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MUNICIPAL CORPORATIONS—ZONING—RIGHT OF MUNICIPALITY AND PROPERTY OWNERS THEREIN TO OBJECT TO AMENDMENT OF ZONING ORDINANCE OF ADJACENT MUNICIPALITY—The borough of Dumont in New Jersey amended

its zoning ordinance to change one city block from a residential area to a district in which business user would be permissible. The amendment occasioned objections by certain boroughs which were adjacent to the reclassified block, property owners in the adjacent boroughs, property owners in Dumont, and property owners in the block itself. On suit in lieu of prerogative writ by these parties, *held*, ordinance set aside. Where several boroughs are adjacent to the block of the defendant borough, and in reliance on the residential character of the whole area single family dwellings are erected in all the boroughs, property owners in adjacent boroughs have vested rights to benefits from the zoning restrictions of defendant borough, subject only to a proper exercise by defendant of its police power. The adjacent boroughs are proper parties to contest the validity of the amendment. *Borough of Cresskill v. Borough of Dumont*, (N. J. Super. Ct. 1953) 100 A. (2d) 182.

Amendment or repeal of zoning ordinances is subject to the same restrictions as the first enactment.[1] Thus, a municipality may amend its ordinance only where such amendment is reasonably necessary to the promotion of public health, safety, morals, general welfare, or other legitimate exercise of police power.[2] It is sometimes stated, as in the principal case, that property owners have vested rights to the benefits from a zoning ordinance.[3] However, since legislative acts of a municipality are involved, it appears more nearly accurate to say that property owners acquire no vested rights under a zoning ordinance, and that amendments to, or repeal of zoning ordinances do not deprive property owners of legal rights where the amendments are made in the public interest to promote the health, safety, morals, or general welfare.[4] In order to have legal standing to object to the validity of an ordinance or amendment, a person must be an aggrieved party.[5] Perhaps the most obvious example is that of the property owner who is planning a business or factory in reliance on the zoning ordinance only to have his lot reclassified as residential. It is in this situation that the courts are most likely to give relief, holding that a property owner has a right to rely on an ordinance not being changed unless the change is required for public good.[6] The indulgence of courts is especially great where the owner has obtained a building permit or license and has started construction under

[1] Shannon v. Building Inspector of Woburn, (Mass. 1952) 105 N.E. (2d) 192; Trust Co. of Chicago v. Chicago, 408 Ill. 91, 96 N.E. (2d) 499 (1951); Clifton Hills Realty Co. v. Cincinnati, 60 Ohio App. 443, 21 N.E. (2d) 993 (1938).

[2] Hasbrouck Heights Hospital Assn. v. Borough of Hasbrouck Heights, 27 N.J. Super. 476, 99 A. (2d) 591 (1953); Rodgers v. Tarrytown, 302 N.Y. 115, 96 N.E. (2d) 731 (1951).

[3] People v. Stanton, 211 N.Y.S. 438 (1925); Pelham View Apartments v. Switzer, 224 N.Y.S. 56 (1927).

[4] Chayt v. Maryland Jockey Club of Baltimore City, 179 Md. 390, 18 A. (2d) 856 (1941); Page v. Portland, 178 Ore. 632, 165 P. (2d) 280 (1946).

[5] 8 McQUILLAN, MUNICIPAL CORPORATIONS, 3d ed., §25.292 (1950).

[6] Western Theological Seminary v. Evanston, 325 Ill. 511, 156 N.E. 778 (1927); Zilien v. Chicago, 415 Ill. 488, 114 N.E. (2d) 717 (1953); Phipps v. Chicago, 339 Ill. 315, 171 N.E. 289 (1930); Rex v. Borough of Lansdale, 66 Montg. 186 (1953).

it.[7] However, where the amendment is really necessary to the public good, it will be held valid in spite of individual injury.[8] Also well within the definition of an aggrieved party is the neighboring property owner whose land suffers in value because part of the residential district in which he lives is changed to a commercial area. Here again the courts usually declare amendments invalid when they are not reasonably founded in the public good,[9] but uphold them when they are not arbitrary.[10] A much more difficult question is presented when objection is made by a property owner who is not within the zoning district affected by the amendment. Though the problem does not often occur, it is presented squarely by the principal case, for several of the plaintiffs were outside the zoning district. There is little authority on the question, but some cases lend support to the proposition that one outside the zoning district cannot question the validity of an ordinance,[11] while others support the opposite rule.[12] As long as a party owns property near enough to suffer an appreciable loss in value and is within the municipality, there appears to be no reason not to consider him an aggrieved party. The problem is still more difficult when, as in the principal case, the complaining party is beyond both the zoning district and the municipality.[13] The extensive repercussions which might result from requiring that an amendment be reasonable in its effect on property not only in the town in which it was enacted, but also in all the territory contiguous to the town, justify the view that owners of property outside the municipality should not be able to object.[14] In holding that adjacent municipalities, as well as property owners in those municipalities, are proper parties to question the validity of an amendment, the court in the principal case has extended the concept of the aggrieved party beyond any authority which has been discovered. It has been held that a borough may prosecute an appeal from a court order setting aside a zoning board order denying a petition for a variance from the zoning ordinance provisions;[15] and that where plaintiff's property is on the edge of municipality *A*, the court will consider the presence of a business area across the street from plaintiff's property, even though the businesses are in

[7] Coldwater v. Williams Oil Co., 288 Mich. 140, 284 N.W. 675 (1939); People v. Bales, 224 App. Div. 87, 229 N.Y.S. 550 (1928); Willis v. Town of Woodruff, 200 S.C. 266, 20 S.E. (2d) 699 (1942).

[8] Osborn v. Darien, 119 Conn. 182, 175 A. 578 (1934); Brady v. Keene, 90 N.H. 99, 4 A. (2d) 658 (1939).

[9] Wilcox v. Pittsburgh, (3d Cir. 1941) 121 F. (2d) 835; Clifton Hills Realty Co. v. Cincinnati, 60 Ohio App. 443, 21 N.E. (2d) 993 (1938).

[10] Eggebeen v. Sonnenburg, 239 Wis. 213, 1 N.W. (2d) 84 (1941); State v. Superior Court, 155 Wash. 244, 284 P. 93 (1930); Cassel Realty Co. v. Omaha, 144 Neb. 753, 14 N.W. (2d) 600 (1944).

[11] Kimberly v. Town of Madison, 127 Conn. 409, 17 A. (2d) 504 (1941); Fairfax County v. Parker, 186 Va. 675, 44 S.E. (2d) 9 (1947).

[12] Appley v. Township Committee of Township of Bernards, 128 N.J.L. 195, 24 A. (2d) 805 (1942).

[13] This was the situation in Kimberly v. Town of Madison, note 11 supra, and the court held that the plaintiff had no standing to question the validity of the ordinance.

[14] See 21 ILL. B.J. 34 (1933).

[15] Perelman v. Board of Adjustment of Borough of Yeadon, 144 Pa. Super. 5, 18 A. (2d) 438 (1941).

municipality *B*, in determining the reasonableness of municipality *A's* ordinance.[16] There seems to be no authority going beyond this point, so it appears that the New Jersey court is alone in its declaration that one borough may question an amendment to the zoning ordinance of an adjacent borough.

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[16] Taylor v. Glencoe, 372 Ill. 507, 25 N.E. (2d) 62 (1939); Forbes v. Hubbard, 348 Ill. 166, 180 N.E. 767 (1932); Dowsey v. Village of Kensington, 257 N.Y. 221, 177 N.E. 427 (1931).