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NON-EUCLIDEAN ZONING: THE USE OF THE FLOATING ZONE

By RUSSELL R. RENO*

When the Supreme Court of the United States in 1926 upheld the validity of the zoning ordinance of the Village of Euclid, Ohio, as within the police powers of the state, the concept of zoning, as a device for regulating the use of land, height of buildings and area of lots by dividing the municipality into territorial districts, was accepted by municipal planners. This method of controlling land use by setting up established districts with set boundaries is commonly referred to as "Euclidean zoning." These early zoning ordinances usually utilized three types of controls by establishing three different zoning plans for the entire municipality. One plan zoned the entire area into use districts in which certain districts were restricted to residential uses, while in other districts business was permitted and in some, industry. Since residential use was considered "higher" than business, and business "higher" than industry, these districts were normally cumulative, in that, any higher use was permitted in a lower use district. Another plan zoned the municipality into height districts, placing height restrictions upon structures erected within each district. The height restrictions were usually lower in the outlying districts of the city than in the business center. The third plan zoned the city into area districts establishing minimum lot sizes with the outlying residential lots having larger minimums than the older residential area near the center of the city. These three plans of controls were then superimposed upon each other so as to create a comprehensive zoning ordinance in which each square foot of land in the city was restricted as to use, height of structures and lot

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area. In addition, restrictions as to placement of buildings and density of occupation were often included to more effectively carry out the minimum lot restrictions by assuring the existence of adequate open areas for light and sunshine.

In these early zoning ordinances the primary objective of the planners was to protect existing uses from interference by discordant uses. Thus, any type of business or industrial use was excluded from residential districts. Likewise, multiple dwellings were considered a discord in a single family dwelling house area. Since World War II, city planners have revised some of their major premises upon which the early zoning ordinances have been based. With the development of the urban sprawl around the large cities, the need for neighborhood shopping centers in residential areas is now recognized. Likewise, the development of garden apartments has weakened the argument that multiple dwellings are a discordant influence in a single family dwelling area. In addition, many types of light industry, involving no noise, odor or smoke, can be conducted in a residential area without infringing upon the peace or quiet of the neighborhood. With the rising tax rate in these suburban areas, the attraction of these light industries into the suburban area becomes financially desirable.

These changes in objectives can be carried out by an amendment to the existing zoning ordinance or by a complete rezoning of the municipality. A complete rezoning may run into extensive opposition from existing residential property owners who will strenuously object to a change in zoning to authorize a shopping center, a multiple dwelling or a light industry in existing single family dwelling areas. On the other hand, the enactment of separate amendments changing the zoning classification of small isolated tracts may be invalidated as illegal “spot zoning”. Spot zoning is the classification of a small area within a zoning district to a use which is inconsistent with the use to which the rest of the district is restricted. If it is not in accord with a comprehensive zoning plan but is for the sole benefit of the owner, the courts will find that the classification is arbitrary and unreasonable and therefore not within the police power of the state. On the contrary, if the reclassification is in accord with the

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3 Note, Spot Zoning and the Comprehensive Plan, 10 Syracuse L. Rev. 303 (1959).
comprehensive plan and done for the public good, it is valid. Either device, a complete rezoning or an amend-
ment to the existing zoning ordinance, presents to the
planning commission the problem of selecting undevel-
oped tracts for such reclassification, with the hope that
after the reclassification is made real estate developers
and owners of light industries can be induced to develop
such tracts in accordance with the new classification.
However, most planning commissions realize, that although
they have the technical advice sufficient to select an area
suitable for shopping centers, multiple dwellings and light
industry, they lack the coercion needed to induce the
development of such areas. For this reason the tendency
of planning commissions is to wait until an actual demand
for a reclassification of a specific tract has developed. This
raises the issue as to whether reclassification of a single
tract can be justified as within the comprehensive plan for
the entire community.

