THE VALIDITY OF ZONING AN ENTIRE MUNICIPALITY EXCLUSIVELY RESIDENTIAL

The creation within a municipality of restricted residential districts from which business and trade can be excluded has been considered valid since the 1926 Supreme Court decision of *Village of Euclid v. Ambler Realty Co.*[1] Although the people of a municipality have a right to endeavor to maintain the character of their city, this right has its constitutional limits.[2] The problem, then, is to consider the proper function of land use planning and control and to define the limits of municipal protectionism that can be exercised through the local zoning power.

The Supreme Court of Connecticut in *Cadoux v. Planning & Zoning Commission*[3] held that it is not unreasonable to establish a *single* zoning district, encompassing the entire 20 square mile Weston, Connecticut, municipality, limiting the district to minimum two-acre family residence, farming, and associated incidental uses. The general orientation of the residents for employment, shopping, and other services was toward the town of Westport, Connecticut, and New York City. The function of Weston itself was that of "a residential area for single-family homes in a rural Connecticut setting."[4] Plaintiff in *Cadoux* applied for an amendment to the zoning regulations to establish a shopping center district to include both plaintiff's 4.18 acre parcel and the adjacent, already existing shopping center, then being maintained as a nonconforming use. The court, in affirming the denial of the application for amendment, stated that "[i]t is, in each case, a question of fact as to reasonableness, which depends upon the needs of the community and the adaptability of property therein for residential uses."[5]

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1. 272 U.S. 365 (1926). *See also* Zahn v. Board of Pub. Works, 274 U.S. 325 (1927).

2. Berman v. Parker, 348 U.S. 26 (1954); Reynolds v. Barret, 12 Cal. 2d 244, 83 P.2d 29 (1938); Connor v. Township of Chanhassen, 249 Minn. 205, 81 N.W.2d 789 (1957).

3. 162 Conn. 425, 294 A.2d 582, *cert. denied,* 408 U.S. 924 (1972).

4. *Id.* at 428, 294 A.2d at 583.

5. *Id., citing* 1 A. RATHKOPF, LAW OF ZONING AND PLANNING 14-8 (3d ed. 1966).

Governmental power to interfere with the general rights of landowners by restricting the character of their land use through zoning is not unlimited. The established rule, which is generally recognized by state courts,[6] is that the restrictions of a zoning ordinance must be substantially related to the public health, safety, morals or general welfare.[7] To justify the state imposing its authority on behalf of the public through its exercise of police power, it must appear that the interests of the public generally, as distinguished from a particular class, require such interference and that the means are reasonably necessary for the accomplishment of that purpose.[8] Where there is room for fair difference of opinion or if the reasonableness of the ordinance is fairly debatable, the courts will not disturb the legislative decision.[9] If the ordinance is held to be a proper exercise of the police power, the right of the property owner to the unrestricted use of his property is subordinated to the exercise of such power.

A plaintiff may attack a zoning ordinance in two ways: he may argue that the ordinance is invalid in its specific application to his land or that it is invalid in its general application to the community. In the case of the former, if enforcement of the terms of the ordinance would result in arbitrary and unreasonable injury to an owner of specific property, the ordinance will be void as to such property even though the general scheme of the ordinance is valid.[10] In *Cadoux,* however, plaintiff could not claim that the ordinance was unreasonable in its application to his property because his property was neither unsuited for residential use nor did the residential zoning destroy the value of the property.[11]

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6. *See* Annot., 117 A.L.R. 1117, 1124 (1938).

7. Nectow v. City of Cambridge, 277 U.S. 183 (1928). *See also* Annot., 117 A.L.R. 1117, 1124 (1938).

8. Lawton v. Steele, 152 U.S. 133, 137 (1894). *See also* Goldblatt v. Town of Hempstead, 369 U.S. 590 (1962); People v. Hawley, 207 Cal. 395, 279 P. 136 (1929).

9. Nectow v. City of Cambridge, 277 U.S. 183 (1928); Zahn v. Board of Pub. Works, 274 U.S. 325 (1927); Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926); Radice v. New York, 264 U.S. 292 (1924).

10. *See, e.g.,* Sunny Slope Water Co. v. City of Pasadena, 1 Cal. 2d 87, 33 P.2d 672 (1934).

11. *See, e.g.,* People *ex rel.* Kirby v. City of Rockford, 363 Ill. 531, 2 N.E.2d 842 (1936); Glencoe Lime & Cement Co. v. City of St. Louis, 341 Mo. 689, 108 S.W.2d 143 (1937); Chusud Realty Co. v. Village of Kensington, 40 Misc. 2d 259, 243 N.Y.S.2d 149 (Sup. Ct. 1963); Rockdale Constr. Corp. v. Village of Cedarhurst, 94 N.Y.S.2d 601 (Sup. Ct.), *aff'd,* 275 App. Div. 1043, 91 N.Y.S.2d 926 (1949), *aff'd,* 301 N.Y. 519, 93 N.E.2d 76 (1950).

