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Real Property—Zoning

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Zoning

A zoning ordinance may not impose restrictions upon property which are not necessary for the public health, safety, convenience or general welfare.²² However, where reliance is placed upon such a statute, the party so relying cannot also attack it as being unconstitutional.²³ The only grounds of attack in such a situation are that the statute was unconstitutionally applied.²⁴

In *Diocese of Rochester v. Planning Board*²⁵ and in *Community Synagogue v. Bates*,²⁶ the question of the application of zoning ordinances to religious bodies was before the Court of Appeals. In each case petitioner had applied to its respective zoning board for building permits as required by statute. In the *Diocese of Rochester* case the application was denied on the grounds that property values in the area would diminish, there would be decreased enjoyment of neighboring property, there would be loss of tax revenue and that the presence of a church and school in a residential area would create traffic hazards. In the *Community Synagogue* case, the application was denied on the grounds that the statute allowed only buildings to be used for a strictly religious purpose, that this would not include a building to be used for social gatherings and meetings and that the granting of the application would not promote health, safety, convenience or welfare of the public. The Court held, reversing the Appellate Division in both instances,²⁷ that the denials of the respective boards were arbitrary and unreasonable and were therefore an abuse of discretion.

In the review of a determination by an administrative body, a court may not base its decision upon the personal feelings of the members thereof.²⁸ It may only interfere where such determination was arbitrary and capricious.²⁹ Since churches and religious organizations contribute to the general welfare of society it would be patently unconstitutional for a zoning board to exclude them from a residential area altogether or to impose restrictions of any nature without reason. Therefore it would seem that the effect of churches, schools

22. *North Shore Unitarian Soc. v. Village of Plandome*, 200 Misc. 524, 109 N. Y. S. 2d 803 (Sup. Ct. 1951).

23. *Fahey v. Mallonee*, 332 U. S. 245 (1947); *Shepherd v. Mount Vernon Trust Co.*, 269 N. Y. 234, 199 N. E. 201 (1935).

24. *Snowden v. Hughes*, 321 U. S. 1 (1943); *Zorach v. Claiborn*, 303 N. Y. 161 100 N. E. 2d 463 (1951), *aff'd.*, 343 U. S. 306 (1952).

25. 1 N. Y. 2d 508, 136 N. E. 2d 827 (1956).

26. 1 N. Y. 2d 445, 136 N. E. 2d 488 (1956).

27. *Diocese of Rochester v. Planning Board*, 1 A. D. 2d 86, 147 N. Y. S. 2d 392 (4th Dep't 1955); *Community Synagogue v. Bates*, 1 A. D. 2d 686, 147 N. Y. S. 2d 204 (2d Dep't 1955).

28. *Rodgers v. Village of Terrytown*, 302 N. Y. 115, 96 N. E. 2d 731 (1951).

29. *People ex rel. Hudson-Harlem Valley Title & Mortgage Co. v. Walker*, 282 N. Y. 400, 26 N. E. 2d 952 (1940).

and other buildings used for religious purposes upon neighboring property would be an insufficient basis to deny an application for a building permit since such buildings would have the same effect in any residential area.

It has been held that an administrative board may not apply any standards which are not declared by the statutes authorizing their existence, hence an increase in traffic in the area would not be a valid basis for denial of a building permit.³⁰ The state has declared a policy of encouraging religious organizations by exempting from taxation all property used exclusively for such purposes³¹ and thus has demonstrated its preference for religious organizations over potential taxes. It would be somewhat illogical, therefore, to base a denial of a building permit upon the grounds of loss of tax revenue.

It has been generally considered that the term church or religious building includes all buildings connected with the general religious purpose.³² This would include meeting halls, schools and the like. As pointed out in the opinions, a church is more than a place of worship — it is a meeting place for members of a religious faith and a place of education in the dogma of the particular denomination. Therefore a denial of the right to provide for these purposes is no more justified than a denial of permission to build the church itself.

The Court was undoubtedly correct in its holdings. Since the denials of the applications were based upon a rationale which has been demonstrated as not being within the discretion of a zoning board, the decisions can not be said to be a substitution of the Court's opinion for that of the administrative body.³³

Fair and Reasonable Rental

Under the Emergency Business Space Rent Control Law³⁴ in force in New York City, a landlord who is not receiving a reasonable return on his investment may proceed to have his tenant's rent increased by applying to the Supreme Court or submitting to arbitration.³⁵ A reasonable return is pre-

30. *Small v. Moss*, 279 N. Y. 288, 18 N. E. 2d 281 (1938).

31. N. Y. TAX LAW §4 The following property shall be exempt from taxation: (6) The real property of a corporation or association organized exclusively for . . . religious . . . purposes . . .

32. *Young Women's Christian Assn. v. City of New York*, 217 App. Div. 406, 216 N. Y. Supp. 248 (1926), *aff'd.*, 245 N. Y. 562, 157 N. E. 858 (1927).

33. The dissent in both cases was to the effect that the decision was premature in that the better procedure would be to attack the constitutionality of the statutes in a separate proceeding. While this might be more "orderly" and was the procedure used in *Concordia Collegiate Inst. v. Miller*, 301 N. Y. 189, 93 N. E. 2d 632 (1950), it does not seem that it is a matter of crucial importance.

34. MCKINNEY'S UNCONSOL LAWS, §88551 et seq.

35. MCKINNEY'S UNCONSOL LAWS, §8554.