In recent years a new device in zoning has developed
which provides the machinery for the establishment of
small tracts for use as a shopping center, a garden apart-
ment or a light industry in accordance with a compre-
hensive plan for the entire municipality, and at the same
time leaves the exact location of each tract to be deter-
mined in the future as demand for a shopping center, a
garden apartment or a light industry develops in a specific
area. This device is the creation of special use districts
for these various uses, which at the time are unlocated
districts, but which can be located by a petition of a
property owner desiring to develop his specific tract for
one of these special uses. Such unlocated special zoning
districts are popularly referred to as "floating zones," in
that they float over the entire municipality until by appli-
cation of a property owner one of these special use zones
descends upon his land thereby reclassifying it for the
special use. The zoning ordinance is carefully drawn so
as to impose restrictive use limitations upon the owner
in these special use zones in order to protect the adjoining
residential areas. Usually there is a minimum lot require-
ment with large set-back restrictions for the structures,
both from the streets and from the adjoining residences.
Also in the case of light industry, limitations exist as to
architecture of the buildings with requirements as to land-
scaping.

LEGALITY OF THE FLOATING ZONE

The appellate courts in three jurisdictions have been asked to pass upon the legality of the floating zone device, both in respect to the question as to whether the state enabling act permits a municipality to utilize this type of unlocated zone and also as to whether this type of zoning is within the police power of the state. In answering this question, the courts had to consider the following issues: (1) Does the state enabling act require all zones to be specifically located in the zoning ordinance? (2) Is a floating zone "in accordance with a comprehensive plan?" (3) Is there a delegation of legislative authority when the petition to establish a special use district is approved by an administrative body? (4) Is the planning function of zoning being transferred from the government to the private developer who petitions for a special use district?

In the New York case of Rodgers v. Village of Tarrytown, Tarrytown had been previously zoned into seven use districts. The highest use district, Residence A, was limited to single family dwellings, the second highest, Residence B, permitted two family dwellings, and Residence C permitted apartment houses. An amendment to this zoning ordinance was passed authorizing a new zone to be known as Residence B-B in which garden type apartments could be located. This new zone was an unlocated zone with its boundaries to be delineated in the future by an amendment to the zoning map upon application by a property owner. This floating zone contained strict limitations as to set-back and spacing of buildings as well as requiring a minimum lot size of ten acres. A year and a half later upon application of the owner of ten and a half acres of land in a Residence A district, an amendment to the zoning map was passed reclassifying his land as Residence B-B. In an attack upon the amendment creating this floating zone, the Court of Appeals upheld the validity of the amendment as being in accord with sound zoning principles.

In the Maryland case of Huff v. Bd. of Zoning Appeals, Baltimore County was being completely rezoned under a zoning plan which provided for twelve types of use dis-

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7 Supra, n. 6.
8 Supra, n. 6.
tricts, six were restricted to residential uses, three permitted various types of commercial uses, and three authorized industrial uses. All of the use districts were specifically located as to boundaries except one industrial use district described as M.R. — Manufacturing, Restricted. This M.R. district was to be an unlocated or floating zone, with a minimum size of five acres, to be subsequently located by the Zoning Commissioner upon petition by a property owner. This M.R. classification was limited to light industrial uses that would not produce noise and odors and would not be disturbing to the adjacent residences. Shortly thereafter the owner of eighteen acres of farm land, which had been zoned for residential uses, petitioned for reclassification of his tract to an M.R. zone for the purpose of establishing a factory for the manufacture of electrical precision instruments for use in missiles. In an attack upon the validity of this M.R. zone, the Maryland Court of Appeals, citing the New York case above, upheld the validity of the floating zone device in a general zoning ordinance.

In the Pennsylvania case of Eves v. Zoning Bd. of Adjust. of Lower Gwynedd Twp.,9 the supervisors of the Township enacted an amendment to the general zoning ordinance providing for an unlocated or floating zone described as F-1, Limited Industrial. Here, as in the Maryland case, this zone was created to permit the establishment of light industry in residential areas with adequate restrictions as to architecture, set-back limitations and landscaping to protect the surrounding residential area from disturbance. The amendment authorized the township supervisors to reclassify any tract containing a minimum of twenty-five acres upon application by the property owner, accompanied by a plan for development which had been reviewed by the Planning Commission. Within six months an application by the owner of a tract of 103 acres in an A residential district was filed with the supervisors for reclassification of the land from the highest residential classification to F-1 for the purpose of constructing an industrial plant. After reducing the area to 86 acres, the township supervisors adopted an amendment to the general zoning ordinance placing this tract in the F-1, Limited Industrial, zone. The adjoining residential property owners challenged the validity of this use of the floating zone device. The Supreme Court of Pennsylvania,

without referring to either the New York or Maryland cases discussed above, held the use of the floating zone device was not within the power of the municipalities under the state enabling act.

