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Municipal Corporations—Zoning Laws—Aesthetic Considerations

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Lodging Houses—Accessory To Hospital Use

In *DeMott v. Notey*[15] the Court held that a village zoning ordinance[16] prohibiting maintenance of lodging houses did not restrict a hospital from furnishing two dwellings for use by hospital personnel, when such dwellings were adjacent to and formed a single unit with the hospital.

The property, which included a main building and two dwellings, was leased by defendants as a unit. The main building was used as a hospital and the two dwellings were each used to house from four to five hospital personnel. Use of the main building as a hospital was a permitted use. The zoning ordinance involved prohibited use of the remaining dwellings as "boarding houses" unless such use was an "accessory use." The Court took judicial notice of the fact that it was customary for a hospital to furnish housing facilities for its personnel, and, since the dwellings in question were part of the unit forming the hospital property, the use was as "accessory use" within the meaning of the ordinance.

A hospital is inhabited by sick people who may need immediate attention. Therefore, the Court here is justified in assuming that the legislators of the ordinance involved did not intend to lessen a hospital's ability to provide such attention by prohibiting their personnel from living in furnished dwellings adjacent to such hospital.

Zoning Laws—Aesthetic Considerations

Zoning laws have been upheld by the courts as a justifiable exercise of the police power.[17] The rule generally supported in the past was that only public health, safety and morals were to be submitted to reasonable definitions and delimitations by zoning ordinances; the zoning power was not to be exercised for purely aesthetic consideration,[18] although such considerations would have some weight.[19]

Petitioner, in *Presnell v. Leslie*,[20] was an amateur radio operator, residing in a "Residence A" zone of Long Island, who had sought a permit to replace his small antenna with a 44 foot steel tower. The zoning law of his village, as applied to the petitioner, would not permit him to raise such a tower.

15. 3 N.Y.2d 116, 164 N.Y.S.2d 398 (1957).
16. ORDINANCE OF THE VILLAGE OF FREEPORT, LONG ISLAND No. 10.1.
17. Baddour v. Long Beach, 279 N.Y. 167, 18 N.E.2d 18 (1938), *appeal denied* 308 U.S. 503 (1939).
18. Dowsey v. Village of Kensington, 257 N.Y. 221, 177 N.E. 427 (1931).
19. See notes 17 and 18 *supra*.
20. Presnell v. Leslie, 3 N.Y.2d 384, 165 N.Y.S.2d 488 (1957).

The case reached the Court of Appeals on the grounds of deprivation of property without due process of law and pre-emption by the Federal Government in the communications field. However, it appears to the writer that the basic issue in the case was the weight to be given aesthetic considerations in deciding a zoning case.

The majority in affirming the Appellate Division's dismissal of the petition,[21] balanced the petitioner's interest and the public interest and found that the ordinance was justified under the police power of the State. It was mentioned that there was some tendency for children to climb such a structure as the petitioner sought to erect and that the petitioner would not lose any substantial part of his property nor would he be stopped from carrying out his hobby as he had a small antenna operating. The weight of the private interest in the case was found to outweigh the public interest by the dissent.

Reference was made by the majority to what, it appears to the writer, held most weight in the Court's mind: "There was also evidence . . . that the proposed tower . . . would be an eyesore in an exclusively residential community occupied by private homes situated close to one another; and would not be in conformity with the character of the neighborhood."[22] It was also pointed out that; "No such structure as proposed has never existed in the village."[23]

We see the Court here determining the reasonableness of the restriction and finding against the petitioner. The writer has been unable to find an adverse opinion to an amateur radio operator's attempt to erect large towers or poles in zoning cases in other jurisdictions.[24]

No real danger to the health, morals, or safety of the community can be seen when a radio enthusiast erects a tower on his property.[25] The rule regarding aesthetic considerations in zoning cases appears to be undergoing development by the New York courts.[26]

A cogent statement was made by the dissent which would have great importance in deciding a case of this nature today: "It has been announced that they ["ham"

21. Presnell v. Leslie, 1 A.D.2d 955, 150 N.Y.S.2d 363 (2d Dep't 1956).
22. Presnell v. Leslie, *supra* note 20 at 389, 165 N.Y.S.2d at 492.
23. *Id.* at 387, 165 N.Y.S.2d at 492.
24. *Cf.* Village of Saint Louis Park v. Casey, 218 Minn. 394, 16 N.W.2d 459 (1944); Wright v. Vogt, 7 N.J. 1, 80 A.2d 108 (1951); Appeal of Lord, 368 Pa. 121, 81 A.2d 533 (1951).
25. Pennsylvania in allowing an amateur the privilege to erect a larger pole for an antenna in a "B" residential district found that not to do so would be an unnecessary and unwarranted block in the road of progress and in the legitimate enjoyment of private property. Appeal of Lord, 368 Pa. 121, 81 A.2d 533 (1951).
26. Presnell v. Leslie, *supra* note 20 at 394, 165 N.Y.S.2d at 496.

operators] are part of the Naval Research Laboratory's plans for the tracking of earth satellites."[27] The writer submits that the erection of such towers as petitioner proposed is a matter in the best public interest.

Local Bill—Unconstitutional

In order to petition a village board to annex an adjacent territory, the majority of the voters, or a majority in value of the property owners therein, must secure written consent of the town board.[28] However the board is allowed to hear only certain objections, all of which pertain to the qualifications of the signers of the petitions and the regularity of the petition itself. Then, after determining whether section 348 of the Village Law has been complied with, they must execute their consent.[29]

In *Cutler v. Herman*,[30] a recent amendment to the Nassau County Civil Division Act[31] which attempted to revise this procedure was struck down as violative of the constitutional prohibition against passing local laws incorporating villages.[32] By this statute the petition would be made to the county board, with the consent of the village board, and the county might reject it if they determine that the annexation would not be in the public interest. Since the Village Law has been held to form the charter of all villages organized under it,[33] this act necessarily affects the incorporating of villages.[34]

The distinction between general and local laws rests on the effect of the acts rather than their terms.[35] For the act to be considered general it may only be necessary that the legislature make the statute applicable to a "class" which it creates so long as it relates to some special situation or conditions peculiar to that class, rather than merely to designate and identify the place or persons to be affected.[36]

In the instant case, the class, which consisted of those villages in Nassau County, may not have been so small as to negative the possibility of the creation of a general law relating to special problems therein, however the Court makes

27. See *State v. Wieland*, 269 Wis. 262, 69 N.W.2d 217 (1955) where the court held as a valid exercise of the police power an ordinance requiring a finding by the village building board that the exterior architectural appeal and functioning plans of a building would not be different than others in the area.
28. N.Y. VILLAGE LAW §348.
29. *Id.* §348(3).
30. 3 N.Y.2d 334, 165 N.Y.S.2d 449 (1957).
31. N.Y. Sess. Laws 1954, c. 818.
32. N.Y. CONST. art. III, §17.
33. Abell v. Clarkson, 237 N.Y. 85, 142 N.E. 360 (1923).
34. Magrum v. Williamsville, 241 App. Div. 55, 271 N.Y. Supp. 472 (4th Dep't 1934).
35. Matter of Henneberger, 155 N.Y. 420, 50 N.E. 61 (1898).
36. Farrington v. Pickney, 1 N.Y.2d 74, 150 N.Y.S.2d 585 (1956).