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WHAT CONSTITUTES SPOT ZONING?

A THESIS

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by

James Boyd Griffin, Jr.

In Partial Fulfillment

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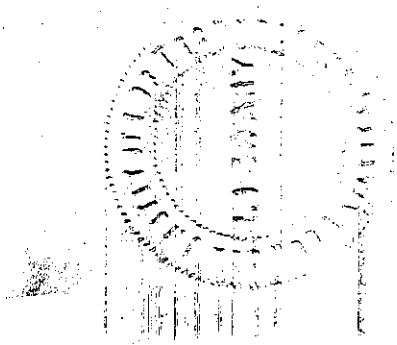

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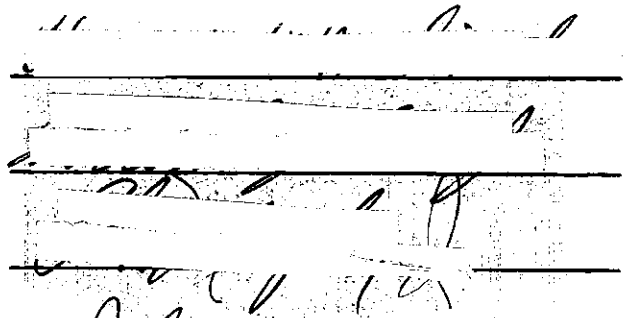

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TABLE OF CONTENTS

SUMMARY

The purpose of this study is to identify spot zoning and to evaluate the various techniques which have been devised to eliminate this zoning problem.

From an investigation of spot-zoning litigation the important characteristics of this zoning problem were discerned. These characteristics, pertinent legal opinions, and planning principles served as a basis for evaluating the effectiveness of amendment restrictions and techniques which have been devised to eliminate spot zoning.

A review of the development of zoning districting techniques revealed a significant trend away from the division of cities into a few broad classifications and toward more specific controls.

This trend toward particularized zoning controls has substantially increased the danger of enacting arbitrary and discriminatory zoning districts which are not in accordance with sound planning principles, i.e., the danger of enacting spot zones.

From an investigation of current zoning practice, it was found that three amendment restrictions and three re-zoning techniques are the most common devices which have been developed to eliminate spot zoning. These are:

Amendment Restrictions

(1) size limitations

(2) the requirement that an amendment be made in accordance with a comprehensive plan, and

(3) planning commission report guided by a check list of planning considerations.

Re-zoning Techniques

(1) contract zoning

(2) floating zone

(3) special-use permits

An evaluation of these zoning devices indicated that the most effective re-zoning mechanisms are those which bring about a closer relationship between prescribed planning principles and the zoning regulations. The planning check list and the floating zone are the best examples of this type of re-zoning device.

The study concludes that zoning practice has reached a stage of development beyond which it cannot advance without a re-evaluation of the planning principles which are the basis for sound land-use regulation. The growing spot-zoning problem that has accompanied the trend toward particularized zoning controls can be resolved only through intensive studies of the principles of land-use development and the recognition of these principles by the governing body enacting zoning controls.

CHAPTER I

SPOT ZONING--A STATEMENT OF THE PROBLEM

Introduction to the Problem.--Perhaps no practice represents as great a danger to effective zoning as does "spot zoning". The vast number of court cases in which zoning districts are attacked as spot zones bears witness to the extent of this malpractice. An examination of the great number of spot zoning cases, however, reveals many misconceptions which shroud the definition and manifestations of this zoning problem.

It is necessary, therefore, to determine, at the outset, the characteristics of spot zoning. This can best be accomplished by an examination of the opinions of judicial bodies and city planners who have investigated the legal and planning aspects of this problem.

Spot Zoning Defined.--The term "spot zoning" originated in court cases which tested the validity of zoning ordinance amendments which created small use districts. Since its first usage, spot zoning has become a popular cliche, denoting any zoning action which creates piecemeal departures from zoning ordinances. This use of the term has become so widespread that the basic concept of the spot zone has become confused with several zoning practices.

Spot zoning, as defined by the courts, generally means simply the legislative act of re-zoning small parcels of land into specially zoned districts.

> "...'spot zoning' is where zoning ordinance is amended reclassifying one or more tracts or lots for use prohibited by original zoning

ordinance."

Christopher v. Matthews, 362 Mo. 242, 240 S. W. 2d 934, 1951.

"Spot zoning' generally relates to action in 'lifting out' of a zoned area one unit, or one particular piece of property."

Birdsey v. Wesleyan College, 211 Ga. 583, 87 S. E. 2d 378, 1955.

"Spot zoning' as usually defined, signifies a carving out of one or more properties located in a given use district and reclassifying them in a different use district."

Chayt v. Maryland Jockey Club, 179 Md. 390, 18 A. 2d 856, 1941.

These descriptive definitions have served to distinguish spot zoning from several zoning practices with which it has become confused. The issuance of variances and special exceptions has, for instance, been referred to as spot zoning. The courts have distinguished these administrative actions, which are governed by pre-determined standards, from spot zoning which is subject to legislative discretion and which is limited only by the constitutional restrictions of the police power.

The term "piecemeal zoning" has also appeared in several spot zoning cases. This zoning practice, however, is commonly used in reference to a problem that is somewhat different from the spot zoning problem.

"Piecemeal zoning", in its most common usage, refers to the partial zoning of a municipality or other political subdivision. This type of zoning occurs when only a portion of the municipality is singled out for regulation while the remaining area is exempted from that regulation, even though the remaining area may be similar or even identical in character to this regulated portion.

The distinction between this "piecemeal zoning" and spot zoning

has been summarized by the court in the case of the County Commissioners of Anne Arundel County v. Ward in which the court said:

> "...'spot' zoning presupposes a general zoning plan, and raises the question of the validity of the exception of specified 'spots' from particular restrictions contained in that plan; whereas partial or 'piecemeal' zoning raises the question whether it is necessary to have any general plan at all, being concerned with the validity of a single zoning regulation limited to a designated area smaller than the entire municipality." (1)

Illegal Spot Zoning.--While the descriptive definition of spot zoning appears in several court cases, the majority of judicial bodies and zoning experts have agreed that spot zones are only those zoning districts which do not meet constitutional and statutory requirements and are illegal (2). The following are selected examples of spot zoning definitions which indicate the illegal characteristics of this zoning practice as well as the descriptive characteristics of the term.

