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Land Subdivision Regulation: Its Effects and Constitutionality

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NOTES

LAND SUBDIVISION REGULATION: ITS EFFECTS AND CONSTITUTIONALITY

The American postwar phenomenon of mass migration to suburbia has generated costly demands for public improvements. Specifically, the shifting population has created the need for facilities such as roads, sewers, schools and parks. This demand has caused a critical drain on the funds available to the affected communities. Municipal governments have long sought the means of providing for the new facilities necessitated by the newcomers without overburdening the established residents. The method most commonly used is to require the subdivider to dedicate a portion of his land, or its equivalent value, to the municipality as a condition precedent to the approval of his plat. This, in turn, shifts a portion of the cost generated by land development to the new residents in the form of increased housing costs. This note deals with the effects of land subdivision regulation and its constitutionality.

The Traditional Exactions

The practice of having new residents contribute to the expenses they generate originated in the real estate boom in the first quarter of this century. Many municipalities realized the need for effective subdivision control after finding themselves with the burden of paying for new streets and utility improvements which serviced only vacant lots.[1] However, many states had anticipated this need and equipped municipalities with the authority to require subdividers to provide specific public improvements. This subdivision regulation has been sustained in a number of state court decisions. For example, in *Allen v. Stockwell*,[2] the Michigan Supreme Court sustained an ordinance requiring the subdivider to provide graded and graveled streets, surface drains, sidewalks and sanitary sewers, as a reasonable exercise of authorized municipal and police power. In *Ridgefield Land Co. v. City of Detroit*,[3] the same court found the city em-

[1] The improvements were made in anticipation of development which did not take place. Reps, *Control Of Land Subdivision By Municipal Planning Boards*, 40 CORNELL L.Q. 258, 266 (1955).

[2] 210 Mich. 488, 178 N.W. 27 (1920).

[3] 241 Mich. 468, 217 N.W. 58 (1928).

powered to condition approval of a plat upon the establishment of a ten-foot building line on one street. The court also upheld the required dedication of seventeen feet for a second street, in addition to the normal thirty-foot dedication. The subdivider maintained that the ordinance was, in effect, a taking of his private property for public use without just compensation. The court rejected this argument, maintaining that the city was not attempting to compel a dedication, but rather, was acting within its power by imposing reasonable conditions to be complied with before the plat is accepted for record. "In theory at least, the owner of a subdivision voluntarily dedicates sufficient land for streets in return for the advantage and privilege of having his plat recorded." [4] A second basis for the decision was the city's determination that widened streets were necessary for accommodating traffic, and, hence, the required dedication was within the municipality's police power.[5]

The "Taking" Argument

Although the courts have accepted the police power basis for the enactment of subdivision control regulation,[6] the question often arises as to whether a specific application subjects the subdivider to reasonable regulations, or so limits his activity by conditions as to amount to a taking of his property without compensation. In the earlier street dedication cases, the courts uniformly rejected this "taking" argument.[7] In *Brous v. Smith*,[8] a town building and zoning inspector refused a permit to a subdivider who failed to construct roads providing free access to proposed structures, or post a bond to insure performance after erection of the buildings. The court upheld the constitutionality of the challenged enabling act,[9] stating that " 'to challenge the power to give proper direction to community growth and development . . . is to deny the vitality of a principle that has brought men together in organized society for their mutual

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[4] *Id.* at 472, 217 N.W. at 59.

[5] As the court stated in the leading case of Mansfield & Swett, Inc. v. West Orange, 120 N.J.L. 145, 150, 198 Atl. 225, 229 (1938): "The public welfare is of prime importance; and the correlative restrictions upon individual rights—either of persons or of property—are incidents of the social order, considered a negligible loss compared with the resultant advantages to the community as a whole."

[6] Cunningham, *Land-Use Control—The State and Local Programs*, 50 IOWA L. REV. 367, 416 (1965).

[7] Heyman & Gilhool, *The Constitutionality Of Imposing Increased Community Costs On New Suburban Residents Through Subdivision Exactions*, 73 YALE L.J. 1118, 1130 (1964).

[8] 304 N.Y. 164, 106 N.E.2d 503 (1952).

