

1968

John W. Fitzgerald, Bion Tolman, Bruce B. anderson, Emerson Kennington and K. Jay Holdsworth v. Salt Lake County; Oscar Hanson, Jr., Philip Blomquist and Marvin G. Jensen, Individually and As Members of the Board of County Commissioners of Salt Lake County; Ralph Y. McClure, County Zoning Administrator; Lane Ronnow, Director of Building Inspection Department of Salt Lake County; and Bill Boderick, Inc. : Plaintiffs-Appellants Brief

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Utah Supreme Court  
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IN THE SUPREME COURT  
OF THE STATE OF UTAH

- - - - -

JOHN W. FITZGERALD, BION TOLMAN,  
BRUCE B. ANDERSON, EMERSON KENNING-  
TON and K. JAY HOLDSWORTH,  
Plaintiffs-Appellants,

vs.

) Case No.  
) 11157

SALT LAKE COUNTY; OSCAR HANSON, JR.,  
PHILIP BLOMQUIST and MARVIN G.  
JENSEN, Individually and as Members  
of the Board of County Commissioners  
of Salt Lake County; RALPH Y. McCLURE,  
County Zoning Administrator; LANE  
RONNOW, Director of Building Inspection)  
Department of Salt Lake County; and  
BILL RODERICK, INC.,  
Defendants-Respondents

- - - - -

PLAINTIFFS-APPELLANTS' BRIEF

- - - - -

APPEAL FROM A JUDGMENT OF THE  
THIRD DISTRICT COURT OF SALT LAKE COUNTY  
Honorable Stewart M. Hanson

- - - - -

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B R I E F  
STATEMENT OF THE CASE

In this action plaintiffs, owners of dwellings near 4500 South and 2300 East, Salt Lake County, Utah, have sued to invalidate a conditional use permit allowing defendant, Bill Roderick, Inc., to erect a service station at the southeast corner of this intersection. The permit authorizing construction of the service station was issued September 13, 1967. This action was commenced September 18, 1967; it sought to have declared invalid the permit to erect a service station, to enjoin defendant, Bill Roderick, Inc., from undertaking to construct such station and for an order requiring Bill Roderick, Inc. to remove all construction undertaken pursuant to the permit.

To have a service station in a Commercial C-1 zone in Salt Lake County, an applicant must satisfy two mutually exclusive requirements:

- (1) The property must be zoned commercial; and
- (2) The requirements for a conditional use permit must be met.

This court on February 6, 1968, in Tolman, et al. v. Salt Lake County, et al., case No. 10935, invalidated the Commercial C-1 zoning

of the subject property. The Tolman decision did not reach the question of the validity of a conditional use permit application on this property since that question was not then before the court.<sup>1/</sup>

#### DISPOSITION IN LOWER COURT

Plaintiffs' amended complaint was dismissed January 25, 1968, for a failure to state a claim upon which relief can be granted.

#### RELIEF SOUGHT ON APPEAL

Plaintiffs seek a reversal of the judgment below and a reinstatement of their amended complaint.

#### STATEMENT OF FACTS

Subsequent to January 11, 1967, Bill Roderick, Inc. filed an application requesting that a build-

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1. Even though the appeal in the Tolman case invalidated the commercial zoning at this location, Bill Roderick, Inc. has filed or may file another application, or may amend an application to have the subject property zoned Commercial C-1. If the applicant hereafter is successful in having this property zoned Commercial C-1, applicant could immediately operate a service station at this location because the County Commission heretofore has granted a conditional use permit on the subject property. Appellants are urging in this appeal their right to challenge the validity of the permit, because otherwise, if Bill Roderick, Inc. succeeds in having the subject property zoned Commercial C-1, plaintiffs will have been effectively stripped of their rights of due process related to the granting of the permit and of the protections guaranteed to them by general rules of law and by the conditional use permit ordinance.