> "'spot zoning' is a process of singling out small parcels of land for use classification totally different from that of surrounding area for benefit of owner of such parcel and to detriment of other land owners."
>
> Hermann v. Inc. Village of East Hills, 279 N. Y. App. 2d 753, 104 N. Y. S. 2d 592, 1951.

> "'spot zoning' has been defined as a provision in a zoning plan, or a modification in such plan, which affects only the use of a particular piece of property or a small group of adjoining properties and is not related to the general plan for the community as a whole."
>
> Eden v. Bloomfield, 139 Ct. 59, 89 A. 2d 746, 1952.

> Spot zoning is the process of..."singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners...and as such is the very antithesis of planned zoning."
>
> Rodgers v. Village of Tarrytown, 302 N. Y. Crt. App. 115, 96 N. E. 2d 731. 1951.

> "...The cases relative to 'spot zoning' are generally cases where a particular small tract, within a large district was specially zoned so as to impose upon it restrictions not imposed upon the surrounding lands, or grant to it special privileges not granted generally, not done in pursuance of any general or comprehensive plan."
>
> Marshall v. Salt Lake City, 105 Ut. 111, 141 P. 2d 704, 1943.

The courts have discerned, then, four characteristics which are common to illegal spot zones. The first two are the descriptive characteristics indicated above.

(1) Spot zones are small zoning districts.

(2) Spot zones are created by legislative action.

The second two are the illegal characteristics which are indicative of the dangers represented by spot zoning.

(3) Spot zones are generally enacted for the benefit of the owner of the property re-zoned and to the detriment of other land owners.

(4) Spot zones are not in conformity with a comprehensive plan designed to promote the general welfare of the community.

Spot Zoning--A Tool of Favoritism.--One of the most flagrant abuses in zoning practice is the use of spot zoning as a tool of favoritism. It has, in fact, been found that the principal causes of spot zoning is the singling out of small zoning districts for individual gain. Yokely, in his comprehensive review of the law of zoning has said:

> "While we are not to be understood as contending that all zoning decisions invalidating amendatory ordinances on the ground that they constitute 'spot zoning' stem from causes that reach the courts because of personal selfishness or disregard for the rights of others, we can safely say, after an exhaustive review

> of the cases, that this is definitely the rule and not the exception." (3)

This practice not only has a corrupting influence on political bodies but also destroys the faith of the citizenry in the integrity of the zoning ordinance.

Spot Zoning and the Comprehensive Plan.--Because of the nature of zoning regulations, piece-by-piece spot zoning has a particularly detrimental effect on the zoning ordinance. Zoning regulations are a striking departure from traditional police power regulations. Whereas traditional police power regulations such as anti-noise ordinances and traffic codes are city-wide in application, zoning regulations divide the political subdivision into districts and establish different regulations for different districts. The effectiveness of such zoning regulations depends, therefore, on some sort of generalized plan or policy which governs the enactment of such regulations.

Zoning changes then, must, in order to remain consistent with the basic zoning ordinance, be enacted in accordance with this general or comprehensive plan. The courts have held:

> "...any such change can only be made if it falls within the requirements of a comprehensive plan for the use and development of property in the municipality..." (4)

The Problem Defined

It is evident, then, that spot zoning threatens effective zoning in several ways. First, it undermines the purposes of zoning by preventing the utilization of land use controls for the benefit of favored individuals. Spot zoning also disrupts the tenor of land uses in the community by permitting, in the midst of zoning districts, uses inconsistent

to those districts. The usefulness of zoning controls is destroyed when spot zoning creates land use patterns as chaotic as existed before zoning.

When enacting district amendments to the zoning ordinance, then, legislative bodies must take great care to assure that the new district is:

(1) necessary to the public welfare and in the best interest of the community as a whole;

(2) consistent with surrounding districts and property uses and will not harm property values needlessly; and

(3) consistent with a comprehensive plan for land use development in the community.

The problem of spot zoning has plagued zoning bodies since the enactment of the first comprehensive zoning ordinance. The efforts of individuals to seek relief from zoning restrictions for their parcels of property began almost from the first day that zoning regulations went into effect.

Spot zoning was not, however, a serious problem when zoning ordinances were designed to segregate uses into well defined districts. As Professor Charles Haar has pointed out:

> "...in the early days of zoning it was considered feasible (and proper) to segregate uses into fairly rigid compartments and that relatively few modifications to meet special situations would be required." (5)

Under this rigid system, planners felt that zoning was simply the regulatory tool that assured the carrying out of a well conceived land use plan.

Through the years, however, zoning has retained few of its original characteristics. The changing land use patterns and the demands of pri-

vate developers for greater freedom in the development of land have necessitated zoning controls that are noted for their flexibility rather than their stabilizing effect on the development of land.

The most significant trend toward flexibility in zoning has been the recent propensity of governing bodies to amend the zoning ordinance in response to proposals from private developers to develop particular parcels of land for specific uses. This tendency to vary the basic zoning plan by re-zoning in response to individual requests has brought with it many of the advantages of flexible zoning and the very serious problem of spot zoning.

The degree to which zoning can meet the seemingly opposing needs for sound land use development and for the unencumbered private development of land in a free society will depend, to a large degree, on the resolution of the spot zoning problem. When the conflicts between particularized zoning controls relating to small parcels of land and zoning controls which are in the public interest and consistent with a well-conceived plan for land use development can be resolved, then the dangers of spot zoning will have been eliminated.

Recently, as a result of a growing awareness of the dangers of spot zoning, attempts have been made to control this malpractice. Legislative bodies have written into zoning ordinances restrictions which limit amendatory action. Minimum size limitations on amended districts, compulsory accordance with a previously adopted comprehensive plan, and compliance with prescribed planning considerations are the most common examples of these restrictions. New techniques of re-zoning, such as contract zoning, floating zones, and special uses, have also been devised

to provide more adequate zoning regulations and to prevent spot zoning. These amendment restrictions and re-zoning techniques will be discussed later.

Purpose and Method of Analysis

It is the purpose of this thesis to examine the current re-zoning mechanisms which are aimed at the prevention of spot zoning and to evaluate the most effective techniques of controlling this problem. This will be accomplished by examining:

(1) the legislative restrictions on the process of amending zoning ordinances, and

(2) new techniques of re-zoning which have been devised to eliminate spot zoning.

From this examination planning and legislative techniques for avoiding spot zoning will be recommended.

