

1960

Gayland v. Salt Lake County et al : Brief of Plaintiff and Respondent

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

GAYLAND, a Utah corporation,
Plaintiff and Respondent,
vs.

SALT LAKE COUNTY, STATE OF
UTAH; LAMONT B. GUNDERSEN,
EDWIN Q. CANNON, JR., and
WILLIAM G. LARSON, Individually
and as members of the Board of County
Commissioners of Salt Lake County,
Defendants and Appellants,

FILED

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Supreme Court, Utah

Case No.
9280

Brief of Plaintiff and Respondent

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9280

Brief of Plaintiff and Respondent

INTRODUCTION

The plaintiff owned certain lands in Salt Lake County some distance southeast of Salt Lake City limits. Action was brought by the plaintiff against Salt Lake County and the County Commissioners for a Declaratory Judgment declaring the zoning resolutions of Salt Lake County unlawful and illegal because of the failure of the Commission to follow the statu-

tory procedure in adopting the same. The complaint also asked in the alternative that the court order a reclassification of a portion of the plaintiff's lands from Residential R-2 to Commercial C-2 classification on the grounds that the classification as Residential R-2 was unreasonable, arbitrary and an abuse of the discretion of the county commissioners. The evidence was stipulated to by the parties and judgment was entered in favor of the plaintiff ordering the reclassification on the grounds that the R-2 classification was arbitrary and unreasonable.

The court found that the County Commission had failed to observe the terms of the statutes in adopting the zoning resolutions, but refused to declare the resolutions invalid. The defendants appealed from the decision of the court ordering the reclassification. The plaintiff cross-appealed from the refusal of the court to declare the zoning resolutions invalid.

STATEMENT OF FACT

The plaintiff is the owner of a sizable tract of land in Salt Lake County located near the intersection of 5600 South and 13th East. This land was classified by Salt Lake County in its zoning regulations as Residential R-2, which prohibited the building thereon of a commercial shopping center.

The plaintiff made application to the Salt Lake County Planning Commission for the reclassification of approximately 18 acres of the property owned by the plaintiff from Residential R-2 to Commercial C-2. The County Planning Commission, after securing the consent of the plaintiff, reduced the amount of land to be reclassified from 18 acres to 10 acres, and unanimously recommended to the County Commission that said 10 acres be so reclassified.

The matter was set down for public hearing. At the hearing a petition favoring the change in zoning, signed by in excess of 1000 residents of the area, was submitted in evidence. A number of residents of the immediate area appeared and gave testimony in support of the proposed change. No witnesses residing or owning land in the immediate vicinity opposed the change. However, there were several witnesses owning competing commercial property located from 1/2 mile to 3 1/2 miles from the property in question that appeared in opposition. No representatives of the county or of the state appeared to give any testimony regarding highway congestion, sanitation or any other matters which might be taken into consideration in such a situation. After the hearing the County Commission voted 2 - 1 to deny the reclassification. Commissioner Cannon, one of the commissioners voting against the reclassification, clearly stated in the Commission meeting at the time of casting his vote that he was so voting because of the effect the rezoning would have on competing commercial properties.

Salt Lake County has never adopted a master plan for zoning, nor has it ever set up or established any standards to determine the classification of any particular area. Zoning in the county has proceeded and in this case did proceed merely upon the whims of the individual commissioners as to whether a certain area should be zoned commercial or residential.

As a basis for seeking a reversal of the decision of the District Court, the appellants rely on three points. We will hereafter in our brief discuss these points in the order in which they are raised by the appellants.

In addition to meeting the argument of the appellants, it is the position of the respondent that the zoning resolutions of Salt Lake County should be declared invalid as prayed for in

the complaint and in seeking such relief the respondent relies upon the following

STATEMENT OF POINTS

THE COURT ERRED IN HOLDING THAT THE FAILURE OF SALT LAKE COUNTY TO ADOPT A MASTER PLAN FOR LAND UTILIZATION DOES NOT INVALIDATE THE ZONING RESOLUTIONS OF SALT LAKE COUNTY.

ARGUMENT

In this brief we will answer under the headings Points 1, 2 and 3 the respective points raised by the appellant. Under Point 4 we will argue the point raised by the respondent on cross-appeal.

POINTS ONE AND TWO

THE DISTRICT COURT HAS JURISDICTION TO REVIEW ZONING ACTIONS OF THE BOARD OF COUNTY COMMISSIONERS WHERE THE BOARD ACTS UNREASONABLY AND ARBITRARILY AND IN ABUSE OF SOUND DISCRETION.