ing permit be issued allowing construction of an automobile service station on the subject property. The Revised Ordinances of Salt Lake County do not allow a service station merely because property is zoned Commercial C-1. In addition to having property zoned C-1, an applicant must meet the requirements for a conditional use permit.<sup>2/</sup> The conditional use permit ordinance provides that the Planning Commission may not issue a permit for a service station in a Commercial C-1 zone unless from the evidence it finds each of the following:

(a) That the proposed use of a particular location is necessary or desirable to provide a service or a facility which will contribute to the general well being of the neighborhood and the community;

(b) That such use will not, under the circumstances of a particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity;

(c) That the proposed use will comply with the regulations and conditions specified in the ordinance for such use; and

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2. See Appendix A for a full text of the conditional use permit ordinance.



(d) That the proposed use will conform to the intent of the Salt Lake County Master Plan.<sup>3/</sup>

The ordinance further provides that a public hearing may be held on an application for a conditional use permit.

Plaintiffs requested a public hearing on the application of Bill Roderick, Inc. for a conditional use permit. A public hearing was held before the Planning Commission on July 26, 1967, at which applicant, plaintiffs and others presented evidence.

The Planning Commission, after a careful study of the evidence presented at the hearing, denied the application on the grounds that the evidence failed to establish any of the four requirements of the ordinance.

As to each of the four requirements the Planning Commission made a separate specific finding:

(1) The Planning Commission found

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3. Section 8-34-2(5), Revised Ordinances of Salt Lake County. The text of this ordinance codifies general rules of case made law. Even in the absence of express provisions of the ordinance, such general rules would have controlled whether the County, within the scope of its police power, could broaden permitted land use to allow a service station in this residential area. See authorities cited *infra*, note 9, p. 11, 12, note 22, p. 18, 19 and note 28, p. 22 of this brief.

that the evidence did not establish any need for the proposed service station:

"There has been no evidence presented to establish that additional service of this type is necessary at this location. Conversely, facts show that within a half-mile of this intersection, there are six service stations. Within a mile radius, there is (sic) a total of 16 stations and within a mile and one-half, there are 26 stations, total, representing nearly all major oil companies and three of which are vacant. The factor of need for additional service for the area and at this corner is difficult to establish in light of these facts."

The Planning Commission found that the evidence did not establish that the proposed service station was desirable:

". . . 15,000 cars pass through this intersection per day and projections from the Salt Lake Area Transportation Study indicate that with the increase of traffic volume, it will require the widening of both 2300 East and 4500 South from 66 feet to 100 feet.... Since the applicant has demonstrated the business volume anticipated, it must therefore follow that this heavy traffic generator can only hamper the free flow of traffic at this major intersection.

"Recently, the Granite School District purchased property immediately east of the intersection of 4500 South and 2300 East for the purpose of building a junior high school. They project an enrollment of 1600 students. Studies indicate that peak service station

hours occur generally at peak home-to-work and home-to-school hours. When a school is built, a service station located at this intersection would increase vehicular-pedestrian conflict."

(2) The Planning Commission found from the evidence that the proposed service station would be injurious to property or improvements in the vicinity. The Planning Commission found that a service station at this location would depreciate residential values of the immediate properties:

"It is conceivable that the inimical affects (sic) of this commercial use on the abutting residential uses can be minimized, but will certainly result in depreciation of residential values of the immediate properties. (Emphasis added by the Planning Commission.)

"The greatest single adverse effect, of course, will be to reduce the efficiency of 2300 East Street and 4500 South Street as traffic arteries and will to that extent be 'detrimental to the general welfare and safety' of the community."

(3) The Planning Commission found that Bill Roderick, Inc. had failed to comply with the planned unit development requirements of the ordinance.

(4) The Planning Commission found from the evidence that the proposed use would not

conform to the intent of the Salt Lake County Master Plan:

"Secondly, retail service oriented, as the proposed service station is, to the highways will establish precedent for commercializing the major highways serving the Holladay Community and encourage 'strip commercial' development of 2300 East Street and 4500 South Street which is also against the goals and policies developed for the Master Plan....

