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"Spot Zoning"-A Vicious Practice or a Community Benefit

Conclusion

There is a certain amount of irony in the judicial reasoning which sustains historical zoning on economic grounds. Such reasoning suggests that zoning ordinances have been held valid because they tend to preserve the historic areas as tourist attractions and hence have a favorable effect upon business. Yet those who urged the preservation of historic areas will attest that the primary motive was quite the contrary. Objection was raised to the immolation of historic areas to the demands of burgeoning business. A desire existed to preserve the beauty of these areas quite apart from the incidental economic benefits resulting thereby. It is time that the courts recognize that the very preservation of historical monuments, the beauty of the settings in which they are placed and the beauty of our communities as a whole is an end in itself.

"SPOT ZONING"—A VICIOUS PRACTICE OR A COMMUNITY BENEFIT

New influences such as the "population explosion," a higher standard of living, and advances in transportation and communication have created a variety of new conditions and needs to which present zoning regulations must be adjusted. In an effort to meet these changing conditions in their respective communities, municipal planners and zoning commissions have frequently departed from the earlier theory that each use district should be restricted to one formal use. In many instances, they have allowed small areas to be zoned for uses which are inconsistent with the uses permitted in the larger surrounding districts. The validity of this type of zoning is frequently attacked as "spot zoning."

A Misused Term

The term "spot zoning" has received such wide use that it now has several meanings. When used as a label to indicate that a particular zoning regulation is invalid, it has its *legal* meaning,[1] "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners."[2] The term has also been used by the courts in a broader sense to describe any limited application of a particular zoning ordinance to an individual plot or a small area.[3] Through liberal use, the term has been expanded even further to encompass such restrictive land uses as variances, nonconforming uses, and piecemeal original zoning.[4] The term "spot zoning" will be used in this comment in its legal sense.

1. Annot., 51 A.L.R.2d 263, 266 (1957).

2. Rodgers v. Village of Tarrytown, 302 N.Y. 115, 123, 96 N.E.2d 731, 734 (1951).

3. Chayt v. Maryland Jockey Club, 179 Md. 390, 18 A.2d 856 (1941); Penning v. Owens, 340 Mich. 355, 65 N.W.2d 831 (1954); State ex rel. Christopher v. Matthews, 362 Mo. 242, 240 S.W.2d 934 (1951). Contra, Winslow v. Zoning Bd., 143 Conn. 381, 122 A.2d 789 (1956); Birdsey v. Wesleyan College, 211 Ga. 583, 87 S.E.2d 378 (1955).

4. See Note, Spot Zoning and the Comprehensive Plan, 10 Syracuse L. Rev. 303 (1959).

"Spot Zoning" Is Essentially Invalid

Since its introduction in Europe,[5] the practice of restricting land uses, by dividing municipalites into use districts or zones, has served primarily to protect residential areas from encroachment by industry and commerce. In this country, zoning has been sanctioned as a valid exercise of the police power of the state when it is done to promote public health, safety, morals or the welfare of the community.[6] "Spot zoning," the "antithesis of planned zoning,"[7] is subject to attack on a dual basis, namely, it may be unconstitutional because it violates the due process provisions of the federal and state constitutions, or it may be void for want of legislative authority when it does not comply with the requirements of the particular state's enabling act.

"Spot zoning," by definition, seeks only to benefit a single property owner or a select group of owners at the expense of the community as a whole. This type of zoning is an abuse of the police power delegated by the state to its municipalities.[8] It is an infringment of the property rights of the many as against a privileged few.[9] It has therefore been declared arbitrary,[10] discriminatory[11] or unreasonable.[12] It was this manifest disregard for the community benefit which prompted one authority to denounce "spot zoning" as a "most vicious practice that has expanded almost to a point where it has become a cancerous growth on the body politic in many, many municipalities."[13]

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5. For a brief history of the origins of zoning, see 1 Yokley, Zoning Law and Practice §§ 2-7 (2d ed. 1953); Note, 1 Buffalo L. Rev. 286-87 (1952).

6. Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). Mr. Justice Sutherland delivered the opinion of the Court upholding the legality of a general zoning ordinance under attack as violating due process under the fourteenth amendment. The Court held that zoning is a valid exercise of the police power when reasonably related to public health, safety, morals and general welfare.

