1963

Municipal Corporations (May 29, 1963)

William & Mary Law School

MARSHALL-WYTHE SCHOOL OF LAW
College of William & Mary

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1

Major City is an industrial center of 63,000 population. It lies on the east bank of Pollution River. Over the years the middle-income families have been moving into Minor City, a suburb of single-family residences of about 20,000 population. The map shows the relation of the two cities. Minor City has grown to a point where most of it now lies on the west bank of the river. A bridge connects the two parts of Minor City, but its city council has fought all proposals to construct two other bridges between the two municipalities; the proposed bridges are indicated by broken lines on the map.

Virtually coextensive with Minor City is another municipal corporation, the 3-R School District. The district also covers a portion of Major City which contains what remaining residential area (mostly multiple dwellings) there is in the latter, except for a rather extensive zone of marginal housing.

The State of Confusion and Major City are both interested in obtaining Federal highway funds to develop a limited-access highway which will be carried as a throughway across the river and connected to boulevards in both cities. This involves completing the proposed bridges, each to be one-way traffic arteries. There is also a report that Sooty Industries is planning a multimillion dollar factory in Major City provided (1) the throughways are constructed and (2) the corporation can be assured of residential and educational facilities for its semi-skilled and skilled workers.

Major City now enacts an ordinance to annex Minor City under a statute providing for annexation of "contiguous areas of the same general urban character." Minor City officials and citizens' councils prepare to fight the ordinance. The 3-R School District seeks to intervene, insisting that the added costs and numbers of students will overburden its revenues and facilities. The State Highway Department, on the strength of an opinion by the attorney general of the State of Confusion, announces that it is proceeding to negotiate a contract with the Federal government for funds to develop the throughway and construct the bridges.

By now everybody is shouting at everybody else. What are the various questions of law which will have to be settled? Who has standing to sue? What evidence is required to establish the several pleadings (if they get into court), and what issues are reviewable?

2

The City of Runnymead has an attractive residential area known as King John Plaza. Many fine homes have developed in this area, but one of the largest remaining tracts has an old wooden barn which in recent years has been leased as a dance hall and skating rink. The area is zoned as first class residential, and the barn is a nonconforming use which antedates the zoning ordinance.

Recently a statute has been enacted permitting municipal corporations to exercise the power of eminent domain to acquire and extinguish nonconforming uses, provided that the property so acquired is either developed as a park or rezoned to conform to the surrounding environs. The state constitution provides: "No private property shall be taken except for public uses, in which case just compensation shall always be given."

Runnymead now enacts an ordinance pursuant to the new statute, reciting that the barn is thereby condemned and reciting that the land is to be rezoned and marketed for first-class residences. Barnowner then brings a suit (what kind?) and requests a jury to hear the evidence. His argument is that there are many undeveloped building lots in this residential zone; he produces a witness to testify that the barn and parcel of land is worth $50,000; and evidence is offered that a lot two blocks away, of the same size, sold for $55,000 two years before.

Runnymead attorneys produce witnesses testifying the property in question is only worth $35,000, and produce further evidence that it has been assessed at $30,000. Barnowner seeks to introduce expert testimony that the clientele of the dance hall and skating rink have established a good will of $7,500, but the court refuses to allow admission of this testimony. The court also refuses two instructions to the jury requested by Barnowner: (1) That the jury may find against the city if it determines that the proposed use of the property

proposed by the ordinance is not a public purpose. (2) That the jury was to refuse to permit the taking if the evidence persuades them that the taking is unnecessary.

The jury finds for the city and awards damages of $32,500. What will be the issues on appeal?

3

A statute authorizes all first-class cities to zone "in accordance with a master plan." The City of Newport Roads upon reaching the size to qualify as such a city adopts such a plan and in the plan desgnates a certain area as first-class residential. Gabriel Archer, a developer of residential subdivisions, thereafter begins to plan a select subdivision for this area.

Since 1935 there has been in this area a junk yard operated by "Capt." John Smith. The yard makes a profit of about $5,000 annually on its operations. If the yard was not there, the land on which it is situated would be valued at $40,000. But owners of nearby lots have refused to build until the junk yard is removed. In 1960 Newport Roads sought an injunction against operation of the junk yard as a public nuisance, but the court refused the injunction and held that a junk yard properly operated is not a nuisance. Archer has offered Smith $50,000 for the property but Smith has refused, saying he has no other place in Newport Roads where he can set up a junk yard.

In 1961 Newport Roads enacts an ordinance requiring all persons making nonconforming use of property to apply for a "certificate of occupancy" and as a condition thereto to produce 25 sworn statements that the enterprise was in being at the time the ordinance of zoning was passed. Smith has refused to apply for the certificate. In 1962 the city amended the 1961 ordinance to provide that all nonconforming uses of a value under $50,000 are hereby given 60 days to terminate their operations. Smith made no effort to comply with this ordinance.

The city now brings a new action to enjoin Smith from continuing the junk yard. Smith files a cross-bill praying a declaratory judgment that these ordinances are void and a decree that he is legally entitled to continue his junk yard.

4

In the winter of 1960 the City of Sunnyvale was hit by an unprecedented 15-inch snowfall. The city's seldom-used and obsolete snowplow broke down almost as sonn as it was put into operation. With all streets blocked and utility services in need of emergency maintemance, the city council called an emergency meeting to hear the report of the superintendent of public works. H s report said that it was a matter of life and death that a new snowplow be obtained and used to clear the streets. The superintendent in response to questions advised that Jefferson Thomas, a member of the council who was vacationing in Bermuda, had such a plow in his implement shop just outside the city. Contacted by "ham" radio, Thomas offers to sell the plow to the city at cost -- $1,299.99. Upon proper motion and second, the council authorized the superintendent to purchase the plow and put it into immediate operation. The streets were cleared.

