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Municipal Corporations—Zoning

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THE COURT OF APPEALS, 1953 TERM

IX. MUNICIPAL CORPORATIONS

Annexation of Territory

An action was brought by an owner of realty to review the determination of a town board in refusing to consent to a petition for annexation of territory to a village.¹ The applicable statute provides:

A petition for such annexation, . . . , and signed by a majority of the persons residing therein, *if any*, qualified to vote for town officers, or by the owners of a majority in value of the property therein . . .² [Emphasis added.]

Originally the statute contained the term *and also* instead of the term *or*.³ The contention of the town board is based on the premise that the words *if any* in the statute still necessitate that a majority of persons residing in the territory, qualified to vote, must sign the petition. In an earlier decision the court noted that it was no longer necessary for a petition to carry signatures of both a majority of property owners and a majority of the voters.⁴ The instant case goes a step further and interprets the section to mean that a petition can be signed by a majority of the property holders whether or not there are any qualified voters in the area.

In affirming the order of the Appellate Division, which annulled the town board's determination and directed it to execute its consent, the Court of Appeals stated that the town board merely performs the ministerial function of determining whether the petition complies with the statute,⁵ and inferred that any refusal of consent of the town board must be based solely on the specified statutory objections.⁶

Zoning

Although the General City Law gives a city council the right to restrict the use of property in accordance with a comprehensive plan,⁷ it cannot do so arbitrarily or unreasonably.⁸ Validity of a zoning ordinance depends upon maintaining a reasonable balance between the public interests and the opposing private interests in

1. *Wright v. Ransom*, 307 N. Y. 317, 121 N. E. 2d 244 (1954).

2. VILLAGE LAW § 348.

3. L. 1915 c. 257.

4. *Repper v. Patterson*, 306 N. Y. 683, 117 N. E. 2d 357 (1954).

5. *Accord*: In re *Village of Spring Valley*, 189 Misc. 324, 71 N. Y. S. 2d 848 (Sup. Ct. 1947).

6. See VILLAGE LAW § 348 (2).

7. GENERAL CITY LAW § 83.

8. 8 McQUILLAN, MUNICIPAL CORPORATIONS §25.05 (3d ed. 1949).

the property.⁹ A zoning ordinance cannot deprive an owner from using his land in a manner for which it was reasonably adapted,¹⁰ for if a regulation goes too far in restricting the use of land it will be regarded as a taking of property.¹¹

This past term a property owner asked for a declaratory judgment declaring a zoning ordinance affecting his property invalid.¹² The tract of land is located in the center of a highly developed business district. The property had been reclassified from a business district to a residential district, and the public's parking their automobiles on the property was allowed as a nonconforming use. The petitioner, having purchased the land, applied for and was refused a variance to allow him to construct a shopping center. After joinder of issue, the property was again reclassified as a Designed Parking District, which prohibited the use of the property for any purpose except for the parking of automobiles and a service station, which was already on the land.

The court held the zoning ordinances unreasonable and arbitrary so as to result in an invasion of property rights and therefore invalid. The court noted that the purchase of property with the knowledge of the restrictions on it does not prevent the purchaser from contesting their validity, and the application for a variance, which assumes the validity of the ordinance, does not prevent a subsequent attack upon its validity.¹³

Right to Inspect Public Records

Section 51 of the General Corporation Law, which establishes the procedure for the prosecution of public officials for illegal acts also declares that all records of local governmental units are public records open to inspection by a taxpayer. Sections 893 and 894 of the Greater New York Charter stipulate that the right of inspection shall not apply to certain specified records, including papers prepared for use in any investigation authorized by the charter. Under the charter, there is created a Commission of Investigation which is empowered to make investigations as directed by the Mayor or Council,¹⁴ and to report the results to them.¹⁵

9. *Id.* § 25.40.

10. *Id.* § 25.45; *Dowsey v. Village of Kensington*, 257 N. Y. 221, 177 N. E. 427 (1931).

11. *Id.* § 25.43; *Pennsylvania Coal Co. v. Mahon*, 206 U. S. 393 (1922).

12. *Vernon Park Realty v. City of Mount Vernon*, 307 N. Y. 493, 121 N. E. 2d 517 (1954).

13. See *Arverne Bay Construction Co. v. Thatcher*, 278 N. Y. 222, 15 N. E. 2d 587 (1938).

14. NEW YORK CITY CHARTER § 803.

15. NEW YORK CITY ADMINISTRATIVE CODE § 803-1.0.