[9] N.Y. TOWN LAW § 280(a).

advantage.'" [10] The court found the provisions reasonable in light of the importance of access to the proposed dwellings, particularly in times of emergency. While it was not made clear why the burden of paying for the new streets should fall upon the subdivider, the court implied that since the subdivider had created these needs by attracting newcomers to the community, he should pay the bill. Furthermore, since the demand for new facilities was due to causes external to the existing community, it would be unfair to burden the established residents with their cost.[11] Thus the "taking" objection lacks merit as long as there is a reasonable relation between the condition imposed on a land-use and the need which that land-use will normally generate.

In *Ayres v. City Council*,[12] the court rejected the defendant's contention that the conditions imposed on approval of his subdivision plan amounted to a taking of private property for public use without just compensation. The planning commission had imposed certain conditions precedent to approval of the subdivider's plat, including the dedication of part of the subdivision for the widening of streets. The court stated that there was no sufficient reason to justify overturning the trial court's decision that the conditions were "reasonably related to increased traffic and other needs of the proposed subdivision. . . ."[13] Here again, the court did not specifically state why the conditions did not constitute a "taking," but it declared that control requirements should be reasonably related to the subdivision in question. Incidental benefit to the community as a whole was not controlling. Thus, while the courts have not formulated a definite test for determining when an exaction for streets or sewers will amount to a "taking," they have not rejected the imposition of the traditional conditions upon the subdivider.

The Modern Exactions: Land for Schools and Parks

The major issues in this area now focus on municipal demands for land dedication for school and park sites, or cash in lieu of land for the improvement of sites. The basic question is whether the subdivider or the new resident will be paying for more than a fair portion of the total cost of these schools and parks. If they are burdened with an unfair share of the cost, the exaction may be considered both discriminatory and an unlawful taking.

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[10] Brous v. Smith, 304 N.Y. 164, 168-69, 106 N.E.2d 503, 505 (1952), quoting from Mansfield & Swett, Inc. v. West Orange, *supra* note 5, at 150-51, 198 Atl. at 229.

[11] Brous v. Smith, *supra* note 10, at 169, 106 N.E.2d at 506.

[12] 34 Cal. 2d 31, 207 P.2d 1 (1949).

[13] *Id.* at 42, 207 P.2d at 8.

"The equal protection clause of the fourteenth amendment secures equality of right by forbidding arbitrary discrimination between persons similarly circumstanced." [14] Thus, it requires that the landowners of a given area be treated similarly. If the newcomers are taxed to pay costs which are the product of the entire community's activities, they are being treated dissimilarly from others "similarly circumstanced," since they are being required to pay more than others receiving the identical benefits.[15]

In the majority of recent cases striking down municipal exactions, the courts never reached the constitutional issue raised by such exactions.[16] In these cases, the municipal provisions were struck down as ultra vires, *i.e.*, beyond the statutory powers provided by the state legislatures. However, where statutory authority was present and the courts were forced to confront the constitutional issue, some have not hesitated to strike down the ordinance or statute as unconstitutional.

Land — Cash Exactions Held Unconstitutional

In *Pioneer Trust & Sav. Bank v. Village of Mount Prospect,*[17] the town planning board conditioned approval of plaintiff's plat upon the dedication of land for a school and park site.[18] The Illinois court overruled the town board because the record did not establish that the need for the educational and recreational facilities was one specifically attributable to the addition of the subdivision. To support the decision, the court looked to the test formulated in the earlier case of *Rosen v. Village of Downers Grove.*[19] That court, holding invalid a village ordinance requiring payment of up to three hundred and fifty dollars per lot from a subdivider for educational facilities, declared that dedication ordinances cannot require a subdivider to assume the cost of public improvements which were not "specifically and uniquely attributable to his activity and which would otherwise be cast upon the public." [20] Just as in *Rosen,* where the fees demanded

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[14] Schmidt v. Board of Adjustment, 9 N.J. 405, 418, 88 A.2d 607, 613 (1952).

[15] "[I]f one is required to pay more than his share, he receives no corresponding benefit for the excess, and that may properly be styled extortion or confiscation." Stuart v. Palmer, 74 N.Y. 183, 189 (1878).

[16] *E.g.*, Kelber v. City of Upland, 155 Cal. App. 2d 631, 318 P.2d 561 (1957); Rosen v. Village of Downers Grove, 19 Ill. 2d 448, 167 N.E.2d 230 (1960); Coronado Dev. Co. v. City of McPherson, 189 Kan. 174, 368 P.2d 51 (1962); Haugen v. Gleason, 226 Ore. 99, 359 P.2d 108 (1961).

