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Zoning – The Floating Zone: A Potential Instrument of Versatile Zoning

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COMMENT / Zoning—The Floating Zone:

A Potential Instrument of Versatile Zoning

"... we have unnecessarily prolonged the existence of a land use control device conceived in another era when the true and frightening complexity of urban life was barely appreciated. We have through heroic efforts and with massive doses of legislative remedies, managed to preserve what was once a busty infant not only past the retirement age but well into senility...."[1]

LOCAL MUNICIPALITIES derive the authority to zone a locality through enabling legislation enacted by the state.[2] A majority[3] of the state legislatures have accomplished this delegation by adopting the wording of the Standard State Zoning Enabling Act[4] proposed by the Department of Commerce. The act empowers the local legislative body to enact zoning ordinances dividing the municipality into zones of varying uses and in such number, shape or area as the legislative body deems suitable for sound community development. In determining the suitability of an area for a specific land use the legislative body is required by the act to look beyond the present[5] because any ordinance enacted pursuant to the enabling act must constitute a comprehensive approach to a land use program.[6] Mr. Yokley, in his treatise on zoning aptly summarizes this rule:

[1] Reps, *Requiem for Zoning*, 1964 Pomeroy Memorial Lecture presented to A.S.P.O. National Planning Conference in Feb.-March 1964 ZONING DIGEST.

[2] See Village of Euclid v. Ambler Co., 272 U.S. 365 (1926). The Supreme Court upheld zoning ordinances as a valid exercise of the police powers of the state.

[3] Reno, *Non-Euclidean Zoning: The Use of the Floating Zone*, 23 MD. L. REV. 105 (1963).

[4] Reprinted in 2 RATHKOPF, ZONING AND PLANNING §§ 100-01 (3d ed. 1962).

[5] Vickers v. Township Committee of Gloucester, 37 N.J. 232, 181 A.2d 129 (1962).

[6] CONN. GEN. STAT. tit. 8, ch. 124, § 8-2 1966) is typical: Such regulations shall be made in accordance with a comprehensive plan and shall be designed to lesson congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.
See also N.J. STAT. ANN. tit. 40:55-32 (1964); N.Y. TOWN LAW § 263; PA. STAT. ANN. tit. 16, § 5226 (1956).

> A local government's legislative body, in enacting zoning ordinances, must continually bear in mind that, to be valid, a zoning regulation or ordinance must be enacted in accordance with a comprehensive plan. . . .[7]

The purpose of the foregoing statutory prerequisite that any zoning ordinance be in accordance with a comprehensive plan is to avoid an arbitrary, capricious, or unreasonable exercise of the broad zoning powers granted to the community.[8] Unless the ordinance attempts to benefit the public good or the community as a whole—the objectives contemplated in the prescribed comprehensive plan—the ordinance is invalid as outside the power delegated by the state to the political subdivision. To protect the public against any misuse of power the courts have developed rigid standards for measuring the actions taken by the local legislative bodies. Hence, when the zoning ordinance or amendment thereto is adopted by the governing body it must supplement a master plan of community development and the purpose and procedure of the enactment is subject to careful review by the courts.

The rigidity of the act's requirement that any zoning ordinance be in accord with a comprehensive plan is, at best, inconsistent with the effective development of a land use program. The search is on, led by city planners, for valid means of introducing flexibility into zoning ordinances heretofore interpreted as establishing more or less permanent districts.[9] How can the local legislative body, even with the aid and advice of a capable planning commission, hope to so district the municipality as to anticipate and designate in advance on the zoning map all or more than a few districts in locations that meet the particular needs of certain specialized uses? Furthermore, Professor McDougal[10] points out that a significant recent development in zoning is the emergence of certain new concepts of "regionalism" and "ordered mixed uses". Against this background of *new fangled* uses and the concept of regionalism emerges the city planner's recent device aimed at reconciling the statutory requirement that any zoning ordinance constitute an extension of a pre-planned approach to land use in the municipality with the local government's inability to forecast accurately what use constitutes the "eternal" highest and best use of specific land. This device is the floating zone.

The phrase floating zone, in the most general sense, might be defined as

[7] 1 YOKLEY, ZONING LAW AND PRACTICE 121 (3d ed. 1965).

[8] *Supra* note 6.

[9] Stickel, *Report of Committee on Zoning and Planning*, 25 NIMLO MUNIC. L. REV. 512, 527 (1962); see also Ellicott v. City of Baltimore, 180 Md. 176, 181, 23 A.2d 649, 651 (1942).

