# THE JUDICIAL VIEW OF THE RELATIONSHIP BETWEEN LAND USE AND TRAFFIC

By

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A THESIS

Submitted to the College of Business and Public Service
of Michigan State University of Agriculture and
Applied Science in partial fulfillment of
the requirements for the degree of

MASTER IN URBAN PLANNING

Department of Urban Planning and Landscape Architecture

1960

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ABSTRACT

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Each of the several United States has enacted Zoning Enabling Legislation which states the purposes of zoning. One of these purposes can provide the basis for minimizing further increase of traffic upon the streets and highways. "The Purpose," as it is used throughout this thesis, is that of "lessening the congestion on the public streets and highways."

With the development of new and specialized land uses which cater solely to the users of automobiles, the incidence of two-car families and three-car families has been rising steadily. The American uses his car for every imaginable use, from the trip to the local store to get a loaf of bread to extended vacation trips. More people are moving to the suburbs, and the commercial establishments, business, and industrial developments are moving along with them to be closer to the customers and employees, as well as to have space for adequate parking facilities.

These developments are some of the factors creating great volumes of traffic and consequent congestion.

This study undertakes to: (1) establish that there is a direct relationship between traffic and land use, (2) examine and discuss the judicial view of this relationship, and (3) analyze, study, and recommend what can be done to give the Zoning Enabling Acts, and therefore the Municipal Zoning Ordinances, greater control in the development of land uses.

The main portion of this study consists of the reporting and analysis of court cases involving zoning in order to see if the subject of traffic and congestion was injected into the discussion of the case and to determine if any of the decisions were definitely based upon the purpose of "lessening congestion on the public streets and highways."

The cases included in this thesis cover a wide range of zoning districts, from various residential classifications to industrial and parking classifications. Over 2,500 zoning cases were read or scanned, and of these over 300 contain some mention of traffic or congestion ranging from a passing reference to "The Purpose" to quite extensive traffic discussion, traffic counts and traffic flow data.

Most of the cases reported are from seven states: California, Connecticut, Illinois, Michigan, New Jersey, New York and Pennsylvania.

# ACKNOWLEDGEMENTS

Material for this study was gathered primarily from the published records of the courts of the various states selected for representation in this study. The task of locating court cases involving material pertinent to this study required numerous days and hours of time-consuming effort and research. The few individuals whose positions enabled them to provide access to such limited material have been most helpful, and the author wishes to acknowledge the assistance freely rendered by the staff of the Michigan State Law Library. Particular thanks are extended to Miss Charlotte Dunnebacke, Head Librarian, for her patience and understanding and in giving the author unlimited use of the library. The help of Miss Maurine Brunner and Mrs. George R. Sidwell also is gratefully acknowledged.

The author also acknowledges the very patient and tireless effort rendered by Assistant Professor Carl Goldschmidt of the Urban Planning Department and the Highway Traffic Safety Center at Michigan State University, in his service as faculty advisor to this study. His capable guidance and suggestions were essential to this study and have grealy enriched the learning experience which a project such as this type entails.

# FOREWORD

Interest in this thesis topic originated when the author was doing research work for the Highway Traffic Safety Center at Michigan State University. While with the Center the author's work consisted of intensive research: reading and scanning of voluminous material, the reporting and compiling of information, and final analysis for presentation to the Center. These were the preliminary phases of investigation into and consulting practically all of the many publications related to zoning, such as the various law quarterlys and reviews, legal and other indices, books on zoning, and other magazines and publications. Since it was found that there was very little material published or available concerning this topic, the field was narrowed to the court cases of the various states and a few books relating to zoning. The court case investigation was commenced while with the Center, and the completion of the work was done on the author's time.

The termination of the graduate research assistantship with the Highway Traffic Safety Center due to the conclusion of the required residence work for the master's degree in Urban Planning took place before the final report

and analysis were written. Therefore it was decided that the final product would be of more value and of earlier realization if the person who compiled all of the pertinent data were to finish it.

With the permission of the Highway Traffic Safety Center and with the approval of the Department of Urban Planning and Landscape Architecture, the originally anticipated report is now completed in another form--that of a thesis for the degree Master in Urban Planning.

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# INTRODUCTION

"The Judicial View of the Relationship Between Land Use and Traffic" would seem to be a topic for a thesis in the field of jurisprudence, instead of in the field of urban planning. A student in law might well be more capable of investigating and interpreting court cases. However, traffic congestion has become a problem for the planner because of the close relationship between the use of the land--as well as zoning--and the increase in traffic and traffic congestion on our public roads and streets.

Traffic congestion is a very serious problem. Since World War II, more and more people are owning more and more automobiles. The two-car family is no longer a rarity. Coupled with the increasing number of automobiles is the increasing number of functions which they serve. Today, there is a multiplicity of new land uses which cater solely to the automobile and its occupants. Even the desire of people to own homes on relatively large parcels has contributed to the problem by forcing longer journeys to work. "Suburbia" as a way of life is surely one of the greatest causes of traffic congestion on many of our major arteries today.

That there is a measurable relationship between traffic and land use is an accepted fact.* Furthermore, there is an established judicial position on the traffic generation of the various land uses which might be permitted under the exercise of the power of zoning by municipalities.** In addition, many states in their zoning-enabling acts, definitely state in one form or another that one of the purposes of zoning is to lessen congestion in the streets.