Thus, plaintiff argued that the ordinance was *generally* invalid—that since the ordinance provided for only one zoning district for the entire municipality, to the exclusion of all business, industry, and even apartments, the restrictions were illegal and arbitrary. In actuality, there is scant authority upholding the validity of zoning a municipality exclusively residential,[12] although it has been held that a municipality on the periphery of a large metropolitan center may constitutionally pass a one-use ordinance in order to retain its residential character.[13] Limitations on such ordinances have been constructed, however, so that a municipality has the power to incorporate into a single-use district only so long as the business and industrial needs of its inhabitants are supplied by other accessible areas in the community at large,[14] the zoning at that particular place is reason-

12. Valley View Village, Inc. v. Proffett, 221 F.2d 412 (6th Cir. 1955), principally relied upon in *Cadoux,* noted that Valley View, on the periphery of a large metropolitan center, was not a self-contained community, but only an "adventitious fragment of the economic and social whole." *Id.* at 418. The court could not conclude *as a matter of law* that an ordinance which places all of such a village into a residential district is per se arbitrary and unresonable, at least not without regard to the public need for business or industrial uses. Connor v. Township of Chanhassen, 249 Minn. 205, 81 N.W.2d 789 (1957), upheld a similar ordinance upon the presumption that: "[I]f the regulation is not clearly unreasonable and arbitrary, and if it operates uniformly on all persons similarly situated in the particular district which was not itself selected arbitrarily, it will be upheld." *Id.* at 210, 81 N.W.2d at 791.

Several cases are cited in support of the results in *Cadoux, Valley View Village,* and *Connor,* but have slightly different facts. Gautier v. Town of Jupiter Island, 142 So. 2d 321 (Fla. 1962), upheld the validity of an ordinance enacted to preserve the unique status of the town, which had existed for many years geographically isolated, restricting land use therein to single-family dwellings. Village of Old Westbury v. Foster, 193 Misc. 47, 83 N.Y.S.2d 148 (Sup. Ct. 1948), upheld an injunction to restrain the operation of a business in the residence zone of a village endeavoring to maintain a somewhat rural atmosphere in its development and to keep it practically free from business. In both of these cases, however, a small portion of each municipality was zoned for business.

Gardner v. Leboeuf, 24 Misc. 2d 511, 204 N.Y.S.2d 468 (Sup. Ct. 1960), *aff'd,* 15 App. Div. 2d 815, 226 N.Y.S.2d 678 (1962); Nehrbas v. Village of Lloyd Harbor, 147 N.Y.S.2d 738 (Sup. Ct. 1955), *modified,* 1 App. Div. 2d 1034, 152 N.Y.S.2d 28 (1956), *aff'd,* 2 N.Y.2d 190, 140 N.E.2d 241, 159 N.Y.S.2d 145 (1957), and State *ex rel.* Saveland Park Holding Corp. v. Wieland, 269 Wis. 262, 69 N.W.2d 217 (1955), concerned communities zoned entirely residential but were not directed so as to specifically uphold the validity of such zoning.

13. Valley View Village, Inc. v. Proffett, 221 F.2d 412 (6th Cir. 1955).

14. *Id.* at 418.

able,[15] and, as a matter of statutory construction, the municipality's zoning enabling act *permits* the zoning of the municipality into one district.[16]

Municipalities have traditionally been required to zone with regard to municipal needs.[17] Although the courts have rarely considered nonmunicipal uses of land *not contiguous* to the zoning municipality, when courts have done so, it has generally been to justify the municipality's exclusion of some type of land use from its borders.[18] Departing from the rather narrow view of a self-contained municipal-

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15. Dowsey v. Village of Kensington, 257 N.Y. 221, 177 N.E. 427 (1931). *See also* Annot., 86 A.L.R. 642 (1931). *Dowsey* held that a village ordinance which, with the exception of a small plot, placed the entire village in a one-family residence district, was unreasonable as to property on the boundary of the village and fronting on a much used road. The zoning ordinance was intended to prevent the intrusion of business and apartment buildings and to preserve the rural quiet, but the court held that the village could not restrict property to a use for which it was not adapted.

Rockdale Constr. Corp. v. Village of Cedarhurst, 94 N.Y.S.2d 601 (Sup. Ct.), *aff'd*, 275 App. Div. 1043, 91 N.Y.S.2d 926 (1949), *aff'd*, 301 N.Y. 519, 93 N.E.2d 76 (1950), held that the zoning ordinance limiting the use of plaintiff's corner lots fronting on a four-lane turnpike to residential purposes was void as to plaintiff's property, particularly on the facts that land across the road was unrestricted and commercially developed.