CHAPTER II

AMENDMENT RESTRICTIONS FOR AVOIDING SPOT ZONING

In the past two decades zoning has undergone a significant trend toward greater flexibility. As property owners and private developers have clamored for greater latitude in the location, design, and erection of various land uses, planners and legislative bodies have developed a variety of zoning techniques designed to give a greater degree of personalized regulation for proposed land uses.

The process of amending zoning ordinances has received the greatest impact from this demand for flexible zoning. Many legislative bodies have been faced with substantial increases in the number of proposed district changes to the zoning ordinance. As a result, zoning amendments have increasingly been used to grant departures from the basic zoning plant--a function previously restricted to administrative relief mechanism such as variances or special exceptions.

This increased use of the zoning amendment for particularized zoning has substantially increased the chance of spot zoning and has necessitated greater control of the amendment process. Since the use of zoning amendments has taken on many of the characteristics of variances or special exceptions, it has been deemed desirable to restrict amendments with prescribed standards in much the same manner as the administrative devices are restricted.

The amendment limitations, which are designed to prevent spot zoning are generally of three types:

(1) size limitations,

(2) the requirement that an amendment be made in accordance with a comprehensive plan, and

(3) compliance with prescribed planning considerations, presented in the form of a planning check list.

The use of such limitations raises two important questions concerning their value as controls on the amending process. First, are these restrictions effective deterrents to spot zoning? Second, how may such restrictions be imposed to best guide the amendment process?

The following discussion will attempt to answer these questions through an examination of the amendment restrictions currently found in zoning ordinances and an evaluation of these restrictions in terms of the legal and planning considerations which bear upon them.

Size Limitations.--The following excerpts from zoning ordinances are examples of the size limitations on zoning district changes which have been enacted in an effort to curb spot zoning.

> "Minimum size of parcel: A lot, lots or parcel of land shall not qualify for a zoning amendment unless it possesses 200 feet of frontage or contains 25,000 square feet of area, or adjoins a lot, lots, or parcel of land which bears the same zoning district classification as the proposed ordinance..." (6)

> "Minimum size of parcel: When a lot, lots or parcel of land has less than 100 feet of frontage or less than 10,000 square feet of area, no amendment shall be passed to change the zoning district in which such lot, lots, or parcel of land are located, except where in the event of the passage of such amendment such lot, lots or parcel of land would be in the same zoning district as an adjoining lot, lots or parcel of land. (7)

Legislative bodies, in the enactment of such limitations, recognize the constant reference, in court cases, to size as a characteristic of spot zoning. In order to evaluate the effectiveness of size limitations

as a deterrent to spot zoning it is necessary to examine, more closely, the courts' language concerning this characteristic.

Judicial bodies have, however, expressed varying opinions concerning the importance of size as a factor in identifying spot zones. The courts have held, on the one hand, that; "...a single lot with a building thereon is not a proper area to be classified as a district in itself ..." (8) and have, on the other hand, established that; "An ordinance is not to be labled 'spot zoning' merely because it singles out and effects one parcel of land..." (9). While there does seem to be some discrepancy in the language of the courts, the great majority of judicial bodies have held that; "The validity or invalidity of the ordinance depends upon more than the size of the lot..." (10). While no size restriction of any zoning ordinance has been challenged and given a judicial test, the language of the courts indicates that size alone is not a valid test of spot zoning and would not, therefore, be a satisfactory deterrent to this zoning practice.

Not only are size limitations insufficient in terms of court opinions, but they also present significant difficulties to the planners or governing bodies who attempt to design such restrictions. As one zoning expert has pointed out:

> "The minimum areas required will not be the same for all districts due to the different character of all the uses and intensity of land usage allowed in the various zones...It is not possible to prescribe exact areas which will be proper in all cities..." (11)

It would not, in fact, be possible to prescribe exact areas which will be proper throughout the various districts within one city or for more than a short period of time. Minimum sizes for different districts

will greatly vary depending on existing land conditions, current building practices, the "vogue" in minimum lot sizes, etc.

Probably the greatest shortcoming on the size limitation is the fact that it does not control the detrimental effects of spot zoning. As indicated in Chapter I, spot zones permit the intermingling of incompatible uses and disrupt the effect of zoning controls which regulate land according to a general land use plan. Size limitations take no account of these problems. Rather, they attempt to regulate one of the superficial characteristics of this zoning misuse and ignore the dangers of spot zoning.

In virtually all ordinances which regulate minimum sizes of amended districts, the limitation clause contains a provision which waives the size restriction when the re-zoned area abuts a zone having the same classification or a less restricted zone. Thus legislators are permitting two types of re-zoning without prescribed size limitations. These are:

(1) the extension of existing districts by re-zoning adjacent parcels of property;

(2) re-zoning parcels of land to a district classification which is more restricted than the classification of abutting zones.

This first type of unrestricted re-zoning, which may be termed "extension zoning", has generally been upheld by the courts when attacked as spot zoning (12). It should not be assumed, however, that extension zoning is the solution to many of the problems of spot zoning. This type of re-zoning poses significant threats to comprehensive zoning.

Legislators may, for instance, attempt to zone narrow corridors to

connect an existing zone with a parcel of property for which a zone change has been requested. This "gerry-mandering" of zoning districts obviously destroys any semblence of orderly land control.

The practice of extension zoning might also encourage "strip zoning". This type of zoning is characterized by the major street which is zoned commercial for its entire length and to a depth of about 100 feet on either side of the street. This abuse of re-zoning ultimately leads to an excess of land for commercial uses and encourages unsightly roadsides and poorly planned community development.

The second type of unrestricted re-zoning, indicated above, also leaves the community open for zoning abuse. While most spot zones involve the re-zoning of parcels of land to less restricted classifications than surrounding districts, many equally disruptive effects can result from re-zoning to more restrictive classifications. Many legislative bodies presume that zoning is designed primarily to exclude incompatible uses from residential districts and that other districts require less attention.

Progressive communities, however, are coming to a greater realization of the need to regulate the development of industrial and commercial land uses as well as residential development. These communities have recognized that the encroachment of so-called uses of greater restriction (i.e., residential uses) into prime commercial or industrial land ("less-restricted districts") not only creates illogical development patterns, but also precludes the development of many desirable uses. The unrestricted re-zoning of land in industrial or commercial districts to apartment or single family uses is spot zoning and is equally as detrimental as re-zoning residential properties to industrial uses.