". . . there has been no evidence presented to establish that this requested use is in harmony with objectives of the Master Plan."<sup>4</sup>/

On or about September 13, 1967, the Salt Lake County Commission reversed the decision of its Planning Commission and approved the application for the conditional use permit. The County Commission acted without a hearing; or, if a hearing was held, no one advised plaintiffs of the time and the place of the hearing so that plaintiffs could attend. The County Commission knew that plaintiffs were interested and wanted to be heard in opposition to the application.

#### PLAINTIFFS' POSITION

Plaintiffs urge that they are entitled to proceed to trial to test the validity of the conditional use permit issued by the County Com-

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<sup>4</sup>. See plaintiffs' amended complaint, pages 4, 5.

mission which authorizes the erection of a service station on the subject property.

## ARGUMENT

### I

AN AGGRIEVED DWELLING OWNER HAS REDRESS TO THE COURTS IF HE BELIEVES A ZONING DECISION OF A COUNTY COMMISSION TO BE INVALID.

This Court has recognized that a County Commission has some latitude in determining appropriate uses of land within its geographical boundaries, but has also held that such power is subject to judicial review at the suit of an affected property owner. As stated in Naylor v. Salt Lake City Corporation:

"... an affected citizen must have redress to the courts if he believes a zoning ordinance to be an abuse of discretion."<sup>5/</sup>

The conditional use permit requirements contained in the Salt Lake County zoning ordinance control permissible uses of land in the same manner as that part of the zoning ordinance which declares generally what real properties may be used for dwellings, businesses, etc. The conditional use permit procedure imposes additional restrictions within a given commercial classification because of the particularly objectionable features of certain types of commercial uses.

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5. 16 U.2d 192, 398 P.2d 27, 29 (1965).

An automobile service station is one of the particularly offensive type of uses in a Commercial C-1 zone which the zoning ordinance has determined must have special supervision and restrictions. In Naylor this court held that an affected citizen has redress to the courts to determine the validity of general zoning classifications.<sup>6/</sup> A fortiori, an affected citizen has redress to the courts to determine whether the additional requirements imposed by the zoning ordinance have been satisfied in order to permit a service station in a Commercial C-1 zone.

## II

ACTION BY A COUNTY COMMISSION CHANGING THE PERMISSIVE USES OF LAND IS INVALID IF BEYOND ITS POWER, OR UNCONSTITUTIONAL, OR CAPRICIOUS AND ARBITRARY OR UNJUSTLY DISCRIMINATORY.

Action of a County Commission which changes the permissive uses of land is invalid if such action clearly appears to be beyond its power, or is an unconstitutional deprivation of property without due process of law, or is capricious and arbitrary or is unjustly discriminatory. Gayland v. Salt Lake County, 11 Utah 2d. 307, 358 P.2d 633, 636 (1961).

The amended complaint alleges with particularity how the action of the County Commission

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6. See also, Gayland v. Salt Lake County, 11 U.2d 307, 358 P.2d 633, 636 (1961).

in granting the application for the conditional use permit clearly appears to be beyond its power, is an unconstitutional deprivation of property without due process of law, is capricious and arbitrary and is unjustly discriminatory. Each allegation will be briefly argued:

(a) THE ACTION OF THE COUNTY COMMISSION IN GRANTING THE PERMIT IS IN EXCESS OF ITS POWER.