16. City of Moline Acres v. Heidbreder, 367 S.W.2d 568 (Mo. 1963), held that under its zoning enabling act, the municipality lacked the power and authority to adopt a zoning ordinance which restricted the use of land and buildings therein to a single purpose, in this case one-family dwellings. The court noted that the enabling act requires all zoning to be made in accordance with a comprehensive plan and rejected the city's argument that a plan may be comprehensive even though it establishes only a one-use district. The soundness of the *Moline Acres* decision was, however, questioned in McDermott v. Village of Calverton Park, 454 S.W.2d 577, 581 (Mo. 1970), where the court found nothing to indicate a legislative intent that "*under all circumstances,* a municipality must provide for more than one use in its ordinance." *See also* Gunderson v. Village of Bingham Farms, 372 Mich. 352, 126 N.W.2d 715 (1964), which held that the applicable zoning enabling act did not authorize one-use zoning of the entire village.

Town of Hobart v. Collier, 3 Wis. 2d 182, 87 N.W.2d 868 (1958), held that although the ordinance was not unconstitutional per se and void, the boundaries of the town were not proper boundaries of a residence district because *all* of the land was not suited for residential purposes.

17. *See, e.g.*, Valley View Village, Inc. v. Proffett, 221 F.2d 412, 418 (6th Cir. 1955); O'Connor v. City of Moscow, 69 Idaho 37, 202 P.2d 401 (1949); City of Waxahachie v. Walkins, 154 Tex. 206, 275 S.W.2d 477 (1955). *See also* Note, *Zoning: Looking Beyond Municipal Borders,* 1965 WASH. U.L.Q. 107, 115.

18. Note, *The Constitutionality of Local Zoning,* 79 YALE L.J. 896, 922 n.113 (1970).

ity, *Cadoux* joins the short line of authority that indicates that both commercial and industrial development may be excluded from a municipality if sufficient facilities are located in an adjacent community.[19] It has been noted that in one case which adopted such a view,[20] the court saw the need for regionalism in order to validate the statute, yet ignored the needs of the larger area: "[T]he only aspect of regionalism considered by the court was the isolationist view of the township."[21] The extra-municipal area should be considered since "[t]he effective development of a region should not and cannot be made to depend upon the adventitious location of municipal boundaries."[22] A zoning ordinance will, following this line of cases, be upheld if extra-municipal development satisfies local needs. Particularly in such instances, however, a municipality must be prevented from putting up exclusionary walls in accordance with "local whim or selfish desire."[23]

Cases which expressly require that the municipality consider the extraterritorial effect of its zoning restrictions are rare. Indeed, the very propriety of such a consideration may be questioned.[24] Typically, municipalities have merely to zone "in accordance with a comprehensive plan"[25] which in nearly every instance means only that zoning must be internally consistent and not patently arbitrary.[26] Thus, in *Cadoux*, the zoning ordinance is internally consistent with the

19. *See* Valley View Village, Inc. v. Proffett, 221 F.2d 412 (6th Cir. 1955); Wrigley Properties, Inc. v. City of Ladue, 369 S.W.2d 397 (Mo. 1963); Fanale v. Borough of Hasbrouck Heights, 26 N.J. 320, 139 A.2d 749 (1958); Duffcon Concrete Prods., Inc. v. Borough of Cresskill, 1 N.J. 509, 64 A.2d 347 (1949).

20. Haar, *Zoning for Municipal Standards: The Wayne Township Case*, 66 HARV. L. REV. 1051 (1953), *noting* Lionshead Lake, Inc. v. Township of Wayne, 10 N.J. 165, 89 A.2d 693 (1952).

21. Haar, *supra* note 20, at 1053.

22. Duffcon Concrete Prods., Inc. v. Borough of Cresskill, 1 N.J. 509, 513, 64 A.2d 347, 350 (1949).

23. Vickers v. Township Comm., 37 N.J. 232, 252, 181 A.2d 129, 140 (1962) (dissenting opinion).

24. Marcus, *Exclusionary Zoning: The Need for a Regional Planning Context*, 16 N.Y.L.F. 732, 736 (1970), *citing* R. ANDERSON, PROVINCIALISM AND THE PUBLIC INTEREST, FEDERATION PLANNING INFORMATION REPORT 4-5 (N.J. Fed'n. of Planning Officials, Jan. 1970).

25. *See, e.g.*, Chapman v. City of Troy, 241 Ala. 637, 4 So. 2d 1 (1941); Magnin v. Zoning Comm'n, 145 Conn. 26, 138 A.2d 522 (1958).