[10] McDougal, *The Influence of the Metropolis on Concepts; Rules and Institutions Relating to Property*, 4 J. PUB. L. 93, 188 (1955).

a special permit accomplished by a zone-change amendment.[11] In enacting or amending its zoning regulations the local government establishes a use classification which is not necessarily placed anywhere on the zoning map at the time such classification is written into the text of the zoning ordinance. The district, usually providing for a specialized use, figuratively floats above the landscape in no fixed position, until it is brought down to earth by a boundary-change rezoning amendment. Initially, the object of the floating zone was to locate those selected uses, such as apartment houses, shopping centers, and industrial parks whose location was dependent upon the unpredictable preferences and needs of the residential community and the ever-diminishing supply of land for the business community.[12] Certainly suburban apartment-house living was not anticipated by Justice Sutherland in 1926 when he delivered his classic decision in *Village of Euclid v. Ambler Co*;[13] nor could the Supreme Court at that time foresee essential defense manufacturers being requested by the federal government to seek locations not less than ten miles from possible bombing targets.[14] Yet it was in *Village of Euclid* and in two subsequent decisions[15] in the following two years, forty years ago, that many of the guideposts for zoning were defined. The very purpose of creating a floating zone is to provide the flexibility necessary to meet the requirements of new types of uses which seem to be emerging at a progressively increasing rate.

Typically, the concept of a floating zone originates in the city planner's recommendations to the legislative body. The establishment of the floating zone may be by amendment to the existing zoning regulations or by incorporation into a new zoning plan. Usually the ordinance or amendment will impose mininum lot requirements, set back and side yard restrictions, parking and nuisance controls.[16] More specific limitations may exist when the floating zone allows for commercial or industrial land use. However, the legislative procedure in creating the floating use does not include delineating its boundaries on the official zoning map. The location of the zone is left for later determination by the municipal legislative body or an administrative

[11] Craig, *Particularized Zoning: Alterations While You Wait*, 1 INSTITUTE ON PLANNING AND ZONING 153, 173 (1961).

[12] O'Harron, *Why Are We Going Where*, 2 INSTITUTE ON PLANNING AND ZONING 1, 12-13, (1962).

[13] Village of Euclid, *supra* note 2.

[14] This requirement was raised by the petitioning industrialist in Huff v. Board of Zoning Appeals, 214 Md. 48, 133 A.2d 83 (1957) when he sought to locate a light manufacturing plant outside a metropolitan area.

[15] Gorieb v. Fox, 274 U.S. 603, 608-09 (1927); Necton v. City of Cambridge, 277 U.S. 183, 188 (1928).

[16] *Supra* note 6. The typical ordinance creating a floating zone will incorporate several restrictions necessary to advance the general purpose of zoning depicted in the Connecticut,

agency such as a zoning board of appeals.[17] The action may be initiated by the legislative body in the exercise of its responsibility for benefiting the public in general or it may be initiated by a petitioning landowner before the zoning appeals board.

One area of dispute over the floating zone is the procedures followed in locating the zone. When the power to locate a special use district is conferred upon an administrative body such as a zoning board of appeals, is there an improper delegation of legislative authority violative of the due process provisions of the United States Constitution? Or, if a private developer institutes the proceedings for the location of the district, has the planning function of zoning been transferred from the government to individuals? Another area of dispute is the statutory requirement that the zoning ordinance be enacted in accordance with a comprehensive plan of the affected community. Is the floating zone "in accordance with a comprehensive plan"? Must all zones be specifically located in the zoning ordinances to comply with the state enabling act?[18]

It is in the wording of section 3 of the Standard State Zoning Enabling Act[19] that the phrase "in accordance with a comprehensive plan" apparently originated.[20] The implication of the phrase is explicit: vital to the validity of any zoning regulation is its consistency with a master plan.[21] Accordingly, the validity of a floating zone will depend, *inter alia,* upon whether that particular land classification of that specific property conforms to a master plan; indeed, whether a master plan for the municipality exists.