A County Commission does not have unlimited power with respect to determining permitted uses of land. Its power is strictly limited by constitutional rules<sup>7/</sup> and by express statutory language which requires that zoning regulations be designed and enacted to promote

"the health, safety, morals, convenience, order, prosperity or welfare of inhabitants of the State of Utah, including, among other things, the lessening of congestion in the streets or roads, or reducing the waste of excessive amounts of roads, securing safety from fire and other dangers, providing adequate light and air, classification of land uses and distribution of land development and utilization, protection of a tax base,

7. A zoning ordinance "and all similar laws and regulations must find their justification in some aspect of the police power, asserted for the public welfare." Euclid v. Amber Realty Co., 272 U.S. 365, 387 (1926).

securing economy in governmental expenditures, fostering the state's agricultural and other industries, and the protection of both urban and nonurban development."<sup>8/</sup>

Plaintiffs have pleaded and are entitled to proceed to trial to show that the action of the Commission in granting a permit for the erection of a service station at this location within a solid residential area is invalid, having no substantial relation to any legitimate objective sought to be gained by the exercise of its police power.<sup>9/</sup>

8. Section 17-27-13, UCA 1953. A New Jersey statute substantially the same as this Utah statute was held not to have been complied with where a parcel of land in a predominately residential community was rezoned commercial. The area had been zoned residential for many years under a comprehensive zoning plan revealing an intention to maintain the residential character of the whole area. The court noted that there was a "fine shopping center" one-half mile away. Borough of Cresskill v. Borough of Dumont, 15 N.J. 238, 104 A.2d 441 (1954).

9. The power of a commission to change land uses depends on the change having a substantial relation to the public good:

"The basic purpose of zoning is to 'bring about an orderly development of cities, to establish districts into which business, commerce, and industry shall not intrude, and to fix certain territory for different grades of industrial concerns .... The exercise (of this power) must have a substantial relation to the public good within the spheres held



These general rules alone are enough to demonstrate the invalidity of the instant change of land use. But the county zoning ordinance goes even further. It codifies these and other rules. The County ordinance sets out the conditions precedent which must be found from the evidence before a conditional use permit can be granted.<sup>10/</sup> Based on the evidence adduced before the Planning Commission, none of the conditions precedent was satisfied.<sup>11/</sup>

Having once adopted an ordinance, the County is bound to act in accordance therewith.<sup>12/</sup> It cannot ignore the conditions

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proper.'" (Emphasis supplied). Marshall v. Salt Lake City, 105 Utah 111, 141 P.2d 704, 709 (1943), quoting with approval from White's Appeal, 287 Pa. 259, 134 A. 409, 412 (1926).

10. Appendix A contains the full text of the ordinance.

11. Relevant parts of the Planning Commission's findings are quoted in plaintiffs' amended complaint, pages 4, 5. For purposes of this appeal, the Court must assume not only that the Planning Commission so found, but also that plaintiffs could prove at the trial that none of these conditions precedent was met.

12. A municipal legislative body must substantially follow the internal regulations it has itself established relative to zoning. County Comm'rs. of Arundel County v. Ward, 186 Md. 330, 46 A.2d 684, 688 (1946). It cannot deviate from

of any ordinance for the purpose of benefiting a particular individual or business.<sup>13/</sup>

The conditional use permit ordinance sets forth a hearing procedure which should be governed by general rules of administrative law. One of these rules is that a reviewing body which has neither heard the witnesses nor seen the evidence cannot reverse the decision of its examiners if there

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existing regulations or make exceptions therefrom on behalf of individuals. 8 McQuillin on Municipal Corporations, §25.253.

13. Conferring a special benefit on a particular land owner is not sufficient reason to change land use regulations:

"An exception of one such lot as that of Levine for a filling station would be a departure from a purpose, and unless made by reason of some exceptional condition, under authority of the enabling act, would be illegal, even if attempted by municipal ordinance. Clearly, there can be no valid exception of one lot merely as a favor to the one owner, because it is more profitable to him."

Ellicott v. Mayor & City Council of Baltimore, 180 Md. 176, 23 A.2d 649, 652 (1942).