The problem is not one of recognizing the situation or its causes, but rather one of gaining acceptance of zoning by both courts and municipalities as an instrument for reducing congestion.

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*Robert B. Mitchell and Chester Rapkin, Urban Traffic A Function of Land Use (New York: Columbia University Press, 1954), pp. 3-19.

**Village of Euclid, v. Ambler Realty Co., 272 U.S. 365 (47 S. Ct. 114, 71 L. ed 303, 54 A. L. R. 1016).

# CHAPTER I

## BACKGROUND

### Section (a): Developments

Since the invention of the automobile and its evolution into one of the major means of transportation, there has been a continual increase in congestion upon our streets. Basically, this congestion has been created by

(1) the concentration of population in large municipal centers,

(2) more intensive development of land,

(3) more extensive use of the automobile,

(4) the many new and varied types of land uses catering to the automobile and its occupants,

and to a limited degree,

(5) the increase in the physical size of the individual vehicle.

All of these factors have developed since the invention of the automobile, yet, the widespread judicial recognition of the problem dates back only a decade or so.

Within the past quarter century the automobile has evolved from the novelty and pleasure stage to the necessity and essential stage. This evolution has occurred due

to the continuation of the expansion of municipalities into so-called suburban areas, this expansion began originally with the use of the street car in providing transportation to persons living on the "outskirts" of town. Americans have, in the past twenty years, had the desire to live in a less crowded environment, away from the crowded areas of the metropolitan and municipal centers. The automobile has contributed greatly to the influence of this expansion into the suburban areas. The automobile has provided for greater ease in going to and from the central city. The more adequate the roads and streets became, the farther out the person could reside and still commute to the central city quite easily. This has gone on until the city and also the streets cannot handle all of the automobiles adequately or efficiently and therefore congestion has resulted. The development of the outer reaches of the suburban areas with all types of commercial, business and industrial areas, to help relieve the central city, have caused congestion to become apparent in these suburban areas also. With this continual expansion the automobile has become a necessity because of the lack of adequate public transportation or the inconvenience of using the public transportation facilities and the effect is therefore that the automobile has

directly caused the decline in public transportation. The public transportation facilities cannot hope to serve all of the needed areas adequately today because of the great distances people will commute or drive for a certain purpose in mind--whether it be employment or personal uses. The distances to the shopping areas, to places of employment, to areas of recreation, and to the areas of entertainment have become so great that the automobile has become essential. The American has also adopted the automobile to a great extent for use as the mode of transportation when taking his vacations to tour the country. With this mass movement of automobiles as sightseeing facilities, there is the increase of traffic upon the country highways as well as the addition to the traffic on the streets of the municipal centers.

With the use of the automobile as the essential means of transportation for everyday use the problem of land use and traffic congestion relationships can be seen. Any land when put to use will probably depend upon the motor vehicle to provide transportation for prospective customers, for its own employees, and for the suppliers of its own goods and services. With this attraction of the motor vehicles, the streets will be called upon to bear a

heavier load of traffic, and possibly also to serve as parking facilities. This overloading is evident unless adequate provisions and regulations can be provided through zoning regulations for the development of the land use. Zoning ordinances can provide for regulations to furnish adequate parking facilities, to provide ingress and egress regulations, and provide for the possible analysis of the adequacy of the streets in the area which are to serve the land use. All of these means can assist in the relief of the possible traffic and the resultant congestion of the streets.

The purpose of this study is to examine and expand upon the causes and effects of the problems developed by land uses and their relationships to traffic congestion of the streets. This examination and analysis is based mainly on an investigation of pertinent court cases. The court cases utilized were selected on the basis of the discussion of problems involved by virtue of their review by an appellate court. The material used for the analysis of land use and traffic congestion relationships is based upon the court decisions and upon the zoning enabling laws of the several selected states. One of the purposes of zoning, among those which are stated in these laws, is the

lessening of congestion on the public roads or streets. It is this purpose which forms the basic formula of this thesis.

For the purposes of this study the following terms are defined:

LAND USE--the utilization of land by human activity.

TRAFFIC--the movement of people and goods by motor vehicles upon public rights of way.

TRAFFIC CONGESTION--the over-concentration of the movement and the using of, the human's modes of transportation upon his roads and streets to the point at which the traffic will no longer move at a "normal" pace but becomes slowed and hazardous due to the voluminousness of traffic movements and the intervening of automobile conflicts.

Section (b): Land Uses

Every time a piece of land is put to use, theoretically that use is attracting motor vehicles. This attraction of automobiles stems from the use of that land for business, living, pleasure, employment, or for other purposes. When a parcel of land is developed for a particular use, the users will always need a way of ingress and egress. Further, part of that area may be needed either as a parking area or as a storage area for the mechanical conveyances attracted by the new use.

