, reversed, two justices dissenting.[2] As the exclusion of trailer parks was deemed necessary to enable the township to realize its full potential for extensive and rapid growth as a well-ordered community attractive to industry, the amendment to the zoning ordinance barring trailer parks from its industrial district constitutes a valid exercise of the zoning power of the township. *Vickers v. Township Comm.*, 37 N.J. 232, 181 A.2d 129 (1962), *cert. denied*, 371 U.S. 233 (1963).

The power to zone is derived from the police power of a state. Townships, or other political subdivisions of a state, must rely upon a specific delegation of this power, by statute or constitutional provision, as a prerequisite to its exercise.[3] The zoning power is also subject to the more

1 Vickers v. Township Comm., 68 N.J. Super. 263, 172 A.2d 218 (1961).

2 The dissenting justices felt that it was arbitrary to permit the prohibition of mobile home parks in a municipality where they can be placed in appropriate districts and where there is a demand for them.

3 YOKLEY, ZONING LAW AND PRACTICE § 27 (1948). The New Jersey constitution empowers the legislature to enact general laws "under which municipalities . . . may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use and the nature and extent of the uses of land, and the exercise of such authority shall be deemed to be within the police power of the State." N.J. CONST. art. IV, § 6. Pursuant to this provision the New Jersey legislature has given municipalities extensive power to create districts and regulate structures and the use of land therein through the use of zoning ordinances. N.J. REV. STAT. §§ 55-30 to -31 (1937). For a complete discussion of the delegation of the police power of a state to municipalities or other governmental units, see 6 MCQUILLIN, MUNICIPAL CORPORATIONS, §§ 24.36 to .39 (3d ed. 1949).

general and elusive limitation that its arbitrary and unreasonable use to effectuate the absolute prohibition of a type of property use that is not detrimental to the public welfare will be deemed unconstitutional as a denial of equal protection of the laws and of due process of law.[4] Although the courts have the power to prevent the exercise of the police power from infringing constitutional rights, judicial supervision is restricted in this context by an assumption that a zoning ordinance is warranted by the location, property, and surroundings to which it applies.[5] When the reasonableness of an ordinance is in question, the courts often decline to substitute their judgment for that of the legislative body which is charged with the primary duty and responsibility with respect to zoning matters.[6] Since opinions dealing with exclusionary zoning ordinances often speak in generalities, it is difficult to discern a pattern of standards into which such an ordinance must fit in order to be upheld. Few courts have been faced with this problem in the context of a total exclusion of trailer parks from a municipal unit, as the vast majority of governmental units have chosen rather to relegate trailer parks to certain defined areas and impose particular health and safety regulations on them.[7] Decisions which have upheld ordinances precluding trailer parks in a particular area of a municipal unit are based on a wide variety of rationales. For instance, exclusion from a residential district has been deemed justifiable to prevent sewage disposal problems,[8] overcrowding of schools,[9] and diminution of surrounding property values.[10] A Detroit ordinance requiring neighborhood consent to the presence of trailer parks was upheld on the basis of public interest in having no large groups of people living in homes for which they pay no real estate taxes.[11] The validity of an ordinance which completely excluded heavy industry from a municipality was in issue in the *Duffcon* case.[12] The New Jersey Supreme Court's opinion indicated that such an ordinance may be imposed if in accordance with the *most appropriate use* of the land throughout the municipality and that such appropriateness may depend not only upon the physical, economic, and social conditions prevailing within the municipality and its present and reasonably prospective needs, but also upon the nature of the entire region in which the municipality is located and the use to which the land in such

4 6 McQUILLIN, *op. cit. supra* note 3, § 24.63; 7 *id.* §§ 24.324 to .325; RATHKOPF, THE LAW OF ZONING AND PLANNING § 6 (2d ed. 1949). See Annot., 22 A.L.R.2d 774, 779 (1952).

5 RATHKOPF, *op. cit. supra* note 4, §§ 6, 18; YOKLEY, *op. cit. supra* note 3, §§ 35-36.

6 RATHKOPF, *op. cit. supra* note 4, § 19.

7 HODES & ROBERSON, THE LAW OF MOBILE HOMES 88 (1957). The authors of this book have set out all of the state statutes dealing with mobile homes up to 1957 and present an extensive discussion of various aspects of the law dealing with mobile homes.