What constitutes a judicially acceptable master plan? Discontented protestants attacking zoning regulation on this issue have found that "this [master] plan, or comprehensive plan with which the ordinance must conform, is many things to many courts."[22]

> It may be the basic zoning ordinance itself, or the generalized "policy" of the local legislative or planning authorities in respect to their city's development—or it may be nothing more than a general feeling of fairness and rationality. Its identity is not fixed with any precision, and no one can point with confidence to any particular set of factors, or any document, and say that there is the general plan to which the zoning enabling act demands fidelity.[23]

Opinions demonstrate a wide range of interpretation as to the necessary ingredients of an acceptable plan as evidenced by the Connecticut Supreme

New Jersey, New York and Pennsylvania statutes.

[17] Yokley, *op. cit. supra* note 7, at 133.

[18] Both Yokley and Reno have raised these issues. See notes 6 & 3 *supra.*

[19] 2 RATHKOPF, *op. cit. supra* note 4.

[20] O'Harron, *supra* note 12.

[21] Craig, *supra* note 11.

[22] Haar, *In Accordance with a Comprehensive Plan,* 68 HARV. L. REV. 1154, 1167 (1955).

[23] *Ibid.*

Court's holding in *Bishop v. Board of Zoning Appeals*.[24] In *Bishop* the court held that a comprehensive plan is one which is general, and that since a city-wide zoning ordinance is general it is, by definition, comprehensive. Such a liberal interpretation of the statutory wording "in accordance with a comprehensive plan" has not, however, been followed in recent decisions where courts have been confronted with the issue of the floating zone.

The protestants in *Rodgers v. Village of Tarrytown*[25] avoided an extension of the Connecticut court's syllogism by arguing that *any* process of singling out a certain land area for a use classification totally different from uses allowed in the surrounding area is subject to the charge of "spot zoning". The New York court in *Rodgers,* while it upheld the zoning amendment which created an apartment house zone without delineating its boundaries on the zoning map, dismissed the charge of "spot zoning" by finding that the amendment under attack was enacted to promote a comprehensive plan. Primarily, the finding reflected the court's attitude that the Village of Tarrytown lacked an adequate number of apartment units.[26] The important distinction, however, made by the court in the *Rodgers* decision is that the zoning ordinance and the master plan are not synonymous. Considering the purpose of the requirement of a master plan—to prevent the capricious exercise of legislative power which might result in haphazard or piecemeal zoning[27]—the distinction made in *Rodgers* appears to be a necessary one.

On the other hand, it can safely be said that there is no reason to infer legislative intent that the comprehensive plan be portrayed in some physical form outside the ordinance itself.[28] Neither should it be required, although it is desirable, that the entire municipality or county be zoned at one time, that regulations be uniform throughout the political subdivision,[29] nor that the plan itself relate to the area outside the locality.[30] The master plan, therefore, must be something more than the zoning ordinance itself, yet it need not be a tangible, all-inclusive, infallible prediction of the physical development of the locality. Somewhere between these extremes lies the required ingredients of a comprehensive plan.

In determining the existence of a master plan a prime concern of the reviewing court is whether the ordinance safeguards the public interest. In the Maryland case of *Huff v. Board of Zoning Appeals*[31] the court agreed to

[24] Bishop v. Board of Zoning Appeals, 133 Conn. 614, 619, 53 A.2d 659, 662 (1947).
[25] Rodgers v. Village of Tarrytown, 302 N.Y. 115, 123, 96 N.E.2d 731, 734 (1951).
[26] *Id.* at 122, 96 N.E.2d at 733.
[27] Kozesnik v. Montgomery Township, 24 N.J. 154, 165-66, 131 A.2d 1, 7-8 (1957).
[28] *Id.* at 166, 131 A.2d at 7.
[29] County Commissioners of Anne Arundel County v. Ward, 186 Md. 330, 339, 46 A.2d 684, 688 (1946).
[30] 1 RATHKOPF, THE LAW OF ZONING AND PLANNING § 9-4 (3d ed. 1962).
[31] Huff v. Board of Zoning Appeals, 214 Md. 48, 58-59, 133 A.2d 83, 89 (1957).

affirm the decision allowing a floating industrial zone to descend in a sparsely-populated, suburban residential area. The petitioning manufacturer in *Huff* was supplying the federal government with precision instruments necessary to the national defense and was subject to the request that such vital industry be located out of the metropolitan area for safety reasons. The zoning amendment which created the new industrial zone contained within its provisions detailed requirements to be met by the petitioner which conditioned the zone change, particularly in respect to building density, parking, and landscaping. In holding that the amendment provisions were part of a general plan the Maryland court explained that:

