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Spot Zoning as Use Control

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NOTES

SPOT ZONING AS USE CONTROL

Just how far can the police powers of the legislative body go to effectuate land use control by means of spot zoning? This is a question recently faced in the cases of *Kissenger v. City of Los Angeles*[1] and *Robertson v. The City of Salem*[2] involving the question whether a spot zoning ordinance passed by municipalities in order to depress land value for later purchase at lower cost would be held valid or invalid.

At the outset it is necessary to recognize the problem of terminology involved in the use of the term spot zoning.[3] Generally, "spot zoning" is the practice whereby a single lot or area is granted benefits which were not extended to other land in the same use district.[4] It is also, but more rarely, used to describe the reverse proposition; that is, one in which a single lot has burdens imposed upon it which are more rigid than those imposed upon other properties within the same area.[5] This latter definition will be our concern.

Spot zoning in recent times has become a much discussed process. Controversy has arisen as to whether such a process should be allowed, and if so to what extent. Arguments have been advanced condemning spot zoning ordinances on the ground that they interrupt comprehensive zoning plans and that they tend towards favortism and monopoly.[6] However, this conclusion is generally reached where the spot zoning ordinance favors a limited area.[7] Whether the same conclusion should be reached where the burdens placed on the limited area are more rigid is another question.

Spot zoning in the sense where it benefits special areas is considered repugnant to the general welfare of the public by many courts.[8] The reason for these decisions are based on the tests applied to all zoning ordinances.[9] Some jurisdictions contend that the validity of the ordinance depends upon its being in "accordance with a comprehensive plan,"[10] and the general view

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[1] 161 Cal. App. 2d 454, 327 P.2d 10 (1958).

[2] 191 F. Supp. 604 (9th Cir. 1961).

[3] Cases discussed in Annot., 51 A.L.R.2d 263 (1957).

[4] Rogers v. Village of Tarrytown, 302 N.Y. 115, 96 N.E.2d 731 (1951); RATHKOPHF, ZONING AND PLANNING § 2 at 26 (3d ed. 1960).

[5] RATHKOPHF, ZONING AND PLANNING § 2 at 26 (3d ed. 1960).

[6] Dobbins v. Los Angeles, 195 U.S. 223 (1904); Pacific Palisades Ass'n v. Huntington Beach, 196 Cal. 211, 237 Pac. 538 (1925); *In re* White, 195 Cal. 516, 234 Pac. 396 (1925).

[7] To the effect that spot zoning in its general sense is ordinarily invalid see Bartram v. Zoning Comm'n of Bridgeport, 136 Conn. 89, 68 A.2d 308 (1949); Parker v. Rash, 314 Ky. 609, 236 S.W.2d 687 (1951); Shaffner v. Salem, 201 Ore. 45, 286 P.2d 599 (1954); Page v. Portland, 178 Ore. 632, 165 P.2d 280 (1946); Harmon v. Dallas, 229 S.W.2d 825 (Tex. Civ. App. 1950); State *ex rel.* Miller v. Cain, 40 Wash. 2d 216, 242 P.2d 505 (1952). See also cases collected Annot., 51 A.L.R.2d 263 (1957).

[8] *Ibid.*

[9] Cases discussed in Annot., 51 A.L.R.2d 263 (1957).

[10] *Ibid.*

is that spot zoning in this general sense does not meet this test.[11] Spot zoning in the narrow sense herein discussed must meet the same tests; but whether or not it meets them is still in question. These jurisdictions requiring a comprehensive plan seem to be in disagreement as to what is actually meant by this term, their views ranging from a literal approach invalidating any zoning ordinance not related to an existent over-all community plan separate from the zoning ordinance[12] to the moderate view that the zoning ordinance is not and need not be an integral part of another plan, but is itself the comprehensive plan contemplated by the zoning-enabling act.[13]

Spot zoning, in its rare sense, where it is used to describe the situation whereby a single lot or area has burdens imposed upon it which are more rigid than those imposed upon other properties within the same area, is a separate consideration. Whether this use of spot zoning is defensible on the ground that it corresponds to a need for flexibility, and that its use would be for the good of the general welfare is questionable. Certain situations such as the need to maintain public parks and public beaches when the city cannot purchase because of lack of funds seem to call for such a use.[14] Beyond this scope the question is one of extent.

