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sound,[56] it's conclusions appear to be based on an inarticulated assumption. To wit, that a rate of $9.23 on a weekly salary of $13.85 is unwarranted for an employee who is only partially disabled. Under the Workmen's Compensation Law, a rate of $9.23 on a weekly salary of $13.85 would be warranted for a partially disabled employee if the disability were not only "partial in character but permanent in quality."[57] The distinction between a temporary and permanent partial disability is not made by the Court.

There is even some indication that the partial disability was permanent. That is, the Board Panel, which discharged the Special Fund, stated that the medical evidence in the record showed that there was a continuing partial disability.[58] If the partial disability was only temporary in character, the established rate of $9.23 was not warranted and the decision to discharge the Special Fund appears sound. However, it further appears that the Court should have fully defined the partial disability so as to give judicial support to their decision.

ZONING

VALIDITY OF CONDITIONED ZONING AMENDMENT

In *Church v. Town of Islip*[1] an action was brought for a declaratory judgment, voiding the rezoning of the defendant's property in the Town of Islip from Residence A to Business, and for injunctive relief. The Supreme Court[2] rendered judgment declaring the rezoning amendment invalid and unconstitutional, which decision was reversed by the Appellate Division.[3] The Court of Appeals held that this legislative zoning change granted upon condition that the owner of the property execute certain restrictive covenants as to maximum area occupied by the building located thereon and certain other restrictions was valid and constitutional and not subject to attack on any theory that the rezoning constituted contract zoning or spot zoning.

While stability and regularity are undoubtedly essential to the operation of zoning plans, zoning is by no means static. Changed or changing conditions, as experienced by the town in question, call for revised plans. A person who owns property in a particular zone or use district enjoys no eternally vested right to that classification if the public interest demands otherwise.[4]

The Court here is asked to decide whether the Town of Islip validly

56. The statute requires the Board to spread the lump sum settlement at the rate applicable to the disability found at the time of the approval of the lump sum settlement by the Referee.
57. N.Y. Workmen's Comp. Law § 15(3).
58. Supra note 48.

1. 8 N.Y.2d 254, 203 N.Y.S.2d 866 (1960).
2. 6 Misc. 2d 810, 160 N.Y.S.2d 45 (Sup. Ct. 1956).
3. 8 A.D.2d 962, 190 N.Y.S.2d 927 (2d Dep't 1959).
4. Rodger v. Tarrytown, 302 N.Y. 115, 96 N.E.2d 731 (1951).

effected such a change, in view of the attack by plaintiffs that among other things this zoning amendment was "spot zoning." Spot zoning may be defined as 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 owners of such property and to the detriment of other owners. This type of zoning is the very antithesis of planned zoning, the latter requiring a comprehensive plan in its application. However if an ordinance is enacted with a comprehensive plan in mind, it is not necessarily "spot zoning," even though it singles out and affects one small plot,[5] or creates, in the center of a large zone, small areas or districts devoted to a different use.[6] The relevant inquiry is not whether the particular zoning under attack consists of areas fixed within larger areas of different uses, but whether it was accomplished for the benefit of individual owners rather than pursuant to a comprehensive plan for the general welfare of the community.

Since neither the appellant or the respondent in this action questions the Appellate Division's findings that the change (from Residence A to Business) is *conditioned* upon the executing and recording of a deed subjecting the land to certain restrictions, these findings of fact are conclusive. The majority in its opinion states that "Since the town Board could have presumably zoned the property without restrictions we fail to see how reasonable conditions invalidate the legislation."[7] These conditions in addition to being classified as reasonable are held by the Court to be beneficial to the community by respondent's neighbors. It should be noted however, that the very objection to the second important issue in this case i.e. "zoning by contract," is really to the condition itself. Whether the conditions are good or bad, reasonable or unreasonable, is immaterial. The question of illegality is based solely on the municipality's power, not policy. The late Mr. Basset, who was this country's leading authority on zoning, denounced the sale of zoning legislation twenty years ago in the following words: "Sometimes local legislatures state that they will make certain zoning changes if property owners file agreements either with one another or with the city. This is wrong, unnecessary and unfair. There is no consideration for such a bargain because the municipality cannot receive a consideration for taking steps in legislation."[8] Other prominent text writers are in accord.[9] In *Schwab v. Graves*,[10] this Court held that the Town Board in granting a permit and in imposing terms and conditions for the exercise of a right, was not acting in a private capacity but acting under its police power. The town's sole power was to regulate through its police power, a power which is not sub-

5. Shepard v. Village of Skaneateles, 300 N.Y. 115, 89 N.E.2d 731 (1951).
6. Nappi v. La Guardin, 295 N.Y. 652, 64 N.E.2d 711 (1945).
7. Supra note 1 at 259, 203 N.Y.S.2d 869 (1960).
8. Bassett, Zoning 184 (1940).
9. Rathkopp, The Law of Zoning and Planning 392 (3d ed. 1956); Metzenbaum, The Law of Zoning 789 (2d ed. 1955).
10. 221 App. Div. 357, 223 N.Y. Supp. 160 (4th Dep't 1927).

ject to limitation by private contract. In *Bartholmew v. Village of Endicott*,[11] the Court held that the exercise of any legislative power by a village for public benefit cannot be limited by contract and any attempt to do so would constitute an illegal act.

Section 262 of the Town Law authorizes the Town Board to create districts subject to the condition, among others, that, "All such regulations (within a district) shall be uniform for each class or kind of building, throughout such district." The Town Board, although it has the power to set up different use districts, must treat all property within the zone uniformally. When, however, the Board, as in this case, resorts to individual covenants and restrictions with the property owners in question, the Board in effect is destroying the scheme of uniformity required by the statute. It would seem that the property involved in this case takes on a characteristic of a "zone within a zone," with its own requirements over and above those applicable to Business Zone properties in general. This point is strongly urged by the dissenters, although it went unmentioned by the majority of the Court.

Population increases and economic changes are posing difficult problems to local legislative bodies in regard to zoning changes. This is a real problem and a solution should be reached. Whether or not the more appropriate remedy would be to grant variances is not in issue here. While the Court is anxious to affect a satisfactory solution to a pressing problem, it seems questionable to disregard the means used to achieve that end.

Milk Vending Machine in Apartment House a Valid Subsidiary Use

In *Dellwood Dairy Co. v. City of New Rochelle*,[12] the Court of Appeals reversed the Appellate Division[13] and sustained the trial court decision. The sole issue the case presented was whether the presence of a coin-operated milk vending machine, installed in the basement of an apartment building located in a restricted residential zone, violated the Zoning Law of the City of New Rochelle. These laws prohibit any business in the R-5 District except "Accessory uses customarily incident to the above uses" (the above use in this case is an apartment house). An "accessory use" is defined as "a use customarily incidental and subordinate to the main use conducted on the lot, whether such accessory use is to be conducted in a main or accessory building."[14] The Court of Appeals held that there was no violation. It found that the use of a milk vending machine is but a different method of doing a traditional service for a householder. Little, if any, adverse effect to the character of the residential neighborhood can result from the presence of the machine. It's not the

11. — Misc. —, 59 N.Y.S.2d (Sup. Ct. 1945).
12. 7 N.Y.2d 374, 197 N.Y.S.2d 719 (1960).
13. 7 A.D.2d 1026, 184 N.Y.S.2d 656 (2d Dep't 1959).
14. New Rochelle Zoning Law Art. VII, § 1(e).