1. Requirement that the Zones be Specific as to Boundaries

Since the power to zone is derived from the police powers of the state and not inherent in the governmental powers of the municipality, the methods used in zoning must be limited to those provided for in the state enabling act. The majority of state acts follow the wording of the Standard State Zoning Enabling Act proposed by the Department of Commerce. This Act provides for the division of "the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of the act," and provides for uniformity of regulations throughout each district. Based upon this wording the Euclidean theory of zoning, which provides for the establishment of more or less permanent territorial divisions, planned and arranged according to the character of the land and the existing buildings and based upon their peculiar suitability for particular uses, has been accepted as the proper method of zoning. The floating zone device conflicts with this method in two respects: first, by not being a more or less permanent district established at the date of the enactment of the zoning ordinance; and secondly, by the fact that the zone will not be established because of existing uses and peculiar suitability of the land for such uses, but because a developer or an industry may in the future find it financially desirable to improve a specific tract for a lower use than its present zoning.

In the Eves case the Pennsylvania court indicated that the floating zone devise was the antithesis of the type of zoning contemplated in the state enabling act. It pointed out the fact that the statute required the township supervisors "to shape the land into districts" and therefore

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contemplated the location of all zoning districts in the
general zoning ordinance subject only to the power to
amend the plan upon change in conditions. Further, by use
of the floating zone these supervisors were avoiding their
duty to "shape" the land into districts best suited for
specific uses and leaving the final determination of the
use of land to the desires of individual landowners. The
same view was expressed in the dissenting opinions in
both the Rodgers case and the Huff case. For this reason
among others, the Pennsylvania court in the Eves case held
the use of the floating zone device was beyond the powers
of the township supervisors under the state enabling act
and therefore invalid.

On the contrary, the New York court in the Rodgers
case held that zoning cannot be static and that changing
conditions may call for changes in zoning methods. Since
the power to reclassify an area by amendment or complete
rezone remains in the township supervisors, they have
the choice of selecting the method for accomplishing this
result. Based upon a change of conditions, they may im-
mediately amend the classification of all residential zones
to authorize lower uses or they can amend the ordinance
so as to invite landowners to apply for reclassification of
their land when the landowner finds it desirable to so use
his land. By treating the floating zone as merely a pro-
cedural method for amending a general zoning ordinance,
it can be upheld as within the legislative discretion of the
municipality and not ultra vires. The same reasoning was
applied by the Maryland court in the Huff case, where the
court quoted at length from the Rodgers case. This rea-
soning is based upon the major premise that changing
conditions exist that do justify the lowering of the origi-
nal classification to permit lower uses in what was
formerly a higher use zone. The New York court went to
great length in pointing out that the village trustees were
justified in finding that changing conditions did justify
the introduction of garden apartments into single family
dwelling house areas. Similarly, the Maryland court
quoted at length from the Planning Commission’s report
pointing out the changing conditions in the county and the
need for dispersed areas for light industry, the inability
of the Planning Commission to select in advance such
areas and the desirability of leaving this selection to the
future as the demand for establishment of specific indus-
tries in various parts of the county developed.