Points 1 and 2 as set forth by counsel for the appellant in their brief are closely related and can best be considered in conjunction with each other. In making their argument counsel have selected out of context language from a number of Utah cases and have come up with a conclusion that these cases do not support, in fact a conclusion that these cases directly refute. In effect, counsel argue:

(a) Zoning is a legislative function;

(b) The courts may not interfere with the legislative process.

Therefore, the courts may not review any action of the county commissioners pertaining to zoning.

It is true that the case of *Walton v. Tracy Collins Trust*, 97 Ut. 249, 92 Pac.2d 724 has a paragraph contained therein to the effect that zoning power is a legislative function. It is also true that the old case of *City of Ogden v. Crossman*, 17 Ut. 66, 53 Pac. 985 has language which implies that under no circumstances may the court interfere with the legislative process so long as the legislative process is actually confined to its proper sphere. However, in numerous cases, the court has expressly held that the zoning function may be reviewed by the courts not only when the zoning body exceeds its jurisdiction, but also where it acts arbitrarily, unreasonably or otherwise abuses sound discretion.

In the Walton case there was not involved the power of the court to review the zoning regulations of a city. In that case was involved the question of the power of a subsidiary administrative body to exercise the zoning power. A number of subsequent cases however, some of which are in fact quoted by the appellant, definitely establish that the courts do have the jurisdiction to review the zoning function. The language in the case of *Marshall v. Salt Lake City*, 105 Ut. 111, 141 Pac. 2d 704 clearly states the extent of the power of the court to review the zoning function. There the court said:

"Unless the action of such body (the city commission) is arbitrary, discriminatory or unreasonable or clearly offends some provision of the constitution or

statute, the court must uphold it, if within the grant of power to the municipality."

From this language, it is obvious that the court may assume jurisdiction to review the action of the city commission in zoning matters in cases where (a) they act beyond their power as granted by the statutes of the state; or (b) although acting within the scope of such power, they act arbitrarily or unreasonably, or where they offend against some provision of the constitution or statute.

In the case of *Phi Kappa Iota Fraternity v. Salt Lake City*, et al., 116 Ut. 536, 212 Pac. 2d 177, the court stated:

"Sections 15-8-89, 90, 91, and 92, U.C.A. 1943, grant the governing body of the city the discretionary power to district and zone cities for various purposes that are to the public interest; and the exercise of that power will not be interfered with by the courts *unless the discretion is abused*."

In the case of *Dowse v. Salt Lake City*, 123 Ut. 107, 225 Pac. 2d 723, the court stated:

"The wisdom of the plan, the necessity, the number, nature and boundaries of the district are matters which lie within the discretion of the city authorities, and only *if their action is confiscatory, discriminatory or arbitrary may the court set aside their action*."

The power of the court to review actions of the zoning body to determine whether or not they are arbitrary, discriminatory or confiscatory is likewise upheld in the case of *Smith v. Barrett*, 20 Pac. 2d 864. See also *Provo City v. Claudin*, 91 U. 60, 63 P. 2d 570.

There can be, therefore, no question as to the jurisdiction of the court to hear the case or to issue the order in question.

The only matter for determination is whether or not the evidence establishes that the action of the county commission was arbitrary or unreasonable or otherwise not in pursuance of the zoning powers conferred upon them generally under the police powers of the state. These are matters which we will discuss in the next succeeding section.

We have no quarrel with the statement of counsel nor with the cases which they cite to the effect that we may not inquire into the motives of the county commission. In this regard they seem to have erected a straw man in order to blow it down. No where in the findings is the question of motive mentioned. It matters not what impelled members of the county commission to vote in a certain way if there is a good sound basis for their so voting. If there is a good sound basis to support the vote, the action of the commission may be sustained even though the thing which compelled the commissioners to vote as they did was wholly frivolous and not germane to the question. On the other hand, though they may have voted with the noblest of motives if there is no sound fundamental reason to support the position which they take, their action cannot be upheld. Therefore, the question into which we must look here is not, what were their motives, but was there good sound basic reason for what they did under the police power of the state. This will be discussed in the next succeeding section.

POINT III

THE COUNTY COMMISSION'S ACTION IN REFUSING THE REZONING OF THE PROPERTY IN QUESTION WAS UNREASONABLE, ARBITRARY AND AN ABUSE OF SOUND DISCRETION.

