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cent attempt was made to have the Louisiana Supreme Court eliminate the immunity which it had created, but the court refused to alter its position.²⁹ Some municipalities have protected their citizens by taking out liability insurance, thereby waiving their immunity.³⁰ Such piecemeal action is effective within the sphere in which it operates, but complete elimination of the immunity doctrine can come only through legislative enactment.³¹

John B. Hussey, Jr.

LOCAL GOVERNMENT — ZONING — EXCLUDING COMMERCIAL ENTERPRISES FROM INDUSTRIAL AREAS

Plaintiff, intending to construct retail stores, purchased property located in an industrial zone of a municipality. After plaintiff had applied for a building permit, the zoning ordinance was amended to restrict the use of property in the industrial zone exclusively to "light industrial" uses which were not detrimental to health, safety, and property, and specifically to exclude residential and retail commercial uses. Plaintiff alleged that the amendment was unreasonable, arbitrary, and capricious, and a deprivation of property without due process of law. The trial court, sustaining the validity of the ordinance, issued a summary judgment for defendants. On appeal, the New Jersey

29. *Barber Laboratories, Inc. v. New Orleans*, 227 La. 104, 78 So.2d 525 (1955). The plaintiffs pointed out in their brief that the Louisiana Civil Code article 2315 was based on the French *Code Civil* article 1384 and cited the commentators: 14 BAUDRY-LACANTINIERE, *TRAITÉ THÉORIQUE PRATIQUE DE DROIT CIVIL* 1147, § 2917 (2d ed. 1905); 8 HUC, *COMMENTAIRE THÉORIQUE ET PRATIQUE DU CODE CIVIL* 598 (1895); 20 LAURENT, *PRINCIPES DE DROIT CIVIL FRANÇAIS* 440, 667 (2d ed. 1876), as saying that immunity of municipalities from tort liability did not exist in France. See *The Work of the Louisiana Supreme Court for the 1954-1955 Term — Local Government*, 16 *LOUISIANA LAW REVIEW* 308, 316 (1956).

30. Among the larger cities in Louisiana, New Orleans and Baton Rouge carry limited insurance, whereas Shreveport carries none (based on letters written by the author to city attorneys). Cities which own their public utilities generally carry liability insurance on them, for the operation of public utilities has been classified as proprietary and the governmental immunity has not extended to them. Of interest is section 6-303(2) of the Home Rule Charter of the City of New Orleans: "The City may, without waiver of its governmental immunity, procure public liability, bodily injury, and property damage insurance covering such risks and in such amounts as the Council may ordain, provided all such policies of insurance shall contain a stipulation that the insurer shall not assert the governmental immunity of the City as a defense of any suit on such policies."

31. The federal government has paved the way in this direction with the enactment of the Federal Tort Claims Act, 28 U.S.C. § 2671 (1952). For suggested state and local laws, see Borchard, *Proposed State and Local Statutes Imposing Public Liability in Tort*, 9 *LAW & CONTEMP. PROB.* 282 (1942).

Supreme Court *held*, reversed.¹ Commercial uses are compatible with the "light industrial" uses in this environment. No "overriding" public interest was shown to justify an exception to the general rule that "higher uses are allowable in less restricted areas." *Katobimar Realty Co. v. Webster*, 118 A.2d 824 (N.J. 1955).

Zoning ordinances are presumed to be valid; consequently, the burden of proof is on the person alleging the unconstitutionality of the ordinance.² Where there is room for a legitimate difference of opinion concerning the reasonableness of a zoning ordinance the courts will not interfere with the legislative judgment.³ An ordinance which promotes the public health, safety, morals, and welfare, and is not unreasonable, will be sustained as a valid exercise of the police power derived from the state.⁴ But, an ordinance reasonable on its face may be unreasonable in its application to a particular property.⁵ Whether an ordinance will be considered an unreasonable restraint on particular property will sometimes depend upon the differentiation made between uses permitted and prohibited thereunder.⁶ If the permitted and prohibited uses are considered very similar, and not incompatible, an "overriding" public interest will have to be

1. Four of the justices voted to reverse; three dissented.

2. *Nectaw v. Cambridge*, 277 U.S. 183 (1928); *State v. New Orleans*, 154 La. 271, 97 So. 440, 33 A.L.R. 260 (1923); 1 ANTEAU, MUNICIPAL CORPORATION LAW § 7.02 (1955); 1 RATHKOPF, THE LAW OF ZONING AND CITY PLANNING 539 (3d ed. 1956).

3. *Zahn v. Board of Public Works*, 274 U.S. 325 (1927); *Marblehead Land Co. v. Los Angeles*, 47 F.2d 528 (9th Cir. 1931); 1 RATHKOPF, THE LAW OF ZONING AND CITY PLANNING 577, 578 (3d ed. 1956). Courts, however, will regard the determinations of a municipality much more lightly than determinations of a state legislature. FORDHAM, LOCAL GOVERNMENT 864 (1949).

4. *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365 (1926); *State v. New Orleans*, 154 La. 271, 97 So. 440 (1923); *Stafford v. Caffeyville*, 161 Kan. 311, 168 P.2d 91 (1946); 8 McQUILLIN, MUNICIPAL CORPORATIONS § 25.60 (3d ed. 1956).