Every time land is put to use, that use may increase traffic congestion. Every opening onto the street, whether

it is from a parking lot, a service drive, or a driveway, as well as the resultant parking of the automobiles on the streets, will create problems, slow down traffic, create traffic hazards, and thus cause congestion. The effects of the land use upon traffic may not only be felt upon, or in front of, or adjacent to the parcel of land being used, but may also affect the traffic and cause congestion and hazards for several blocks from the property being used. In order to relieve the traffic congestion and hazards created by the particular land use, provisions will eventually have to be made elsewhere to accommodate the increased parking demand and traffic flow that has been indirectly caused by the use of that parcel of land. These provisions may be in the form of additional parking facilities, street widenings, rearrangement of traffic flow, or stricter regulations in the traffic codes.

A single residential use of land may, for instance, create a very minor change in the traffic pattern. In the case of a multiple-family residential use the traffic change will become more apparent. Increase the multiple-family residential use several times and the traffic becomes increasingly more noticeable. These proportions of traffic increase potentials keep enlarging for each type

of land use, from the more restrictive land uses (i.e. single-family residential types) to the less restrictive land uses (i.e. heavy industrial types). When business, commercial, and other or more concentrated land uses are compared to residential uses, usually traffic congestion problems are substantially larger. When the intermingling of a larger traffic generator, such as a commercial use, with one that creates little traffic generation, such as a single-family residential use, is permitted through improper zoning practices, there is actually a deterioration of the efficient traffic pattern on affected streets and highways. This intermingling usually causes deterioration in areas which normally are not adequate--or prepared--for this impact of increased traffic and the resulting traffic congestion.

As an example, when a supermarket or some other intensive land use is placed in a strictly residential area, it is sometimes felt to be a detriment to that residential area. Such use may not have its effects felt immediately, but it will if given a little time. Residential property values generally decrease; deterioration of the surrounding area is then likely to result. It may also form a wedge for other intensive uses to invade the area.

When a supermarket is placed in the residential area, place is needed to park the added vehicles of the employees and the customers. Trucks and other types of commercial vehicles are necessary to service and supply the supermarket. All of these additional functions add to the traffic flow and thereby add to the traffic congestion problems. With the addition of more traffic there is an indirect effect upon the surrounding land uses: possible parking in the streets, slowing down of traffic due to more traffic movement, new hazards, and more noise in a once quiet neighborhood.

In order to relieve the traffic congestion problems created in such situations, adequate measures should be taken through effective and enforceable legislation and through well-organized and defined zoning ordinances. Along with the measures of control of the land use, there are also needed the properly organized planning agencies upon which usually lies the responsibility of preparing the zoning ordinances and comprehensive plans, and there are also needed adequately prepared and enacted regulatory powers upon which the zoning ordinances rely for enforcement.

The control of the land uses is one of the ways in which we can help prevent traffic congestions. In 1935

Messrs. Bassett and Williams said, "It is urged that the control of the land bordering on main highways is essential to their usefulness for traffic over them."[1] To control land uses, local governments must be given certain regulatory powers. The regulatory means or instruments upon which the municipalities rely are the powers which are granted to them through the zoning enabling acts. These give the municipalities the powers to classify the land within the municipality into various uses. As a typical example, the City and Village Zoning Act of the State of Michigan includes the following:

> Provide[s] for the establishment in cities and villages [or other types of governmental units] of districts or zones within which the use of land and structures, the height, the area, the size and location of buildings may be regulated by ordinance, . . . to provide by ordinance for the acquisition by purchase, condemnation or otherwise private property which does not conform to the regulations and restrictions of the various zones or districts so provided; to provide for the administering of this act. . . .[2]

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[1]Edward M. Bassett et al., Planning Law ("Harvard City Planning Studies," Vol. VII (Cambridge: Harvard University Press, 1935), p. 30.

[2]Michigan Department of Economic Development, Michigan Laws Related to Local Planning (City and Village Zoning Act, Act 207 of the Public Acts of 1921 as amended, Lansing, Michigan, June 1949), p. 59.

The Act also regulates and restricts the power of municipalities in the following manner:

> The legislative body of cities and villages may regulate and restrict the location of trades and industries and the location of buildings designed for specified uses and for such purposes divide any city or village into districts of such number, shape and area as may be deemed best suited to carry out the provisions of this section. For each of such districts regulations may be imposed designating the uses for which buildings or structures shall or shall not be erected or altered, and designating the trades and industries that shall be permitted or excluded or subjected to special regulations. Such regulations shall be made in accordance with a plan designed to lessen congestion on the public streets. [emphasis supplied], to promote public health, safety and general welfare, and shall be made with reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, the conservation of property values and the general trend and character of building and population development.[3]

The Act also provides for the regulation of buildings and gives the authority to zone. It also empowers legislative bodies to adopt zoning ordinances and other regulations and provisions. The preceding quoted portions of the Michigan Zoning Enabling Act are typical of the ones of other states.

This section has established that land uses do have a direct effect upon traffic and traffic congestion on the roads and streets. Provisions for the controlling of these land uses has been made in the powers granted by the State

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[3] Ibid., p. 60.

Zoning Enabling Acts. When the unregulated development along the roads and streets was recognized in 1935 as a cause of traffic hazards and congestion, Mr. Whitten said:

> . . . the present unregulated and disorderly roadside development is destructive of property values and is a serious handicap to the safe and efficient use of the highway. By control of the development along the rural highway [as well as municipal streets] many traffic dangers and unnecessary interruptions to traffic flow can be avoided, . . . and the appropriate and orderly use of adjacent property promoted and its value protected.[4]

Section (c): Early Legal Developments

Even though the problem of traffic and the resulting congestion of the streets in the United States has been more noticeably increasing since the invention of the automobile, the problem was by no means unknown prior to that time.