7. Rodgers v. Village of Tarrytown, 302 N.Y. 115, 124, 96 N.E.2d 731, 735 (1951).

8. Municipalities do not have inherent powers to zone. Boozer v. Johnson, 33 Del. Ch. 554, 98 A.2d 76 (Ch. 1953); Clements v. McCabe, 210 Mich. 207, 177 N.W. 722 (1920); Miller v. City of Memphis, 181 Tenn. 15, 178 S.W.2d 382 (1944).

9. 1 Yokley, Municipal Corporations § 160 n.153 (1956). Cf. Note, 44 Cornell L.Q. 450 (1959).

10. Bishop v. Board of Zoning Appeals, 133 Conn. 614, 53 A.2d 659 (1947) (dictum); Polk v. Axton, 306 Ky. 498, 208 S.W.2d 497 (1948); Deligtisch v. Town of Greenburgh, 135 N.Y.S.2d 220 (Sup. Ct. 1954).

11. Whittemore v. Building Inspector, 313 Mass. 248, 46 N.E.2d 1016 (1943); Caccinari v. Union City, 1 N.J. Super. 219, 63 A.2d 891 (Super. Ct. 1949).

12. See Wilkins v. City of San Bernardino, 29 Cal. 2d 332, 175 P.2d 542 (1946); Bishop v. Board of Zoning Appeals, 133 Conn. 614, 53 A.2d 659 (1947). "An ordinance which permanently so restricts the use of property that it cannot be used for any reasonable purpose goes, it is plain, beyond regulation, and must be recognized as a taking of the property. The only substantial difference, in such case, between restriction and actual taking, is that the restriction leaves the owner subject to the burden of payment of taxation, while outright confiscation would relieve him of that burden." Arverne Bay Constr. Co. v. Thatcher, 278 N.Y. 222, 232, 15 N.E.2d 587, 592 (1938). See Eubank v. City of Richmond, 226 U.S. 137 (1912). Cf. Mr. Justice Holmes' opinion in Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922).

13. 1 Yokley, Zoning Law and Practice § 91, at 203 (2d ed. 1953).

The validity of "spot zoning" may also be subject to attack on the secondary ground that it does not satisfy the requirements of the particular state's enabling act. By limiting the scope of the zoning authority delegated to municipalities to that zoning which is done in accordance with a well-considered comprehensive plan,[14] a state legislature can give some measure of protection to the individual property owner. When the enabling act clearly requires conformance to such a plan, the requirement is strictly construed.[15] Contrary zoning regulations have been held to be void for lack of legislative authority.[16]

A Well-Considered Comprehensive Plan

Case decisions point up the lack of agreement among the courts in testing zoning measures for consonance with the enabling mandate of "accordance with a comprehensive plan." Some courts, adopting a literal approach, have reached the seemingly Draconian result of invalidating any zoning ordinance which is not related to an existent over-all community plan which is separate from the zoning ordinance.[17] A less mechanical reading of the enabling act has allowed other courts to hold that the statutory requirement is met when the zoning regulation is consistent with the "policy"[18] of the zoning commission or where due consideration has been given to the common benefit of a particular district.[19] Another frequently accepted construction is the moderate view that the zoning ordinance is not and need not be an integral part of another plan which transcends it in scope, but is itself the comprehensive plan contemplated by the zoning enabling act.[20]

This lack of agreement as to the construction to be given the statutory requirement has mitigated the effectiveness of the provision so that many muni-

14. Those state enabling acts which had as their model the Standard State Zoning Enabling Act, recommended by the Department of Commerce in 1926, require that zoning ordinances and all amendments thereto be drawn "in accordance with a comprehensive plan." 1 Rathkopf, The Law of Zoning and Planning 9-1 (3d ed. 1959). "[T]o be valid, a zoning ordinance must be one which is designed to further a plan which relates to a substantial area of the municipality enacting it and to the reasonable needs of the community, both at present and in the foreseeable future. There must be a plan and that plan must be comprehensive as to territory, public needs and time." Fairlawns Cemetery Ass'n v. Zoning Comm'n, 138 Conn. 434, 439, 86 A.2d 74, 77 (1952).

15. See Marshall v. Salt Lake City, 105 Utah 111, 141 P.2d 704 (1943); Cf. Penning v. Owens, 340 Mich. 355, 65 N.W.2d 831 (1954).