> A comprehensive plan has been said to be a general plan to control and direct the use of land and buildings by dividing the governmental area into use districts according to present and planned future conditions, so as to accomplish, as far as possible, the most appropriate uses of land consistent with the public interest and the safeguarding of the individual property owner.[32]

It has been this judicial concern for the public good that has led courts to arrive at opposite conclusions as to whether zone changes adhered to a comprehensive plan. In *Offutt v. Board of Zoning Appeals of Baltimore County*[33] the court had to weigh the rights of individual property owners whose property could well be adversely affected by the proposed change against the public welfare of the community. The same conflicting interests were evaluated in *Eves v. Zoning Board of Adjustment,*[34] a Pennsylvania case invalidating a floating industrial zone. In both cases concern centered on the neighboring owner's right to rely upon a zoning ordinance as reflecting the current planned use of the community's land.

A plan may be comprehensive even though it provides a method whereby relatively small pieces of land may be changed from the original classification to another "if such contemplated changes and the procedure by which they will be accomplished are carefully thought out and in harmony with the uses contemplated or provided in the entire municipality."[35] Whenever the floating zone descends in a district devoted to other uses, singling out a small parcel of land for a use classification totally different from that of the surrounding area, the charge of spot zoning is certain to be raised. The decision in *Rodgers* described spot zoning as the very antithesis of planned zoning. If an ordinance is enacted in accordance with a comprehensive plan, it is not illegal "spot zoning" even though it (1) singles out and affects but

[32] *Id.* at 58-59, 133 A.2d at 89.
[33] Offutt v. Board of Zoning Appeals, 204 Md. 551, 561, 105 A.2d 219, 224 (1954).
[34] Eves v. Zoning Bd. of Adjust. of Lower Gwynedd Twp., 401 Pa. 211, 218, 164 A.2d 7, 11 (1960).
[35] RATHKOPF, *op. cit. supra* note 30.

one small plot or (2) creates in the center of a large zone small areas or districts devoted to a different use.[36] Thus, the relevant inquiry is not whether the particular zoning under attack consists of areas fixed within larger areas of different use but whether it was accomplished for the benefit of individual owners rather than pursuant to a comprehensive plan for the general welfare of the community.[37] Spot zoning may be illegal or legal. If it is an arbitrary and unreasonable devotion of the small area to a use inconsistent with the uses to which the rest of the district is restricted and made for the sole benefit of the private interests of the owner, it is illegal.[38] On the other hand, if the zoning of the small parcel is in accordance and in harmony with the comprehensive zoning plan and is done for the public good—to serve one or more of the purposes of the enabling statute, and bears a substantial relationship to the public health, safety, moral, and general welfare—it is legal.[39]

A zoning plan does not cease to be a comprehensive plan because it looks to reasonably foreseeable potential use of land which cannot be precisely determined when the zoning is passed. In zoning of undeveloped areas account can be taken of potential uses reasonably foreseeable. Such was the case in *Huff* where the planning commission looked upon the undeveloped areas as a reservoir of future land uses. In *Huff* the new regulations proposed for Baltimore County provided for twelve land use classifications varying from low density residential districts to heavy manufacturing districts, including the floating restricted manufacturing zone. The new floating zone was located on the zoning map in a low density residential area and the court upheld the procedure after paying particular attention to the recommendations of the planning commission which were presented to the legislative body prior to the adoption of the zone-change amendment. The planner's report stated that the low density residential area was

> ... not visualized as a purely residential zone,—one which is thought of as contemplating complete eventual development into approximately one-acre lots, as the Zone permits. Because of the extent and character of Baltimore County this R.40 (residential) Zone necessarily represents to a certain extent a 'reservoir' of future land uses, much of it certainly remaining indefinitely agricultural, some becoming increasingly and more concentratedly residential in character, some being used for non-residential purposes....[40]

[36] Rodgers v. Village of Tarrytown, *supra* note 25, at 123-24, 96 N.E.2d at 735.

[37] *Ibid.*

[38] Huff v. Board of Zoning Appeals, *supra* note 31, at 53, 133 A.2d at 88; Cassel v. Mayor & City Council of Baltimore, 195 Md. 348, 355, 73 A.2d 486, 493 (1950).

[39] Huff v. Board of Zoning Appeals, *supra* note 31, at 57, 133 A.2d at 88; Offutt v. Board of Zoning Appeals, *supra* note 33; Ellicott v. Mayor & City Council of Baltimore, 180 Md. 176, 23 A.2d 649 (1942).