The problem of traffic and congestion was considered as far back as 1889 in the United States, when the New York State Court of Appeals based a decision upon the principal factors of an English case, in which Lord Chief Justice Ellenborough in 1812 had declared: "The King's Highway is not to be used as a stable-yard."[5] The latter case referred

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[4] Bassett et al., p. 133.

[5] Rex v. Cross, 3 Camp. 224, 170 Eng. Rep. 1362 (1812).

to the use of the public streets for loading, unloading, and standing of stage coaches. The unloading and loading were to be done in a reasonable time, and private premises were to be procured for the coach to stop at during the interval between trips, the end of one trip and the beginning of another.

E. C. Yokely has said that "There is early legal precedent that at least points up the need for clearing the streets of congestion due to the propensities of some to exercise squatters rights to the exclusion of the use of the streets by others," and then he used the case of Rex v. Cross as an example.[6]

The trial court's decision in the 1889 New York case described the following course of events in the statement of the case:

> Evidence was given on the trial tending to prove the following facts: On the morning of October 20, 1879, said Cohen was walking through Attorney street in such city, and at the same time an ice wagon was passing south through that street, and a wagon loaded with coals was coming north through the same street. A grocery wagon without any horse attached was standing in front of the grocery store kept by one Marks, who owned the wagon. The thills were tied up in a perpendicular manner with some kind of string, and the length

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[6]E. C. Yokely, Zoning Law and Practice, Vol. II (2nd ed.; Charlottesville, Virginia: The Michie Company, Law Publishers, 1953), p. 93.

> of the wagon, was parallel with the street. For some reason the driver of the ice wagon started up his horses, seemingly for the purpose of passing the grocery wagon before the driver of the coal wagon should reach it. The street was narrow and the ice man's wagon caught in someway against the wheel of the grocery wagon, and turned the wagon somewhat around, so that the thills came down on the sidewalk. At that time Cohen was passing and the iron on one of the thills struck him on the head. . . . The wagon was used by its owner, the grocer, as the evidence tended to show, for the purpose of facilitating the transaction of his private business, and it was in no sense a public cart. When not in actual use the wagon was kept in the street in front of the owner's grocery store, day and night, under a permit which was granted by defendant. . . . No law or ordinance existed which gave jurisdiction to the defendant, through its Common Council, or through any of its officers, to license or permit such a use of the highway. . . . Judgment in favor of the defendant.[7] [Lower court.]

In the opinion of the Court of Appeals Judge Peckham said that

> The storing of the wagon in the highway was a nuisance. The primary use of a highway is for the purpose of permitting the passing and repassing of the public, and it is entitled to the unobstructed and uninterrupted use of the entire width of the highway for that purpose, under temporary exceptions as to deposits for building purposes, and to load and unload wagons, and receive and take away property for or in the interest of the owner of the adjoining premises, which, it is not now necessary to more specifically enumerate.
>
> It is no answer to the charge of nuisance that, even with the obstruction in the highway, there is still

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[7] Cohen v. Mayor, 113 N. Y. 532, 533, 534, 21 N. E. 700 (June 4, 1889).

> room for two or more wagons to pass, nor that the obstruction itself is not a fixture. If it be permanently, or even habitually in the highway, it is a nuisance. The highway may be a convenient place for the owner of carriages to keep them in, but the law, looking to the convenience of the greater number, prohibits any such use of the public streets. The old cases said the king's highway is not to be used as a stable yard, and a party cannot eke out the inconvenience of his own premises by taking in the public highway. These general statements are familiar and borne out by the cases cited.[8]

Judge Peckam reversed the judgment of the Supreme Court (the lower court) which had affirmed a judgment in favor of the defendant.

Section (d): Traffic and Traffic Congestion

Prior to World War II the volume of traffic on the roads seemed to be of little concern to the nation, except possibly for a very few large metropolitan centers. But since the conclusion of World War II there seemed to be figuratively an "explosion," of the automobile population.

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[8] Ibid., 535, 536.
Cases cited in this case:
King v. Russell, 6 East, 427 (1805).
Rex v. Cross, 3 Camp. 224, 226, 170 Eng. Rep. 1362, 1363 (1812).
Rex v. Jones, 3 Camp. 230.
People v. Cunningham, 1 Denio, 524.
Davis v. Mayor, etc., 14 N. Y. 506, 524.
Callanan v. Gilman, 107 N. Y. 360.

With this great increase of automobiles the roads and streets of the cities, towns, the suburban areas and the country as a whole felt this impact of traffic.

The factors influencing the increase in the volume of traffic on the streets are many, as previously stated in Section (a) of this Chapter. The intensive use of the automobile by individuals has evolved together with the development of land uses that depend directly upon the motor vehicle for their existence, and which have been provided purposely for the convenience of the customer. These land uses, among others, are drive-in theaters, drive-in banks, drive-in restaurants, shopping centers of various types, and other types of drive-in facilities.

Because more parking facilities have been provided and because reaching the older developed portions of existing cities has been made easier, the motor vehicle has been attracted to cities even more than before. The establishment of ribbon commercial developments along the major roads and streets can be directly attributed to traffic.