16. City of Utica v. Hanna, 202 App. Div. 610, 195 N.Y. Supp. 225 (4th Dep't 1922).

17. Johnson v. City of Huntsville, 249 Ala. 36, 29 So. 2d 342 (1947).

18. Bartram v. Zoning Comm'n, 136 Conn. 89, 68 A.2d 308 (1949).

19. County Comm'rs v. Ward, 186 Md. 330, 46 A.2d 684 (1946).

20. See Couch v. Zoning Comm'n, 141 Conn. 349, 106 A.2d 173 (1954). See also Bishop v. Board of Zoning Appeals, 133 Conn. 614, 53 A.2d 659 (1947). "The analysis of the 'comprehensive plan' requirement in terms of the zoning ordinance itself is a common judicial phenomenon. The reasoning seems to be that a comprehensive ordinance, one which blankets the entire area and is internally consistent, is automatically 'in accordance with a comprehensive plan.' The plan is the ordinance, and the ordinance the plan. . . ." Haar, "In Accordance With a Comprehensive Plan," 68 Harv. L. Rev. 1155, 1167 (1955).

cipalities have enacted zoning legislation without first adopting a master community plan.

The spot-zoning cases, like those dealing with partial zoning, appear to make the legislative requirement of accordance with a comprehensive plan in effect a nullity. The words become merely a supererogatory reminder of the underlying test of constitutionality. So long as the legislation is reasonably related to the police power, plausibly serving the ends of health, safety, welfare, or morals, and not demonstrably arbitrary or discriminatory, it will be sustained. To avoid the charge of spot-zoning, the community must be sure only that in dealing with one land parcel, others similarly situated have been taken into account. In this sense, "comprehensive" is virtually synonymous with "uniform," the uniformity being in terms either of the ordinance itself or of a generalized plastic "policy."[21]

Decisions Aid Future Planning

Although the courts have condemned "spot zoning," they have been consistent in pointing out that the zoning of "spots" for inconsistent uses is not invalid per se.[22] Rather it is invalid or valid depending on the circumstances involved in the particular case.[23] Because of the uniqueness of the subject matter, the courts must decide "spot zoning" cases on a case by case basis.[24] It is necessary, therefore, that municipal authorities review recent court decisions before enacting any inconsistent zoning ordinances or amendments to determine their probable acceptability.

Economical Housing

The recent expansion of the suburbs has resulted, in part, from the natural increase of their residents and the migration or overflow from heavily conjested urban areas. In adjusting to the community need for economical housing[25] which has resulted from the marked increase in population, municipal authorities have been successful in rezoning residential areas to multi-dwelling and apartment uses. Changes in conditions within the district is the principal reason for allowing this type of rezoning,[26] but the courts will also consider the changes in surrounding use districts,[27] or the suitability of the particular land

21. Id. at 1170. Cf. Speakman v. Mayor of No. Plainfield, 8 N.J. 250, 256, 84 A.2d 715, 718 (1951).

22. See Higbee v. Chicago B.&Q.R.R., 235 Wis. 91, 292 N.W. 320 (1940). See also Deligtisch v. Town of Greensburgh, 135 N.Y.S.2d 220 (Sup. Ct. 1954).

23. State ex rel. Christopher v. Matthews, 362 Mo. 242, 240 S.W.2d 934 (1951); Shaffner v. City of Salem, 201 Ore. 45, 268 P.2d 599 (1954); Page v. City of Portland, 178 Ore. 632, 165 P.2d 280 (1946); Kenny v. Kelly, 254 S.W.2d 535 (Tex. Civ. App. 1953).

24. Rowland v. City of Racine, 223 Wis. 488, 271 N.W. 36 (1937).

25. Cf. Lamarre v. Commissioner of Pub. Works, 324 Mass. 542, 87 N.E.2d 211 (1949); Crow v. Town of Westfield, 136 N.J.L. 363, 56 A.2d 403 (Sup. Ct. 1948); Rodgers v. Village of Tarrytown, 302 N.Y. 115, 96 N.E.2d 731 (1951).

26. See Wilcox v. City of Pittsburgh, 121 F.2d 835 (3d Cir. 1941) (no change in conditions; rezoning invalid). See also City of Miami v. Ross, 76 So. 2d 152 (Fla. 1954). Cf. Wolpe v. Poretsky, 154 F.2d 330 (D.C. Cir.), cert. denied, 329 U.S. 724 (1946).