Within a month, at the regular municipal elections all members of the council are defeated by a new group which had campaigned against "wasteful spending" by the former members. The new council at its first meeting enters into its minutes a resolution that the purchase of the plow was improper and that the bill is not to be paid. Thomas upon returning from his vacation brings suit (1) for the contract price agreed to via radio or (2) for quasi-contract recovery.

A statute of the state provides that no municipal corporation may let any contract without having first invited bids and letting the contract to the lowest responsible bidder. The city charter provides that no officers of the city shall have any business dealings with the city. A Sunnyvale ordinance provides that all contracts for more than $10 shall be in writing.

5

As provided in its charter, Knight City gives notice of a resolution of intention to undertake a public improvement installing powerful street lights to reduce traffic accidents on Broadway. The notice describes the type of lights proposed for installation, the approximate costs and notice of creation of an assessment distribt extending half a block back from Broadway on both sides of the street for the number of blocks involved in the improvement. The plan proposes that 65% of the cost of the improvement shall be borne by the district and 35% by the city. At the hearing, for which proper notice is given, the largest property owner on this section of Broadway, George Plenty, is absent from the city and a notice of the hearing though sent by first-class registered mail fails to reach him before the date of the hearing.

The city council following the hearing votes to proceed with the project and to issue improvement certificates. The certificates are sold to a local bank. When the lights have been installed, it is found that they shine onto all the houses fronting on Broadway as much as on the street itself. The city council inspects the area and concludes that this lighting substantially increases the benefitial effect upon the property. Mr. Penty's property, though vacant, is assessed $18,500 for the improvement, although for general tax purposes it is assessed at $14,500. There has been no market value for the property for the past five years.

Under the city charter a property owner feeling aggrieved by special assessments has ten days in which to appeal to the council. Mr. Plenty returns on the tenth day and appears before the council, but after hearing him briefly the council affirms the assessment. Mr. Plenty now files a bill in equity to enjoin the collection of the assessment. He produced two witnesses who testify that the property has not been benefitted by the improvement. The city produces two witnesses who testify that it has been benefitted by $13,500. Neighbors testify that they cannot sleep at nights because of the lights. A neighborhood doctor testifies that he has treated an increased number of pedestrian injuries since the lights were installed. The precinct police captain testifies that he expects the number of burglaries in that area to be reduced. An electrician testifies that the wiring in the lights is defective, causing them to flicker unnecessarily. The city clerk testifies that Mr. Penty's grantor six years ago petitioned for improved street lights in this block of Broadway.

At the conclusion of the evidence the city moves to dismiss.

6

Peter Plunk slipped on ice in front of 1010 Main Street in Suburbia and broke his leg. He sues the city and the property owner, John Lazy. The city also seeks recovery against Lazy claiming that the liability is entirely his. There is an ordinance making it a misdemeanor for a property owner to fail to keep public walks in front of his property free of snow and ice. The ordinance provides that any pedestrian using reasonable care is given a cause of action against the property owner who fails to comply and the pedestrian is injured. A statute requires all cities to keep their streets in safe condition, and another statute requires that anyone seeking tort recovery against the city must give notice of such action within ten days. Plunk gives the city such notice, but neither he nor the city gives notice of the accident to Lazy.

The parties stipulate that Plunk has only ten percent vision and that he was using reasonable care such as would be used by a person having only ten percent normal eyesight. In response to a request for special findings, the jury reports that Surburbia is 20% liable and Lazy is 80% liable. All parties then move for directed verdicts.

7

New York City and the New York L fe Insurance Co. executed a contract whereby the city undertakes to acquire by condemnation a certain block in Manhattan and to offer the property at public auction for a fifty-year lease. The company agrees to bid for the lease on the following conditions:

1. The successful bidder is to construct a public parking garage, title to vest in the city, to accommodate at least 750 cars.

2. The structure shall contains commercial facilities in the basement, ground floor and two succeeding floors. The structure shall not exceed three stories in height.

3. The initial rent shall consist of the total awards, interest and expenses of the condemnation, the condemnation for widening the streets around the block, plus taxes accruing between condemnation and execution of the lease, $750,000 to be paid five days prior to execution of the lease and the balance five days after. The annual rent is to be at least $35,000.

4. The successful bidder shall remove all tenants.

5. The city shall rezone "for the purposes of the said lease" the area to be condemned.

6. The garage rates shall be approved by the city, but lessee may charge enough to yield "after operating expenses" a return of 6% annually on the original investment.

7. The lessee shall landscape the flat roof of the structure, with at least four feet of soil, and maintain it as a public park.

On what grounds, and by whom, may the contract be attacked?

8

Promoter owns a large tract of land which he plans to subdivide for sale. In 1951 a zoning ordinance had pladed this land in a zone for single-family residences. Directly across the boulevard is a zone of apartment dwellings. The zoning ordinance stipulates a minimum of 30-foot frontage for the apartment lotes, but 50-foot frontage for the single-family lots. In 1957 a planning commission was created with plat approval powers. The enabling act makes no provision for lot sizes, but empowers the commission to reject plats not consistent with the character of the community.

Promoter's contractors advise him that his best chance for sales lies in subdividing into 50-foot lots. He prepares his plat accordingly, but the planning commission rejects it on the ground that it is not consistent with the character of the surrounding community. It proposes 60-foot frontage for the lots.

The zoning law provides for a board of appeals, but the subdivision law under which the planning commission operates has no such provision. Promoterss lawyers now must consider what action to take: Shall they appeal to the Zoning Board of Appeals? Or shall they seek a writ of mandamus against the Planning Commission? What will be their argyment in either case?