As the people realize they can live farther out from the city and still easily get to the core of the city on newly constructed expressways, more people tend to live

at a greater distance from the core of the central city. Eventually "bedroom" communities develop. These communities, developing around all of the larger cities, cause the traffic into the central city to become more voluminous, thus causing congestion of the streets.

It is well known that important highways and streets which carry the greater amount of the traffic volume, attract business and commercial establishments. One reason seems to be that the owner of land bordering heavily traveled streets will usually say that the only logical--or best--use is for business or commercial use. The writer has often wondered if it is seriously realized that for every business, commercial or other intensive use more drives, parking, servicing and delivering and other facilities have to be provided in excess of those required for residential uses. Incidentally intensive use is a land use which attracts large numbers of people and/or automobiles, more than a residential use. These needed facilities result in more points of conflict. "Points of conflict" are the cross-overs of vehicles in the traffic flow thereby creating more possible points in which an accident can occur. The number may seem negligible for each individual parcel of intensively used land. When these intensive uses

are continually increased up and down the streets, serious traffic congestion problems are created.

The altogether too-common practice of allowing business, commercial, and industrial uses to develop along the major network of streets has caused a dangerous situation. With the development of these intensive uses, the street and highway speed has been slowed considerably. This slowing of traffic creates irritation and dissatisfaction in the driver of the motor vehicle, and then he is tempted to be a little less careful and becomes restless; therefore he tries to find short cuts--and these short cuts eventually are through the residential areas thereby causing an increase of traffic in these once quiet areas. As a result, there may soon be a request for rezoning of the land bordering on these heavily traveled residential streets because of the deterioration, or traffic congestion, and then the whole cycle begins over again.

The development of these intensive uses along the streets and highways is known as "strip commercial," or "ribbon commercial," or "business strips," or by other similar nomenclature. It may be pointed out here that the expressways and limited access highways have prohibited or

limited the egress and ingress upon them and are therefore limiting the land use adjacent to them.

Another effect that traffic and congestion have upon land use relates to the value of the land adjacent to certain streets and highways. Land tends to produce more income for the owner if he can sell his land for or if he can use it for commercial purposes than if it is used for residential purposes. A major factor that usually makes these properties low in residential value is of course--traffic. The land along the major streets is usually more desirable, hence more valuable, for commercial or other types of intensive uses than it is for residential uses. Will this mean that all of the streets, just because they are heavily traveled, have to be turned into "strings," of land uses which create far greater traffic problems by increasing the volume of traffic and increasing the traffic congestion?

What are some of the possible ways or solutions that can be applied toward alleviating this rapidly expanding problem of traffic congestion? Providing expressways and limited access highways, widening the streets, and creating one-way traffic flow, among other things, can afford some

temporary relief. In recent years and in most American cities some provisions have been made, some construction and planning have been done; some have helped and some have failed. As streets are widened and new thoroughfares are constructed in urban areas, there always seems to be created an immediate increase of automobile traffic and the resulting congestion within these areas. Because the new or easier means of access had been designed and built to the central part of the cities to relieve traffic congestion, the resultant impact of additional traffic creates additional parking problems, chokes up the streets again, and creates more congestion; the municipality finds itself in the same predicament as when it started. This sequence can turn into a vicious cycle as pointed out in 1935 by Mr. Robert Whitten when he said in a discussion that

> The motor age has also created the need for modern highways or expressways. The type and volume of present-day traffic require different highway facilities from those adequate and suitable in former days. It is now recognized that every large metropolitan community needs a limited number of expressways and parkways, and that these are necessary not only to prevent congestion and the slowing down of the business and life of the community, but in order to prevent the blighting of the residence sections.
>
> Many state and county highways constructed during the past ten years have gradually become less and less adequate for the purposes of motor travel because of

> the uncontrolled development of their frontages. Clusters of filling stations and other business uses have created bottlenecks for through traffic. The subdivision of adjacent lands and the opening of numerous intersecting streets have tended to give the former open highway the characteristics and disadvantages of a narrow village street.
>
> In some instances a by-pass highway has been constructed around a community with a view to avoiding the slowing down of traffic incident to a built-up city street. In a few years, however, a shoe-string building development along the new route has created the same undesirable traffic conditions to avoid which was a chief purpose of the construction of the by-pass.[9]

This has been true, and today these roads are being by-passed again. Even some of the highways built since World War II are obsolete today and have to be corrected. Mr. Whitten also said, "The enormous expenditures that are being made for highways cannot be justified unless investments are protected by some continuing control of the uses of the abutting land."[10]

Another way of reducing traffic congestion is to require off-street parking facilities for all businesses, industries, and other major land uses. When the streets are relieved of the necessity of serving as parking lots, more lanes of moving traffic may be opened up. The

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[9] Bassett et al., pp. 133-134.

[10] Bassett et al., p. 134.

establishment of such parking facilities is often effected through zoning ordinances. The regulations are usually based upon the type of use, the square footage of floor area, the number of persons employed, or the number of customers. In addition, due to the increase in the length and width of the automobile there has been a decline in the number of parking spaces in the existing parking facilities in the last ten to fifteen years, thereby causing more cars to be parked in the streets or necessitating construction of additional parking facilities to take care of the loss in parking spaces of the older parking facilities.