In Harrington v. Bd of Adjustment, 124 S.W.2d 401, 407 (Tex. 1939), the court held:

"It (the Board) may not destroy the general restriction by piecemeal exemption of pieces of land equally subject to the hardship created in the restriction, nor arbitrarily grant to an individual a special privilege denied to others."

is no sufficient evidence to support its decision of reversal.<sup>14/</sup>

The Planning Commission is created by the legislature.<sup>15/</sup> Its functions and power are a nullity, however, if a County Commission can reverse, without grounds, its decisions.

(b) ACTION OF THE COUNTY COMMISSION IN GRANTING THE PERMIT FOR A SERVICE STATION IS UNCONSTITUTIONAL BECAUSE IT DEPRIVES PLAINTIFFS OF THEIR RIGHTS WITHOUT DUE PROCESS OF LAW.

Action of the County Commission in issuing the permit has deprived plaintiffs of their rights to substantive due process of law and to procedural due process of law.

Plaintiffs' substantive rights of due process guarantee them free use of their property; such rights may be infringed only through the police power, exercised for the good of the public generally.<sup>16/</sup> When there

<sup>14.</sup> Proof of a finding of error in the original determination has been held essential to permit reversal or setting aside of such determination. See, Stuart v. Bd. of Supervisors, 11 S.2d 212, 215 (Miss. 1943). The County Commission made no such determination.

15. Section 17-27-2, UCA 1953, et seq.

16. Euclid v. Amber Realty Co., 272 U.S. 365 (1926).

is no benefit to the public generally from a proposed change of land use, the Commission is without power to authorize the change.<sup>17/</sup> Plaintiffs' position that a service station at the subject location cannot be supported by any benefit to the public generally is supported by the findings of the Planning Commission in refusing to grant a conditional use permit application. A regulation of land use having no substantial relation to the public health, safety, morals or general welfare is unconstitutional.<sup>18/</sup>

In addition to their substantive due process rights, dwelling owners affected by the actions of the County Commission in regulating the use of land are entitled to procedural due process protections. Tolman v. Salt Lake County, supra.

The ordinance provides for a "hearing of the appeal" of an application for a conditional use permit denied by the Planning

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17. Authorities cited supra, note 9, pages 11, 12 of this brief.

16. Euclid v. Amber Realty Co., supra, note 16.

Commission.<sup>19/</sup> No such hearing was held, or, if a hearing was held, plaintiffs as interested parties were not notified thereof or given an opportunity to be present. This is a clear case of deprivation of procedural due process.

(c) ACTION OF THE COUNTY COMMISSION IN REVERSING THE DECISION OF THE PLANNING COMMISSION AND GRANTING THE PERMIT FOR A SERVICE STATION IN A WHOLLY RESIDENTIAL AREA CAPRICIOUSLY AND ARBITRARILY INFRINGES UPON THE RIGHTS OF PLAINTIFFS.

19. When a statute provides for an appeal and does not describe how the appeal shall be tried, it is deemed to provide for a trial de novo upon the merits. Spurck v. Civil Serv. Bd., 226 Minn. 240, 32 N.W.2d 574 (1948). There is nothing in Section 8-34-2(6) of the Ordinances of Salt Lake County (Appendix A) outlining the type of appeal provided - save that the Commission shall review the decision of the Planning Commission. The County Commission, in reviewing the conditional use permit, is therefore required to hear the matter de novo. The Commission in this matter did not have any kind of a hearing.

The right to a "hearing of the appeal" includes all usual features of a hearing - namely, the right to be present and to be heard, production of witnesses and documents, the taking of evidence, examination of witnesses, representation by counsel, presentation of arguments, authorities and everything incident thereto. Spurck v. Civil Serv. Bd., 32 N.W.2d at 579. None of these things was permitted by the County Commission prior to reversing the decision of its zoning experts - the Planning Commission.