27. Byrn v. Beechwood Village, 253 S.W.2d 395 (Ky. 1952) (area on edge of residential district rezoned to apartment use because abutting on heavily trafficked highway and facing commercial structure across highway); Crow v. Town of Westfield, 136 N.J.L. 363, 56 A.2d

for the use permitted by the original zoning.[28] In one case,[29] the court, in allowing a "floating zone" to be created for garden apartments in residential districts, stated:

> The Tarrytown board of trustees was entitled to find that there was a real need for additional housing facilities; that the creation of Residence B-B districts for garden apartment developments would prevent young families, unable to find accommodations in the village, from moving elsewhere; would attract business to the community; would lighten the tax load of the small home owner, increasingly burdened by the shrinkage of tax revenues resulting from the depreciated value of large estates and the transfer of many such estates to tax-exempt institutions; and would develop otherwise unmarketable and decaying property.[30]

The courts are more prone to approve zoning allowing an inconsistent apartment use where the change in zoning will not be a radical departure from the use of the surrounding area.[31] It is also noteworthy that when dealing with rezoning to such a use, particular attention will be given to the size of the "spot" in question.[32]

Where a residential area has previously been rezoned to apartment use, the courts will further permit the same areas to be "spotted" with commercial, cultural, recreational and educational uses so as to form integrated neighborhoods and districts.[33] In such situations the most frequently used commercial uses are acceptable, *i.e.*, groceries, drug stores, barber shops, beauty parlors, dry cleaning shops, filling stations, and the like.[34] Special zoning of this type is

403 (Sup. Ct. 1948) (rezoned to apartment use to act as a buffer to protect property value against less restricted area of adjacent township). See Greenberg v. City of New Rochelle, 206 Misc. 28, 129 N.Y.S.2d 691 (Sup. Ct.), aff'd, 284 App. Div. 891, 134 N.Y.S.2d 593 (2d Dep't), appeal dismissed, 308 N.Y. 736, 124 N.E.2d 716 (1954).

28. Gratton v. Conte, 364 Pa. 578, 73 A.2d 381 (1950) (unsuitable topography for single family dwellings); Eggebeen v. Sonnenburg, 239 Wis. 213, 1 N.W.2d 84 (1941) (fill on land too poor to support single family dwelling).

29. Rodgers v. Village of Tarrytown, 302 N.Y. 115, 96 N.E.2d 731 (1951), where the court declared valid two amendments to the general zoning ordinance of defendant village. The first amendment created a new zone in which garden apartments were permissible, provided certain standards for such a zone, such as a minimum size plot of ten acres, were met. The boundaries of the new zone were to be fixed by another amendment of the zone map when the authorized "floating" zone was applied to specific property. The second amendment placed only the property of the individual defendant, which was previously residential, in a new zone for garden apartments.

30. Id. at 122, 96 N.E.2d at 733.

31. Hendlin v. Fairmount Constr. Co., 8 N.J. Super. 310, 72 A.2d 541 (Super. Ct. 1950) (dictum); see Hedin v. Board of County Comm'rs 209 Md. 224, 120 A.2d 663 (1956). Cf. Greenberg v. City of New Rochelle, 206 Misc. 28, 129 N.Y.S.2d 691 (Sup. Ct. 1954).

32. See Crow v. Town of Westfield, 136 N.J.L. 363, 56 A.2d 403 (Sup. Ct. 1948); In re Lieb's Appeal, 179 Pa. Super. 318, 116 A.2d 860 (1955).

33. Cf. Webster, Urban Planning and Municipal Policy 143-59 (1958).

34. See Temmink v. Board of Zoning Appeals, 205 Md. 489, 109 A.2d 85 (1954); State ex rel. Oliver Cadillac Co. v. Christopher, 317 Mo. 1179, 298 S.W. 720 (1927) (dictum). See also Cassel v. Mayor of Baltimore, 195 Md. 348, 73 A.2d 486 (1950) (dictum). Cf. Snow v. Johnston, 197 Ga. 146, 28 S.E.2d 270 (1943) (dictum) (funeral home not allowed in residential area).

neither irrational nor discriminatory.[35] It serves a distinct and insistent social need,[36] providing for the accommodation and convenience of the residents of the districts.[37] It should be noted, however, that the courts, in deciding the reasonableness of this type of zoning, look to the needs of the particular district,[38] and the distance from the district of a use capable of satisfying these needs.[39]

In many cases of suburban expansion, the need for additional public utilities also increases in proportion to the rise in population. Special zoning in residential areas will often be sanctioned to permit restricted uses for those public utilities which are considered necessary for the additional convenience of the residents of the district.[40] Such inconsistent zoning will also be upheld where it is reasonable and will best serve the interests of the community as a whole.[41]