In the development of concentrated shopping centers either adjacent to or some distance from the major streets and highways, there may be required a network of traffic routes designed and built specifically to serve the shopping area adequately and efficiently without interfering with the local or residential streets. This will also tend to relieve traffic congestion on streets that are inadequately prepared to handle the increase in traffic caused by the shopping center. There also may be requirements for shopping centers to provide for adequate and sufficient off-street parking spaces that are needed to serve the shopping center and thereby stop forcing the cars

to park on the adjacent streets. Such practices may be causing the decline of the ribbon developments so common in the past, and still being allowed today. In the planning and development of new industrial areas, and the redevelopment of older ones, the provision of off-street parking facilities and off-street loading and unloading areas should be required; and, also, in addition, an attempt should be made at relieving the congestion created by the trucks and employees' automobiles traversing and parking on the local and residential streets through the construction of adequate roads to and from the industrial areas to further relieve traffic congestion.

This section has established that traffic and traffic congestion not only affect the land use bordering on or adjacent to the streets and highways, but has also shown that where heavy traffic and congestion occur, the streets and highways eventually become obsolete as avenues serving as adequate transporation routes. The streets that have heavy traffic and congestion usually affect the use of the land in an undesirable way. By this it is meant that usually a more intensive land use will develop thus adding more traffic and congestion to the heavy traffic and congestion that is already existing. When this traffic

and congestion becomes so great as to decrease the actual effective use of the street for travel, remedial corrections have to be made. If when the remedial corrections are made, and there is not adequate regulation of the adjacent land uses, the cycle of traffic and congestion will repeat itself again.

Section (e): Summary

The advent of the automobile provided the nation with a problem that has been steadily increasing. In the last quarter century the automobile has had an influence upon the development of the municipalities far beyond the dreams of man at its first appearance. Within the last decade the municipalities have been experiencing such an increase in traffic and its resultant congestion that they are feeling the effects in many ways. The development of land uses bordering on the streets and highways has been influenced by the motor vehicle. The traffic and congestion on the roads and streets has been increased by the land use adjacent to these roads and streets.

Therefore, there are direct relationships between traffic congestion and land use. One of the factors that can be controlled is the land use. Land use can be

controlled by the zoning ordinances of the municipalities. By providing for adequate regulations and provisions through zoning ordinances, specific measures can be provided that can be applied to the land use which can tend to relieve traffic congestion. Notably among these measures can be the adequate provision for off-street parking facilities, for limiting the egress and ingress to and from the streets, for limiting of the size and use of the structures, and for providing the means and the powers whereby the municipalities have the authority and the legal instruments to accomplish what is deemed necessary to help relieve congestion in the streets.

The right to zone, to regulate, and to enforce adequately prepared zoning ordinances is granted to the municipality through the zoning enabling acts which have been enacted by the legislatures of the various states. These acts, among other provisions, set forth the purposes of zoning, which are the basis for the preparation and presentation of zoning cases in the courts.

As a very simple statement of land use and traffic congestion relationships the following may be offered:

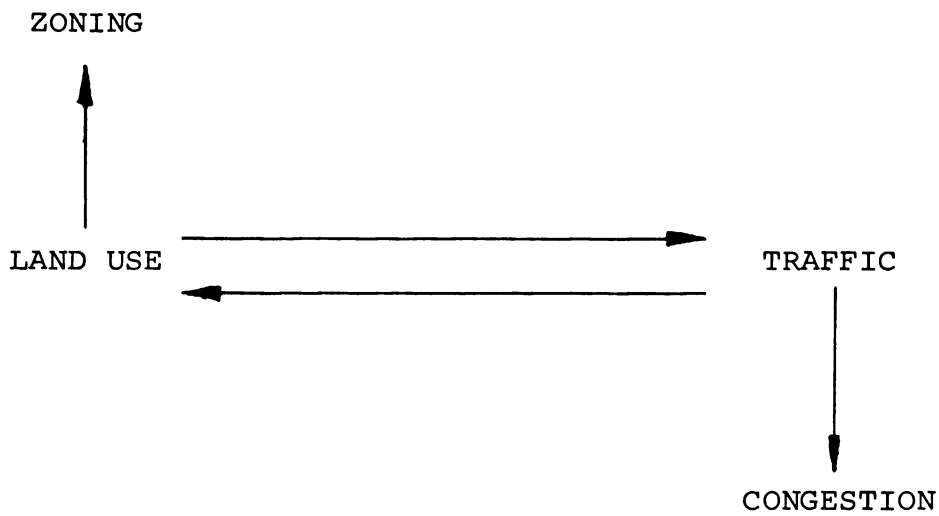
(1) Zoning controls land use,

(2) Land use affects traffic,

(2A) Traffic affects land use,

(3) Increased traffic increases congestion.

The following diagram may show this more clearly.



# CHAPTER II

## LEGISLATIVE PROVISIONS--

## ZONING ENABLING ACTS

### Section (a): Résumé - Discussion

The Zoning Enabling Acts are acts that provide for the establishment of districts or zones in municipalities within which the use of the land and structures, the height, the area, the size and the location of buildings, among other things, may be regulated by ordinance. These acts will usually state in some way that such regulations must be made in accordance with a plan designed to lessen congestion of the public roads and streets.