The amendment restrictions which attempt to control the superficial characteristics of re-zoning have little value as deterrents to spot zoning. Spot zoning occurs when zoning districts are enacted which bear little or no relation to planned community development designed to promote the public welfare. If amendment restrictions are to be effective, then, they must bring about a closer relation between the amendatory action and the basis for zoning--the comprehensive plan.

The Requirement that an Amendment be made in Accordance with a Comprehensive Plan.--

> "If...an ordinance is enacted in accordance with a comprehensive plan, it is not spot zoning..." (13)

This court opinion and the language of most judicial bodies, which have identified the characteristics of spot zoning, indicate that this zoning abuse can be avoided only if re-zoning is closely allied with a comprehensive plan. The most significant difficulty in achieving this end has been a general confusion as to what constitutes the comprehensive plan. As Professor Charles M. Harr has pointed out in his examination of the relation of the comprehensive plan to the spot zoning problem:

> "...This general plan, or comprehensive plan,...is many things to many courts. It may be the basic zoning ordinance itself, or the generalized 'policy' of the local legislative or planning authorities...or it may be nothing more than a general feeling of fairness and rationality." (14)

The recent trend toward particularized zoning has caused the courts to take a more realistic view of the comprehensive plan. In a recent case which tested the validity of an unorthodox re-zoning technique (infra, p. 30), the court said:

> "...the comprehensive plan, required as a legal basis of zoning, is at least a complete land use plan, including definite allocations of land for the major land uses." (15)

This judicial opinion supports the view of most city planners that zoning should be based on a community master plan designed and kept up to date as a guide for sound land-use development.

Recently, in an effort to curb spot zoning, several legislative bodies have restricted the amendatory process by requiring that all amendments creating new zoning districts conform to a previously adopted comprehensive plan. An example of this type of restriction is found in the charter of the city of Stamford, Connecticut.

> "...the zoning map shall not be amended...to permit a use in an area which is contrary to the general land use of such area established by the Master Plan." (16)

Under this restriction, the master plan or comprehensive plan would have to be adopted by the governing body in order to have any legal effect. This would require that any zoning change that did not conform to the plan could not be approved without first amending the plan.

This technique would eliminate spot zoning in that no amendment could be adopted that was not in accordance with the comprehensive plan. There are, however, serious difficulties which arise under this system. While the comprehensive plan is the basis for the development and enactment of zoning regulations, it is not a static document. In order for this plan to be an effective guide to community development it must be capable of reflecting both new insights into the complex relationships between land uses and the desires and needs of the public for new patterns of development. The adoption of the plan as a legal document does not preclude its revision but it does blanket the plan with sufficient legal red tape to impede the necessary updating of the plan.

Adopting the comprehensive plan as a legal document also raises

serious questions as to the detail which would be appropriate to such a document. Should the plan specify a myriad of considerations such as utility expansion, public facility plans, street and highway programs as well as the designation of areas for classes of land uses?

It is highly improbable that any plan at all would be adopted if it were necessary to obtain general agreement of all municipal or county departments as to their respective development plans. There would also be no end to the constant revision of such a plan, if it were adopted, because of the many individuals having a direct interest in the document.

If the plan should be only a land-use scheme, should it be specific or generalized? If the plan must be specific then, in all probability, it would put such extensive restrictions on the development of land as to preclude private initiative. It is interesting to note that one official, commenting on the master plan restriction of the Stamford charter, has said:

> "If I could have foreseen some of our difficulties...when the legislation that put the planning board in its present position (was passed), I would have made the Master Plan even more general because we are called by the lawyers all the time." (17)

If, however, the plan becomes too general then it is ineffective as a guide to district changes which affect small parcels of property. The propensity of legislators to re-zone small parcels of land would not be guided by the plan and the practice of enacting spot zoning amendments would be extended to the comprehensive plan as well as the zoning ordinance.

Planning Commission Report on Amendments.--The most common amendment restriction, designed to bring about a closer relationship between zoning

and planning, is the requirement that proposed amendments be submitted to the advisory body for study prior to enactment. As a special deterrent to spot zoning, some ordinances require that proposed amendments which have been disapproved by the planning body can be adopted only by more than a majority vote of the governing body. Provisions of this type, with or without the more-than-majority-vote requirement, have the advantage of providing the planning body with a voice in the amendatory process. The following quotation exemplifies this type of amendment restriction:

> "Before taking action on any proposed amendment, supplement or change the Governing Body shall submit the proposed revision to the Planning Commission for its recommendation and report...
> "Unless such proposed amendment, supplement or change has been approved (sic) by the Planning Commission...such amendment, supplement or change shall not become effective except by the favorable vote of three-fourths (sic) of all the members of the Governing Body." (18)

This restriction has been carried one step further in the zoning ordinance of South Bend, Indiana. In this ordinance the planning is given extraordinary power to review and, in an indirect manner, to enact zoning regulations.

> "(a) Any petition or ordinance for the amendment, supplement, change or repeal of the zoning ordinance or any part thereof, not orginating in the City Plan Commission, shall be referred to the Plan Commission for consideration and report before any final action is taken by the City Council...
> "(c) If the report of the Plan Commission is adverse to the proposed change or amendment, the ordinance shall not be passed except by a vote of at least seventy-five percentum of the members of the City Council.
> "(d) Sixty (60) days after report of the Plan Commission to the council favoring the change or amendment, the change or amendment shall have the same effect as ordinances passed by the Council, unless the City Council shall have acted upon it to become effective at an earlier date. If the City Council rejects or amends the proposed change or amendment, it shall be returned to the Plan Commission for its consideration, with a written statement of the reasons for its rejection or amendment.

> "(e) The Plan Commission shall have forty-five (45) days in which to consider the rejection or amendment and report to the City Council. If the Commission approves the amendment, the ordinance shall stand as passed by the Council as of the date of the recording of the Commission's report to the City Council. If the Commission disapproves the amendment or rejection, the action of the Council on the original amendment or rejection shall stand only if confirmed by a seventy-five (75) percentum vote of the City Council." (19)

Simply requiring prior study of proposed amendments by the planning body has not, however, proved to be a satisfactory safeguard against spot zoning. This is quite often due to the fact that many planning bodies are not familiar with the planning principles which should guide the amendment of zoning districts. In recognition of this need to assure that the evaluation of amendments will be consistent with planning principles, a number of legislative bodies have designated, in the texts of zoning ordinances, a list of factors which must be examined by the planning body when reviewing proposed amendments.