The plaintiff made application to the County Planning Commission to rezone 80 acres in the vicinity of 56th South and 1250 East to permit the creation of an area shopping center. This application was turned down by the Planning Commission. After working further with the Planning Commission, the plaintiff submitted his revised application to rezone 18.78 acres. The Planning Commission held hearings on this proposal and after a full investigation recommended the rezoning on the 23rd day of May, 1959, and cited as the reason for their action the following:

“It was felt that this commercial center is needed because of the existing and anticipated growth in this area and the lack of commercial facilities to serve the expansion.”

Because of certain problems with approach roads, the matter was further investigated by the Planning Commission, and the plaintiff reduced the amount of land sought to be rezoned to 10 acres. Again the Planning Commission took favorable action. On August 25, 1959, it unanimously approved the application of the plaintiff, and it stated under the caption “Reasons for Action” (Exhibit 1):

“It was found that a neighborhood shopping center was necessary to serve the growing population in this part of the County.”

The County Commission called a public hearing on the matter for November 4, 1959. At this hearing a petition was filed, signed by over 1,000 residents in the area immediately surrounding the area proposed to be rezoned. The petition contained the signature of substantially every resident of property adjoining the 10 acre piece, or so near thereto as to be affected by the operation of a shopping center thereon.

There also appeared at the hearing and gave statements some 14 witnesses from the immediate vicinity. No witness residing near the land in question appeared in protest. No witness of the County or other civic groups appeared for the purpose of giving testimony as to congestion of streets, sewage disposal or other problems. There were 14 witnesses appearing in opposition. Each one of the 14 witnesses appearing in opposition either owned, or was an attorney for the owner of, land in southeast Salt Lake County which is zoned commercially. Some of these commercially zoned lands already had commercial buildings thereon, while others were merely bare land being held by the owners for speculation. A reading of the testimony of these 14 witnesses shows that the sole reason given by them in opposition to the proposed change was that it would have a detrimental effect on their own property. After the hearing the Commission sat on the matter for some five months without action. On March 14, 1960, they denied the zoning change. Commissioner Gundersen voted for the change and Commissioners Cannon and Larson voted against it. In casting his vote against the change, Commissioner Cannon frankly stated that he was voting against it because of its impact on other commercial zones in the area (R. 18). In setting down their reasons for this action, the Commissioners stated: "There is sufficient commercial zoning in the area; not warranted at this time." (Ex. 1).

The power of the County to zone or rezone property is based upon the police power, and in the absence of a valid exercise of that power a zoning restriction cannot stand. The following language is found at 101 *Corpus Juris Secundum* 705:

“In general, zoning, or lawful zoning, is within and constitutes a lawful and valid exercise of the police power, and its validity may be sustained thereunder. Subject to constitutional and statutory guaranties, limitations, and restrictions, as discussed infra Sec. 17, and to the requirement that they must be reasonable, infra Sec. 68, the validity of zoning enactments, regulations, and restrictions is dependent on their being within and constituting a valid exercise of the police power, or on their having a reasonable relation thereto, and, hence, they must fall as invalid unless they are within and can be supported as a legitimate exercise thereof.”

In order to be a valid exercise of the police power, action taken by public authority thereunder must be reasonably related to the public health, safety, welfare or morals. Zoning authorities do not sit as boards of business regulation for the purpose of determining whether or not competition shall be allowed in lawful commercial pursuits. While zoning authorities often attempt to occupy this position, where it appears that there is no valid basis for their action, except the matter of limiting commercial competition, the courts are unanimous in holding that such is not a valid exercise of the zoning powers. If an economic advantage is conveyed upon the owner of land by coincident in the course of the exercising of the police power for the protection of the public health, safety, morals or welfare, such a conferring of economic advantage does not invalidate the zoning regulation. However, when there is no other valid supporting reason for the regulation except the question of limiting commercial competition, it must fail. The following language is found in the case of *In re Lieb's Appeal*, 116 Atl. (2) 860, at page 865:

"Under some circumstances zoning does limit competition by restricting the area within which it can be established or conducted. This is a by-product of zoning. An ordinance which results in the restriction of competition is not unlawful because of it, but the purpose of zoning is not to limit or restrict competition. It would be unlawful for a council to zone or rezone or refuse to zone or rezone for this purpose. Unlike public utility laws, zoning is not for the purpose of limiting or prohibiting competition and when that is the only purpose of a zoning ordinance, it must be declared invalid. The appellant is not entitled to protection against competition by means of a zoning ordinance."

