

### Zoning--Administrative Law--Denial of Building Approval to Church Held Arbitrary and Unreasonable (Diocese of Rochester v. Planning Board, 1 N.Y.2d 508 (1956))

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extent of liability of the defendant-broadcaster for a seemingly uncontrollable remark, save that a good cause of action is stated against it.

In examining the case in relation to the judicial development of the law, it would seem to sanction a contradiction in terms. No longer need a libel be "considered as written, and a slander as spoken, defamation."<sup>34</sup> This is in direct violation of the dictum laid down in *Locke v. Gibbons*,<sup>35</sup> and followed by all jurisdictions save two,<sup>36</sup> that "our courts cannot legislate to eradicate the long-established distinctions between libel and slander."<sup>37</sup>

While it is true that damage from defamatory statements can almost be presumed to occur over the modern electronic media, it would seem more logical to include oral defamation by radio or television as a category of slander *per se*.<sup>38</sup> Another solution might be to discard the "outmoded" forms and make one action for defamation with certain categories exempt from proof of special damages. The Legislature and not the courts would seem the best method of correcting a field of our law rapidly becoming confused and divided by contradiction.



ZONING — ADMINISTRATIVE LAW — DENIAL OF BUILDING APPROVAL TO CHURCH HELD ARBITRARY AND UNREASONABLE. — The petitioner brought a proceeding under Article 78 of the New York Civil Practice Act to review a decision of the Planning Board of the town of Brighton. The town zoning ordinance required the approval of the Board for the erection of a church with accessory uses in a restricted class "A" zoning district. The petitioner applied for approval; the Board denied it and was affirmed in the courts below. The Court of Appeals reversed, *holding* the Board's decision arbitrary and unreasonable. *Diocese of Rochester v. Planning Board*, 1 N.Y.2d 508, 136 N.E.2d 827 (1956).

Present day zoning, which is of comparatively recent origin<sup>1</sup> resulted from the recognition that some regulation of private property

<sup>34</sup> *Locke v. Gibbons*, 164 Misc. 877, 880, 299 N.Y. Supp. 188, 193 (Sup. Ct. 1937), *aff'd mem.*, 253 App. Div. 887, 2 N.Y.S.2d 1015 (1st Dep't 1938).

<sup>35</sup> *Ibid.*

<sup>36</sup> See *Summit Hotel Co. v. National Broadcasting Co.*, 336 Pa. 182, 8 A.2d 302 (1939); see also *Coffey v. Midland Broadcasting Co.*, 8 F. Supp. 889 (W.D. Mo. 1934).

<sup>37</sup> *Locke v. Gibbons*, *supra* note 34.

<sup>38</sup> See note 2 *supra*. It is interesting to note that falsely imputing unchastity to a woman was made actionable *per se* by statute. This was formerly adopted in Section 1908 of the New York Code of Civil Procedure and is continued today in the New York Rules of Civil Practice, Rule 97.

<sup>1</sup> *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 386 (1926).

owners was necessary.<sup>2</sup> The courts have upheld it against constitutional objection, as a valid exercise of a state's police power.<sup>3</sup> In exercising police power, the state may delegate the zoning power to municipalities by enabling acts.<sup>4</sup>

The act involved in the instant case provides that the following purposes are to be accomplished:

. . . [T]o lessen congestion in the streets, to secure safety from fire, flood, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.<sup>5</sup>

To avail itself of the act, the municipal legislative body must first appoint a zoning commission.<sup>6</sup> The commission holds public hearings, after which it recommends to the local legislative body the boundaries of the various districts, and the appropriate regulations to be enforced therein.<sup>7</sup> Any ordinance adopted must conform to the enabling act, and contain standards to guide its application by administrative bodies.<sup>8</sup> The ruling of an officer, department, board or bureau may be reviewed by the supreme court in a proceeding under Article 78 of the Civil Practice Act.<sup>9</sup>

In the instant case, the town board of Brighton, enacted a zoning ordinance which stated in part: "For the purpose of promoting the public health, safety, morals or the general welfare . . . the Town of Brighton is hereby divided in four classes of districts. . . ." <sup>10</sup> One of these districts was residential and in turn was subdivided into "A," "B," and "C" classes.<sup>11</sup> The Diocese was denied approval to build a church and accessory uses in the class "A" area.<sup>12</sup> Special

<sup>2</sup> *Id.* at 386-87; BASSETT, ZONING 45-46 (1936).

<sup>3</sup> *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). See *Lincoln Trust Co. v. Williams Bldg. Corp.*, 229 N.Y. 313, 128 N.E. 209 (1920); *City of Utica v. Hanna*, 202 App. Div. 610, 195 N.Y. Supp. 225 (4th Dep't 1922).

<sup>4</sup> See BASSETT, ZONING 13, 45 (1936). See also *Headley v. City of Rochester*, 272 N.Y. 197, 5 N.E.2d 198 (1936) (by implication); *Stubbe v. Adamson*, 220 N.Y. 459, 116 N.E. 372 (1917).

<sup>5</sup> N.Y. TOWN LAW § 263; see N.Y. VILLAGE LAW § 177. Such purposes are enumerated in most enabling acts. BASSETT, ZONING 51 (1936).

<sup>6</sup> N.Y. TOWN LAW § 266; N.Y. VILLAGE LAW § 179-a.

<sup>7</sup> *Ibid.*

<sup>8</sup> See I RATHKOPF AND RATHKOPF, ZONING AND PLANNING 103 (3d ed. 1956).

<sup>9</sup> N.Y. TOWN LAW § 267(7); N.Y. VILLAGE LAW § 179-b.

