June 1951

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MUNICIPAL ZONING AND LAND USE REGULATION*

Chester James Antieau**

ZONING refers to the districting of municipalities on the basis of one or both of (a) nature and extent of use, and (b) architectural and structural requirements. Today the power to zone is regularly possessed by municipal corporations, either directly under state constitutions or by legislative grant. The general principle of municipal zoning is clearly constitutional.

A municipal zoning ordinance will be sustained so long as it is reasonable and bears a reasonable relationship to the community health, safety, morality, or general welfare. According to the present majority view such a relationship is not satisfied by an ordinance posited solely upon aesthetic considerations. There is, however, some authority that aesthetic considerations will alone justify zoning, and if the reasonable relationship to the public health, safety, morality, or general welfare otherwise

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exists, the presence of aesthetic considerations will never invalidate an ordinance.7

Zoning ordinances have been held unreasonable and invalid when (a) based upon racial considerations;8 (b) retroactive in their application;9 (c) the description and location of the several zones was indefinite;10 (d) the boundaries of the districts were drawn carelessly or unfairly;11 (e) the zoning action did not follow a comprehensive plan;12 (f) there was an unjustified lack of uniformity throughout an area homogenically constituted;13 (g) a generally legal activity was banned from everywhere in the municipality;14 (h) a particular activity was banned from a zone while others not reasonably differentiated from it were permitted;15 (i) there was a lack of standards or guidance for those charged with

8 Buchanan v. Warley, 245 U.S. 60 (1917).
9 Comment, 39 Yale L.J. 735 (1930); Noel, Retroactive Zoning and Nuisances, 41 Col. L. Rev. 457 (1941). See also cases cited in note 51.
10 Moon v. Smith, 138 Fla. 410, 189 So. 835 (1939); Taylor v. Moore, 303 Pa. 469, 154 Atl. 799 (1931). It is eminently desirable to attach a copy of the zoning map to the ordinance and make it an essential part thereof. Speroni v. Board of Appeals of City of Sterling, 368 Ill. 568, 15 N.E.2d 302 (1938).
12 Davis v. Omaha, 45 N.W.2d 172 (Nebr. 1950); Women's Kansas City St. Andrew Society v. Kansas City, 35 F.2d 593 (8th Cir. 1933).
the administration of the ordinance;\textsuperscript{16} (j) the beneficial use of property was permanently so restricted that it could not consistently with the ordinance be used for any reasonable purpose;\textsuperscript{17} (k) limitation upon the use of property greatly diminished its value with only a distant relationship to public health, safety, morality or general welfare;\textsuperscript{18} and (l) when changed conditions made an originally valid zoning ordinance later unreasonable in its limitations upon property use.\textsuperscript{19}

Equal protection of the laws is not denied by exempting from the terms of a zoning ordinance prior nonconforming uses.\textsuperscript{20} By the weight of authority zoning restrictions and building regulations cannot be imposed upon one's property by his neighbors under delegation from a municipal legislative body.\textsuperscript{21} On the other hand, a zoning ordinance is frequently sustained notwithstanding it permits the lifting of imposed restrictions upon securing the


\textsuperscript{19} Skalko v. Sunnyvale, 14 Cal.2d 213, 93 P.2d 93 (1939), 38 Mich. L. Rev. 434 (1940); Forde v. Miami Beach, 146 Fla. 676, 1 S.W.2d 642 (1941).


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consent of nearby property owners.22 Ordinances should be drawn so as to require council action after consents have been filed and this is clearly constitutional.23

Frequently courts have said that a zoning ordinance comes to the judiciary with a presumption of validity,24 although the judicial record somewhat belies such a recognition.25 It should also be noted that municipal zoning ordinances will be invalid when in conflict with state law,26 and occasionally it is even held that zoning ordinances as applied to interstate carriers constitute an undue burden on interstate commerce.27

Municipalities have been sustained in excluding from designated districts zoned for residential use not only commercial and industrial establishments,28 but also buildings (a) on undersize lots;29 (b) set too close to front sidewalks;30 (c) with inadequate