For the public generally to benefit from a change of permissible use of land, the action of the county must promote the "health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Salt Lake County ...."<sup>20/</sup>

The complaint alleges that there is no legally acceptable reason benefiting the public generally which supports the action of the County Commission. In the absence of such a reason, the decision of the Commission is arbitrary and capricious and hence invalid.<sup>21/</sup>

(d) THE ACTION OF THE COUNTY COMMISSION IN AUTHORIZING A SERVICE STATION IN WHAT IS OTHERWISE A SOLID RESIDENTIAL AREA DISCRIMINATES UNJUSTLY IN FAVOR OF THE SUBJECT PARCEL AND AGAINST ADJOINING PROPERTIES AND OTHER PROPERTIES IN THE AREA, AND IS THEREFORE INVALID.

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20. Section 8-1-2, Revised Ordinances of Salt Lake County.

21. This court will interfere with Commission action where:

"... it is shown to be so clearly in error that there is no reasonable basis whatsoever to justify it and its action must therefore be regarded as capricious and arbitrary."

Naylor v. Salt Lake City Corp., 17 U.2d 300, 410 P.2d 764 (1966).

Plaintiffs are entitled to go to trial to make such showing.



"Spot zoning" is unconstitutional as well as a violation of general concepts of zoning. The result from either approach is the same - an attempted grant of a permit for commercial uses on a small spot of land in an otherwise solid residential area is invalid.<sup>22/</sup> This Court has already condemned

22. In Dowse v. Salt Lake City Corp., 123 Utah 107, 255 P.2d 723, 724 (1953), this Court said:

"The character of the district as a whole must be kept in mind in determining whether the health, safety, morals or general welfare of the district and hence the community would be promoted by permitting encroachment into the residential area of commercial or industrial establishments. Cf. Leahy v. Inspector of Buildings, 308 Mass. 128, 31 N.E.2d 436."

An attempted change of land use which does not form part of a comprehensive plan but is for mere private gain is invalid. Leahy v. Inspector of Buildings, 308 Mass. 128, 31 N.E.2d 436 (1941).

In De Blasiis v. Bartell, 143 Pa. Super 485, 18 A.2d 478 (1941), the court held:

"While the City Council has broad powers (to fix land uses) . . . , it has no right or authority to place restrictions on one person's property and arbitrarily and by mere favor remove such restrictions from another's property, there being no reasonable ground or basis for the discrimination."

In Cassel v. Mayor & City Council of Baltimore, 195 Md. 348, 73 A.2d 486 (1950), the court held:

"Moreover, increase in 'spot zoning' in

"indiscriminate spot zoning."<sup>23/</sup>

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course of time would subvert the original soundness of the comprehensive plan and tend to produce conditions almost as chaotic as existed before zoning. It is, therefore, universally held that a 'spot zoning' ordinance, which singles out a parcel of land within the limits of a use district and marks it off into a separate district for the benefit of the owner, thereby permitting a use of that parcel inconsistent with the use permitted in the rest of the district, is invalid if it is not in accordance with the comprehensive zoning plan and is merely for private gain ...."

To the same effect: Pierce v. King County, 62 Wash.2d 324, 382 P.2d 628 (1963); Clark v. City of Boulder, 146 Colo. 426, 362 P.2d 160 (1961); Freeman v. City of Yonkers, 205 Misc. 947, 129 NYS 2d 703 (1954) (in view of the presence of other gas stations in the area, there was no reasonable ground for believing that there would be a need within the reasonable future for a gas station on the subject lot); Cassinari v. Union City, 1 N.J. Supp. 219, 62 A.2d 891 (1949).

23. In Marshall v. Salt Lake City, 105 Utah 111, 141 P.2d 704, 709 (1943), this Court stated: "The regulation of use of property by lots or by very small areas is not zoning and does violence to the purpose and provisions of the statute. It would not, and could not, accomplish the purpose of the law...."

"Zoning is done for the benefit of the city as a whole, and the limitations imposed on respective districts must be done with a view to the benefit of the district as a whole, and not from the consideration of particular tracts."