The power to spot zone in California is found under the general zoning authority.[15] The courts normally will not interfere with zoning regulations, including spot zoning regulations, even where the reasonableness may be debatable.[16] The presumption is that in absence of manifestly unreasonable classification, the wisdom of zoning ordinances is not a matter for the court.[17] The city council, in enacting a zoning ordinance, is presumed to have acted reasonably,[18] in view of the large discretion vested in the legislative branch of the government with respect to exercise of police power.[19] The courts will uphold the validity of the measure unless it is clearly oppressive. In order to be held reasonable, a zoning ordinance must be necessary, non-discriminatory, and reasonably related to health, safety, morals, and general welfare of the community.[20] Can the use of spot zoning in the presently considered rare sense fit into this acceptable definition?

In 1953, the California courts decided the landmark case of *McCarthy v. City of Manhattan Beach*,[21] which dealt directly with the problem of placing burdens on a limited area which were more rigid than other areas. In the *Manhattan Beach* case, the city adopted a zoning ordinance whereby plaintiff's land was zoned from residential to beach recreational. In effect this zoning ordinance had the same results as a spot zoning ordinance since in

[11] *Ibid.*

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

[13] Bishop v. Board of Zoning Appeals, 133 Conn. 614, 53 A.2d 659 (1947).

[14] McCarthy v. City of Manhattan Beach, 41 Cal. 2d 879, 264 P.2d 932 (1953).

[15] CAL. GOV'T CODE §§ 65800-06.

[16] Kissinger v. City of Los Angeles, 161 Cal. App. 2d 454, 327 P.2d 10 (1958).

[17] City of Norwalk v. Auction City, Inc., 186 Cal. App. 2d 287, 8 Cal. Rptr. 781 (1960).

[18] City of Chico v. First Ave. Baptist Church of Chico, 108 Cal. App. 2d 297, 238 P.2d 587 (1951).

[19] McClain v. South Pasadena, 155 Cal. App. 2d 423, 318 P.2d 199 (1957).

[20] Biscay v. City of Burlingame, 127 Cal. App. 213, 15 P.2d 787 (1932).

[21] 41 Cal. 2d 879, 264 P.2d 932 (1953).

the area zoned from residential to beach recreational the plaintiff's land was the only privately owned section. Prior to the enacting of the ordinance, the city had made known its intentions of purchasing the land as soon as it could raise the necessary funds. In discussion with the plaintiff both the mayor and the city attorney expressed their hope that the property would not be sold or improved so as to increase the cost of its acquisition by the public authorities. The court said that the testimony as to the motive or purpose of the zoning ordinance was irrelevant as concerning its reasonableness.[22] When the plaintiff attempted to get a re-zoning to residential, claiming that the ordinance was a scheme to depress the value of the land for later purchase for public park purposes, he was defeated. The city argued successfully that any attempt to build residential homes on this beach area would be hazardous and not within the general welfare, and that the ordinance was passed in order to provide economic and social advantages and to conserve and promote public health, safety and general welfare. Therefore they were able to justify their zoning ordinance although considerably diminishing the value of the plaintiff's land. Probably the public use of the beach and the need for a public recreational area were important factors in the upholding of the ordinance. However, the emphasis was placed on the *"reasonableness"* of the ordinance which standing alone would not seem to be strong enough reason to justify the intentional depression of the value of land preparatory to a later purchase. This case seems to show that the court will allow spot zoning which places burdens on a limited area in this particular situation, when the public interest is directly involved, but are they willing to extend the scope of this decision?