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yard space;\textsuperscript{31} (d) with less than a minimum floor space;\textsuperscript{32} (e) with excessive height;\textsuperscript{33} (f) or bulk;\textsuperscript{34} (g) intended for apartments\textsuperscript{35} or other multiple dwellings.\textsuperscript{36} Funeral homes frequently seek locations in residential districts and the courts regularly sustain their exclusion.\textsuperscript{37} So, too, gasoline stations\textsuperscript{38} and commercial


\textsuperscript{38} City of Jackson v. McPherson, 162 Miss. 164, 138 So. 604 (1932); Leary v. Adams, 226 Ala. 472, 147 So. 391 (1933); Heckman v. Independence, 127 Kan. 653, 274 Pac. 732 (1929); Texas Co. v. Tampa, 100 F.2d 347 (5th Cir. 1939); Howden v. Savannah, 172 Ga. 833, 159 S.E. 401 (1938). Note Gulf Oil v. Board of Comm'r's etc., 123 N.J.L. 376, 26 A.2d 246 (1942) (invalidating Newark's attempt to ban gas stations from the entire city).
parking lots. Municipalities have generally been unable to exclude from residential zones private educational, religious, and charitable institutions.

Courts customarily permit in residential districts certain "accessory uses" and there is constant litigation concerning the scope of the term. Garages and servant quarters are almost always deemed to be within the concept. Courts are likely to call the professional use of a residence by a medical practitioner an accessory use, but when others employ houses in residential zones for business purposes courts are willing to enjoin the activity. Use of a residence for a tourist home or boarding

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45 Notes, 117 A.L.R. 1117 (1933), 150 A.L.R. 94 (1944); and see cases cited in following note.
house is not generally considered an accessory use. A miscellany of accessory uses can be gleaned from the reports.

Districts zoned for multiple dwellings may similarly be kept free from commercial and industrial uses, and commercial areas may be protected against industrial encroachments.

Although a few courts have upheld zoning ordinances requiring the termination of existing uses within a short time, the overwhelming weight of present authority holds unconstitutional an attempt to zone out prior uses. Somewhat similar in objective, but far different in time allowed for termination, are the statutes and ordinances requiring termination of use at the end of the estimated useful life of the nonconforming structure. There is good reason to believe that these very desirable attempts to end the scourge of nonconforming uses will survive judicial scrutiny.

Most zoning ordinances specifically sanction the continuance of prior nonconforming uses and litigation continually exists regarding the actual use prior to the time of adoption of the ordinance. Contemplated use is never enough. Nor is the

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49 Note, 117 A.L.R. 1111 (1938).


52 E.g., Ill. Rev. Stat. c. 24, § 73-1 (1945); Chicago Zoning Ordinance § 20 (1944); Wichita Zoning Ordinance § 24 (1948).


mere possession of a building permit. So, too, when the possession of the permit has been accompanied by the expenditure of but a small sum. However, the owner of property may acquire a vested right if he secures a permit and in reliance thereon enters into a construction contract and pays a sizeable sum or effectuates a substantial and material change in his property by excavation and construction. It is not enough that a building was designed for a nonconforming use if at the time of the passage of the ordinance it was not actually utilized for a nonconforming use. Zoning ordinances may validly prevent the expansion of prior nonconforming uses, rebuilding or repair after destruction in large part, structural alterations, substitution of another non-

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63 City of Earle v. Shackelford, 177 Ark. 291, 6 S.W.2d 294 (1928); Piccolo v. West Haven, 120 Conn. 449, 181 Atl. 615 (1935); Commercial Club v. Chicago R.R., 142 Minn. 169, 171 N.W. 312 (1919); State ex rel. Euclid-Doan Bldg. Co. v. Cunningham, 97 Ohio St. 130, 119 N.E. 361 (1918); Selligman v. Von Allmen Bros., 297 Ky. 121, 179 S.W.2d 207 (1944). Note, 64 A.L.R. 920 (1929).
conforming use of equal or greater nonconformity. and resumption if there has been an abandonment or discontinuance.