[17] 22 Ill. 2d 375, 176 N.E.2d 799 (1961).

[18] The amount of land was computed according to a formula provided in the ordinance.

[19] 19 Ill. 2d 448, 167 N.E.2d 230 (1960).

[20] *Id.* at 453, 167 N.E.2d at 233-34.

were held necessarily limited to costs specifically attributable to the activity of the subdivider, so also in *Pioneer Trust*, the court held that the exaction would constitute a "taking," since the need for school facilities was a result of activity beyond the limits of the subdivision. In elaborating upon permissible and prohibited exactions, the opinion cited with approval the *Ayres* distinction between the needs for improvements reasonably related to the activity within the subdivision and those which "stem from the total activity of the community." [21] The court also relied on *Rosen* to observe that communities were not entitled to use the requirement of plat approval to provide for every future problem of the municipality.

In determining that the ordinance was unconstitutional, the court made it clear that if the ordinance were properly restricted, the dedication provisions would be valid. It was the abuse of an appropriate control that made the ordinance unconstitutional. While application of the ordinance could result in the subdivider being burdened with the *total* cost of a definite need, under the "specific and unique" formula, only *a portion* of the cost could be reasonably attributed to the developer and ultimately to the community's newcomers. This is in accord with the rationale of the traditional cases seen earlier, for the subdivider would be required to pay for only that portion of the facility necessitated by his own activities. Therefore, it would seem that under the Illinois approach, a more limited ordinance, demanding that the municipality show a unique causal relation between the development and the new facilities required, would be upheld.[22]

In *Gulest Associates, Inc. v. Town of Newburgh*,[23] the court was confronted by a situation where the New York legislature had empowered local communities to require land dedications or cash in lieu of such dedications for parks, playgrounds or other recreational purposes.[24] The regulations adopted by the Newburgh town board provided for dedication of land for park facilities or, if dedication were impractical, for a deposit of fifty dollars for each proposed lot in the subdivision. The moneys collected

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[21] *Supra* note 17, at 380, 176 N.E.2d at 802.

[22] In Billings Properties, Inc. v. Yellowstone County, 194 Mont. 28, 394 P.2d 182 (1964), the court upheld a land dedication requirement using the *Pioneer Trust* formula after finding a legislative determination that subdivisions of certain sizes required new park facilities.

[23] 25 Misc. 2d 1004, 209 N.Y.S.2d 729 (Sup. Ct. 1960), *aff'd mem.*, 15 App. Div. 2d 815, 225 N.Y.S.2d 538 (2d Dep't 1962).

[24] "If the planning board determines that a suitable park or parks of adequate size cannot be properly located in any such plat . . . the board may require . . . an amount to be determined by the town board, which amount shall be available for use by the town for neighborhood park, playground or recreation purposes including the acquisition of property." N.Y. TOWN LAW § 277(1).

were to be paid into a special fund for future acquisition and improvement of the town's recreational facilities. The board determined that the plaintiff's land was unsuited for parks and conditioned approval of his subdivision upon payment of twenty-three hundred dollars.

The appellate division, in a memorandum decision, affirmed the supreme court's ruling that the enabling legislation was unconstitutional. The supreme court had observed that the statute's only limitation on the use of such exactions was the general provision that they be expended for neighborhood park or recreational facilities. The moneys assessed could be used in any section of the town and for any recreational purpose, regardless of any relation to the contributing subdivision. This could result in the subdivider, or the newcomer, paying more than a proportionate share of the particular facility. In addition, the statute gave the town board broad discretion to determine the amount of cash, if any, to be paid in lieu of land.[25] The court reasoned that such discretionary authority could be discriminatorily applied.

The decision in *Gulest* reflects a different approach than that in *Pioneer Trust.* While the Illinois court held the exaction unconstitutional because there was no specific and unique *causal relationship* between the development and the new facility, the New York court declared the exaction unconstitutional because the new facility, although necessitated by the subdivider, did not *directly benefit* the subdivision.