Shopping Centers

As the suburban communities have expanded and spread around the original commercial districts, the time and distance required for daily shopping has frequently become a burden. Growing municipalities have, in many cases, solved this problem by "spotting" residential districts with small commercial zones. This type of special zoning has given rise to the American shopping center. Residential land may be segregated for use as a shopping center in order to "maintain in harmonious operation the family home."[42] This will reduce the time required to do daily shopping, and the traffic congestion in the older, more limited commercial districts.[43] A shopping center, because it allows the pedes-

35. State ex rel. Oliver Cadillac Co. v. Christopher, supra note 34; Goddard v. Stowers, 272 S.W.2d 400 (Tex. Civ. App. 1954). See also Fieldston Garden Apartments, Inc. v. City of New York, 7 Misc. 2d 147, 145 N.Y.S.2d 907 (Sup. Ct. 1955), aff'd, 3 App. Div. 2d 903, 163 N.Y.S.2d 402 (1st Dep't 1957).

36. Goddard v. Stowers, supra note 35.

37. Temmink v. Board of Zoning Appeals, 205 Md. 489, 109 A.2d 85 (1954).

38. See Freeman v. City of Yonkers, 205 Misc. 947, 129 N.Y.S.2d 703 (Sup. Ct. 1954) (area doesn't need gas station); Appley v. Township Comm., 128 N.J.L. 195, 24 A.2d 805 (Sup. Ct.), aff'd, 129 N.J.L. 73, 28 A.2d 177 (Ct. Err. & App. 1942) (no need for extension of commercial district). Cf. Edgewood Civic Club v. Blaisdell, 95 N.H. 244, 61 A.2d 517 (1948) (novelty store not necessary).

39. See Bischoff v. Hennessy, 251 S.W.2d 582 (Ky. 1952) (nearest commercial shopping center was 2½ miles away); Jones v. Zoning Bd., 32 N.J. Super. 397, 108 A.2d 498 (Super. Ct. 1954) (no shopping area within 1½ miles, but large increase in population was anticipated). Cf. Kuehne v. Town Council, 136 Conn. 452, 72 A.2d 474 (1950); Skinner v. Reed, 265 S.W.2d 850 (Tex. Civ. App. 1954).

40. Higbee v. Chicago, B.&Q.R.R., 235 Wis. 91, 292 N.W. 320 (1940) (passenger depot permitted in residential area).

41. Holt v. City of Salem, 192 Ore. 200, 234 P.2d 564 (1951) (electric substation in residential area for benefit of community). Cf. McNutt Oil & Ref. Co. v. Brooks, 244 S.W.2d 872 (Tex. Civ. App. 1951) (truck service center allowed in apartment area to avoid congestion in downtown area).

42. Marshall v. Salt Lake City, 105 Utah 111, 141 P.2d 704, 711 (1943).

43. See Bartram v. Zoning Comm'n, 136 Conn. 89, 68 A.2d 308 (1949); City of Waxahachie v. Watkins, 275 S.W.2d 477 (Tex. 1955); Skinner v. Reed, 265 S.W.2d 850 (Tex. Civ. App. 1954).

trian to shop without the dangers of traffic and because it is convenient to the surrounding area, can readily be related to the health, safety and public welfare of the community. But where this type of zoning is done for the sole purpose of favoring an individual or group[44] or to create a monopoly[45] in a particular area, without regard to the needs of the community, it is invalid.

Gas Stations

The rapid expansion of many of our suburban municipalities has been accompanied by a marked rise in private and commercial vehicular traffic. The resulting increased demand for filling and service stations has often resulted in the rezoning of small areas from residential use to restricted use as a gas station. Such rezoning is approved where there is sufficient evidence of a present or anticipated need for such a use,[46] and where the rezoned area is abutting on an arterial highway,[47] or is located on the corner[48] of a heavily trafficked intersection.[49]

In order to reduce the deleterious effect of this type of rezoning upon the surrounding residential property, some zoning regulations require compliance with special protective provisions before the rezoned plot may be used as a gas station.[50] These special provisions have been upheld by the courts against attack as "contract zoning."[51] Because of the frequently unfavorable effects of such rezoning, considerable and weighty evidence is needed to demonstrate its reasonableness.[52]

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44. Ellicott v. Mayor of Baltimore, 180 Md. 176, 23 A.2d 649 (1942); De Blasiis v. Bartell, 143 Pa. Super. 485, 18 A.2d 478 (1941); Huebner v. Philadelphia Sav. Fund Soc'y, 127 Pa. Super. 28, 192 Atl. 139 (1937). Cf. McNutt Oil & Ref. Co. v. Brooks, 244 S.W.2d 872 (Tex. Civ. App. 1951) (mere incidental benefit to property owner does not invalidate inconsistent zoning, where it is required by public need).