14 Comment supporting the dissenting opinion, 9 Wash. & Lee L. Rev. 120 (1952).
2. Need for a Comprehensive Plan

The Standard State Zoning Enabling Act\textsuperscript{15} is the source of the requirement that the zoning "regulations shall be made in accordance with a comprehensive plan." This wording is found in all state enabling acts, but its interpretation from state to state has varied.\textsuperscript{16} A literal interpretation of this requirement would require the creation of a complete master plan for the municipality before the enactment of a zoning ordinance. But the creation of master plans is a recent addition to city planning. In most cities zoning long antedated the creation of a master plan. In fact, as of today many large cities still lack a completed master plan.\textsuperscript{17} A more reasonable interpretation is that this requirement merely means that the zoning ordinance itself must disclose a land use pattern for the area that is reasonable and not arbitrary. This then raises the question as to how comprehensive must the zoning ordinance be in respect to territorial area and in respect to time.\textsuperscript{18} A still more liberal interpretation of this requirement is that it merely means that the zoning ordinance has been carefully considered by the legislative body, both in respect to the general welfare of the municipality and also procedurally. Thus, illegal spot zoning tends to be synonymous with lack of a comprehensive plan, while spot zoning is valid if in accordance with a comprehensive plan. The creation of a floating zone accompanied by its subsequent location on the land of a petitioner is certainly spot zoning, but whether it is legal or not depends upon whether it is in accordance with a comprehensive plan.

In the Rodgers case the New York court answered the contention that the creation of a floating zone and its subsequent location was merely illegal spot zoning by pointing out that the desirability of locating garden apartments in single family dwelling house areas had been carefully considered by the village trustees in relation to the general welfare, and that the provision authorizing such garden apartments applied to the entire village, so was in accordance with a comprehensive plan and not for the sole benefit of an individual owner. The opinion in the Huff

\textsuperscript{15} Supra, n. 11.
\textsuperscript{16} See Haar, "In Accordance with a Comprehensive Plan", 68 Harv. L. Rev. 1154 (1955) for a full discussion of the various interpretations of this requirement.
\textsuperscript{17} At the present writing the Citizens Planning and Housing Association is urging the City of Baltimore to appropriate sufficient funds to its Planning Department to complete a master plan.
\textsuperscript{18} An excellent discussion will be found in respect to partial zoning ordinances and interim zoning ordinances in Haar, \textit{supra}, n. 16.
case is still more explicit in pointing out that the legislative body carefully considered the desirability of having small industrial enclaves located throughout the county, and that their manner of location on the future application of a landowner was all part of the general plan of zoning for the county. It should be noted that the use of the floating zone in the Maryland case was part of the original re-zoning plan for the entire county and not a subsequent amendment to the original zoning ordinance as in the New York case. Both courts emphasized the fact that the use of the floating zone device had been carefully considered by the legislative body and tested as to the needs of the entire municipality. Thus apparently, these courts have accepted the more liberal interpretation of the requirement of a comprehensive plan, namely, that it merely discloses careful consideration by the legislative body in respect to the general welfare of the community and bears a reasonable relationship to such welfare.

On the contrary, the Pennsylvania court in the Eves case was emphatic in distinguishing between comprehensive planning and a comprehensive plan, and held that at the date of the enactment of the zoning regulation there must be a comprehensive plan for the use of the land which has reached final formulation. Some of the language of the opinion might lead the reader to believe that the Pennsylvania court requires the existence of a comprehensive plan for land use preceding the enactment of the zoning ordinance. This interpretation would require the existence of a master plan before a municipality could enact a zoning ordinance. However, other language shows that the court merely requires the final formulation of such a plan at the date of the enactment of the zoning ordinance, and thus the zoning ordinance itself can be that required formalized comprehensive plan. This view clearly requires all the use districts to be fully located as to boundaries as of the date of the enactment of the zoning ordinance. Therefore, a floating zone, which leaves the planned use of the land to await the needs of the landowners, "is manifestly the antithesis of zoning in accordance with a comprehensive plan."

Under this narrower view, if city planners wish to resort to the use of "flexible selective zoning" as the Pennsylvania court describes a floating zone, it will be necessary to amend the state enabling acts to delete the words "in accordance with a comprehensive plan." This requirement, when given the narrower interpretation, is merely a requirement of the state enabling act and not a constitutional requirement for the exercise of the police power to zone.
3. Locating the Zone by an Administrative Body

In both the Rodgers case and the Eves case, the floating zone was subsequently located by an amendment enacted by the legislative body of the municipality, so the issue as to whether the legislative body could subdelegate its zoning powers to an administrative body was not before the court. But in the Huff case the subsequent act of locating the floating zone, after petition by the landowner, was by an administrative officer and not by an amendment enacted by the legislative body of the municipality. The rezoning ordinance, providing for the floating zone, expressly authorized the Zoning Commissioner, after a public hearing, to approve or disapprove the petition of the landowner for a rezoning of his land to this special industrial use district. This raised the issue of the power of a municipal legislative body, having been delegated the state police power over zoning, to subdelegate such power to an administrative officer.