[40] Report of Planning Commission to Zoning Commission and Board of Commissioners, quoted in Huff v. Board of Zoning Appeals, *supra* note 31, at 53-54, 133 A.2d at 86.

Maryland, therefore, upheld as comprehensive a general plan which would control and direct the use and development of property by dividing it into districts according to present and *potential* use of the properties.

What can the municipalities do to side step the charge of "spot zoning" when allowing changes in the plan? In *Rodgers* the court allowed the reclassification of low density land to apartment house use thereby permitting garden apartments for young families unable to find accommodations who might otherwise move elsewhere. Here the court allowed a change in parcels of ten acres or more for multiple occupancy even though the boundaries were not set out in the ordinance. The Board of Trustees, the village's legislative body, had passed an ordinance amending Tarrytown's General Zoning Ordinance. The ordinance created a new district, Res B-B, allowing for 15 or fewer families, without delineating the boundaries of the new district. The boundaries were to be fixed by amendment to the official zoning map at such time in the future as such districts were in demand. The ordinance provided exacting standards of size and physical layout for the new zone. A local administrative agency, the planning board, was empowered to approve such rezoning amendments. In answering the attack by a neighbor upon the ordinance, the New York court based its decision on the cardinal principle that what is best for the body politic in the long run must prevail over individual interests. Thus, while the rezoning amendment did benefit an individual owner, while it did single out and affect one small plot, and while it did create in the center of a large zone a small area devoted to another use, nevertheless, the ordinance was upheld as pursuant to a comprehensive plan for the general welfare of the entire community. The evidence presented, showing the growing number of young families, the potential lightening of the tax load, the development of scantly used land, and the attraction of business was cited in the opinion in support of the community need and therefore in support of the finding of the furtherance of a comprehensive plan.

In *Rodgers* the New York court further found that the legislative body did not divest itself or the administrative body of the power to regulate future zoning for apartments. While it is true that the individual owner of 10 acres or more of land need only submit plans and a petition for locating the floating apartment house zone on his property, nevertheless, he was not *ipso facto* entitled to the zone change. The ordinance in *Rodgers* gave both bodies the right to approve or disapprove the petition depending upon whether it furthered a comprehensive plan or not. An arbitrary or capricious determination by either body, of course, would be subject to reversal by the courts.[41]

[41] Rodgers v. Village of Tarrytown, *supra* note 25.

However, when this same procedure for locating a floating zone came before the Pennsylvania court in *Eves* it was held to devolve upon the township supervisors, duties quite beyond those outlined in the enabling legislation.[42] The Pennsylvania court reasoned that the adoption of a procedure whereby it is decided which areas of land will eventually be rezoned on a case by case basis patently admits that at the point of enactment of the controversial ordinance there was no orderly plan of particular land use for the community.[43] Final determination under such a scheme would expressly await solicitation by individual land owners, thus making the planned use of the community dependent upon its development. That is, the development itself would become the plan, which is manifestly the antithesis of zoning in accordance with a comprehensive plan.

Again, in *Huff,* the argument was presented that even if a floating zone could be valid in terms of conformity to a comprehension plan, "the determination as to what small areas shall be so zoned in the future cannot be left to an administrative body."[44] The Maryland court found that there was no improper delegation of power to an administrative body. The reasoning by which the court made this finding was by analogy to prior case law wherein the authority delegated to an administrative body to grant special exceptions was upheld as valid. Factually, the court was convinced that the provisions of the regulations, strictly followed, first, would protect vicinal property owners and, second, would allow an area to be rezoned to accommodate the floating use only when in actual operation and effect it would be a harmonious part of the comprehensive plan. Finally, the court in *Huff* pointed to the prior determination by the legislative body—insofar as that body adopted the ordinance creating but not locating the floating zone—that the use which the administrative body permits is *prima facie* proper in the environment in which it is permitted. Therefore, by analogy to the rules applicable to special exceptions rather than the general rules of original error or change in conditions or the character of the neighborhood, and because the ordinance established sufficient standards to protect both the public good and the interests of nearby property owners, the court held that the claim of improper delegation of legislative power was effectively refuted.

The floating zone is similar to the special exception. It would seem that if the utilization of the device of special exceptions can comport with the statutory requirement of a comprehensive plan, then the floating zone device can also be compatible with the statutory requirement.[45] The principle

[42] While the duties outlined in the New York and Pennsylvania enabling acts are not identical, they are substantially the same.