Another case passing upon the same point is the case of *Benson v. Zoning Board of Appeals* (Conn.), 27 Atl. (2) 389, at page 391, where the court stated:

"The record shows that the court's decision was predicated upon the premise that the defendants' denial of the application was based on the objection of the competitors which were not 'a proper factor to be considered under the zoning act.' The court was correct in holding that the zoning authority had no right to regard the preventing of competition as a factor in administering the zoning law."

We know that in the practice of law that it is unusual to find a case reported where all of the fact situations are the same as in the case under consideration. However, in this instance, we do have such a case recently decided by the Supreme Court of Appeals of the State of Virginia. This case is *Board of Supervisors of Fairfax County v. Davis*, reported at 106 S.E. (2) 152. In that case the owners of certain property which was zoned for residential purposes and was being sub-

divided, applied for a zoning change to permit the use of twenty-one acres of the property as a shopping center. Some 1200 residents of the area signed a petition in favor of the rezoning. The main opposition came from the developers of another shopping center one and a quarter miles away from the property in question. The planning commission, by a vote of 9-2, favored granting the application. After a hearing, the board of county supervisors, by a vote of 6-1, denied the rezoning. The matter was taken to courts and the lower court held that the board had improperly denied the application for rezoning because the principal ground for denial was the effect upon a competing shopping center. This decision was appealed to the Court of Appeals, which upheld the lower court. The Court of Appeals stated:

“It is not a proper function of a zoning ordinance to restrict competition or to protect an enterprise which may have been encouraged by a prior zoning classification. * * * As Frederick H. Burr, Jr., a planning and economic development consultant, who testified on behalf of the Reed Estate said:

“ ‘The only point at which it is proper in zoning, in my opinion, to consider the economic effects is the point at which the economic effects reach into the general welfare. So far as holding one piece of ground for a shopping center and prohibiting other shopping centers which are needed simply because a prior commitment has been made or a prior piece of land has been zoned is not—it does not properly come under zoning as a function.’ * * * We agree with the holding of the lower Court that the evidence shows that the denial by the board of rezoning application was based upon improper factors which bore no reasonable relation to the public health, safety, morals or welfare of the

community and was therefor arbitrary, unreasonable and invalid.”

For other cases of the same general holding, see *Duncan Ave. Corporation v. Jersey City*, 122 N.J. 292; 5 Atl. (2) 68; *Gabrielson v. Borough of Glen Ridge*, (N.J.) 176 Atl. 676, *Robinson v. Town Council of Narragansett*, (R.I.) 199 Atl. 308.

This case falls exactly within the decided cases. Application was first made for this change in classification to the County Planning Commission. Provision for the appointment of this Commission is made by Sec. 17-27-2, U.C.A. 1953. The next succeeding section of the statute gives this board the authority to hire technical advisors and experts and to employ a staff for the purpose of carrying out their functions of making zoning recommendations to the County Commission. 17-27-14, U.C.A., 1953 provides that all applications for amendment must go first to the County Planning Commission. The plaintiff complied with this statute exactly. In making changes in the proposal the recommendations of the County Planning Commission were concurred in by the plaintiff. When this matter was sent down to the County Commission, this advisory body of the County Commission, which had gone into all aspects of the case as far as public health, safety, welfare and morals were concerned, advised the County Commission that there was no good reason to prohibit commercial development on this property. In fact, they found that it would be of benefit to the growth of the area. Presumably, therefore, the only thing before the County Commission when it considered the matter was the recommendation of its advisory board plus whatever had been brought out at the hearing. As we have pointed out, there was nothing brought out at the hearing

which would warrant the restriction of this property against commercial use.

In their brief, the County has attempted to sustain their action on the basis of a passing statement found on page 60 of the record of the hearing before the Commission. A Mrs. Rippe, the owner of a competing property some three miles away, had the following to say in regard to the problem of traffic:

"Imagine how many cars are going to line up in that small area before they swing out of the area and wait for the red signal to turn green. I am in the insurance business and I know that bumpers have actually hit on the small shopping areas."

Her principal basis for opposition, however, was stated in more detail, and she concluded as follows:

"I also feel that the type of developer that our opponent is that if he is beginning with ten acres, he is a very progressive man; he will be requesting more later. It will have a tendency to hurt all shopping centers."