Zoning authorities have from time to time created "zones" of single parcels of land, apparently to accommodate individual supplicants, and the courts have regularly invalidated these abuses of the zoning power. An occasional "spot" is sustained because of a particularly localized health or safety problem. A few other cases have upheld individual parcel zoning when the court found the general welfare of the community was advanced thereby, and a few more cases sustain spot zoning on the theory that the effect is nothing different from the grant of a variance permit by an appeal board. Unfortunately, not only these but bona fide attempts to cope with larger areas of a municipality, but less than the whole, have often been labelled "piecemeal" or "spot" zoning and the judicial antipathy to the former has permeated municipal attempts to zone on anything less than an all


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inclusive plan. There are, however, some cases sustaining area zoning, and it is suggested that the proper attitude is that of the Maryland court that "there is no constitutional requirement that an entire municipality or county be zoned at one time..." Amendment to present zoning statutes to authorize sectional zoning seems desirable.

On the same principles as the original zoning action a municipality is empowered to amend a zoning ordinance when the character and use of a district or surrounding territory have become so changed since the original ordinance was enacted that the public health, morals, safety and welfare would be promoted if changes were made in the boundaries or in the regulations prescribed for certain districts. Although there are no vested rights in a zoning ordinance, courts are nevertheless keenly sympathetic to persons who have purchased and improved property in reliance upon a zoning ordinance, and a typical court suggests that "amendments to zoning ordinances should be made with caution and only when changing conditions clearly require amendment." Amendments to zoning ordinances must be in harmony with the

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72 County Comm'rs of Anne Arundel County v. Ward, 186 Md. 330, 46 A.2d 684, 688 (1946).
75 Leahy v. Inspector of Bldgs. of New Bedford, 308 Mass. 128, 31 N.E.2d 436 (1941); DePalma v. Town Plan Comm'n of Greenwich, 123 Conn. 257, 193 Atl. 808 (1937); Jardine v. Pasadena, 199 Cal. 64, 248 Pac. 225 (1926); Marblehead Land Co. v. Los Angeles, 47 F.2d 528 (9th Cir. 1931); Caires v. Building Comm'r of Hingham, 325 Mass. 599, 35 N.E.2d 550 (1949); Cassel Realty Co. v. Omaha, 144 Neb. 753, 14 N.W.2d 600 (1944).
general plan for the municipality\textsuperscript{70} and must not unduly depreciate the value of surrounding properties.\textsuperscript{66} Furthermore, they must generally take cognizance of trends in urban development.\textsuperscript{81}

Decisions vary on whether municipalities can erect in zoned districts nonconforming structures.\textsuperscript{82} There is some inclination to utilize here the frequent distinction between governmental and proprietary functions, permitting the construction of buildings dedicated to governmental responsibilities notwithstanding non-conformity to the zone.\textsuperscript{83} Careful draftsmanship of zoning ordinances can avoid problems such as this.\textsuperscript{84}

Although a zoning ordinance authorizes a particular activity in a district it may nevertheless be banned as a nuisance, because of the nature of its operations.\textsuperscript{85} And the orthodox view permits residents of an area to exclude undesirable structures and uses by restrictive covenants, even though the edifice or use may be permitted in the district under applicable zoning ordinances.\textsuperscript{86} There is some thought that the expression of the public will should be preferred to private agreements.\textsuperscript{87}

**AIRPORT APPROACH ZONING**

Municipal corporations in at least thirty-six states possess grants of power to zone airport approaches.\textsuperscript{88} Airport approach

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\textsuperscript{66} Clifton Hills Realty Co. v. Cincinnati, 60 Ohio App. 443, 21 N.E.2d 993 (1938), 38 Mich. L. Rev. 431 (1940).


\textsuperscript{87} Taylor v. Hackensack, 137 N.J.L. 139, 58 A.2d 788 (1948).

\textsuperscript{88} Rhyne, *Jurisdiction over Civil Aviation*, 11 LAW & CONTEMP. PROB. 459, 485 (1946).
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zoning limits to specified heights buildings on land located at specific distances from the airport, with increasing heights permitted with increasing distances. Notwithstanding dicta to the effect that such limitation upon land use is constitutional, and the approval of many scholars, the present state of the law is not favorable to municipal airport approach zoning. For the time being municipal corporations are well advised to condemn easements for the use of air space over lands adjacent to municipal airports. Such power is available in many states and should be specifically granted in others. Easement condemnation is far preferable to the uneconomic acquisition and wastage of lands surrounding airports, and justice to all parties is best served by this method.