The Maryland Court of Appeals solved this problem by holding that the Zoning Commissioner was not exercising legislative discretion in approving or disapproving the petitioner's request for a rezoning of his land to this special industrial use district, but was merely applying definite and specific standards already set out by the legislative body in the zoning ordinance. The problem of determining whether a petitioner's land should be rezoned for a specific industrial use was merely an administrative problem of applying these standards set out in the original rezoning ordinance establishing this floating zone. The court reasoned by analogy from the rules applicable to special exceptions. Special exceptions authorize types of uses in a higher use district which may become discordant unless careful precautions are taken to protect adjacent property. Therefore, the practice is to provide in the original zoning ordinance that certain uses are authorized only if an administrative body grants a special exception upon proof that the necessary precautions will be taken to protect the adjoining property from interference and injury. Since the ordinance itself sets up the standards to be applied in granting a specific exception for a special use, the administrative body is not exercising legislation discretion. By treating the floating zone as merely the authorization of an

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"Yokley, Zoning Law and Practice (2d ed. 1953), § 132.

Montgomery Co. v. Merlands Club, 202 Md. 273, 96 A. 2d 261 (1953)."
industrial use in a residential zone as a special exception, the Zoning Commissioner is merely exercising administrative duties in applying the standards set out in the ordinance in approving or disapproving the petition.

This concept of the floating zone as a special exception must be based upon two major premises: first, that the special lower use authorized by the floating zone is prima facie not discordant in a residential neighborhood, and secondly that the use can be carried out with special precautions so as not to interfere with adjacent residences. Clearly in the Rodgers case where the lower use was merely that of a garden apartment, it is easy to reason that the modern type of garden apartment is prima facie compatible with single family dwelling houses where adequate safeguards are taken to provide for open spaces and landscaping. But in the Huff and Eves cases we are faced with the commonly accepted belief that any industrial use in a residential district is necessarily an undesirable use. However, the Maryland court felt that the report of the Planning Commission on the desirability of providing for small industrial enclaves of light industry throughout the county justified the legislative determination that such industrial uses would not create discordant uses and could be the basis for a special exception. On the contrary, the Pennsylvania court rejected the idea that the act of locating a special industrial use in a residential district could be analogous to a special exception for two reasons: first, because the floating zone applied to all types of use districts and not to a specific type of use district, so could not constitute a specific warning to a purchaser of the possibility of an exceptional use in his district; and secondly, because the act of authorizing such special industrial use was to be by the legislative body itself rather than by an administrative body. The answer to the first argument is that the provision for the floating zone became part of the original zoning ordinance as of the date of the amendment creating it, and from that date was a warning to any purchaser of land in any district thereafter. As for the second argument, this can easily be avoided by following the Maryland procedure of providing that the approval of the petition for a special industrial use be by an administrative body rather than the legislative body itself. This will superficially give the

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22 "But always heretofore it has been assumed that industrial and residential uses are inconsistent and incompatible, and not beneficial to one another." From the dissenting opinion in Huff v. Bd. of Zoning Appeals, 214 Md. 48, 70, 133 A. 2d 83 (1957); 1 MITZENBAUM, LAW OF ZONING (2d ed. 1955) 62.
proceedings the form of a special exception rather than an amendment rezoning the area.

4. Case-by-Case Rezoning

Clearly the floating zone device does, in result, transfer the planning function of zoning from the municipal authorities to the private landowner who desires to develop his land for a use not authorized by its present zoning. This raises a constitutional issue as to whether the resulting rezoning of a specific tract to a lower use can be upheld as due process. Where the rezoning is done by the legislative body on its own initiative rather than by petition of a landowner, the courts generally limit the power of amendment to cases where (1) the original zoning classification can be shown to have been arbitrary or unreasonable, or (2) the character of the neighborhood has changed so that the original classification is now unreasonable. But under the floating zone device, the rezoning is not restricted by either of these requirements. It is merely a question as to whether the petitioning landowner’s plan of development conforms to the standards set out in the ordinance creating the floating zone. The petitioner need not show that the original zoning of his land in a higher use district was in any way unreasonable, or that the character of the neighborhood has changed since the original zoning. It is merely a question of the desire of the private landowner to devote his tract to the special type of use authorized for the floating zone. This certainly results in private enterprise determining the course and direction of development of the municipality rather than direction by the planning commission.