8 Stevens v. Township of Royal Oak, 342 Mich. 105, 68 N.W.2d 787 (1955).

9 *Ibid.*

10 Napierkowski v. Township of Gloucester, 29 N.J. 481, 150 A.2d 481 (1959).

11 Cady v. City of Detroit, 289 Mich. 499, 286 N.W. 805 (1939).

12 Duffcon Concrete Prods., Inc. v. Borough of Cresskill, 1 N.J. 509, 64 A.2d 347 (1949).

region has been or may appropriately be put. The court upheld the ordinance on the grounds that the physical location and circumstances of the small residential municipality were such that it was best suited for continued residential development and, separated from it but in the same geographical region, there was present a concentration of industry in an area peculiarly adapted to industrial development and sufficiently large to accommodate such development for years to come. The United States Supreme Court has pointed out that a regulatory ordinance "which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities."[13] This distinction has been applied by state courts to invalidate ordinances excluding trailer parks from agricultural areas on the grounds that exclusion from an open and undeveloped area neither promotes nor has a reasonable and substantial relation to the public welfare.[14] Furthermore, the Michigan Supreme Court has refused to compromise an owner's right to free use of property on the basis of speculation that conditions might develop with regard to which the application of the ordinance would enhance the public welfare.[15]

On the other hand, the decision of the New Jersey Supreme Court in the principal case seems to leave no theoretical limitation on the exclusion of trailer parks by state governmental units. The court based its decision on precedent and upon the proposition that zoning must subserve the long-range needs of the community. The court broadly construed language from a decision which had upheld an ordinance of a small and completely developed borough prohibiting future construction of apartment houses within its borders[16] to mean that a municipality does not have to provide for every type of land use within its borders. In the same vein the court relied upon a case which had upheld an ordinance barring motels from a developed community consisting of business, residential, and industrial zones.[17] At no point in its opinion did the court cite a case which

13 Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 387 (1926). This is the landmark case on comprehensive zoning in the United States, the reasoning of which has been widely referred to and relied upon by state and federal courts throughout the years. YOKLEY, *op. cit. supra* note 3, § 20. Since the *Euclid* decision, the Supreme Court has practically withdrawn from the zoning field, with certiorari being consistently refused in zoning cases since 1930.

14 Gust v. Township of Canton, 342 Mich. 436, 70 N.W.2d 772 (1955) (township ordinance); Stevens v. Stillman, 18 Misc. 2d 274, 186 N.Y.S.2d 327 (Sup. Ct. 1959) (town ordinance).

15 Gust v. Township of Canton, *supra* note 14.

16 Fanale v. Borough of Hasbrouck Heights, 26 N.J. 320, 139 A.2d 749 (1958). The court also relied on the case of Duffcon Concrete Prods., Inc. v. Borough of Cresskill, 1 N.J. 509, 64 A.2d 347 (1949). Problems of total exclusion of certain land uses, analogous to those presented by the principal case, have arisen under high minimum lot size zoning regulations and high minimum floor space regulations, as exemplified respectively in Fischer v. Township of Bedminster, 11 N.J. 194, 93 A.2d 378 (1952), and Lionshead Lake, Inc. v. Township of Wayne, 10 N.J. 165, 89 A.2d 693 (1952). For commentary on these cases and a general discussion of zoning law in New Jersey, see Cunningham, *Control of Land Use in New Jersey by Means of Zoning*, 14 RUTGERS L. REV. 37 (1959).

17 Pierro v. Baxendale, 20 N.J. 17, 118 A.2d 401 (1955).

dealt with the exclusion of a particular mode of living from a spacious and undeveloped area; therefore, something more than stare decisis was needed to sustain the holding. In a prior decision the court had committed itself to the view that zoning must subserve long-range objectives as well as the needs of the present and immediately foreseeable future.[18] It was argued that maximum community benefits in the future could be derived only from comprehensive zoning which provided for an attractive industrial area and compatible residential districts. The court pointed out that the current industrial development in the state is taking place in communities where nuisances are excluded and attractive architecture prevails. Therefore, the court held that, in order to attract industry, trailer parks, which bring problems of congestion and "attendant difficulties," may be excluded. This rationale did not meet the thrust of the plaintiff's argument that the township's development was not in fact simply limited to industrial and residential uses. The United States Supreme Court has stated that the question of whether the power exists to forbid a particular type of property use is to be determined by considering the thing not abstractly, but in connection with the existing circumstances and locality.[19] Although the court in the principal case attempted to justify its decision by pointing to the need for an appropriate residential-industrial balance in the future, the efficacy of this rationale is dubious since no industry was contemplating a move into the township in the foreseeable future, and, even if industry did move into the township, there was no indication that such an event would change its course of diversified development. Neither practical reality nor precedent justify excluding trailer parks from many square miles of open area in which there is no conflict between trailer living and other surrounding uses.