45. Wickham v. Becker, 96 Cal. App. 443, 274 Pac. 397 (Dist. Ct. App. 1929). See Linden Methodist Episcopal Church v. City of Linden, 113 N.J.L. 188, 173 Atl. 593 (Sup. Ct. 1934); Huebner v. Philadelphia Sav. Fund Soc'y, supra note 44.

46. See Ellicott v. Mayor of Baltimore, 180 Md. 176, 23 A.2d 649 (1942) (nearest gas station ½ mile away). "So long as this district continues zoned for residential purposes, it must be dealt with as a residential district, and the segregation of a lot within it for a commercial use must be dealt with as a discrimination. Not all discriminations are, however, departures from the authority of the enabling act, or unconstitutional." Id. at § —, 23 A.2d at 652.

47. Church v. Town of Islip, 8 N.Y.2d 254, 168 N.E.2d. 680, 203 N.Y.S.2d 866 (1960). Cf. Tews v. Woolhiser, 352 Ill. 212, 185 N.E. 827 (1933) (abutting on railway right of way).

48. Ellicott v. Mayor of Baltimore, 180 Md. 176, 23 A.2d 649 (1942).

49. Cf. Marshall v. Salt Lake City, 105 Utah 111, 141 P.2d 704 (1943).

50. Church v. Town of Islip, 8 N.Y.2d 254, 168 N.E.2d 680, 203 N.Y.S.2d 866 (1960), affirming 8 App. Div. 2d 962, 190 N.Y.S.2d 927 (2d Dep't 1959). The change in zoning was granted upon conditions that the owners execute restrictive covenants as to the maximum area to be occupied by buildings and as to fence and shrubbery.

51. Church v. Town of Islip, supra note 50.

52. Cf. State ex rel. Miller v. Cain, 40 Wash. 2d 216, 242 P.2d 505 (1952) (mere fact that nearby property has been "spot zoned" for business does not justify "spot zoning"

INCREASED MUNICIPAL EXPENSES

The increased expense of supplying proper municipal service to an expanded community has prompted municipal planners to seek effective means of attracting new business and of increasing tax revenue. In recent years attention has been focused upon the reasonableness of zoning which permits industry in districts previously zoned for residential use. This type of zoning has been permitted in the past only under special conditions. The most acceptable situation is one where a sparsely developed area, zoned for rural residential use, is "spotted" to allow special areas for industrial use.[53] An industrial "spot" may also be valid where the land is unfit for the originally zoned residential use,[54] or where industrial use is the best possible use that can be made of the land.[55] Conditions in the surrounding area play an important role in the court's decision. Approval is normally given in those cases where the rezoned land abuts on a heavily trafficked highway,[56] is adjacent to a railway siding,[57] or is opposite another industrial use in a neighboring district.[58]

New developments can be expected in regard to this type of rezoning. The earlier antipathy toward industry in or near residential districts is being progressively mitigated as advances in smoke control, sound proofing, and plant design become perfected. Small, clean, specialized industries can now bring to a growing community the advantages of new business, increased employment and greater tax revenues without the disadvantages of smog, noise, glare, and traffic. With proper planning and adequate protective provisions[59] in re-

plot in question for gas station). See Freeman v. City of Yonkers, 205 Misc. 947, 129 N.Y.S.2d 703 (Sup. Ct. 1954).

53. See Kutcher v. Town Planning Comm'n, 138 Conn. 705, 88 A.2d 538 (1952).

54. Hills v. Zoning Comm'n, 139 Conn. 603, 96 A.2d 212 (1953) (held to be merely an extension of existing industrial zone to residential area adjoining railroad right of way and no longer fit for residential use); State ex rel. Christopher v. Matthews, 362 Mo. 242, 240 S.W.2d 934 (1951) (area rezoned for electrical generating plant, since not fit for residential use because of flooding). Cf. Schmidt v. Philadelphia Zoning Bd., 382 Pa. 521, 114 A.2d 902 (1955) (originally industrial; zoned residential; rezoned to industrial). Cf. Graham v. Graybar Elec. Co., 158 Neb. 527, 63 N.W.2d 774 (1954).