These planning checklists serve two vital functions in guiding the enactment of zoning district changes. First, they assure a degree of consistency in the review of proposed amendments by the planning body. Second, while the checklist is not binding on the legislative body, it does serve as a constant reminder to both the public and the governing body of the factors which should be considered in evaluating district changes.

To be effective, the checklist must specify sound planning principles and serve to identify the characteristics of spot zoning. One such checklist has been proposed by Mr. Marvin R. Springer in his monograph on "Zoning Administration" (20).

> "There must be compelling reasons for any zoning amendment which are substantially related to the public welfare and necessity. It is not sufficient that an applicant for an amendment

to the Zoning Ordinance merely show that there is no neighborhood objection to a requested amendment; nor is it sufficient that an applicant show that the amendment would enable him to gain a greater profit or income from his property.

"Every zoning amendment should be analysed with regard to the following:

A. COMPREHENSIVENESS:

(1) Is change contrary to the established land-use pattern?

(2) Would change create an isolated district unrelated to similar districts; i.e., is this 'spot zoning'?

(3) Would change alter the population density pattern and thereby increase the load on public facilities (schools, sewers, streets)?

(4) Are present district boundaries illogically drawn in relation to existing conditions?

(5) Would the proposed change be contrary to the Future Land Use Plan?

B. CHANGED CONDITIONS:

(1) Have the basic land use conditions been changed?

(2) Has development of area been contrary to existing regulations?

C. PUBLIC WELFARE:

(1) Will change adversely influence living conditions in the neighborhood?

(2) Will change create or excessively increase traffic congestion?

(3) Will change seriously reduce the light and air to adjacent areas?

(4) Will change adversely affect property values in adjacent area?

(5) Will change be a deterrent to the improvement or development of adjacent property in accord with existing regulations?

(6) Will change constitute a grant of a special privilege to an individual as contrasted to the general welfare?

D. REASONABLENESS:

(1) Are there substantial reasons why the property cannot be used in accord with existing zoning?

(2) Is the change requested out of scale with the needs of the neighborhood or city?

(3) Is it impossible to find adequate sites for the proposed use in districts permitting such use?" (21)

Conclusion.--It has become increasingly apparent that spot zoning is not simply the re-zoning of small districts. Nor is spot zoning merely the practice of relieving parcels of land of zoning regulations which apply

to surrounding properties. No such cursory definition of this phenomenon is possible. It is, therefore, impossible to prescribe a simple restriction which will eliminate this zoning abuse.

Perhaps the most significant development to come out of the attempts to prevent spot zoning through amendment restrictions has been an increasing realization of the planning considerations which bear upon the practice of zoning. The shortcomings of superficial size restrictions or blanket requirements that amendments be made in accordance with a comprehensive plan have caused planners to look deeper into the manifestations of spot zoning. Out of this study has come a better understanding of the principles by which all district regulations can be evaluated to determine their usefulness in producing sound community development. The planning checklist is the most recent manifestation of this growing understanding of the relation between planning and zoning.

It becomes apparent to the individual examining the spot zoning problem that the principal cause of this zoning abuse is either ignorance or disregard of the principles upon which a comprehensive system of zoning depends. The recent practice of specifying, in the text of zoning ordinances, the pertinent principles of land-use development, which guide zoning regulations, promises to bring about a closer relationship between zoning and planning and to curtail the practice of spot zoning.

CHAPTER III

INNOVATIONS IN AMENDMENT TECHNIQUE

In recent years several new techniques have been used to amend zoning ordinances. These techniques have been designed to facilitate the enactment of small zoning districts which regulate one or a few uses in a more specialized manner than do traditional zoning districts which regulate classes of uses.

These innovations in re-zoning technique are the most recent manifestations of an evolving concept of zoning districting. The "cumulative" zoning districts of early zoning ordinances, which allowed uses permitted in a more restricted district in each of the less restricted districts, bear little resemblence to the specialized and often complex districts found in most modern ordinances. Planners and governing bodies have become increasingly aware of the need to segregate classes of uses and have developed a great variety of district classifications to achieve this end.

The tendency, in recent years, however, to enact special zoning amendments upon the request of land owner or private developers has prompted a striking departure from the traditional techniques of district zoning. Many governing bodies have created zoning districts which are added to the zoning map by amending the map from time to time at the request of private developers. Others have designated special uses which are permitted in all districts of the community subject to the special considerations of the legislative body. Many planners and legislative

bodies have, as a result, developed re-zoning techniques which enable governing bodies to enact very particularized zoning districts. These techniques have been of three types:

(1) contract zoning,

(2) floating zones, and

(3) special use permits.

Because these techniques are particularly susceptible to the dangers of spot zoning i.e., favoritism and the disruption of comprehensive planning, it is important, in a monograph on this subject, to examine these techniques. The following discussions will, therefore, evaluate these amendment techniques in terms of their effect on comprehensive zoning and the legal opinions expressed by courts which have tested their validity.

Contract Zoning.--Several legislative bodies have amended zoning ordinances on request, subject to a contract with the owner of the property re-zoned that he will develop the property in a given way or subject to the owner's placing appropriate deed restrictions on his property. This type of re-zoning has been termed "contract zoning".

This amendment technique undoubtably offers a great deal of flexibility to governing bodies desiring to tailor zoning regulations to all the special land-use control problems of the community. The highly arbitrary and individual features of contract zoning, however, raise serious questions as to the validity of this technique. The courts of at least six states have, in fact, held "contract zoning" to be illegal under existing enabling legislation.

To gain a clearer understanding of the legal shortcomings of "con-

tract zoning" it is valuable to examine a typical case in which the validity of this amendment technique was tested. In the case of Baylis v. City of Baltimore (22), the Maryland court examined an action of the governing body of Baltimore re-zoning a parcel of property from a residential classification to a "First Commercial Use District" which permitted a variety of retail uses. The property owners requesting this change indicated that the property would be used for a funeral home. The legislative body found that the amendment would be desirable only if the property were used for a funeral home and all other uses, normally permitted in a "First Commercial" classification, were excluded. The amendment was, therefore, enacted upon the execution of certain agreements set forth in the amending ordinance. These agreements provided:

(1) that the owners would develop and maintain the property only as a funeral home,

(2) that the entrances and exits to the property would be on an adjacent major street rather than a side street,

(3) that adequate off-street parking facilities would be provided and maintained at a particular location on the property,

(4) that funeral processions would be formed on the property and not in the street, and

(5) that, if the property should at any time not be used as a funeral home, the ordinance would be repealed and the property classification would revert to a residential classification.