[43] Eves v. Zoning Bd. of Adjust. of Lower Gwynedd Twp., *supra* note 34.

[44] Huff v. Board of Zoning Appeals, *supra* note 31, at 60, 133 A.2d at 90.

[45] Craig, *supra* note 11.

argument in favor of the special exception—that there has been a prior legislative determination—is similarly applicable to the floating zone. Whether a legislative body locates the floating zone or the special use appears to make little significant difference so long as that body's actions are reviewable by the courts.

The decisions in Maryland, New Jersey and New York upholding the floating zone concept introduce a degree of necessary flexibility into zoning ordinances. While the Pennsylvania court reached an opposite conclusion and invalidated a floating zone ordinance it did so to prevent *ad hoc* land use control under very broad ideas of community welfare.[46] While the desirability and need for flexibility can be fully appreciated, "too flexible and loosely knit zoning provisions"[47] will continue to fail the judicial test. Notwithstanding a growing concern that the rigidity of conventional zoning doctrines be considerably relaxed so that the way can be opened for performance zoning and planned development of large tracts or areas,[48] still, rather detailed standards and provisions for notice to property owners will be necessary ingredients of the valid floating zone ordinance.

In view of its decision in *Donahue v. Zoning Board of Adjustment of Whitemarsh Township*,[49] Pennsylvania appears to have retreated somewhat from the literal interpretation given the enabling statute in its previous decision in *Eves*. Nevertheless, it seems unwise to accept unqualifiedly the Pennsylvania view which seems to parallel floating zones with illegal spot zoning. A floating zone ordinance carefully drafted could easily be consistent with a comprehensive plan of the community, even in Pennsylvania.

The recent opinion in *Beall v. Montgomery County Council*,[50] a Maryland decision, distinguishes the rules applicable to the granting of variances from those to be applied to the locating of a floating zone. The validity of the floating zone in *Beall* was determined by analogy to the validity of special exceptions. In the opinion the court made it clear that the change in neighborhood and mistake in original zoning factors, necessary determinations in the granting of a variance, were not required to locate a floating zone. When, as in the *Beall* case, a technical staff concludes that the granting of the rezone application would comply with the zoning purposes contemplated by the legislative body, evidence of mistake in the original zoning and of substantial change in character of the neighborhood is superfluous. The *Beall* decision adds additional authority to the proposition that justifi-

[46] Municipal Law Service Letter Vol. 10, No. 9, at 4 (Nov. 1960).
[47] Stickel, *supra* note 9.
[48] Municipal Law Service Letter, *supra* note 46.
[49] Donahue v. Zoning Bd. of Adjust. of Whitemarsh Twp., 412 Pa. 332, 194 A.2d 610 (1963).
[50] Beall v. Montgomery County Council, 240 Md. 77, 212 A.2d 751 (1965).

cation for the locating of a floating zone is more appropriate by analogy to the special exception.

The argument that all boundaries be delineated on the zoning map at the time of enactment of the zoning ordinance gains merit only through a most literal interpretation of the enabling legislation.[51] It is true that the delineation of all land classifications would permit the maximum amount of notice to property owners in the locality, yet generalized land use goals must seek to advance the interests of the community rather than the individual.[52] Nevertheless, notice is an essential right and must not be ignored by a floating zone ordinance. If carefully drafted, the ordinance can offer as much individual protection as that provided by either the special exception or the potential classification devices for altering land uses. These safeguards, considered with the fact that no individual has a vested right in the zoning classification of his property, much less his neighbor's property, would seem to negate any assertion that undelineated zones can not be a characteristic of a valid zoning ordinance.

Courts will continue to require something other than bare zoning provisions in determining the existence of a comprehensive plan. Yet, so long as qualified full-time city planners with adequately-staffed planning bodies remain the exception rather than the rule, it seems unlikely that the courts will require much more than due consideration for neighboring property owners and the general welfare of the community. If the zoning ordinance creates a floating zone and within its text contains standards and safeguards to protect individual interests and indicates sufficient concern for the general good, the ordinance should be held to be within the broad principles of the comprehensive plan required by enabling acts.

[51] For the argument that there should be a specified number of ascertained districts each with a definite slope, area and location, see Rodgers v. Village of Tarrytown, 302 N.Y. 115, 126, 96 N.E.2d 731, 737 (1951) (Conway, J., dissenting).

[52] Craig, *supra* note 11.