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Zoning—Interpretation of Zoning Ordinance Held Question for Zoning Board

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him of that burden."²⁸ Let us not further burden the plaintiff by requiring that he exhaust useless administrative remedies before he is allowed to prove that the ordinance is unconstitutional.

F. P. M.

INTERPRETATION OF ZONING ORDINANCE HELD QUESTION FOR ZONING BOARD

In *Von Kohorn v. Morrell*, the Court of Appeals decided that whether a proposed Y.W.C.A. building qualified as a "membership club," permissible as a special use in a district zoned residential, was a question of fact for the zoning board.²⁹ The zoning ordinance in question permitted as special uses in residential districts "Golf clubs, country clubs and other membership clubs not operated for profit." The permit granted to the Y.W.C.A. authorized the construction of a building to be used for club activities and as a dormitory for members only. Taken together with the fact that the Y.W.C.A. is a nonprofit membership corporation, the board was acting within its discretion in granting the building permit.

Under the ordinance there had to be a showing of appropriate location as to transportation, water, police, etc.; of reasonable safeguard of neighborhood character and property values; and of absence of undue traffic congestion or traffic hazard. The Court found that on the record all of these were questions of fact for the board to decide. This decision comports with the practical necessities of zoning procedure as previously viewed by the Court of Appeals.³⁰ As the Court in this case so aptly stated: "Zoning boards of appeals are made up not of theoreticians or doctrinaire specialists but of representative citizens doing their best to make accommodations between conflicting community pressures."³¹ The Court concluded that in the instant case the board had debated and disposed of the problem with the requisite care.

Bd.

28. *Arverne Bay Const. Co. v. Thatcher*, 278 N.Y. 222, 15 N.E.2d 587 (1938). See Annot., 117 A.L.R. 1110 (1938).

29. 9 N.Y.2d 27, 210 N.Y.S.2d 525 (1961).

30. *People ex rel. Fordham Manor Reformed Church v. Walsh*, 244 N.Y. 280, 155 N.E. 575 (1927).

31. *Supra* note 29 at 34, 210 N.Y.S.2d at 528-529.

COURT OF APPEALS, 1960 TERM

THE COURT OF APPEALS, 1960 TERM
TABLE A

Dispositions	Unanimous	With Dissent	Total
With Full Opinion	68	70	138
By Memorandum*	488	80	568
Total	556	150	706

* Included herein are per curiam memoranda and motions disposed of by memoranda.

TABLE B*
Opinions Written by Individual Judges

	Opinions of Court	Concurring Opinions	Dissenting Opinions	Total Opinions Written
Burke	19	2	7	28
Desmond	24	3	17	44
Dye	12	1	4	17
Foster	11	0	1	12
Froessel	21	11	10	42
Fuld	32	3	6	41
Van Voorhis	10	3	9	22
Per Curiam	9	—	—	9
Total	138	23	54	215

* This table concerns only full opinions of the court.

TABLE C
Dissents by Individual Judges

	By* Dissent- ing Opinion	By* Voting With Another's Opinion	By* Voting Where no Opinion	By** Dissent- ing Opinion	By** Voting With Another's Opinion	By** Voting Where no Opinion	Total Dissents
Burke	7	8	4	1	4	10	34
Desmond	17	4	4	2	0	14	41
Dye	4	8	4	1	0	7	24
Foster	1	6	2	1	0	3	13
Froessel	10	4	4	2	3	12	35
Fuld	6	9	6	1	2	12	36
Van Voorhis	9	7	11	4	6	10	47
Total	54	46	35	12	15	68	230

* In disposition with full opinion.

** In disposition by memorandum.

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TABLE D
Instances of Concurrence
WRITING OPINION*

		Burke	Desmond	Dye	Foster	Froessel	Fuld	Van Voorhis
CONCURRING	Burke		19	8	6	19	24	8
	Desmond	13	1**	10	7	14	26	6
	Dye	18	22	1	8	19	22	7
	Foster	17	19	9		19	30	9
	Froessel	19	15	9	9	4	20	9
	Fuld	15	16	8	9	16	4	7
	Van Voorhis	13	13	10	11	17	23	1
WRITING DISSENTING OPINION								
		Burke	Desmond	Dye	Foster	Froessel	Fuld	Van Voorhis
CONCURRING IN DISSENT	Burke	1	6	1		4	1	2
	Desmond	3	6	2			2	2
	Dye		5	3		3	1	2
	Foster	1	1		1	3		3
	Froessel	2				3		3
	Fuld	3	3	1			5	3
	Van Voorhis		3	1		8	4	5

* Includes all opinions other than dissents.

** Indicates lone concurring opinion.