Peripheral Protection

Owners of fine residential properties at the edge of many municipalities are in continual danger of industrialization and commercialization immediately beyond the city limits. Cities have on many occasions been granted power to eliminate from areas outside the city limits activities and enterprises dangerous to the community health, safety, morality or welfare and the courts have generally sustained such powers. However, grants to municipalities of power to zone beyond their limits would be both politically inexpedient and constitutionally doubtful. The

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81 Rhone, Jurisdiction over Civil Aviation, 11 LAW & CONTEMP. PROB. 459, 485 (1946); Grant, Constitutionality of Zoning Law Enacted to Protect Airport Approaches, 13 J. AIR & COMM. 272 (1942); Wolf, Airport Approach Zoning—a Present Need, 17 U OF CIN. L. REV. 327 (1948); Freeman, Zoning of Airport Approaches as Exercise of Police Power, 10 J. AIR L. 426 (1959); Comment, 23 TEX L. REV. 57 (1944); Hunter, The Conflicting Interests of Airport Owner and Nearby Property Owner, 11 LAW & CONTEMP. PROB. 539 (1946); Note, 19 TENN. L. REV. 358 (1948).
84 Comment, 23 TEX. L. REV. 57 (1944).
85 Brown v. Cle Elum, 255 Pac. 961, 261 Pac. 112 (Wash. 1927); Anderson, The Extraterritorial Powers of Cities, 10 MINN. L. REV. 475 (1926).
interests of most municipalities can be protected rather satisfactorily by full participation in county and township zoning which can now be accepted as valid;\(^6\) by cooperation with their fringe communities; and by joint planning, through regional authorities, with their neighbors for park and recreational facilities near municipal borders.

**Administration of Zoning Ordinances**

Statutes authorizing zoning must be closely followed.\(^7\) Failure to give the generally required notice of hearing will almost universally annul the zoning.\(^8\) Noncompliance with statutory requirements is customarily not even excused in the case of interim, emergency, or "stop-gap" ordinances designed to freeze the status quo pending drafting and passage of a zoning ordinance in final form.\(^9\) Occasional cases uphold, without strict conformity to statutory mandates, temporary zoning ordinances designed to protect property values until a comprehensive zoning ordinance

\(^6\) Vandenburgh County v. Sanders, 218 Ind. 43, 30 N.E.2d 713 (1940); Acker v. Baldwin, 16 Cal.2d 795, 18 Cal.2d 341, 108 P.2d 899, 115 P.2d 455 (1941); County Comm’rs of Anne Arundel County v. Ward, 186 Md. 330, 46 A.2d 684 (1946); Frederick v. Board of Supervisors of Jackson County, 197 Miss. 561, 20 S.2d 92 (1945); Hitchman v. Oakland Tp., 45 N.W.2d (Mich. 1951); Wertheimer, Constitutionalism of Rural Zoning, 26 CALIF. L. REV. 175 (1938); Note, 131 A.R.L. 1055 (1941).

\(^7\) Strain v. Mims, 123 Conn. 275, 193 Atl. 754 (1937) (invalid because no unanimous vote of council as required by statute); Williams v. Village of Deer Park, 70 N.E.2d 109 (Ohio 1946) (invalid because prior approval of city plan commission not secured); Grantwood Lumber Co. v. Schweitzer, 7 N.J. Misc. 101, 147 Atl. 741 (1929) (invalid because not read in final form prior to passage). Note however, Moore v. Pratt, 148 Kan. 53, 79 P.2d 871, 874 (1938); "Since the ordinance was duly passed and published, there is a strong presumption of law that precedent legal requirements were conformed to."


can be worked out.\textsuperscript{100} Amendment of state statutes to more readily permit preliminary zoning is desirable.