The court held this amendment procedure to be void and ultra vires. To support this ruling the court said:

"(1) re-zoning based on offers or agreements with the owners disrupts the basic plan, and this is subversive of the public policy reflected in the overall legislation,

(2) that the resulting "contract" is nugatory because a municipality is not able to make agreements which inhibit its police powers, and

(3) that restrictions in a particular zone should not be left to extrinsic evidence." (Zoning regulations for a particular district are limited to the restrictions specified for that zone in the ordinance.) (23)

The dangers of "contract zoning" far outweigh its advantages. If zoning is subject to the whims of various individuals no consistency can be assured for land-use controls from one day to the next. It must be noted, however, that the attractiveness of this technique has led one New York court to approve contract zoning. In the case of Church v. Town of Islip (24) the court said:

> "...we take notice of the fact that the population and development of Nassau and Suffolk counties have increased enormously in recent years and that such growth is continuing. We take notice also of the consequent multiplication of practical problems presented to local legislative bodies by a deluge of applications for zoning district changes which are prompted by the necessities of such growth, and in this case the evidence accords with such judicial notice. It is understandable that in the public interest and in the interest of practical expediency the practice of granting zoning changes and conditioning their use by means of privately imposed restrictive covenents has seemingly become widespread." (25)

Upon examination of the case it becomes apparent that the "deluge of applications for zoning district changes" noted by the courts probably stems from faulty regulations in the basic ordinance. If this is the case, "contract zoning" can only confound zoning in this community. Poor

zoning regulations allied with highly particularized controls such as are found in "contract zoning" can only create land-use conditions more chaotic than would exist with no zoning at all.

The Islip decision, notwithstanding, the prevailing judicial opinions on "contract zoning" indicate that this technique of enacting particularized zoning controls will not be tolerated in zoning practice under current enabling legislation. There is serious doubt as to the advisability of empowering governing bodies to enact such land-use controls for, as has been pointed out by two eminent zoning experts:

> "To have varying conditions and regulations on different parcels of property in a district having similar uses is the very antithesis of uniformity within a district. Restrictions which do not operate on all alike cannot be justified under the statute or the police power. If some parcels of property are zoned on the basis of variables that could enter into private contracts, then the whole scheme and objectives of community planning and zoning would collapse." (26)

Floating Zones.--A second type of re-zoning technique which has been used frequently in recent years is the "floating zone". This technique has arisen out of a very specialized problem in the application of zoning controls.

City planners have found it increasingly difficult to locate on the zoning map certain specialized uses such as shopping centers or unified residential developments (typically, garden apartments) prior to their proposed development. While it is not difficult to spot these uses in generalized areas on a future land-use plan, two factors hamper the precise location of these potential developments.

First, because of the profound effect of zoning regulations on the value of land, prior designation of particular parcels of property for a

use such as a shopping center would provide a financial windfall to a few lucky property owners. The resultant increase in land values of these parcels of property may push the cost of land beyond the reach of a potential shopping center developer.

Second, the mere designation of several parcels of land for such uses as shopping centers or unified developments does not assure that such land can be assembled for development. Deed restrictions or reluctant property owners may well thwart any development of such land for its designated use. In order to overcome these two difficulties several governing bodies have used the "floating zone" technique.

This technique is essentially a type of "two-step" zoning. It splits the traditional method of enacting zoning ordinances into two distinct actions. Step one of this re-zoning technique is the definition of the "floating-zone" district in the text of the zoning ordinance. This description of the district specifies the use or uses permitted in the zone and may indicate development standards (lot coverage, setbacks, buffers, etc.) and the procedures through which the district will be mapped. "Floating zones" are not generally designated at a particular location on the zoning map in step one.

Step two is the mapping of the "floating zone". At the request of a private developer and upon a report by the planning body that the proposed development meets all the specified requirements, the governing body amends the zoning map, establishing the new zoning district.

The characteristics of the floating zone have been summarized as follows:

"(1) a district classification, in the ordinance text--
(2) not necessarily located on the zoning map in advance of need--
(3) but located by re-zoning when needed--
(4) in response to an individualized application.

Non-essential, but frequent, characteristics of floating zone systems may include:

(1) a specialized type of subject matter.
(2) an explicit procedure for seeking the zone re-classification.
(3) a statement of qualifications for seeking it." (27)

As these characteristics indicate, the "floating-zone" technique of amending the zoning ordinance offers a great deal of flexibility in designating, upon request, special zoning districts on the zoning map. The specialized nature of many "floating zones" also enables governing bodies to regulate, specifically, the development standards of various uses. The use of this re-zoning technique, however, has caused critics to raise serious complaints against the "floating zone".

These critics content that the added discretionary power conferred on legislative bodies under this re-zoning technique destroys the protective value of zoning and negates the practice of zoning in accordance with a comprehensive plan. The critics also charge that re-zoning at the request of individual developers makes it impossible for a municipality or county to anticipate even approximately where the future development of floating zone uses would be located.

The courts have answered these charges. While all judicial decisions have not been favorable to the "floating zone", the cases testing the validity of this re-zoning technique has indicated its usefulness and limitations.

In the classic floating zone case of Rodgers v. Village of Tarry-

town (28), the court upheld a zone classification designed to allow garden-apartments on parcels of ten acres or more. Expressly approving the floating-zone technique, the court held that the governing body could:

> "...amend the General Zoning Ordinance so as to permit garden apartments on any plot of ten acres or more in Residence A and B zones (the zones more restricted) or it could amend that Ordinance so as to invite owners who wished to build garden apartments on their properties, to apply for a Residence B-B classification the floating zone district. The board chose to adopt the latter procedure. That it called for separate legislative authorization for each project presents no obstacle or drawback..." (29)

In answer to the allegation that such technique would destroy any assurance that zoning districts would be enacted in accordance with a comprehensive plan, the court held:

> "Nor did the board, by following the course that it did, divest itself or the planning board of power to regulate future zoning with regard to garden apartments. The mere circumstance that an owner possesses a ten-acre plot and submits plans conforming to the physical requirements prescribed by the 1947 amendment establishing the floating zone district in the text of the ordinance will not entitle him, ipso facto, to a Residence B-B classification. It will still be for the board to decide, in the excercise of a reasonable discretion, that the grant of such a classification accords with the comprehensive zoning plan and benefits the village as a whole." (30)

A Pennsylvania court reached an adverse decision, however, in the more recent case of Eves v. Zoning Board of Adjustment of Lower Gwynedd Township (31) which involved the location, in a residential area, of a "floating zone" permitting industrial uses. Ruling on the contention that the floating zone precluded any possibility that action taken thereunder would be in accordance with a comprehensive plan, this court held that:

> "Final determination of the location of the "floating zone" under such a scheme would expressly await solicitation by individual landowners, thus making the planned land use of the com-

> munity dependent upon its development. In other words, the development itself would become the plan, which is manifestly the antithesis of zoning in accordance with a comprehensive plan." (32)

The conflict in judicial opinion regarding the floating zone in these two cases obviously centers around the relation of this re-zoning technique to a comprehensive plan. Upon further examination of the Eves case, it becomes apparent that there was little evidence to substantiate that the township of Lower Gwynedd had completed a comprehensive plan for zoning.

