Michigan Law Review

Volume 52 | Issue 6

1956

MUNICIPAL CORPORATIONS-ZONING-VALIDITY OF ORDINANCES EXCLUDING RESIDENCES FROM INDUSTRIAL AREAS

Judson M. Werbelow S.Ed.
University of Michigan Law School

MUNICIPAL CORPORATIONS—ZONING—VALIDITY OF ORDINANCES EXCLUDING RESIDENCES FROM INDUSTRIAL AREAS—Plaintiff purchased undeveloped land located in defendant municipality, intending to construct dwelling houses thereon. At the time of plaintiff's purchase, the land was zoned for industrial use, but the applicable ordinance did permit use of the land for residential as well as industrial purposes. Defendant municipality, a town of about 9,000 persons, had experienced a minimum of industrial growth and the possibility of future industrial development was slight. Shortly after the plaintiff had made his purchase, defendant municipality amended the applicable zoning ordinance to prohibit the use of plaintiff's land for residential purposes. However, the ordinance did permit the presence of hotels, hospitals, schools and public playgrounds in the area zoned industrial. The lower court enjoined enforcement of the amended ordinance as it applied to the plaintiff's land. On appeal, *held*, affirmed. A zoning law which prohibits construction of dwelling houses in an area zoned as industrial may be valid, but as applied to an area lacking any substantial present or potential industry the ordinance is unreasonable and confiscatory and therefore void. *Corthouts v. Town of Newington*, (Conn. 1953) 99 A. (2d) 112.

Although other municipalities have enacted ordinances similar to the one in the principal case, research has not disclosed another case in which the validity of such a zoning law was in question. Generally, zoning laws exclude lower or industrial uses from areas zoned as higher or residential use districts.[1] Thus the zoning ordinance challenged in the principal case is uncommon in that it excludes higher uses from the lower or industrial use area. A zoning law which promotes the public health, safety, morals and welfare and is not unreasonable or arbitrary is a valid constitutional exercise of the police power that a municipality derives from the state.[2] The reason-

[1] YOKLEY, ZONING LAW AND PRACTICE, 2d ed., §47 (1953); BAKER, THE LEGAL ASPECTS OF ZONING 66 (1927).

[2] 8 MCQUILLIN, MUNICIPAL CORPORATIONS, 3d ed., §25.05 (1950); METZENBAUM, THE LAW OF ZONING 68-70 (1930); Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114 (1926).

ableness of a zoning law is considered in light of its application to the facts of the particular case at bar.[3] A zoning ordinance is presumed to be valid and the burden is on the party attempting to overthrow it to show that it does not, in fact, meet the constitutional requirements.[4] Factors present in the principal case which may not appear in other cases were unfavorable to the enforcement of the unusual ordinance in question. The absence of substantial industry in the area at the time of the ordinance and the dim prospects for future industrial development caused the court to hold that the zoning law was unreasonable as applied to the plaintiff. The fact that the ordinance permitted construction of hotels, hospitals, schools and public playgrounds in the restricted area raised serious doubt as to whether the ordinance was enacted to promote the public health, safety, morals and welfare. Regardless of whether industry is excluded from residential areas or residences from industrial areas, it would seem that both types of ordinances have the same end, viz., the improvement of public health, safety, morals and welfare through the separation of home and factory.[5] Further, many zoning ordinances which greatly restrict construction of dwelling houses in an area which is zoned residential have been held to be reasonable.[6] Thus it would seem that ordinances which propose to exclude residences from an area which is already substantially industrial or can reasonably be expected to become industrial are valid.[7] Zoning ordinances which exclude dwelling houses from an industrial area can be advantageous, but there may be individual hardship and public detriment in precluding development of large areas of land for a long period of time.[8] Although there may be practical difficulties in drafting a beneficial zoning law of the type discussed, there appears to be no logical reason why a zoning law cannot be enacted to exclude residences from industrial areas and yet be able to withstand attack by local landowners.

Judson M. Werbelow, S.Ed.

[3] YOKLEY, ZONING LAW AND PRACTICE, 2d ed., §28 (1953); Wilkins v. San Bernardino, 29 Cal. (2d) 332, 175 P. (2d) 542 (1946).

[4] Village of Euclid v. Ambler Realty Co., note 2 supra; Town of Islip v. Summers C. & L. Co., 257 N.Y. 167, 177 N.E. 409 (1931).

[5] A listing of the specific purposes of the type of ordinance that excludes residences from industrial areas can be found in Cook, "New Problems in Zoning and Their Solution," NIMLO MUNICIPAL LAW REVIEW 344 at 346 (1953).

[6] In Gignoux v. Village of Kings Point, 99 N.Y.S. (2d) 280 (1950), an ordinance requiring a minimum of 40,000 square feet of land for each single family dwelling was held to be reasonable. An ordinance prohibiting construction of multiple family dwellings in rear yards was held valid in Moore v. Lexington, 309 Ky. 671, 218 S.W. (2d) 7 (1949). Dilliard v. Village of North Hills, 94 N.Y.S. (2d) 715 (1950), upheld an ordinance limiting the construction of single family dwellings to lots of two or more acres.

[7] Language to this effect can be found in the principal case at 114.

[8] BAKER, THE LEGAL ASPECTS OF ZONING 66 (1927). In WILLIAMS, THE LAW OF CITY PLANNING AND ZONING 277 (1922), it is suggested that this problem can be alleviated by excluding residences from only a small area of the proposed industrial district and zoning the surrounding area as unrestricted so that dwelling houses may be constructed in the surrounding area when it is not needed for industrial use.