Such exclusionary ordinances have the potential of adversely affecting a large number of people.[20] Often the assumptions on which they are based, linking trailer parks with itinerants and squalor, are no longer generally valid;[21] in fact, some trailer parks fall within the luxury living category,[22] and the primary groups living in trailer parks today are undoubtedly respectable citizens.[23] There are many means of trailer park control, other than

18 Napierkowski v. Township of Gloucester, 29 N.J. 481, 150 A.2d 481 (1959).

19 Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).

20 The number of mobile home dwellers has increased significantly in the last decade to an all-time high of three million in 1960. BARTLEY & BAIR, MOBILE HOME PARKS AND COMPREHENSIVE COMMUNITY PLANNING 12 (1960). Between 1951 and 1956 the mobile home population doubled. HODES & ROBERSON, *op. cit. supra* note 7, at 3.

21 It is obvious that these assumptions often result in overt hostility toward the mobile home-owning class. For example, one township ordinance dealt with trailers and gypsies together. Commonwealth v. Amos, 44 Pa. D. & C. 125 (C.P. 1941). In the case of Cady v. City of Detroit, 289 Mich. 499, 286 N.W. 805 (1939), the counsel for the city asserted that trailer living tended to create immorality among children.

22 Fogarty, *Trailer Parks: The Wheeled Suburbs*, Architectural Forum, July 1959, p. 127.

23 According to HODES & ROBERSON, *op. cit. supra* note 7, at 4, the primary groups of people who dwell in mobile homes are (1) young married couples, (2) defense

total exclusion from a municipal unit, which protect the public from any possible adverse effects attending the presence of a trailer park in the community.[24] The most common measures take the form of stringent health standards which must be complied with in order to qualify for and keep the necessary license,[25] and the imposition of reasonable building code standards to prevent overcrowding.[26] The power of a governmental unit to tax trailers and trailer parks in order to meet regulatory expenses is well established.[27] With such regulatory measures available, a community which, as in the principal case, encompasses a large amount of undeveloped land could effectively provide for its long-range objectives without adopting the extreme measure of wholly excluding this popular mode of living. Specifically, special zones could be established, within the now undeveloped areas, in which trailer parks would be allowed. These zones could provide for a minimum proximity to any adjacent land uses with which the presence of a trailer park would be incompatible. Such a solution would allow the greatest possible use of property by landowners, while at the same time permitting the municipal officials to effect the valid objectives of the local zoning power.

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and construction workers, (3) military personnel, (4) seasonal harvest workers, (5) traveling businessmen, and (6) retired people.

24 For example, one community limited the number of trailers within its borders to those within the city at the time the ordinance was passed in order to keep a high ratio of permanent to transient population. FORT LAUDERDALE, FLA., ZONING CODE § 47-49 (1947). Another community limited trailer parks to areas zoned for multiple housing, subject to the restriction that they could not be located within 200 feet of permanent residential buildings located outside the district. This ordinance was upheld in Huff v. City of Des Moines, 244 Iowa 89, 56 N.W.2d 54 (1952).

25 Local ordinance provisions restricting trailers to licensed parks are commonplace, and they have been upheld as reasonably adopted to promote the health, safety, and general welfare of the community. Cooper v. Sinclair, 66 So. 2d 702 (Fla. 1953); Township of Wyoming v. Herweyer, 321 Mich. 611, 33 N.W.2d 93 (1948). See, *e.g.*, MASS. ANN. LAWS ch. 140, § 32A-B (1957), which provides for the licensing of trailer parks by the board of health of a town or city with provision for periodic inspection by the state and local health boards.

26 However, unreasonable building code standards are among the vehicles used to effect the exclusion of trailers from a community. For instance, one community forced trailers to leave because they could not meet a building code requirement of 384 square feet to the first floor. Commonwealth v. McLaughlin, 168 Pa. Super. 442, 78 A.2d 880 (1951). It has been observed that trailers often cannot meet floor space requirements without violating vehicle regulations, leaving the law-abiding trailer owner in a dilemma. Brodnick v. Munger, 102 N.E.2d 48 (Ohio C.P. 1951).

27 There is some dispute with respect to the methods of providing for additional general community expenses resulting from the presence of a mobile home population. The problem of taxation of trailers and trailer parks has been dealt with extensively. See Note, 57 DICK. L. REV. 338 (1953); Comment, 22 U. CHI. L. REV. 738 (1955); Comment, 71 YALE L.J. 702 (1962).