## III

ACTION OF THE COUNTY COMMISSION GRANTING A PERMIT FOR A SERVICE STATION ON THE SUBJECT PROPERTY IS VOID BECAUSE IT OTHERWISE VIOLATES THE CONSTITUTION OF THE STATE OF UTAH, THE STATUTES OF THE STATE OF UTAH, THE ORDINANCES OF SALT LAKE COUNTY AND THE MASTER PLAN OF SALT LAKE COUNTY.

Many of the defects in the action of the County Commission which have been argued supra also violate the Constitution and statutes of the State of Utah, the ordinances of Salt Lake County and the Master Plan of Salt Lake County. Argued here will be only those matters not discussed above.

All laws of a general nature within the State of Utah shall have uniform application.<sup>24/</sup> All zoning regulations shall be uniform for each kind of building or structure throughout any zone.<sup>25/</sup> Action of the County Commission in authorizing a conditional use permit results in a service station island in the middle of an area which is otherwise

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24. Article I, Section 24 of the Utah Constitution. In Grant v. McCullough, 196 Tenn. 671, 270 S.W.2d 317 (1954), a change of land use from residential to commercial was held invalid as giving the owner of the property a privilege withheld from others in contravention of Article II, Section 8 of the Tennessee Constitution (uniform application provision).

25. Section 17-27-11, UCA 1953.

entirely occupied by residential dwellings. Such intermingling of business property with residential property is contrary to, and in disregard of, the letter and purpose and spirit of the Constitution and statutes.<sup>26/</sup>

The ordinance provides that an applicant who seeks to change the use of property having an area in excess of one acre shall follow the planned unit development procedure.<sup>27/</sup> Applicant failed to follow this procedure. Notwithstanding such failure to comply, the County Commission issued the permit. The permit is therefore invalid.

As alleged in the amended complaint and as found by the Planning Commission, a service station at this intersection violates the fundamental land use concepts adopted in the Master Plan for

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26. This Court has quoted with approval from the holding in Guaranty Constr. Co. v. Town of Bloomfield, 11 N.J. Misc. 613, 168 A. 34 as follows:

"It is a fundamental theory of the zoning scheme that it shall be for the general good, to secure reasonable neighborhood uniformity, and to exclude structures and occupations which clash therewith." (Emphasis added). Marshall v. Salt Lake City, 105 Utah 111, 141 P.2d 704, 709 (1943).

See also, Whittemore v. Bldg. Inspector of Falmouth, 313 Mass. 248, 46 N.E.2d 1016 (1943).

27. See, Section 8-34-3, Revised Ordinance of Salt Lake County.

Salt Lake County.<sup>28/</sup>

### CONCLUSION

The amended complaint, which was dismissed for failure to state a claim, must be viewed in the light most favorable to plaintiffs.<sup>29/</sup> Plaintiffs who live in the vicinity of the subject property and who are affected by a change of use of this property must have redress to the courts to test the validity of action by the

<sup>28.</sup> In Bartram v. Zoning Comm'n. of City of Bridgeport, 136 Conn. 89, 68 A.2d 308 (1949), the court held:

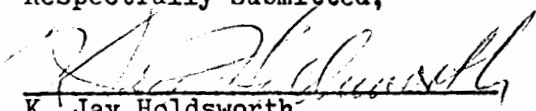
"Action by a zoning authority which gives to a single lot or a small area privileges which are not extended to other land in the vicinity . . . can be justified only when it is done in furtherance of a general plan properly adopted for and designed to serve the best interests of the community as a whole. The vice of spot zoning is that it singles out for special treatment a lot or a small area in a way that does not further such plan."

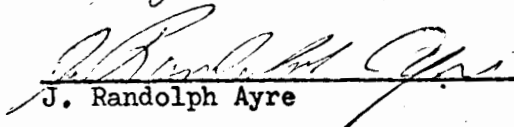
Change of parcel of property from residential to business cannot be sustained where town council gave no consideration to the question of the effect the change would have on the general plan of zoning in the community. Kuehne v. Town of East Hartford, 136 Conn. 452, 72 A.2d 474 (1950).