When and where did the first Zoning Enabling Act originate? In 1924 the United States Department of Commerce prepared a Standard State Zoning Enabling Act, which was revised in 1926.[11] It was generally followed slavishly in the preparation of the Acts of the States.

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[11] U. S., Department of Commerce, Advisory Committee on Zoning, A Standard State Zoning Enabling Act (Revised edition; Washington D. C.: U. S. Government Printing Office, 1926).

Mr. Herbert Hoover, then Secretary of the Department of Commerce, in his Foreword in the "A Standard State Zoning Enabling Act," said:

> The importance of this standard State zoning enabling act can not well be overemphasized. . . . The urgency of the need for such a standard act was at once demonstrated, when, within a year of its issuance, 11 States passed zoning enabling acts which were modeled either wholly or partly after it. (By 1925 the following 19 States had used the standard act wholly or in part in their laws: Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Oklahoma, Pennsylvania (sic.), Rhode Island, South Carolina, Utah, and Wyoming.) Similar acts have been introduced in four other States, with the prospect of more to follow.
> * * *
> In this rapid movement the fundamental legal basis on which zoning rests can not be overlooked. Several of our States, fortunately, already have zoning enabling acts that have stood the test in their own courts. This standard act endeavors to provide, so far as is practicable to foresee, that proper zoning can be undertaken under it without injustice and without violating property rights. . . .[12]

In 1935 Messrs. Bassett and Williams prepared a Model Municipal Zoning Enabling Act.[13] It was based upon the Standard State Zoning Enabling Act and also bears certain similarities to the then existing Zoning Statutes of the State of New York. Pertinent excerpts from this later Model Act follow:

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[12] Ibid., p. iii. (Foreword by Herbert Hoover.)

[13] Bassett et al., pp. 31-38.

# MUNICIPAL ZONING ENABLING ACT[14]

Title.
AN ACT in relation to the regulation of the height, bulk, and use of buildings and other structures; the use of lands; and the density of population in municipalities.

SECTION. 1. GRANT OF POWER. For the purpose of promoting health, safety, morals, or the general welfare of the community, the legislative body or every municipality is hereby empowered to regulate and restrict. . . .

SEC. 2. DISTRICTS. For any or all of said purposes the local legislative body may divide the municipality into districts . . . and within such districts it may regulate and restrict. . . . All such regulations shall be uniform for each class or kind of buildings and for the use of land throughout each district, but the regulations in one district may differ from those in other districts.

SEC. 3. PURPOSES IN VIEW. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; [emphasis supplied] . . . Such regulations shall be made with reasonable consideration, among other things, of 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.

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[14]The names given to local governments in the laws of the different states vary. Besides various types of municipalities, the Zoning Enabling Act may refer to counties, townships, or other larger political units and, the proper wording in any given state is left to the local drafters. There are several portions of this Model Act, by Bassett and Williams, in which wording has been changed and new words or phrases added which were not in the Standard State Zoning Enabling Act.

The other sections concern the method of procedure, changes, zoning commission and the board of appeals, and the final section concerned conflict with other laws. One of the sections concerned enforcement. That section is:

> SEC. 8. ENFORCEMENT AND REMEDIES. The local legislative body may provide by ordinance for the enforcement of this Act and of any ordinance or regulation made thereunder. . . .

One of the purposes of zoning as stated in the Acts which has been consistently emphasized throughout this paper is to lessen congestion in the public roads and streets. Also one of the regulations of the acts is to regulate the use of lands--or land uses. Therefore, putting these two statements together, there must have been some indirect and unforeseen correlation, and evidence seen, in the traffic congestion and land use relationships at the time the acts were formulated and enacted by the states in general, as the majority of the states have included the purpose in some manner in their respective zoning enabling acts. The purpose is also incorporated in the zoning ordinances in general, which have been adopted by the various types of local governmental units in many instances.

The zoning enabling acts of all 50 states have been investigated to see if the purpose of lessening congestion

in the public streets was incorporated. Enabling acts for all types of governmental units of each State were investigated as thoroughly as possible. These are units such as city, county, borough, town, township, municipality, parish, population division or other types of division or governmental breakdown.

The results of this investigation into these Zoning Enabling Acts are as follows: Of the 50 states, 44 states and the District of Columbia have the purpose to lessen the congestion in the public streets--or a similar phrase--included in one or more of their Acts. Six of the states did not have the purpose included in any of their Acts:

Alaska
Arizona
Arkansas
California
Hawaii
Ohio

Two of the states above, Arizona and Arkansas, were included in the above list because the meaning of the enabling acts was not clear to the author.