Neither the *Gulest* nor the *Pioneer Trust* approach has declared the land or cash requirements inherently unconstitutional. Both opinions have merely attempted to refine the tests which must be met for the exactions to be valid. Newcomers to a community are thus protected from being taxed for the privilege of entering the community.[26]

Land — Cash Exactions Held Constitutional

In two recent cases, ordinances requiring subdividers to dedicate land for school and park use, or to pay a cash fee in lieu of such dedication, were upheld. In *Jordan v. Village of Menomonee Falls,*[27] an ordinance was enacted to apportion the cost

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[25] "The board *may* require . . . ." *Ibid.* (Emphasis added.)

[26] A stronger stand in connection with schools was taken in Midtown Properties, Inc. v. Township of Madison, 68 N.J. Super. 197, 172 A.2d 40 (1961), *aff'd mem.,* 78 N.J. Super. 471, 189 A.2d 226 (App. Div. 1963). "[A]ny attempt to compel a developer to pay for building a school, or to donate land for a school, as a condition precedent to giving . . . approval to a subdivision . . . is a taking of his property without due process of law and deprives him of equal protection of the law, and therefore is illegal and void." *Id.* at 210, 172 A.2d at 47.

[27] 28 Wis. 2d 608, 137 N.W.2d 442 (1965).

of providing schools and parks "necessary to serve the additional families brought into the community by subdivision development. . . ." [28] Subdividers were required either to dedicate land valued at two hundred dollars per residential lot for parks and schools, or to pay a sum equal to the value of the land. When a fee was collected, forty per cent was allocated to a park fund and sixty per cent to a school fund "to be used exclusively for immediate or future site acquisition or capital improvement." [29]

The court, concluding that there was statutory authority for the ordinance,[30] analogized the land dedication requirements to the more common requirements of dedicating land for streets, water mains and sewers. Just as the municipalities could require land for these common exactions, "similarly it would seem to follow that the way to facilitate provision for schools, parks, and playgrounds to serve the subdivision would be to require the subdivider to dedicate a portion of the subdivision for such purposes." [31]

The court accepted the basic *Pioneer Trust* formula for determining the constitutionality of such a requirement, but qualified it with an original canon of application.

> We deem this to be an acceptable statement of the yardstick to be applied, provided the words 'specifically and uniquely attributable to his activity' are not so restrictively applied as to cast an unreasonable burden of proof upon the municipality. . . .[32]

Hence, although the municipality might not be able to prove that the required land was to meet a need uniquely attributable to the newcomers of a particular subdivision, it might more easily provide a "reasonable basis" for the demand by establishing that a group of subdivisions had made the land dedications necessary.[33] Under this interpretation of the *Pioneer Trust* test, the unique causal relation is reasonably demonstrated by a showing that the municipality will be required to provide more land for schools and parks as a result of the development.

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[28] Menomonee Falls Ordinance, as cited in Jordan v. Village of Menomonee Falls, 28 Wis. 2d 608, 610, 137 N.W.2d 442, 443 (1965).

[29] *Id.* at 611, 137 N.W.2d at 444. The moneys allocated to the school fund were further limited in that they could only be used "for the benefit of the school district or districts in which the plat lies." *Ibid.*

[30] WIS. STAT. ANN. § 236.45(1) (1957). "The purposes of the statute include facilitating 'adequate provision for transportation, water, sewerage, schools, parks, playgrounds and other public requirements.'" Jordan v. Village of Menomonee Falls, *supra* note 28, at 613, 137 N.W.2d at 446.

[31] *Id.* at 616, 137 N.W.2d at 446.

[32] *Id.* at 617, 137 N.W.2d at 447.

[33] However, a showing that sufficient lands for schools and parks had been acquired prior to the opening up of the subdivisions or that, irrespec-

The court disposed of the constitutional objections to the equalization fee provision, stating that the same reasons which prompted it to hold that the land dedication demands constituted a reasonable exercise of the police power "apply with equal force to the equalization fee requirement." [34] Statutory authority for the cash provision was implied; such provision being necessary to accomplish the purpose of the statute. If there were no alternative to the land exactions, the subdivider would be relieved of any obligation whenever land dedication was impractical.

In *Jenad, Inc. v. Village of Scarsdale*,[35] the New York Court of Appeals considered an ordinance similar to that in the *Jordan* case. The Court found sufficient authority for the land dedication regulation in a statute permitting planning boards to require that the subdivider show parks suitably located as a condition precedent to approval of the plat.[36] Although, as in *Jordan*, there was no provision authorizing a cash in lieu of land exaction, where the circumstances of a particular plat made the exaction unprofitable, the planning board could waive the demand "subject to appropriate conditions and guarantees. . . ." [37] This last phrase was construed by the majority to include "the cash in lieu of land" system Scarsdale had established.