5. *State ex rel. Lorraine v. Baton Rouge*, 220 La. 707, 57 So.2d 409 (1952) (ordinance restricting lowland marsh to residential uses held invalid as applied to plaintiff on ground that the restriction would deprive property owner of present and future use of his property, and restriction had no substantial relationship to health, safety, welfare, or morals of inhabitants in part of city affected); *Wilkins v. San Bernardino*, 29 Cal.2d 332, 175 P.2d 542 (1946); *Forde v. Miami Beach*, 146 Fla. 676, 1 So.2d 642 (1941) (ordinance restricting property to "private estate" uses held invalid on the ground that there was no demand for the property for this use and as a result it would remain unproductive and a source of expense to owner); *Palmer v. Detroit*, 306 Mich. 449, 11 N.W.2d 199, 202 (1943).

6. *Pierro v. Baxendale*, 20 N.J. 17, 118 A.2d 401 (1955) (held that there was enough difference between "motels" and boarding houses to allow a reasonable differentiation). The dissenting judges in the instant case thought the ordinance should be sustained on the basis of the *Pierro* case.

shown to sustain the validity of the ordinance.⁷ Zoning ordinances usually exclude less desirable uses from more restricted areas.⁸ It is less common for an ordinance to prohibit more desirable uses in the less restricted areas.⁹ An ordinance prohibiting residential uses in an industrial area has been held invalid by the Connecticut Supreme Court on the ground that there was a demand for residential property and the property was suited to that purpose.¹⁰ The court emphasized the fact that there was no substantial industry or foreseeable future development for industrial purposes in the restricted area. A similar case,¹¹ involving an ordinance prohibiting "drive-in" theaters in an industrial area, was held invalid by the Illinois Supreme Court on the grounds that the restriction was unreasonable as applied to the plaintiff and had no relationship to the public health, safety, welfare, and morals.

The zoning ordinance in the instant case was enacted for the purpose of increasing the tax ratables by attracting "light industries" to the area. The dissenting opinion expressed the view that these purposes were sufficient to warrant the distinction.¹² However, it has been held that a zoning ordinance enacted for the purpose of assisting a municipality to increase its tax revenues is invalid.¹³ The majority of the court in the instant case recognized that under certain circumstances the validity of an ordinance excluding higher uses from less restricted areas might be sustained, but an "overriding" public interest would have to be shown to prevent the restriction from being unreasonable as applied to plaintiff.¹⁴ It is possible the presence of office buildings of several insurance companies and wholesale

7. *Miami Beach v. State ex rel. Lear*, 128 Fla. 750, 175 So. 537 (1937); *Ronda Realty Corp. v. Lawton*, 414 Ill. 313, 111 N.E.2d 310 (1952); *Chicago v. Sachs*, 1 Ill.2d 342, 115 N.E.2d 762 (1952); *Page v. Portland*, 178 Ore. 632, 167 P.2d 280 (1946).

8. Annot., 38 A.L.R.2d 1141 (1954); 1 *ANTIEAU, MUNICIPAL CORPORATIONS* § 7.05 (1955); *BASSETT, ZONING* 63 (1936).

9. For a list of the municipalities excluding residences from industrial areas see *RATHKOPF, THE LAW OF ZONING AND CITY PLANNING* 206 (3d ed. 1956).

10. *Corthouts v. The Town of Newington*, 140 Conn. 284, 99 A.2d 112, 38 A.L.R.2d 1136 (1953).

11. *People ex rel. Trust Co. of Chicago v. Village of Skokie*, 408 Ill. 397, 97 N.E.2d 310 (1951).

12. 118 A.2d 824, 833 (N.J. 1955).

13. *Dixon v. Zoning Board of Appeals of Town of Milford*, 19 Conn. Supp. 349, 113 A.2d 606 (1955), where it was held that an increase in the tax ratables would not sustain an exception to the ordinance; *Tranfaglia v. Building Commissioner of Winchester*, 306 Mass. 495, 28 N.E.2d 537 (1940); *233 Main St. Corp. v. City of Brockton*, 232 Mass. 647, 84 N.E.2d 13 (1948).

14. 118 A.2d 824, 831 (N.J. 1955).

commercial greenhouses and florists in the affected area influenced the court in its holding the ordinance to be unreasonable.¹⁵

It is suggested that the court correctly held the ordinance unreasonable as applied to plaintiff because commercial and "light industrial" uses are too similar to justify a differentiation in the absence of an "overriding" public interest.¹⁶ Zoning ordinances should be passed to remedy some existing or foreseeable future evil, not merely to result in some remote or speculative advantage to the community.

Burrell J. Carter

REWARDS—COMMUNICATION OF OFFER AND TIME OF ACCEPTANCE

Appellant in an interpleader action claimed a reward for information leading to the arrest and conviction of the murderer of the offeror's wife. Some months prior to the murder which gave rise to the offer, appellant, acting as an informant for the F.B.I., had conveyed data to an agent concerning a pistol of the type later used in the murder. According to the appellant's testimony, on the day following a request published in news reports for information of the nature already given the F.B.I., he had met the agent, reminded him of the data concerning the pistol, and asked why it had not been given to the police. The agent, however, testified that he had given the information to the police prior to their meeting. *Held*, that since the appellant had not acted in response to the offer except to remind the agent that pertinent information collected several months before the murder was on file with the F.B.I. and, since rewards are contractual in nature, there was no meeting of the minds and consequently no acceptance which could give rise to a contract. The court considered the conflict in testimony to be of no importance. *Sumerel v. Pinder*, 83 So.2d 692 (Fla. 1955).

Offers of rewards may be divided into two principal classes: (a) Those made by private persons or corporations, and (b) those made by statute or under statutory authority. Reward offers by private persons are regarded at common law as con-

15. *Id.* at 828.

16. See *Borough of West Caldwell v. Zell*, 22 N.J. Super. 188, 91 A.2d 763 (1952), where the reduction of traffic congestion was held to justify the differentiation between auto repair businesses and truck repair terminals.