> "The Township of Lower Gwynedd had a planning commission although the extent to which they have prepared a development plan for the township is unclear." (33)

And concerning the rudiments of such a plan, the court held:

> "For present purposes, it is only important to point out that the focus of any plan is land use, and the considerations in the formulation of a plan for the orderly development of a community must be made with regard thereto." (34)

Several techniques utilized in zoning ordinances may well eliminate the dangers of the floating zone which have been indicated by the Pennsylvania court. Some ordinances, specify, on the zoning map, approximate locations for potential floating-zone districts by a star or other symbol. The governing body thereby indicates prior study of land-use development patterns and serves warning to residents of the possible location of a development within a stated radius of the symbol.

Other ordinances prescribe standards upon which the location of a floating-zone district is contingent. This mechanism assures residents of the community that intensive study will be made prior to the location of a floating zone and indicates the type of development that will take place. The zoning ordinance of the City of Olympia, Washington, for in-

stance, contains a list of floating-zone standards which guide the location and design of shopping centers.

> "As the city grows, so will the need for further retail facilities of this type. No effort has been made to pinpoint particular locations for neighborhood retailing on the proposed land use map. These centers can be located anywhere subject to meeting certain basic standards. New retail centers should:
>
> (1) Be located next to a perpheral arterial or at an intersection of two arterials.
> (2) Have a trade area of no less than 1500 dwelling units as determined by a count on the city's Land Use Map.
> (3) Have a site of no less than one and one-half acres.
> (4) Follow a plan prepared by the property owner and approved by the Planning Commission, showing location of buildings, both present and future, off-street parking, ingress and egress.
> (5) Provide no less than 6,000 square feet of actual retail space." (insert footnote)

The use of the floating-zone procedure is feasible if a greater coordination between planning and zoning can be achieved. The flexibility of this approach offers a valuable tool for guiding the development of the community in a much more particularized manner. It is important to note the language of the court to the effect that the comprehensive plan, upon which the floating zone and all other zoning regulations must be based, is at least a well-conceived, land-use plan. The judiciary has served notice that comprehensive zoning must be based in the concrete terms of up-to-date planning studies for the community.

Special-use Permits.--Recently several communities have undertaken particularized zoning controls through the enactment of provisions in the zoning ordinance which permit certain uses in any zoning district in the city pursuant to planning commission recommendation and final approval by the governing body, acting administratively. This technique, which has been termed the "special-use permit" procedure (or sometimes, the "conditional-use" procedure), has some of the features of the special exception which

is administered by the board of adjustment. There is, however, an important distinction between the "special use" and the special exception.

The special exception is a use which is permitted by administrative action of the board of adjustment in specified districts when it meets standards and criteria expressly set forth in the zoning ordinance. The "special use", on the other hand, is generally one of a list of uses which can be permitted at any location in the community subject only to the discretion of the governing body and the recommendation of the planning body.

Uses which lend themselves to the legislative "use-permit" procedure are unified housing developments, community or regional shopping centers, institutional developments, large re-development projects (subsequent to urban renewal clearance), and other uses whose effects are community-wide. These are uses which have a significant effect on the provision of streets and other public utilities and the tax base of the community as opposed to those uses which affect only a local area. Because of the effect of such uses on community development and governmental policy, it has been deemed necessary to give these uses detailed consideration and control by the governing body.

While no standardized procedure has been developed, the "use-permit" technique commonly specifies, in the zoning ordinance, detailed circumstances under which particular uses will be permitted at any location in the community. This technique typically requires a highly detailed set of plans from the applicant and authorizes the governing body to impose further conditions on the proposed development prior to the issuance of a permit for such use. The governing body usually authorizes the planning agency to review and report to the legislative body on applications for "special-use" permits.

There has been little legal opposition to the use of the "use-permit" procedure. Most litigation pertaining to this type of legislative-administration action has noted the need for specific standards to guide the issuance of permits for "special-uses". While the courts in several early zoning cases held that the legislative body could make minor administrative exceptions to the zoning ordinance without specified standards (35), more recent courts have held that case-by-case administrative decisions of the legislative body must be governed by prescribed standards (36). One court has held, for instance:

> "It is recognized, according to McQuillin's Law of Municipal Corporation, that municipal legislative bodies may reserve to themselves the power to grant or deny licenses or permits, 'where they do so by an ordinance containing a rule or standard to govern them', since it is a fundamental rule, fully applicable to zoning ordinances, 'that an ordinance must establish a standard to operate uniformly and govern its administration and enforcement in all cases, and that an ordinance is invalid where it leaves its interpretation, administration or enforcement to the unbridled or ungoverned discretion, caprice or arbitrary action of the municipal legislative body or of administrative bodies or officials...'" (37)

The legality of the "special-use" permit may be questioned in several states depending upon whether or not the zoning enabling act of the particular state may be construed broadly enough to allow the local governing body to act administratively. The Georgia courts have, in fact, held this re-zoning practice to be ultra vires under the then enabling legislation of that state.

> "...nothing contained in the Act of 1946 (enabling act) authorized the city to adopt Article 21 (creating the special permit procedure) of the aforementioned ordinance. This being true, its adoption was ultra vires and thereafter void." (38)

In addition to the legislative difficulties which may be encountered in the use of the special-use permit, governing bodies may also find this

technique to be unsatisfactory in that it is not easily controlled. While detailed design standards may be required prior to the issuance of such special permits, the governing body has no guaranty that the plans submitted by the developer will be followed. There is also the ever present danger that special-use regulations will be varied in an arbitrary manner to favor certain individuals.