Turning to the issue of constitutionality, the Court overruled the so-called "New York test" stating:

> Even if the *Gulest* decision were correct—and we hold it is not—it would not apply here since by the Scarsdale rules and regulations the moneys collected as 'in lieu' fees are not only put into a 'separate fund . . .' but, as provided by the board of trustees, expenditures from such fund are to be made only for 'acquisition and improvement of recreation and park lands' *in the village*. There is nothing vague about that language.[38]

The Court rejected the argument that the use of such moneys for general village purposes amounted to an unconstitutional tax. The majority found the exaction a "reasonable form of village planning for the general community good," [39] reasoning that Scarsdale would be forced to provide for the need if the subdivider failed to do so. In addition, it is as reasonable to require the

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tive of the newcomers, the normal growth of the municipality would have necessitated the acquisition of land might prevent the establishment of a reasonable basis. *Id.* at 618, 137 N.W.2d at 447-48.

[34] *Id.* at 620, 137 N.W.2d at 449.

[35] 18 N.Y.2d 78, 218 N.E.2d 673, 271 N.Y.S.2d 955 (1966).

[36] N.Y. VILLAGE LAW § 179-i.

[37] *Ibid.*

[38] Jenad, Inc. v. Village of Scarsdale, 18 N.Y.2d 78, 84, 218 N.E.2d 673, 675, 271 N.Y.S.2d 955, 957-58 (1966). (Emphasis added.)

[39] *Id.* at 84, 218 N.E.2d at 675, 271 N.Y.S.2d at 958.

subdivider to provide land for these facilities as to require land for sewers, water mains and streets. Where, however, a subdivision is not capable of providing lands, and the development has increased the demand for more facilities, a reasonable solution is to assess the subdivider to help meet the needs.

Difficulties Still Unresolved

Both the *Jordan* and the *Jenad* cases represent some departure from prior decisions. Perhaps they also reflect a more realistic approach to the problem of land development and the rise in capital costs to a community. As has been stated concerning the *Jordan* case:

> Quite realistically, the focus was upon the result of subdivision activity in general; the court properly recognized that the inability to trace the problems of drastically increased population to the activity of any one subdivider does not mean no subdivider has caused the problem.[40]

However, although the courts were sensitive to this fact, the majority opinions reflect an unrealistic approach in relation to other problems to which the ordinances in question give rise.

The Tax Problem

The most obvious difficulty is the manner in which the appropriated funds are to be used. The dissents in both *Jordan* and *Jenad* objected to the failure of the ordinances to provide that the moneys collected be expended for the benefit of the subdivision. The *Jenad* dissent reasoned that if the funds could be used to provide recreation facilities for the municipality in general, the exaction amounted to a tax and not an assessment. As was stated in *Stuart v. Palmer*,[41] concerning the power to tax, "there must be an apportionment of the burdens, either among all the property owners . . . or the property owners specially

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[40] 66 COLUM. L. REV. 974, 979 (1966).
[41] 74 N.Y. 183 (1878).
[42] *Id.* at 189.
[43] RHYNE, MUNICIPAL LAW § 29.2 (1957). See Norwood v. Baker, 172 U.S. 269 (1898).
[44] It should be made clear that municipalities cannot argue that the fee is really an equalizing device in that the established residents have already paid their fair share for facilities. The theory that the tax rate should remain constant and the newcomers bear the burden of increased costs "is so totally contrary to tax philosophy as to require it to be stricken down. . . ." Daniels v. Borough of Point Pleasant, 23 N.J. 357, 362, 129 A.2d 265, 267 (1957).

benefitted by the improvements."[42] In other words, the special assessment is to be levied according to a proportionate share of the cost of the improvement, "measured by its particular or special benefit as distinguished from the general benefit accruing throughout the municipality."[43] Thus, special assessments are valid only when a special benefit flows to the party against whom it is levied. The specific objection here is that the subdividers or new residents are not guaranteed a particular benefit from the levy for the parks and schools.

