1973

Urban Land Use (January 1973)

William & Mary Law School

Repository Citation
https://scholarship.law.wm.edu/exams/346
Samuel Jones, a CPA who for years practiced in a large city, recently moved to the suburban-rural county of Marshall, where he has opened an office and rented a home. Desiring to build a home in a quiet surrounding, Jones fell in love with the area of the county known as Restful Haven Hills. In the area, which was zoned to permit only single family residences, was a farm of 200 acres on which the owner, Tom Smith, lived and grew corn. On either side of the farm were fully developed residential neighborhoods. The farm fronted on the southerly side of an east-west county road and on the western boundary of the farm was located a north-south county road that led to the County seat two miles distant to the south, where most of the commerce in the county was conducted. On the northerly side of the east-west road was a huge tract of forested land.

Jones, in June of 1972, without benefit of legal advice, purchased one acre of land at the intersection of the two roads from Smith for $4,000. Smith had verbally assured Jones that the remaining acreage of the farm, if sold, would be in parcels of not less than one acre with restrictions limiting construction to single family dwellings. Smith had exhibited to Jones a preliminary plat of a subdivision planned by Smith on the farm land, but Smith explained, the plat would not be recorded until surveys and engineering studies were complete and the market was right. Jones’ parcel was number 31 on the preliminary plat and all lots seemed to be one acre or larger. However, Smith’s deed to Jones made no reference to the plat, but instead conveyed by a metes and bounds description. The deed, however, did contain the following recital: “The parcel herein conveyed shall be used for residential purposes only, and no structures other than a single family dwelling with accessory buildings shall be constructed thereon. This restriction shall run with the land.”

(A) Jones recorded the deed in June of 1972 and promptly retained an architect to design a home for the site. However, initial site studies revealed that the rear portion of the lot contained a number of small springs that were active during wet weather and over which, from an engineering standpoint, residential construction was not feasible. In the architect's judgment, a home with the minimum square footage specified in the zoning ordinance could be constructed on the site only near the east-west road, and the front foundation would have to be laid within 29 ft. of the right-of-way. Because the zoning ordinance required a frontal set-back of 35 ft., Jones was advised by the architect to retain a lawyer.

(B) In July Jones discovered that Smith was erecting a long, low structure about 75 yards from Jones’ parcel. On inquiry, Jones found that the structure was the first of a series of chicken houses that Smith intended to build, as he had decided to give up corn farming and get into poultry raising until the market was right for subdividing. Also, Smith was tired of complaints about the dust generated when the fields were plowed, and he wouldn’t have to do any plowing in the poultry business. Jones was convinced that the operation of a chicken farm adjacent to his parcel would be noxious and injurious. When Jones asked whether Smith had obtained a building permit, Smith replied "I'm not a builder, I'm a farmer."

(C) Late in July, Smith conveyed to Robert Brown a half acre parcel on the north-south road immediately south of the Jones parcel and Brown sought to have the half acre parcel rezoned to a business classification to allow a 7-11 store. Notwithstanding Jones vigorous objections, and in full compliance with procedural requirements, the governing body approved the requested rezoning in a resolution finding "that the rezoning would improve the tax base and decrease traffic congestion by making it unnecessary for area residents to drive into town for small purchases of groceries."

(D) In August the County announced plans for the purchase of a one acre site on the northerly side of the east-west road directly opposite the Jones site for the construction of a fire station. Jones appeared at the next meeting of the governing body and argued vigorously that the proposed location was unwise and that it should be built closer to the county seat, where there were a number of businesses and apartment houses in need of fire protection. The chairman of the governing body
explained that land "in town" was too expensive, that the price of the proposed site was within the amount budgeted, and that the proposed site, if not ideal, was satisfactory. Purchase of the site was approved and later in accordance with required procedures, a special exception was granted for the site. Construction of the fire station is expected to begin in the spring. Jones is upset because the fire station will disturb the quiet of the neighborhood, and particularly because under existing ordinances, on-street parking is not allowed within 300 ft. of any fire station. Jones fears that if the fire station is built, he will have to provide off-street parking on his site even though off-street parking is not a requirement under residential zoning.