55. See State ex rel. Christopher v. Matthews, supra note 54; Schmidt v. Philadelphia Zoning Bd., supra note 54.

56. Cf. Hermann v. Incorporated Village of East Hills, 104 N.Y.S.2d 592 (Sup. Ct.), aff'd, 279 App. Div. 753, 109 N.Y.S.2d 182 (2d Dep't 1951).

57. See Hills v. Zoning Comm'n, 139 Conn. 603, 96 A.2d 212 (1953); Offutt v. Board of Zoning Appeals, 204 Md. 551, 105 A.2d 219 (1954). Cf. Hermann v. Incorporated Village of East Hills, supra note 56.

58. Raymond v. Commissioner, 333 Mass. 410, 131 N.E.2d 189 (1956); Partain v. City of Brooklyn, 101 Ohio App. 279, 133 N.E.2d 616 (1956) (bordered on district in adjoining municipality which had always been zoned for industrial use). See also Behlen & Bros. v. Mayor of Kearny, 31 N.J. Super. 30, 105 A.2d 894 (Super. Ct. 1954).

59. See Nappi v. LaGuardia, 184 Misc. 775, 55 N.Y.S.2d 80 (Sup. Ct. 1944), aff'd, 269 App. Div. 693, 54 N.Y.S.2d 722 (2d Dep't), aff'd, 295 N.Y. 652, 64 N.E.2d 716 (1945). Cf. Sieber v. Laawe, 33 N.J. Super. 115, 109 A.2d 470 (Super. Ct. 1954).

zoning ordinances, it would appear that the courts would more readily accept rezoning for industrial use in residential districts.

Boundary Rezoning

In discussing "spot zoning" as related to suburban expansion, it is important to realize that the municipality's responsibility toward property owners extends beyond the municipal boundaries. In situations where a municipality has rezoned a "spot" which abuts, or is very near to its boundary lines, the character of the contiguous districts must be considered along with the needs of the rezoning municipality.[60] There is a duty owing to the adjacent property owners in the adjoining municipality. Their rights must be considered along with the rights of the residents and taxpayers of the rezoning municipality. "To do less would be to make a fetish out of invisible municipal boundary lines and a mockery of the principles of zoning."[61]

Conclusion

"Spot zoning" is universally recognized as an abuse of the zoning power.[62] If it were not held in check by municipal authorities and condemned by the courts, it would tend to produce conditions almost as chaotic as existed before zoning.[63] It is equally important to realize, however, that the purpose of zoning is not to place the municipality in a zoned strait-jacket, but rather to give direction and control to the course of its development.[64] Municipalities should be encouraged to exercise their power to enact or to amend zoning ordinances so that land uses may be adapted to changing conditions. The danger of "spot zoning" should guide but not inhibit such readjustment. The best protection from "spot zoning" would seem to be a clear and definite statutory requirement that all zoning should be in accord with an existing, current, community-wide plan which is separate from the zoning ordinance. Such a plan would not only reduce arbitrary and discriminatory zoning, but would also, through conscientious and continued re-evaluation and revision, indicate potential problem areas which could be corrected.[65]

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60. Borough of Cresskill v. Borough of Dumont, 15 N.J. 238, 104 A.2d 441 (1954). See Partain v. City of Brooklyn, 101 Ohio App. 279, 133 N.E.2d 616 (1956).

61. Borough of Cresskill v. Borough of Dumont, supra note 60, at 247, 104 A.2d at 446.

62. See State ex rel. Miller v. Cain, 40 Wash. 2d 216, 242 P.2d 505 (1952).

63. Cassel v. Mayor of Baltimore, 195 Md. 348, 73 A.2d 486 (1950). See Bassett, Zoning 122 (1940).

64. Cf. Bove v. Donner-Hanna Coke Corp., 236 App. Div. 37, 258 N.Y. Supp. 229 (4th Dep't (1932).

65. The basic community plan should be reviewed regularly to insure that it provides sound solutions to local problems and sound goals for future development. Communities change because of internal and external influences. Comprehensive plans must adjust to the change; and in turn, seek to utilize the change to the communities' advantage. This means that planning is more than a collection of officially approved documents; it is a continuing process.