Conclusion.--Particularized zoning has gained a striking degree of popularity in recent years. This new approach to land-use control has been characterized both by flagrantly arbitrary techniques and by conscientious efforts to maintain reasonableness in a system of highly individualized land use control.

The courts have responded to this trend in zoning with mixed reactions. Many techniques have been struck down as illegal spot zoning. Others have been upheld when the legislative body evidenced sincere efforts to maintain sound land-use development and demonstrated as a basis for their actions, well-considered planning principles.

One zoning expert has, upon examination of the adverse judicial decisions coming out of particularized zoning cases, stated that:

> "...the courts may hold that the constitutional requirement of uniformity in the application of the police power, breached once when separate regulations for separate districts were permitted, cannot be breached further so as to permit special treatment for particular uses inside those districts." (39)

Perhaps a more realistic, and more optimistic, conclusion is that the trend away from district zoning toward particularized zoning has brought a re-evaluation by the courts, planners, and legislators of the basis of zoning--the comprehensive plan. It is reasonable to assume that as planners and legislators attempt to bring about individualized con-

trols of the development of land, they will also devote more attention to the formulation of generalized plans and policies upon which comprehensive zoning can be maintained.

The floating-zone technique is the most outstanding example of this effort to reconcile particularized zoning and comprehensive land-use controls. The techniques of "contract zoning" and "special-use permits" present legal and planning difficulties which limit their use in a scheme of comprehensive zoning.

It seems evident from the increasing popularity of the floating-zone technique that this device will continue to develop as an important tool for attaining community land-use objectives. As planners develop more carefully designed standards to control the enactment of floating-zone districts, communities will be assured of a zoning device which will not unduly restrict individual freedom and which will limit the likelihood of arbitrary governmental action.

CHAPTER IV

CONCLUSIONS

The spot zoning problem represents one of the major difficulties in zoning practice today. In essence this is the problem of regulating the many specialized land uses of the community while maintaining a comprehensive zoning ordinance which treats all property with equal justice.

Spot zoning has been defined as:

> "...a process of singling out small parcels of land for use classification totally different from that of surrounding area, for benefit of owner of such property and to detriment of other owners, and, as such, is very antithesis of planned zoning." (41)

It is obvious, however, that small parcels of land must be re-zoned to achieve adequate land-use development. The solution to the spot-zoning problem lies in devising a method of accomplishing this type of re-zoning in accordance with sound planning principles which promote the community health, safety, and general welfare.

The accomplishment of sound re-zoning practice demands the careful study of land-use principles by planning bodies and the recognition of these principles by governing bodies when enacting amendatory ordinances. It is, of course, impossible to achieve adequate land-use controls without the support and co-operation of an informed public. The careful definition of guiding principles for the practice of zoning will go a long way toward assuring both a better understanding of zoning by the public and a better administration of zoning regulations by governing bodies.

Of the many restrictions and techniques devised to eliminate spot zoning, those which have brought about a greater correlation between planning and zoning have been the most effective. These devices have required planning and zoning bodies to delve into the principles upon which sound land-use controls are based.

Two zoning techniques which have come out of recent efforts to eliminate the dangers of spot zoning demonstrate great promise in the achievement of more adequate zoning regulations. These techniques are:

(1) the planning check list, and

(2) the floating zone.

A carefully devised check list of planning policies for guiding amendatory action, written into the zoning ordinance, serves three valuable objectives.

(1) It informs the public of the policies which govern their community's land-use development,

(2) It guides the governing body in making zoning decisions,

(3) It requires the planning body of the community to give special study to the land-use principles which are the basis of zoning.

The floating zone has proven itself to be one of the most promising techniques of accomplishing flexible zoning control. From floating-zone litigation, however, it has become apparent that the use of this device must be accompanied by intensive land-use studies and by carefully prescribed standards of re-zoning.

Several of the community's problem land uses lend themselves to the floating-zone classification. Shopping centers, large-scale developments

and even certain industrial uses can be regulated through this re-zoning technique if properly controlled by predetermined standards. Such standards must, of course, be tailored to the particular use and to the particular community. Standards suitable for one community may not be suited to another.

Zoning is constantly moving toward more and more specific controls. This trend has been accompanied by an increasing danger of spot zoning. The development of techniques such as the planning check list and the floating zone is indicative of the type of solution which is necessary to resolve the conflict between particularized zoning controls and the problem of spot zoning. With the development of specific controls, zoning has reached a stage of development beyond which it cannot advance without a re-evaluation of the planning principles which make up the comprehensive plan for zoning.

This monograph has attempted to define and evaluate the problem of spot zoning and the techniques by which this problem may be resolved. The conclusions of this discussion represent not a solution to the problem, but rather a guide to more adequate techniques of achieving sound zoning controls. Individual communities must undertake extensive studies to assess their particular re-zoning problems and must devise specific standards for guiding land-use controls. No universal set of standards is possible. The type of study indicated in this examination of re-zoning will bring about more adequate methods of dealing with the inherent problems which accompany particularized land-use regulations.

B I B L I O G R A P H Y

LIST OF ABBREVIATIONS

A.	Atlantic Reporter
A. 2d	Atlantic Reporter, Second Series
Calif. App.	California Appellate Reports
Ct.	Connecticut Reports
Ga.	Georgia Reports
Ia.	Iowa Reports
Ill. Sup. Crt. 2d	Illinois Supreme Court Reports, Second Series
La.	Louisiana Reports
Md.	Maryland Reports
Mich.	Michigan Reports
Mo.	Missouri Reports
N. J.	New Jersey Reports
N. J. Sup.	New Jersey Superior Reports
N. Y. App. 2d	New York Appellate Division, Second Series
N. Y. Crt. App.	New York Court of Appeals Reports
N. Y. Misc. 2d	New York Miscellaneous Reports, Second Series
N. Y. S. 2d	New York Supplement, Second Series
N. E. 2d	Northeastern Reporter, Second Series
N. W.	Northwestern Reporter
N. W. 2d	Northwestern Reporter, Second Series
P.	Pacific Reporter
P. 2d	Pacific Reporter, Second Series
Pa.	Pennsylvania State Reports

Pa. Sup. Crt.	Pennsylvania Superior Court Reports
S. E. 2d	Southeastern Reporter, Second Series
So. 2d	Southern Reporter, Second Series
S. W. 2d	Southwestern Reporter, Second Series
Ut.	Utah Reports

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