The Liberality of the Test

A further question arises concerning the tests for validity adopted in the two cases. All that the municipality must establish is that the exaction is reasonably related to a need created or aggravated by the new residents. As long as this relationship is shown, a municipality could demand enormous equalization fees. For example, the *Jordan* opinion mentions that in 1962, an addition to a school in the vicinity of the plaintiff's subdivision was completed at a cost of $364,000 while the value of land dedicated and equalization fees collected for a four-year period totaled only $127,000. Theoretically, applying the *Pioneer Trust* test according to the Wisconsin reasoning, the municipality could require a dedication or equalization fee equal to the total cost of the improvement.[44] Assuming that accurate estimates of capital costs generated by development of a subdivision are available, is it permissible to require dedication, or equalization fees, amounting to several thousand dollars per lot? The burden of this exaction might sufficiently increase the cost of subdivision houses so as to eliminate their market in a municipality.[45] A widespread adoption of such burdensome requirements could have serious effects on an economy which requires a mobile population.[46]

Unnecessary difficulties, present in many recent cases, including *Jenad* and *Jordan,* could be avoided by careful draftsmanship of the ordinances and statutes. Obviously, express statutory authorization for an equalization fee exaction would eliminate the contention that such fees are ultra vires. Even the tax argument need not arise where cash is demanded, if the statute stipulates that the moneys be spent on projects reasonably related to development of the subdivision and the ordinance is drawn accordingly. In addition, courts have declared that local governments may

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[45] Note that the Wisconsin enabling act includes among its purposes facilitating other public requirements. An application of the easily fulfilled *Jordan* test to this general grant of power would result in the municipality assessing new residents for any capital costs it chooses.

[46] See SAMUELSON, ECONOMICS 612-43 (5th ed. 1962).

not zone to prevent growth.[47] Nor may municipalities zone for the purpose of segregating residential areas by income level,[48] or by race, religion or national origin.[49] However, by means of subdivision control, the municipality might achieve indirectly what it is prohibited from doing directly. Thus, it appears imperative that satisfactory legislation include a ceiling on the required fees, well below the cost resulting from the particular land development.

A Proposed Method of Assessment

This leads directly to the question of an accurate method of determining the capital costs newcomers generate by their presence. One seemingly acceptable method is the modern cost accounting technique.[50] This would "permit precise calculation of costs for various facilities allocable to new subdivisions." [51] The proponents of this method correctly assert that the exaction of fees in lieu of land dedication "is a more flexible device and permits of equal application to all subdivisions regardless of size." [52] This approach allows the exactions to be required of one subdivision to be estimated in the context of, and in relation to, other new subdivisions, established residents and future home buyers.

Although the basic technique may be reliable, its proposed application introduces another issue. Its advocates insist that there is no justification for not applying the technique to all capital costs, including, *e.g.*, parks, schools, fire and police stations. They anticipated the argument that such authority would allow local politicians to prohibit real estate development maintaining that "there are . . . political pressures that would prevent any state legislature from permitting exactions to approach the constitutional maximum." [53] According to this theory, any assessment would be within constitutional limits, provided cost accounting techniques could establish the relation between the exaction and the need for which the assessment is made. This presumes, however, that the majority of courts will ultimately conclude that a

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[47] Simon v. Town of Needham, 311 Mass. 560, 42 N.E.2d 516 (1942); Board of County Supervisors v. Carper, 200 Va. 653, 107 S.E.2d 390 (1959). *Cf.* Albrecht Realty Co. v. Town of New Castle, 8 Misc. 2d 255, 167 N.Y.S.2d 843 (Sup. Ct. 1957).

[48] See Stein v. Long Branch, 2 N.J. Misc. 121 (Sup. Ct. 1924).

[49] See Buchanan v. Warley, 245 U.S. 60 (1917).

[50] Heyman & Gilhool, *The Constitutionality Of Imposing Increased Community Costs On New Suburban Residents Through Subdivision Exactions*, 73 YALE L.J. 1118, 1141-46 (1964).

[51] *Id.* at 1143.

[52] *Id.* at 1142.

[53] *Id.* at 1156. Necessarily included in these political pressures are conflicting state interests, *e.g.*, mobile population and discrimination.

subdivider can be required to dedicate land for parks, schools and other capital needs. Although this position is concededly arguable,[54] and the cases which have met the issue squarely have suggested that allowance of exactions for such purposes may become the majority rule, it must be remembered that, at present, few courts have faced the question. Moreover, a valid distinction can be drawn between parks and other facilities. The traditional exactions were generally related to the use and enjoyment of the land by the newcomers.[55] Since parks are more directly connected with the use and enjoyment of land than schools and police stations, the analogy between the traditional demands and parks is more compelling.