Adjoining property owners suffering special damage through diminution in value of their properties generally can enjoin violations of a zoning ordinance.\textsuperscript{101} Estoppel will occasionally prevent such relief.\textsuperscript{102} And municipalities can also secure injunctive relief against zoning ordinance violations.\textsuperscript{103} Although there are a few questionable cases to the effect that a municipal corporation will be estopped to enforce a zoning ordinance against a particular party by its actions,\textsuperscript{104} the courts are overwhelmingly agreed that a municipality may enforce a zoning ordinance against one individual notwithstanding evidence that others are violating the ordinance.\textsuperscript{105}

Statutes usually prescribe the nature of the appeal from zoning ordinances and municipal action thereunder, and "any taxpayer or any other person having an interest in property affected" generally has "a right to bring suit . . . to test the reasonableness of the ordinance or any specific provision thereof which affects his particular property in the use he desires to make of it . . . ."\textsuperscript{106} Where a form of statutory relief is provided it must be followed at least where the attack is directed solely at the validity of administrative action.\textsuperscript{107} Where the attack is

\begin{footnotes}
\item[100] Downham v. Alexandria, 58 F.2d 784 (D.C. Va. 1932); Lima v. Woodruff, 107 Cal. App. 285, 290 Pac. 480 (1930); Fowler v. Obier, 224 Ky. 742, 7 S.W.2d 219 (1928); McCurley v. El Reno, 138 Okla. 92, 280 Pac. 467 (1929).
upon the entire ordinance generally there is no need to exhaust administrative remedies.\textsuperscript{108} Since the attacks upon zoning ordinances are usually by injunction or mandamus to compel the issuance of a permit courts customarily permit broad de novo review of the ordinance as applied.\textsuperscript{109}

Most zoning ordinances specifically authorize exceptions to prohibited uses.\textsuperscript{110} Furthermore, variances to the legislative plan can be made by zoning boards of appeal, adjustment, or review which are customarily provided for in the zoning statutes or ordinances.\textsuperscript{111} These boards must be given adequate standards by the legislative body to direct them in authorizing variations or the zoning legislation will likely be invalidated as an unconstitutional delegation of legislative powers.\textsuperscript{112} It is enough direction, according to the weight of authority, that boards of adjustment are permitted to grant variances in the event of "practical difficulty or unnecessary hardship."\textsuperscript{113}


\textsuperscript{110} Exceptions should not be confused with variances although they frequently are. The former are deviations from the rule specifically authorized in the zoning ordinance. Thus, to be entitled to an exception, there is no need to prove hardship.

\textsuperscript{111} Baker, \textit{The Zoning Board of Appeal}, 10 MINN. L. REV. 277 (1926); Note, 31 Mich. L. Rev. 106 (1932).


Boards of review cannot ordinarily change the boundaries of zones.\textsuperscript{114} And courts frown on attempts by zoning boards of appeal or review to grant wholesale variances as usurpation of the legislative responsibility.\textsuperscript{115} The New York Court of Appeals has said: “Before the Board of Appeals may exercise its discretion and grant a variance upon the ground of unnecessary hardship, the record must show (1) that the land in question cannot yield a reasonable return if used only for the purpose allowed in that zone; (2) that the plight of the owner is due to unique circumstances and not to general conditions in the neighborhood which may reflect the unreasonableess of the zoning ordinance itself; (3) that the use to be authorized by the variance will not alter the essential character of the locality.”\textsuperscript{116} Other courts have demanded proof that the variance will (1) be in harmony with the general plan and spirit of the zoning ordinance,\textsuperscript{117} and (2) not unfairly diminish the property values of others.\textsuperscript{118}

The cases indicate that the courts have been influenced in sustaining variances or in reversing boards of appeal that refused variances by the following factors, none of which, however, can be taken as an assurance of a right to a variation: (1) the existence of several other similar nonconforming uses in the district;\textsuperscript{119} (2) changed conditions from the time of passage of the zoning ordinance;\textsuperscript{120} (3) financial loss to the owner of the property;\textsuperscript{121}


\textsuperscript{115} Potts v. Board of Adjustment, 133 N.J.L. 230, 43 A.2d 850 (1945); County Commissioners v. Ward, 186 Md. 330, 46 A.2d 684 (1946).


\textsuperscript{120} Norcross v. Board of Appeals, 255 Mass. 177, 150 N.E. 887 (1925); Note, 38 Mich. L. Rev. 434 (1940).