In the recent cases of *Kissinger v. City of Los Angeles*[23] and *Robertson v. City of Salem*,[24] comparable questions were presented. In both of these cases, an attempted depression of the land for later purchase, by spot zoning ordinances was held unconstitutional. The courts without hesitation showed that they did not intend to enlarge the scope of the *Manhattan Beach* case.

In *Kissinger*, a spot zoning ordinance was passed which rezoned property from a zone permitting multiple dwellings to one restricted to single dwellings and which restricted the use of plaintiff's property while leaving all similarly situated property alone. The ordinance stated that the subject property lies within the approach zone of the San Fernando Valley Airport; that six unit multiple dwelling units had already started on a portion of the property; and that the construction of similar improvements would create an undue density of population at this location and that such zoning would result in a minimizing of the number of buildings and result in fewer persons being affected by the operation of the airport. At this point, it seems that the court could easily have decided in the city's favor according to the California Government Code section 50485.2.[25] But evidence was presented

[22] *Id.* at 895, 264 P.2d at 940.

[23] 161 Cal. App. 2d 454, 327 P.2d 10 (1958).

[24] 191 F. Supp. 610 (9th Cir. 1961).

[25] CAL. GOV'T CODE § 50485.2: Thus the Airport Approaches Zoning Law contain an express finding by the legislature that ". . . it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented."

showing that a motion had been made by the city council in which the Board of Airport Commissioners were requested to consider condemning this property in order that same may be acquired on a basis of its present value as vacant land for addition to the airport. Thus the additional factor was introduced, a consideration of the propriety of a city depressing land values to diminish the expense of eminent domain proceedings. The court held that it was an invalid ordinance and was in violation of the California Constitution, which holds that private property cannot be taken or damaged for public use without just compensation.

In *Robertson*, the court, citing *Kissinger* as authority, reached a similar decision. In *Robertson*, the city had passed an ordinance restricting the area in which the plaintiff was located to single dwellings while the surrounding area was zoned for commercial enterprises. The reason given for the ordinance was "the needs of the State of Oregon, together with reasonable control for the sake of beauty." Here was an attempt to keep the surrounding areas adjacent to the capitol and state buildings uniform and free from any undesirable structures. The fact that business property was restricted by ordinance to residential use did not alone determine that the ordinance was invalid or discriminatory,[26] nor would a zoning ordinance be void simply because the plaintiff's property depreciated in value because of the re-classification.[27] But, evidence appeared in excerpts from the Minutes of the Meetings of the Salem Planning and Zoning Commission and Council and also from testimony of a prior member of Salem's Planning Commission, that the city intended to purchase the land in eminent domain proceedings at a later date. Consequently, the court ruled that this was a use of the police power to take the land without due process or the payment of just compensation, and therefore, the ordinance was unconstitutional and void as to the landowner.

A comparison of *Kissenger* and *Robertson* brings into focus the basic similarities between the two cases. Both cities in these cases, attempted to pass ordinances which placed burdens on a limited area belonging to the plaintiffs. Both cities attempted this limitation by spot zoning ordinances which purported to be for the general welfare of the public; and both cities purportedly had the intentions of later purchase of the land. In both cases, the court found the ordinances to be in violation of the respective Constitutions, and invalidated the legislation.

However, in the *Manhattan Beach* case, essentially the same facts were present. The city passed an ordinance purporting to be for the general welfare; it was also proven that the city had the intention to later purchase, and the ordinance also restricted the use of the plaintiff's property while other surrounding property was not affected. Why then, did the court reach a different conclusion in this case than in *Kissinger* and *Robertson*?

As already stated, it is important to notice that the *Manhattan Beach* case involved the use of the land by the public. Here we have a factor not present to such an extent in either *Kissinger* or *Robertson*. Even though the fact that the land was being used by the public was not stressed in the *Manhattan Beach* case it remained a strong influence. Coupled with a convincing argument for the validity of the ordinance, this could easily have

[26] Reynolds v. Barrett, 12 Cal. 2d 244, 83 P.2d 32 (1938).

[27] Smith v. Collison, 119 Cal. App. 180, 6 P.2d 279 (1931).