The Pennsylvania court in the *Eves* case pointed out that under the floating zone device there is no planned use by the municipality, but the course and direction of “the development itself would become the plan.” No protection is afforded other property owners who have developed their lands for higher use, and the existing zoning map will not afford any basis for predicting the future course and direction of industrial development. Although the court did not expressly so state, it clearly intimated that this relinquishment of the planning function of zoning by the

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23 Of course, the proposed amendment was probably introduced in the legislative body at the request of the landowner, accompanied by political pressure.

municipality to private land developers could not be considered due process.

On the contrary, in the Huff case the Maryland court indicated that zoning does not have to be static but can be flexible so as to take care of the future needs of land developers, and that placing undeveloped land in the highest use classification as a reservoir for future industrial uses as demand develops is not arbitrary and unreasonable. Further, the setting up of definite and specific standards that must be complied with by the petitioner before his land can be rezoned for a special industrial use does not constitute a relinquishment of the planning function. Likewise, the New York court in the Rodgers case emphasized the fact that the petitioner was not automatically entitled to a rezoning of his land for use as a garden apartment development upon filing of his petition. The municipality still retained reasonable discretion in approving the petition, and thus the planning function remained with the municipal officials.

However, neither the Huff case nor the Rodgers case gets to the heart of this problem of case-by-case zoning, namely, the fact that by the device of a floating zone the power to rezone a higher use area for a lower use exists without a finding that the original higher use zoning was unreasonable or that the character of the neighborhood has changed. This leaves little protection to the adjoining residential owner against rezoning which he feels is arbitrary and unreasonable. The court in the Rodgers case frankly recognized the fact that individual hardship may accrue to adjoining residential owners, but accepted "the principle that what is best for the body politic in the long run must prevail over the interests of particular individuals." In both cases the courts pointed out that each approval of a petition for a rezoning to a lower use would still be subject to judicial review if arbitrary or unreasonable. Possibly, this is their only answer to the claim that the use of the floating zone device is not due process.

**Limitations Upon the Use of the Floating Zone Device**

In both the Huff case and the Eves case where the courts were dealing with rezoning of land originally zoned for residential uses to permit its use for light industry, the successful rezoning of the petitioner's land would restrict

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25 A full discussion of the power to zone undeveloped land and the limitations thereon will be found in Reps, *The Zoning of Undeveloped Areas*, 3 Syracuse L. Rev. 292 (1962).
its use to the specialized industrial use set out in his development plan.26 This raises the question as to the materiality of such a restriction in determining the validity of the floating zone device. If the true basis for the legality of this device is its analogy to a special exception, as indicated in the *Huff* case, then this restriction is essential to its validity. The granting of a special exception is not a change in the zoning classification but merely the authorization of a specialized use, so that if the specialized use is not developed the land retains its original zoning classification.27 Thus, a provision limiting the successful petitioner to develop the rezoned land in accordance with his development plan justifies the analogy of the floating zone with a special exception, and refutes the argument that it constitutes rezoning of the tract to a lower classification. If the floating zone is not limited to a specialized type of use in accordance with the petitioner’s development plan, then its analogy to a special exception breaks down; it becomes a case of rezoning a small tract to a lower use, i.e., spot zoning, requiring evidence of either a mistake in the original zoning classification or a change in the character of the neighborhood. Apparently in drafting the amendment creating the floating zone for garden apartments in the *Rodgers* case, this precaution was not taken, since the new B-B zone for garden apartments also included any use authorized for zones A and B. However, where the floating zone authorizes business or industrial uses in areas originally zoned as residential, such a limitation is, in the writer’s opinion, essential so as to preserve the analogy with a special exception.

