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Exclusive Zoning--A Prohibition or Residences from Industrial and Commercial Zones

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as in *Nutt v. Carson*, for misrepresentation and concealment of the tort, as distinct from the mistreatment itself; or, in the alternative, that the doctrine of equitable estoppel be allowed in such cases in order that the plaintiff receive the legal redress to which he is entitled.

MICHAEL HONOHAN

**EXCLUSIVE ZONING — A PROHIBITION OF RESIDENCES FROM
INDUSTRIAL AND COMMERCIAL ZONES**

Plaintiff purchased property in a commercially zoned district in which both residential and commercial uses were permitted. His application for a permit to build a residential development on the property was rejected because of rear yard deficiencies. Between the time of rejection, and correction of the deficiencies by the plaintiff, the zoning ordinance of defendant city was amended to prohibit residences in districts other than those designated as dwelling house districts. Plaintiff's second application for a building permit met all specifications except the provision of the amended ordinance. When it, too, was rejected, plaintiff brought a mandamus action.

The lower court granted mandamus and ordered issuance of the permit to plaintiff. Its decision was based upon the unconstitutionality of the exclusive zoning amendment and on the vested right to build which plaintiff had acquired prior to the passage of the amendment. The Supreme Court of Illinois affirmed the issuance of mandamus on the basis of plaintiff's vested rights.¹ Plaintiff acquired these vested rights through a substantial change in his monetary position as a result of justified reliance upon the probability of the issuance of the building permit if he fulfilled the requirements in effect upon the date of his application.² However, the state supreme court overruled the lower court's decision on the exclusive zoning amendment by declaring such zoning to be within the state's police power and, therefore, constitutional.

The state police power has traditionally been exercised to protect the health and welfare of the people. It enables the state to control the close intermingling of people within its boundaries, so that the rights of each individual are reasonably consistent and free from conflict with those of his neighbors. When there is a conflict, the state police power must regulate for the good of the community. The decision in the *Skokie* case recognized the inevitable nuisances which

1. *People ex rel. Skokie Town House Builders, Inc. v. Village of Morton Grove*, 16 Ill. 2d 183, 157 N.E.2d 33 (1959).

2. Plaintiff purchased the land for \$26,000 and paid \$1,830 for building permits.

will arise if a residence and an industry are allowed to grow up side by side. The decision upholds the state's police power to zone exclusively in all areas, thereby allowing the home and industry to grow up free from the problems which each imposes upon the other. As logical as this may seem, it is a radical departure from past thinking.

Building regulation has grown up under the concept of pyramidal or cumulative zoning. Under this theory, residential uses, the so-called higher uses, were placed at the top of the pyramid. They were the most restricted. Going down the pyramid to commercial uses and to industrial uses on the bottom, the pyramidal theory permitted all higher uses to be constructed within any area zoned for lower uses. As a result, industrial and commercial uses were excluded from residential districts, but residential uses were permitted anywhere. Until very recently, this has been the accepted approach to zoning.

The idea of exclusive zoning as applied to industrial and commercial districts was presented in a 1912 Frankfort, Germany zoning ordinance.³ It forbade residences in manufacturing districts to protect dwellings from the nuisances of industry. However, the Frankfort idea gained little acceptance, and the idea of exclusive industrial and commercial zoning faded into the background until the late 1940's.⁴ By that time city planners were becoming increasingly convinced that exclusive industrial and commercial zoning was a planning necessity. As the number of such ordinances is rapidly increasing, more and more courts are going to be faced with the problem presented in the *Skokie* case.⁵

In 1956, a California district court of appeal handed down the first United States decision clearly upholding exclusive industrial zoning.⁶ The owners of land in Contra Costa County, California, sought a residential building permit in an area zoned for heavy industry. The court rejected the application and upheld exclusive industrial zoning on the basis that it was a legitimate exercise of the state police power to protect public health and welfare under conditions of modern life. However, the basis for the decision was that the proposed residential construction would be surrounded by heavy industry and the subdivision injuriously affected. While the court upheld exclusive industrial zoning, the reasoning of the decision was not based on protecting industry. The residential higher use continued to be the solitary beneficiary of zoning protection.

3. PLANNING ADVISORY SERVICE, INFORMATION REPORT No. 91 (1956).

4. URBAN LAND INSTITUTE TECHNICAL BULLETIN No. 10 (1948).

5. In Ohio, the question of the validity of exclusive industrial zoning came up for the first time in State *ex rel.* Ronald, Inc. v. City of Willoughby, 170 Ohio St. 39, 161 N.E.2d 890 (1959). The plaintiff sought a writ of mandamus to compel issuance of a building permit for a single frame dwelling in an area exclusively zoned for light industry. The Ohio Supreme Court ruled that the plaintiff had not exhausted his administrative remedies and dismissed the mandamus action without ruling on the validity of the exclusive industrial zoning ordinance.

6. Roney v. Board of Supervisors of Contra Costa County, 138 Cal. App. 2d 740, 292 P.2d 529 (1956).

In light of this historical protection of residential uses and the corresponding lack of protection for commercial and industrial uses, the Illinois Supreme Court's decision in the *Skokie* case is significant. In upholding the constitutionality of the amendment, the court not only recognized exclusive industrial and commercial zoning, but it based its reasoning on the protection of industry and commercial establishments. In doing so it has given a new dignity to industrial and commercial zones. Industry and commerce have good reason to be protected from residences, just as residences have good reason to be protected from industry and commerce. The state's police power to protect the public welfare is just as correctly applied to preventing homes from being built in an area where they will hinder industrial expansion, as it is applied to preventing people from going into an area where their health may be impaired.⁷ The California court in the *Roney* case recognized only the hazards to family living. The *Skokie* case recognized the fact that industrial or commercial efficiency and expansion are hampered by allowing residences within industrial and commercial zones. This is a liberal step toward exclusive zoning in every district.

The court added one word of warning which should be kept in mind when exclusive zoning ordinances are under consideration.⁸ The present character of a district may make an exclusive zoning ordinance unreasonable and discriminatory. If there is no immediate need of land for industrial or commercial use, residences should not be prohibited. In areas where urban centers are expanding, infant residential suburbs often set aside land for future industrial use. Many of these areas are not actually suited for industry, and there is little likelihood that industrial development will ever take place. In such situations exclusive industrial and commercial ordinances may not be appropriate.

The importance of the decision in the *Skokie* case rests upon the transition which it makes from the traditional concept of pyramidal zoning to the idea that exclusive zoning will increase the efficiency and desirability of each district. This recognizes that all uses are important since each has a particular function. The public health and welfare of the community will best be served by separating industrial, commercial, and residential districts. When this is achieved each will be able to operate more effectively and efficiently without interference from conflicting uses.

PHILLIP ALLYN RANNEY

7. A good discussion of the purpose of the state police power is clearly set forth in *State v. Gordon*, 143 Conn. 698, 702, 125 A.2d 477, 480 (1956).

8. *People ex rel. Skokie Town House Builders, Inc. v. Village of Morton Grove*, 16 Ill. 2d 183, 157 N.E.2d 33 (1959); see, e.g., *Corthouts v. Town of Newington*, 139 Cal. App. 2d 740, 292 P.2d 529 (1953); *Comer v. City of Dearborn*, 342 Mich. 471, 70 N.W.2d 813 (1955).