Commissioner Cannon, when casting his vote, and the other Commissioners when putting down the basis for their action, were frank to state that their action was not based upon the things properly within the police power, but was based solely upon the question of whether or not they felt additional zoning for commercial purposes would have an adverse effect upon the lands already zoned commercially. This was the finding of the trial court, a finding which is supported—in fact compelled—by the evidence. Under the uniform holding of the courts construction of commercial buildings on the ten acres in question may not be prohibited on this basis. The action of the court below should be upheld in this regard.

POINT FOUR

THE COURT ERRED IN HOLDING THAT THE FAILURE OF SALT LAKE COUNTY TO ADOPT A MASTER PLAN FOR LAND UTILIZATION DOES NOT INVALIDATE THE ZONING REGULATIONS OF SALT LAKE COUNTY.

Counties are political bodies of limited authority. They are created by the state and have no powers except those that the state grants them either by specific provision or by necessary implication. Constitution of Utah, Article I, Sec. 4, 17-4-1, U.C.A. 1953. The powers of a county are entirely dependent upon the statutory grant of power and county governments are more restricted in their powers than are the governments of incorporated cities. *Lund v. Salt Lake County*, 58 U. 546 at page 562, 200 P. 510 at page 516. Chapter 27 of Title 17 U.C.A., 1953 grants to County Commissioners the power to zone, however, the power is not a limitless grant. This chapter makes provision for the method and the steps to be taken by the County Commission in adopting zoning regulations. Sec. 17-27-1 provides:

"The boards of county commissioners of the respective counties within the state are authorized and empowered to provide for the physical development of the unincorporated territory within the county and for the zoning of all or any part of such unincorporated territory *in the manner hereinafter provided.*" (Emphasis added.)

Sec. 17-27-4 to Sec. 17-27-11 inclusive make provision for the procedure to be followed by the County Commission in adopting zoning resolutions and in particular sets up the

requirement that prior to adopting a valid zoning ordinance, the Commission must adopt a comprehensive master plan for the development of the unincorporated areas of the county.

Sec. 17-27-5 states the general purposes in making a master plan as follows:

“In the preparation of a county master plan, a county planning commission shall make careful and comprehensive surveys and studies of the existing conditions and probable future growth of the territory within its jurisdiction. The county master plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the county which will, in accordance with the present and future needs and resources, best promote the health, safety, morals, order, convenience, prosperity, or the general welfare of the inhabitants, as well as efficiency and economy in the process of development, including amongst other things, the distribution of population and of the uses of land for urbanization, trade, industry, habitation, recreation, agriculture, arboretum and other purposes, as will tend to create conditions favorable to health, safety, transportation, prosperity, civic activities, and recreational, educational and cultural opportunities; will tend to reduce the wastes of physical, financial, or human resources which result from either excessive congestion or excessive scattering of population; and will tend toward an efficient and economical utilization, conservation and production of the supply of food and water, and of drainage, sanitary, and other facilities and resources.”

Sec. 17-27-9 to 17-27-11 deal exclusively with the land utilization or zoning portion of the master plan. Sec. 17-27-9 provides as follows:

“The county planning commission of any county may, and upon order of the board of county commissioners in any county having a county planning commission, shall make a zoning plan or plans for zoning all or any part of the unincorporated territory within such county, including both the full text of the zoning resolution or resolutions and the maps, and representing the recommendations of the commission for the regulation by districts or zones of the location, heights, bulk, and size of buildings and other structures, percentage of lot which may be occupied, the size of lots, courts, and other open spaces, the density and distribution of population, the location and use of buildings and structures for trade, industry, residence, recreation, public activities or other purposes, and the uses of land for trade, industry, recreation or other purposes.”

Sec. 17-27-10 provides for the presentation of the zoning plan to the county commissioners and the holding of public hearings thereon. The pertinent part thereof is as follows:

“After receiving the certification of said zoning plan or plans from the commission and *before the adoption of any zoning resolution or resolutions, the board of county commissioners shall hold a public hearing thereon * * * **.” (Emphasis added).

From the foregoing, it is evident that before the County Commission may adopt any valid zoning resolution or resolutions it is required by the state legislature to hold a hearing on and adopt a comprehensive zoning plan, which it was conceded by the defendants, and which the court held, has not been done. This provision appears again in Sec. 17-27-11, which is the section of the Utah statutes which actually grants to the counties the power to adopt zoning resolutions. This section provides as follows:

*"From and after the time when the county planning commission of any county, in accordance with the procedure hereinabove specified, makes, adopts and certifies to the board of county commissioners a plan or plans for zoning the unincorporated territory within any county, or any part thereof, including both the full text of a zoning resolution and the maps, and after public hearing thereon, then the board of commissioners, may by resolution regulate in any portion or portions of such county which lie outside of cities and towns, the location, height, bulk and size of buildings and other structures, the percentage of lot which may be occupied, the size of yards, courts and other open spaces, the uses of buildings and structures for trade, industry, residence, recreation, public activities or other purposes, and the uses of land for trade, industry, residence, recreation or other purposes. * * * * ."*
(Emphasis added).