In both the *Rodgers* case and the *Huff* case there was a complete system of established use districts covering the entire municipal area, with a single floating zone for a specialized use superimposed upon these established districts. In the *Rodgers* case the village had been zoned into seven types of use districts with set boundaries, while in the *Huff* case the county was being completely rezoned

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26 Sec. 240.6 Baltimore County, Maryland, Zoning Regulations prohibits the issuance of any building permit unless it complies with the approved development plan. Section 1407 Lower Gwynedd Township Ordinance No. 28 provided that if the rezoned area was not developed in accordance with the development plan within eighteen months, the said area would revert to its former zoning classification. (Reprinted in Haar and Hering *The Lower Gwynedd Township Case: Too Flexible Zoning or an Inflexible Judiciary?* 74 Harv. L. Rev. 1552, 1578 (1961).

into eleven types of use districts with established boundaries. Thus, in both cases where the floating zone device was upheld, there existed a comprehensive zoning plan for the municipality to which the floating zone was merely a special exception applicable to the entire plan, analogous to special exceptions applicable to individual zones. This raises the question as to whether the legality of the floating zone device is dependent upon the existence of an established Euclidean zoning system over which the floating zone is superimposed. If not, then what is to prevent the zoning of the entire municipality into a single zone of the highest use with numerous floating zones for various types of uses, which can be located by petition; thus the planning commission will have complete control over the future location of all lower uses such as multiple dwellings, businesses and industry. This method of retaining control over the location of all business and industrial uses has been tried in two states without success.

In the New Jersey case of *Rockhill v. Chesterfield Township*, the Township zoned its entire area into one single district limited to agricultural and residential uses, with numerous special exceptions for various types of business and industrial uses. The ordinance set out detailed standards as to location of structures and landscaping where a permit was issued for a special use, with the granting of such permits under the control of an administrative board. In an attack upon the validity of this zoning ordinance, the court held that the ordinance was ultra vires the state enabling act, because (1) the state enabling act required the establishment of territorial use districts based upon the peculiar use suitability of the land and structures in accordance with the theory of Euclidean zoning; and (2) one of the essential purposes of zoning is to stabilize property uses so as to protect existing investments made on the faith of established use districts, and the ordinance involved contravened this principle.

Similarly, in the Wisconsin case of *Town of Hobart v. Collier*, the town had been zoned into a single residential zone covering the entire municipality. The ordinance did contain a clause providing that industries and trades might be admitted with the approval of the legislative body, but this provision contained no standards to guide the body in determining what trades and industries should be admitted. In an attack on the validity of

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29 3 Wis. 2d 182, 87 N.W. 2d 868 (1958).
the zoning ordinance, the court held the entire ordinance void, because (1) the defendant’s land was clearly unsuitable for residential use and thus the zoning was unreasonable and arbitrary as applied to his land; (2) the provision authorizing the admission of industries and trades upon approval by the legislative body contained no standards for guidance and therefore was arbitrary and unreasonable as placing the power to exclude industries and trades upon the whim or caprice of the legislative body; and (3) the purpose of zoning under the state enabling act is the classification of land into different territorial districts based upon the suitability of the land for particular uses, so as to protect property once developed from encroachments in the form of other inconsistent uses. However, the dissenting opinion raises the issue that if the entire land area of the municipality is suitable for residential uses, as in the case of a suburb adjoining a large city, an ordinance creating a single residential district should not be void. This was the situation in the famous case of *State v. Weiland*, where the entire area of a suburban village was zoned for residential use only. However, the question as to the validity of zoning through a single use district was not before the court, since the attack was solely directed at the use of the architectural controls in the ordinance.

From these cases we can conclude that the most liberal courts still interpret the zoning power to mean Euclidean zoning with the creation of established territorial use districts. The advent of the floating zone device creates a supplementary device similar to the special exception to give greater flexibility to the established use districts but cannot be used as a substitute for the accepted method of Euclidean zoning. To accept a single use district with numerous floating zones for specialized business and industrial uses would be in most cases an abandonment of the original purpose of zoning, namely, to create stability in land uses so as to protect existing property investments, and to substitute future planning under the supervision of the planning commission as the sole objective of zoning.

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31 269 Wis. 262, 69 N.W. 2d 217 (1955).