26. *See, e.g.*, Johnson v. City of Huntsville, 249 Ala. 36, 29 So. 2d 342 (1947); Chase v. City of Glen Cove, 41 Misc. 2d 889, 246 N.Y.S.2d 975 (Sup. Ct. 1964).

town's comprehensive plan and is upheld because the regional resources and facilities satisfy the town's needs. What is not considered in *Cadoux,* and is rarely considered by the courts, is the effect of the town's restrictions on the rest of the region and the burden the town places on regional resources and facilities.

The municipality's affirmative duty to satisfy regional needs is extremely limited.[27] In cases in which the courts are asked to find a zoning ordinance invalid because of a regional need, the courts tend to find that the need is insufficient to justify overturning the ordinance. For instance, one court denied a municipal obligation to leave land available for the satisfaction of a county need, at least in the absence of a showing that the county was so developed that the borough was the "last hope" for solution of its problem.[28] Another court held that the regional need for a shopping center at the approximate location of the land in question was insufficient to overcome local factors such as traffic conditions, water drainage, and the high value of surrounding residential land.[29]

Although the courts have not yet gone so far as to impose the affirmative duty on the municipality to satisfy regional needs, the trend is that the effect of the municipality's restrictions on the rest of the region should be a factor taken into consideration when the validity of zoning is questioned.[30] Zoning ordinances, although operating locally, constitute an exercise of the police power of the state.[31] Delegation of power by the state to enact ordinances not inconsistent with existing law, which shall be deemed expedient or desirable for the health of residents, is not a delegation of the entire police power of the state, but is limited to matters of an inherently local nature.[32] Traditionally, the "public" for whose health, safety, morals or welfare a municipality must zone has been conceived to include only the

27. *See Zoning: Looking Beyond Municipal Borders, supra* note 17, at 120.

28. Fanale v. Borough of Hasbrouck Heights, 26 N.J. 320, 139 A.2d 749 (1958).

29. Wrigley Properties, Inc. v. City of Ladue, 369 S.W.2d 397 (Mo. 1963).

30. *See, e.g.,* Oakwood at Madison, Inc. v. Township of Madison, 117 N.J. Super. 11, 283 A.2d 353 (L. Div. 1971); Duffcon Concrete Prods., Inc. v. Borough of Cresskill, 1 N.J. 509, 64 A.2d 347 (1949); National Land & Inv. Co. v. Kohn, 419 Pa. 504, 215 A.2d 597 (1965).

31. *E.g.,* Dahman v. City of Ballwin, 483 S.W.2d 605 (Mo. 1972).

32. *E.g.,* Robin v. Village Hempstead, 30 N.Y.2d 347, 285 N.E.2d 285, 334 N.Y.S.2d 129 (1972).

residents of the municipality itself,[33] even though this might not include the whole "public" that the zoning affects. Suburbs, and the rural municipalities over which they are sprawling, regulate the use and development of most of the vacant land in metropolitan areas, yet this regulation has a pervasive effect upon the lives of people outside the borders of the suburbs.[34] These extra-territorial effects of zoning ordinances tend to show that a municipality has exceeded the power granted to it under a zoning enabling act limiting the municipality to matters of a local nature only.

Thus, while the *Cadoux* court *did* consider whether the needs (employment, business, industry, shopping and services) of the citizens of Weston were adequately met by the resources and facilities of the surrounding community, it did *not* consider the burden that the surrounding community would have to bear because of Weston's restrictions. The court did not go so far as to balance the good of the public of Weston against the over-all "community" good. For while Weston considered itself part of the "community" for the purpose of taking advantage of all of the services that the community could provide, it did not consider itself part of the "community" to the extent that it would accept responsibility for any of the costs, burdens and needs that the surrounding community might find necessary to impose upon it. Although courts will not generally impose the affirmative duty to satisfy regional needs upon a municipality, they should at least consider the potentially adverse impact restrictive municipal zoning could have upon the entire region. The use of zoning to avoid the increased economic burdens which growth brings, or to preserve rural, exclusive and aesthetic character is not a proper purpose when the larger community needs to be otherwise developed. The courts should look beyond the reasonableness of the zoning ordinance for a particular community and the fulfillment of that particular community's needs, and should balance the reasonableness of that ordinance with the needs and capacities of the entire area that the ordinance will affect.

Terry L. Kaye

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33. *Zoning: Looking Beyond Municipal Borders, supra* note 17, at 118. *See In re* Ackerman, 6 Cal. App. 5, 91 P. 429 (Dist. Ct. App. 1907); Cook County v. City of Chicago, 311 Ill. 234, 142 N.E. 512 (1924); City of Chicago v. Pennsylvania Co., 252 Ill. 185, 96 N.E. 833 (1911); House v. City of Greensburg, 93 Ind. 533 (1883) (plaintiff held not to have standing to contest the vacating of the street upon which his property abutted because his property was outside of the Greensburg city limits).

34. *See The Constitutionality of Local Zoning, supra* note 18, at 921-24.