(E) In September Jones, who owned the building at the county seat where he maintained his office, was offered $40,000 for the building and lot by the County. He declined the offer. Four days later a certificate of taking was filed at the courthouse and he received by service from the sheriff, notice that the building had been condemned by the County for renovation and use as a county office building. He is informed that he may accept the $40,000 or sue for just compensation. Jones agrees that $40,000 is the fair market value of the lot and building, but wants to oppose the condemnation because he is fond of the location and sincerely believes that the County is making a serious mistake of judgment in seeking his office for an office building when it is two blocks from the courthouse and a vacant building 100 yards from the courthouse and owned by a person living out of state is also suitable. Besides, Jones is convinced that if he is compelled to relocate his office, his business will suffer.

As to each of the lettered paragraphs discuss the validity of any claim or rights of Jones suggested in the question.
QUESTION 2:

The State of Warren has land use control enabling legislation similar to that of Virginia. The County of Wythe lies between and somewhat distant from two large metropolitan areas but has its own commercial center and population center. In many respects, it is similar to the James City County-Williamsburg area in population, distribution of ethnic groups, socio-economic structure, business, etc. The County of Wythe, after a planning study, adopted subdivision, zoning and housing ordinances, containing among others, the following provisions:

A. A provision permitting motels, apartment buildings, service stations and any building over 50 ft. tall, only upon issuance of a conditional use permit by the planning commission. The planning commission was to issue such permits only upon a finding by the planning commission "that issuance is in the overall best interests of the county."

B. A provision requiring all churches to provide one space of off-street parking for each 7 seating spaces in the main auditorium or place of principal religion service.

C. A provision requiring all non-conforming uses to be removed and torn down within ten years of the effective date of the ordinance, or within one year of the sale of the premises, whichever is the first to occur.

D. A provision prohibiting any sign of more than 50 square feet which advertises goods or services not available on the premises where the sign is located.

E. A provision requiring all electrical wiring of new structures done during construction be done by licensed electricians or under the supervision of licensed electricians.

F. A provision allowing special exceptions to be granted by the governing body upon a finding that such exception is consistent with the objectives of the zoning ordinance, will not reduce property value, will not endanger the public health, safety or welfare, and will be in the best interests of the neighborhood.

G. A provision prohibiting the issuance of a building permit for any dwelling that will lack indoor plumbing or sanitary facilities.

H. A provision creating a P.U.D. zoning classification, but for which the zoning map shows no existing P.U.D. zone.

I. A provision requiring all structures in the business zone to conform to a F.A.R. requirement of not greater than 1:1, but requiring minimum open space of 20%, exclusive of parking areas.

J. A provision requiring subdividers to dedicate and construct all streets in the subdivision to state standards, to dedicate to the County one acre of land in the subdivision for each 75 dwelling units permitted to be constructed, which is to be used as permanent open space or recreation areas, and requiring that any lot in the subdivision, if in the highest residence zone, be not less than 1/4 acre in size.

Discuss briefly the validity of the above provisions.

QUESTION 3:

The following statement may or may not be a correct statement of law. If not correct, explain in approximately 200 words. If correct, illustrate a type of ordinance to which it would apply and explain in approximately 200 words.

"An owner of land has no absolute and unlimited right to change the essential character of his land so as to use it for a purpose for which it was unsuited in its natural state and which injures the rights of others. The exercise of the police power in zoning must be reasonable and we think it is not an unreasonable exercise of that power to prevent harm to public rights by limiting the use of private property to its natural uses."
QUESTION 4:

As a judge you are confronted with the question of validity of a zoning ordinance that severely restricts the number of multi-family dwelling units that can be built and which, by various subdivision restrictions pertinent to open space, tends to drive the cost of single-family dwelling units up. You are satisfied that the ordinance and plan on which it is based seeks to assure the community a pleasant, uncrowded atmosphere and surrounding for residential living, and is not racially motivated, yet you know that the effect of the ordinance will be to limit the ability of low income groups to live in the area. How would you decide the case? Write a concise, but reasoned opinion.