It is conceded in the pleadings and was admitted by counsel in the court below that Salt Lake County has not complied with the law in regard to the establishing a master plan and holding hearings thereon. This it has not done in spite of the fact that the statute has been on the books in its present form since 1943, and in spite of the fact that the adoption of such a master plan is by the statute made a definite prerequisite to the power of the county commission to adopt zoning regulations and resolutions.

The requirement for such a master plan is common in the statutes of various states. The reason for such a requirement is obvious. Unless there is such a master plan, zoning becomes, as it has become in Salt Lake County a hit-and-miss proposition. The County Commission can as it attempted to do in this case, sit as a body regulating economic competition.

The county commissioners can grant or withhold economic favors on the basis of their personal likes or dislikes, or on the basis of any other reason without relation to the question of public health, safety, welfare or morals. Wherever such a requirement for a master plan exists and where it has not been met, the courts have, with uniformity, held that the zoning power may not be exercised.

The following language in this regard is found at 101 C.J.S. 735:

“In order to achieve specified statutory purposes, it is usually required that zoning regulations be in accordance with some well-considered and comprehensive plan; and such regulations must adopt a definite policy * * * ”

The following statement is made by the authors of American Jurisprudence at 58 Am. Jur. 957:

“Statutes or charters authorizing the enactment of zoning ordinances frequently contain the provision that any such ordinance shall be in accord with a well-considered and comprehensive plan, and a zoning ordinance may be declared invalid where it does not comply with such provision.”

The state of New York has a requirement similar to ours relating to the adoption of a “well-considered plan.” Such a plan had not been adopted by the City of Utica, and in striking down a zoning ordinance of that city, the court in *Utica v. Hanna*, 195 N.Y.S. 225, stated:

“Beautification of our cities deserves encouragement, but measures looking toward beautification must be the result of careful study of the interests of all persons affected, so that the total operation of such measures

will surely result in gain to the city as a whole. It was doubtless this thought which led the legislature to require the zoning ordinances to follow a well-considered plan."

In the case of *Chapman v. Troy*, 4 So. 2d 1, a similar result was reached. The Alabama law required in regard to zoning regulations that "such regulation shall be made in accordance with a comprehensive plan." There the court stated:

"A single ordinance laying off a small portion of the city as a residence district, taking no account of other areas equally residential in character, and so far as appears without any comprehensive plan with a view to the general welfare of the inhabitants of the city as a whole, is not permissible. Piecemeal ordinances are not favored."

See also in this regard *Texarkana v. Marby*, 95 SW.2d 871. In the case of *Darlington v. Frankfort*, 140 SW 2d 392, the Kentucky court held that where the legislative authorization for zoning expressly required the zoning ordinance to be adopted only after the appointment of a zoning commission, having in mind a survey by it of the entire city, the city cannot justify the enactment of an ordinance prohibiting the erection of commercial buildings on a street in the absence of a meeting of the prerequisites for the ^Arising of the zoning authority.

The finding of the Trial Court in this case is proper. In fact it is necessary under the pleadings and under the stipulation of counsel. However, its conclusion of law is erroneous. Obviously this plaintiff is a person injured by the failure of the County Commission to follow the proper procedure in the adopting of the zoning resolutions. Had there been a master plan and master resolutions set up and a public

hearing had thereon as required by the statute, this plaintiff might have appeared there and might have had an opportunity to protest the resolutions before they were ever adopted. Furthermore, it should be fundamental that if the grant of the zoning power to the County Commission is made upon certain conditions and if those conditions have not been met, it is acting without authority in adopting any zoning resolutions and its actions are void from the beginning and in no way limit or restrict the use of the property.

CONCLUSION

Based upon the foregoing reasons, plaintiff submits that the Salt Lake County zoning resolutions should be declared unlawful and void. In the absence of such a holding the evidence and the law clearly warrant this court in sustaining the finding of the Trial Court to the effect that the restrictions placed upon commercial construction on the plaintiff's property are unreasonable and arbitrary and should not be allowed to stand.

Respectfully submitted,

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