<sup>10</sup> *Diocese of Rochester v. Planning Board*, 1 N.Y.2d 508, 515, 136 N.E.2d 827, 829 (1956).

<sup>11</sup> *Ibid.*

<sup>12</sup> The accessory uses proposed by the Diocese were a "school; meeting

term<sup>13</sup> and the appellate division<sup>14</sup> held that the town bodies had not abused their discretion in denying the permit.

The Court of Appeals found that the board's decision bore no substantial relation to the standard of public health, safety, morals or general welfare of the community, and hence, was arbitrary and unreasonable.<sup>15</sup> Specifically the Court said, the Planning Board abused its discretion when it allowed the following considerations to influence its determination: (1) as the area in question was completely built-up and is strictly residential in character, the imposition of a church and school would change the character of the residential area; good planning requires that churches and schools be built in areas where future residential growth could accommodate itself to them; (2) property values would be adversely affected; (3) good planning requires larger and more expensive homes rather than tax-exempt churches; (4) enjoyment of neighboring property would be decreased; (5) traffic hazards would be created; (6) the accessory uses proposed by the Diocese were not within the scope of church activities.<sup>16</sup>

The Court held the considerations of the Planning Board to be unavailing to support its decision. The first, in effect, is a declaration that churches could not be built in the particular area even though allowed by the ordinance. The claim of the respondents was, in fact, that churches could only be built in class "C" areas. Such a policy is not authorized by the zoning ordinance.<sup>17</sup>

In *Community Synagogue v. Bates*,<sup>18</sup> a case decided the same day as the instant case, the Court had denied that an administrative zoning authority had the power to deny an application for a church at a "precise spot." The Court disposed of the second consideration on the ground that mere pecuniary loss to a few persons should not bar a church in view of their high purpose and moral value. The third ground, because it is the policy of the state that religious property shall be exempt from taxation, and therefore it cannot be seriously argued that the denial of the permit because of a loss in tax revenue is in furtherance of the general welfare. The fourth and fifth because decreased enjoyment of neighboring property due to noise and the possibility of traffic hazards are insufficient. The sixth because

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room; kindergarten, small games field, open field and hard-top play areas; and parking lot which would accommodate 144 cars." *Id.* at 516, 136 N.E.2d at 830.

<sup>13</sup> *Diocese of Rochester v. Planning Board*, 207 Misc. 1021, 141 N.Y.S.2d 487 (Sup. Ct. 1955).

<sup>14</sup> *Diocese of Rochester v. Planning Board*, 1 A.D.2d 86, 147 N.Y.S.2d 392 (4th Dep't 1955).

<sup>15</sup> *Diocese of Rochester v. Planning Board*, 1 N.Y.2d 508, 526, 136 N.E.2d 827, 837 (1956).

<sup>16</sup> *Id.* at 523-26, 136 N.E.2d at 834-37.

<sup>17</sup> See *State ex rel. Tampa, Fla., Co. of Jehovah's Witnesses, North Unit, Inc. v. City of Tampa*, 48 So. 2d 78 (Fla. 1950); *State ex rel. Synod of Ohio v. Joseph*, 139 Ohio St. 229, 39 N.E.2d 515 (1942); *City of Sherman v. Simms*, 143 Tex. 115, 183 S.W.2d 415 (1944).

<sup>18</sup> 1 N.Y.2d 445, 136 N.E.2d 488 (1956).

the accessory uses proposed by the Diocese are well within the scope of its activities. In the *Community Synagogue* case, it was said, "a church is more than merely an edifice affording people the opportunity to worship God."<sup>19</sup>

The Court cites with approval cases in foreign jurisdictions<sup>20</sup> and in a lower New York court<sup>21</sup> holding that a zoning ordinance may not wholly exclude a church or synagogue from any residential district. Though this is dicta, it demonstrates the Court's attitude toward the validity of such ordinances.

The effect of the instant decision is to remove the above-stated grounds from the consideration of administrative zoning bodies whenever a religious organization seeks a use permit to build. It will be noted that some of the grounds given by the Planning Board are found in that section of the enabling act dealing with purposes to be accomplished by zoning. The Court states, however, that "it must be borne in mind that churches and schools occupy a different station from mere commercial enterprises and when the church enters the picture different considerations apply."<sup>22</sup>

The dissent states that now disapproval of a religious use is hardly possible. But there are still grounds upon which a church may be validly denied a use permit.<sup>23</sup> This case shows, however, that the courts will scrutinize very carefully attempts to exclude churches for policy reasons.

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<sup>19</sup> *Id.* at 453, 136 N.E.2d at 493.

<sup>20</sup> See, e.g., *Ellsworth v. Gercke*, 62 Ariz. 198, 156 P.2d 242 (1945); *State ex rel. Roman Catholic Bishop of Reno v. Hill*, 59 Nev. 231, 90 P.2d 217 (1939) (per curiam); *City of Sherman v. Simms*, 143 Tex. 115, 183 S.W.2d 415 (1944).

<sup>21</sup> *North Shore Unitarian Soc'y Inc. v. Village of Plandome*, 200 Misc. 524, 109 N.Y.S.2d 803 (Sup. Ct. 1951).

<sup>22</sup> *Diocese of Rochester v. Planning Board*, 1 N.Y.2d 508, 523, 136 N.E.2d 827, 834 (1956); *accord*, *Garden City Jewish Center v. Village of Garden City*, 2 Misc. 2d 1009, 155 N.Y.S.2d 523 (Sup. Ct. 1956).

<sup>23</sup> See *Garden City Jewish Center v. Village of Garden City*, *supra* note 22; *City of Sherman v. Simms*, *supra* note 20.