\textsuperscript{121} First National Bank & Trust Co. v. Zoning Board of Appeals, 120 Conn. 228, 10 A.2d 691 (1940); Holy Sepulchre Cemetery v. Board of Appeals, 271 App. Div. 33, 60 N.Y.S.2d 750 (1946); Notes 117 A.L.R. 1127, 1128 (1938), 168 A.L.R. 18, 32 (1947).
(4) housing shortages and war emergencies; and (5) general public interest. In granting a variance, a board of zoning appeals may impose reasonable conditions.

Any interested party, such as an adjoining property owner, may protest to the courts the grant of a variance by a board of appeals, adjustment or review. Generally the scope of review is very limited, as typified by the statement of the Pennsylvania court: “The ruling of the board should not be overruled in the absence of a manifest and flagrant abuse of discretion.” The decisions indicate quite clearly that the courts will scrutinize with much more care the grant of a variance by a board than the denial of such a variance.


126 Application of Elkins Park Improvement Ass’n, 361 Pa. 322, 64 A.2d 783 (1949); People ex rel. Sheldon v. Board of Appeals, 235 N.Y. 484, 138 N.E. 416 (1923). For statements that courts will not review board findings of fact, see Beardsley v. Church, 261 Mich. 458, 246 N.W. 180 (1933), and Rubin v. Board, 16 Cal.2d 119, 104 P.2d 1041 (1940).


Once a board of appeal or adjustment has granted a license for a variance and the property owner has made substantial progress toward the accomplishment of the variance, the municipality will not generally be able to revoke the permit or forbid the use authorized thereby. There is further evidence that variance permit revocations will be judicially voided when the court cannot detect a substantial relation to the community health, safety, morals or general welfare. Both the grant and revocation of variance permits are quasi-judicial tasks and due process of law is generally interpreted to require that the hearing be preceded by notice and conducted with fairness and according to rules of law.

**Nonzoning Land Use Regulation**

Municipal corporations of course possess the power to abate nuisances per se. So, edifices constituting fire hazards can be destroyed or closed, and noisome enterprises as well as those emitting noxious odors or undue amounts of smoke can be suppressed.

Furthermore, there are many enterprises and activities not nuisances per se that become extremely objectionable in certain districts of a crowded municipality. The courts have wisely permitted municipal legislation to increase the concept of nuisances. Cities have accordingly been sustained in eliminating from the entire community land uses highly dangerous to public

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133 State v. Haines, 30 Me. 65 (1849); City of St. Louis v. Galt, 179 Mo. 8, 77 S.W. 876, 65 L.R.A. 778 (1903).
health and safety, such as gas storage depots. Although a large metropolis did not succeed in completely banning gas stations, a smaller residential community has been sustained in denying within it all industrial establishments, and this decision should be followed. There are many additional decisions concerned with portions of municipalities and sustaining the ban therefrom as nuisances noisome activities, industries emitting noxious odors, unaesthetic edifices, businesses congesting the traffic of the neighborhood, and enterprises disturbing the peace or morals of the residents.

As protection against fire cities can of course impose many regulations upon building construction and use. Sanitation and health justify further regulations of land use. Billboards can

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140 Gulf Oil v. Board of Commrs, 128 N.J.L. 376, 26 A.2d 246 (1942).


144 Lombardo v. Dallas, 124 Tex. 1, 73 S.W.2d 475 (1934); Magnolia Petroleum Co. v. Wright, 124 Okla. 55, 254 Pac. 41 (1926); Kramer v. Mayor & Council of Baltimore, 166 Md. 324, 171 Atl. 70 (1934). Notes, 124 A.L.R. 383 (1940), 96 A.L.R. 1337 (1935).


146 Jones v. Los Angeles, 277 Cal. 304, 295 Pac. 14 (1930); State ex rel. Skillman v. Miami, 101 Fla. 585, 134 So. 541 (1931); State ex rel. Dallas Investment Co. v. Peace, 139 Fla. 394, 190 So. 607 (1939).


be excluded from certain districts and limited elsewhere. To
insure adequate light and air and to reduce fire hazards
municipalities may, without regard for zones or districts, adopt
numerous property regulations, including set-back ordinances
and minimum yard ordinances.