This "use and enjoyment of land" distinction is directly related to the distinction between local benefit and general benefit which is frequently used to determine whether an exaction is constitutional. The law, although recognizing that an improvement may incidentally benefit the community in general, has insisted that it be local, viz., it must be primarily for the accommodation of the assessed inhabitants.[56] Whether a particular improvement is local or general depends upon the nature of the improvement, the surrounding conditions and the character of the benefit.[57] Whether cost accounting techniques may be applied to *all* capital costs depends on how courts will ultimately regard schools and police stations. There are policy questions at stake which are well illustrated by using schools as an example. It has been implied that public schools are traditionally considered beneficial to the general public and must be financed completely from a general tax base.[58] The exactions above are seen as challenging the American ideal of a free education system.

Conclusion

Not all of the policy questions arising from other capital costs can be highlighted as in the case of schools. However, the obvious point is that the exactions and the policies behind them do and will continue to conflict with other important public

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[54] See Heyman & Gilhool, *The Constitutionality Of Imposing Increased Community Costs On New Suburban Residents Through Subdivision Exactions,* 73 YALE L.J. 1118 (1964); Reps & Smith, *Control of Urban Land Subdivision,* 14 SYRACUSE L. REV. 405 (1963).

[55] *E.g., compare* Lake Secor Dev. Co. v. Ruge, 141 Misc. 913, 252 N.Y. Supp. 809 (Sup. Ct. 1931), *with* Midtown Properties, Inc. v. Township of Madison, 68 N.J. Super. 197, 172 A.2d 40 (1961), *aff'd mem.,* 78 N.J. Super. 471, 189 A.2d 226 (App. Div. 1963) (dictum).

[56] See 14 McQUILLIN, MUNICIPAL CORPORATIONS § 38.113 (3d ed. 1950) and cases cited therein.

[57] *Ibid.*

[58] Midtown Properties, Inc. v. Township of Madison, *supra* note 55.

policies. It is unlikely that all the issues in the area will be resolved within the foreseeable future. However, it seems inappropriate for state legislatures to permit these conflicts to find resolution at town planning board meetings where local interests are frequently given undue weight. The balancing of public interests and the settling of conflicts of such importance presumably deserve the close attention of the state legislatures.

THE JUVENILE OFFENDER'S PROCEDURAL RIGHTS IN THE NEW YORK FAMILY COURT

Should a child, when under the jurisdiction of a state juvenile court, be afforded the constitutional rights guaranteed an adult in ordinary criminal proceedings, *i.e.*, the right to counsel, the right against self-incrimination, the right to confront witnesses and the right to appeal? A recent Arizona case, *Application of Gault*,[1] now pending before the United States Supreme Court, which is in accord with numerous jurisdictions, has answered this question in the negative. Several months ago, the United States Supreme Court, in *Kent v. United States*,[2] declared that the District of Columbia's waiver proceeding, which determines whether jurisdiction will be entertained by either the criminal or juvenile court, was unconstitutional. Thus, it appears that the Court is, for the first time,[3] attempting to deal with the constitutional problems inherent in modern-day treatment of juvenile offenders. Whether the Court will declare many state procedures to be in violation of due process is a matter of great speculation.

In 1894, the New York legislature amended the Penal Code to provide that a child under the age of fourteen, charged with a felony which was not a capital offense, might, in the discretion of the court, be tried for a misdemeanor.[4] The charge was finally reduced to juvenile delinquency as a matter of right,[5] and, in 1922, the children's courts were established throughout the state.[6]

Since the child was not to be convicted of a crime but only adjudicated a juvenile delinquent, an entirely novel proceeding was created. The state's relation to the child was that of *parens*

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[1] 99 Ariz. 181, 407 P.2d 760 (1965), *prob. juris. noted*, 384 U.S. 997 (1966).

[2] 383 U.S. 541 (1966).

[3] No United States Supreme Court decision has been found in this area, nor does the *Kent* case refer to any Supreme Court case.

[4] N.Y. Sess. Laws 1894, ch. 726, § 1.

[5] N.Y. Sess. Laws 1909, ch. 478, § 1.

[6] N.Y. Sess. Laws 1922, ch. 547, § 3.