<sup>29.</sup> Leimer v. State Mut. Life Assur. Co., 108 F.2d 302 (8th Cir. 1940); See citation of cases, Moore, Federal Practice Vol. 2A (2nd Ed. 1967), page 2245, fn. 6.

County Commission which will destroy the residential value of their property by the imposition of a service station use in an otherwise solid residential area.

Respectfully submitted,

  
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APPENDIX A  
CONDITIONAL USES

8-34-1. PURPOSE.

To allow the proper integration into Salt Lake County of uses which may be suitable only in certain locations in the County or Zoning District, or only if such uses are designed or laid out on the site in a particular manner.

8-34-2. CONDITIONAL USE PERMIT.

A conditional use permit shall be required for all uses listed as conditional uses in the district regulations or elsewhere in this Title. A conditional use permit may be revoked upon failure in compliance with conditions precedent to the original approval of the permit.

(1) Application. Application for a conditional use permit shall be made by the property owner or certified agent thereof to the Zoning Administrator.

(2) Accompanying Documents. Detailed site plans drawn to scale and other drawings necessary to assist the Planning Commission in arriving at an appropriate decision.

(3) Fee. The fee for any conditional use permit shall be five dollars (\$5.00), no part of which shall be refunded.

(4) Public Hearing. No public hearing need be held; however, a hearing may be held when the Planning Commission shall deem such a hearing to be necessary and in the public interest.

(a) The Planning Commission may delegate to the Zoning Administrator the holding of the hearing.

(b) The Zoning Administrator shall submit to the Planning Commission a record of the hearing, together with a report of findings and recommendations relative thereto, for the consideration of the Planning Commission.

(c) Such hearing, if deemed necessary, shall be held not more than thirty (30) days from the date of application. The particular time and place shall be established by the Zoning Administrator.

(d) The Zoning Administrator shall publish a notice of hearing in a newspaper of general circulation in the County of Salt Lake not less than ten (10) days prior to date of said hearing. Failure of property owners to receive notice of said hearing shall in no way affect the validity of action taken.

(5) Determination. The Planning Commission may permit a conditional use to be located within any district in which the particular conditional use is permitted by the use regulations of this Title. In authorizing any conditional use the Planning Commission shall impose such requirements and conditions necessary for the protection of adjacent properties and the public welfare. The Planning Commission shall not authorize a conditional use permit unless the evidence presented is such as to establish:

(a) That the proposed use of the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood and the community; and,

(b) That such use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity; and,

(c) That the proposed use will comply with regulations and conditions specified in this Title for such use; and,

(d) That the proposed use will conform to the intent of the Salt Lake County Master Plan.

(6) Appeals of Decision. Any person shall have the right to appeal to the Board of County Commissioners any decision rendered by the Planning Commission by filing, in writing and in triplicate, with said Board of County Commissioners at any regular meeting thereof within ten (10) days following the date upon which the decision from which appeal is being taken is made by the Planning Commission.

(a) Notification of Department of Zoning Administration. The Board of County Commissioners shall notify the Department of Zoning Administration of the date of said review in writing at least seven (7) days preceeding said date set for hearing so that said Department of Zoning Administration may prepare the record for said hearing.

(b) Determination of Board of County Commissioners. The Board of County Commissioners, after proper review of the decision of the Planning Commission, may affirm, reverse, alter or remand for further review and consideration any action taken by said Planning Commission and shall make such decision within seven (7) days of the hearing of the appeal.

(7) Inspection. Following the issuance of a conditional use permit by the Planning Commission, the Zoning Administrator shall approve an application for a building permit pursuant to Chapter 3 of this Title and shall insure that development is undertaken and completed in compliance with said permits.

(8) Time limit. Unless there is substantial action under a conditional use permit within a maximum period of one (1) year of its issuance, the conditional use permit shall expire. The Planning Commission may grant a maximum extension of six months under exceptional circumstances.