COMMUNITY DEVELOPMENT THROUGH MUNICIPAL LAND
OWNERSHIP AND SALE

The power of municipal corporations to condemn land for
the clearance of slums is by now generally accepted, as is the
power to construct low-cost housing projects. Where such
power is still wanting or where financial limitations prevent
municipal improvements, municipalities can be instrumental in
creating separate public housing authorities, and in encouraging
by condemnation of land and tax exemption private housing pro-
jects that can do much to resettle urban residents and improve
the appearance of the community.

There is no doubt of the power of municipalities to condemn
land for boulevards, parks, and golf courses. Municipal

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150 General Outdoor Adv. Co. v. Indianapolis, 202 Ind. 85, 172 N.E. 309
(1930); St. Louis Poster Adv. Co. v. St. Louis, 249 U.S. 269 (1919); Liggett's
Petition, 291 Pa. 109, 139 Atl. 619 (1927); Murphy v. Westport, 131 Conn. 292,
40 A.2d 177 (1944). Note Mid-state Adv. Corp. v. Bond, 274 N.Y. 82, 8
N.E.2d 286 (1937) (invalidating prohibition on advertising everywhere in town).
152 Gorieb v. Fox, 274 U.S. 603 (1927); Kerr's Appeal, 294 Pa. 246, 144
964 (1938); Appeal of Blackstone, 38 Del. 280, 190 Atl. 597 (1937).
154 Allydonn Realty Corp. v. Holyoke Housing Authority, 304 Mass. 288,
155 New York City Housing Authority v. Muller, 270 N.Y. 395, 1 N.E.2d
153 (1936); Simon v. O'Toole, 108 N.J.L. 32, 155 Atl. 449 (1931); Re Brewster
St. Housing Site, 291 Mich. 513, 289 N.W. 493 (1939). McDougal and Mueller,
Public Purpose in Public Housing; an Anachronism Reburied, 52 Yale L.J.
42 (1942); Comment, 54 Yale L.J. 116 (1944); Note, 50 Yale L.J. 525 (1941);
Note, 9 U. of Chi. L. Rev. 477 (1942); Notes, 105 A.L.R. 911 (1936), 130
A.L.R. 1069 (1941).
156 Belovsky v. Redevelopment Authority of Philadelphia, 357 P. 329,
54 A.2d 277 (1947); Dornan v. Philadelphia Housing Authority, 331 Pa.
209, 200 Atl. 834 (1938).
157 Zurn v. Chicago, 389 Ill. 114, 59 N.E.2d 18 (1945); Murray v. LaGuardia,
291 N.Y. 320, 52 N.E.2d 884 (1943).
158 City of Kirksville v. Hines, 285 Mo. 233, 225 S.W. 950 (1920); Town
of Perry v. Thomas, 82 Utah 159, 22 P.2d 343 (1933).
corporations should be able to condemn or purchase objectionable nonconforming uses which degrade a district but are beyond the general reach of zoning ordinances. There is the further possibility that municipalities may be able to condemn larger areas to create restricted residential districts. A strong tool in the guided development of cities is contained in the municipal sale of land subject to restrictive covenants adequate to protect the neighborhood. This has been sustained on rare occasions, but the majority of courts are as yet unreceptive to extensive real estate purchase and sale by municipal corporations. The specter of "excess condemnation improvements beyond the strict requirements of "public use."

**SUBDIVISION CONTROL**

If municipal planning is adequate the interest of the community in new subdivisions can generally be safeguarded adequately by refusal to accept subdivisions or record plats thereof until the developer has satisfactorily laid out streets and boulevards to conform to municipal planning and dedicated to the municipality sufficient sites for schools and recreational facilities. Such power is customarily available to municipal corporations.

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161 Bartholomew, Non-Conforming Uses Destroy the Neighborhood, 16 J. LAND & P. U. ECON. 96 (1939); Comment, 52 YALE L.J. 634 (1943); Note, 46 COL. L. REV. 108 (1946); Note, 28 TEX. L. REV. 125 (1949). Municipalities can use the power of eminent domain to establish set-back lines beyond which no building is permitted. Kansas City v. Liebi, 298 Mo. 569, 252 S.W. 404, 28 A.L.R. 95 (1923).
163 First Municipality of New Orleans v. McDonough, 2 Rob. 244 (La. 1842).