In Table I, on pages 33 and 34, is a list of all the states and the results of the investigation in more detail. The enabling acts are listed under three major divisions, to simplify categories. For example, in a state

TABLE I

ANALYSIS OF ZONING ENABLING ACTS BY STATES

Y = Yes
N = No
? = Interpretation
- = No act or none found

| State[15] | Municipality | Township | County |
|---|---|---|---|
| Alabama | Y | N | N |
| Alaska | N | - | - |
| Arizona | N | N | ? |
| Arkansas | ? | N | ? |
| California | N | - | - |
| Colorado | Y | - | N |
| Connecticut | Y | - | - |
| Delaware | Y | - | - |
| District of Columbia | Y | | |
| Florida | Y | - | - |
| Georgia | Y | - | - |
| Hawaii | N | - | - |
| Idaho | Y | - | Y |
| Illinois | Y | - | Y |
| Indiana | Y | - | N |
| Iowa | Y | - | Y |
| Kansas | Y | Y | Y |
| Kentucky | Y | - | Y |
| Louisiana | Y | - | ? |
| Maine | Y | - | - |
| Maryland | Y | - | Y |
| Massachusetts | Y | - | - |
| Michigan | Y | Y | Y |
| Minnesita | Y | Y | N |
| Mississippi | Y | - | Y |
| Missouri | Y | - | Y |
| Montana | Y | - | N |
| Nebraska | Y | - | N |
| Nevada | Y | - | Y |
| New Hampshire | Y | - | - |
| New Jersey | Y | - | - |
| New Mexico | Y | - | Y |

TABLE I.--Continued

| State | Municipality | Township | County |
|---|---|---|---|
| New York | Y | - | - |
| North Carolina | Y | - | - |
| North Dakota | Y | Y | - |
| Ohio | N | N | N |
| Oklahoma | Y | - | Y |
| Oregon | N | - | Y |
| Pennsylvania | Y | Y | Y |
| Rhode Island | Y | - | - |
| South Carolina | Y | - | Y |
| South Dakota | Y | - | ? |
| Tennessee | N | - | Y |
| Texas | Y | - | - |
| Utah | Y | - | Y |
| Vermont | Y | - | - |
| Virginia | Y | - | Y |
| Washington | Y | - | Y |
| West Virginia | Y | - | - |
| Wisconsin | Y | - | N |
| Wyoming | Y | - | N |

[15]Results based on latest information on Enabling Acts on file at the Michigan State Law Library, Lansing, Michigan, April, 1960.

in which the enabling act is for counties containing a city over 70,000 population, this is listed under counties in general (other county divisions of that state may or may not have the purpose included in their acts). This procedure is also used for cities whether they are listed as 1st or 4th class, as in some states, or by population size (one type of city classification may have the purpose included in its act but another city classification of the same state may not have the purpose included). The same procedure again applies to the township division.

Section (b): Summary--General Comments

Throughout the country, zoning enabling acts, besides giving the municipality the right to regulate and restrict land uses through creating and enforcing zoning ordinances, have been enacted to give the local governmental units and the judicial systems of the states something upon which they could rely.

Thus we see that a beginning has been made in legislative measures by which we can hope to cope with some aspects of the traffic problem. Practically every state has recognized, to a limited degree, that traffic congestion problems can be directly associated with the use of

the land. Whether or not these enabling acts have to be supplemented with further legislation in order to give the zoning ordinances more or additional regulatory and provisional powers remains to be seen.

In the states that have the purpose of "lessening congestion in the public streets and highways" included in their enabling acts, has this provision been used effectively in the various courts when a zoning case comes before them? Have the courts and the municipalities been more or less "skipping" over this one important way in which they can attempt to control the increase in our already serious traffic congestion problems? Should more strict and enforceable provisions be provided for in the enabling acts of the states? Should our judicial systems be given more definite and spelled out legislative means and provisions upon which they can provide a sound basis for their decisions? Should rules and regulations governing zoning--land use--and traffic relationships be more precise and definitive?

In the following chapters an attempt will be made to show reasons and the basic fundamentals in the available subject matter that can be used in providing an answer to the above questions. Court cases regarding zoning will be

used, together with analyses, discussion, and decisions of the cases forming the basic portions therein. An attempt will be made to answer the preceding questions by examining the judicial reasoning presented in the court cases cited.

# CHAPTER III

## STATES SELECTED FOR STUDY--RESEARCH DATA

In selecting the states for this study it was determined first that they should represent the three major divisions of the country--the East, the Midwest, and the West. Then it was determined that the most populated state of each of the above divisions should be included so New York represents the East, Illinois represents the Midwest, and California represents the West. Incidentally these three states also contain the largest metropolitan centers and the three largest cities in the United States, according to the preliminary 1960 census figures.

The East, being the most densely populated area of the country, was felt to be the division that should be represented by the most states. Therefore four states, including New York, were selected from this area. Because the Midwest is second in overall population, two states, including Illinois, were selected from this division. The West is represented in all areas of consideration only by California, which was also chosen for the reason that it does not have "the purpose," on which this thesis is based, included in its zoning enabling acts. Hence it is deemed

to be pertinent as a comparison state with the states that do have "the purpose" included in their enabling acts.

The states finally selected for study were:

1. California
2. Connecticut
3. Illinois
4. Michigan
5. New Jersey
6. New York
7. Pennsylvania

During the past several years a very large, but undetermined number of books, magazines, pamphlets, and various other types of printed matter were used in compiling research data. The major portion of the research centered on volumes concerning various types of court cases from the selected states.

Of the well over 2,500 court cases that were read or reviewed, over 300 have been reported on and are listed in Appendix II, beginning on page 229. The cases range in importance from those with very minor data concerning traffic congestion, to those which have very pertinent data in reference to the problem of land use and zoning to traffic congestion relationships.

This paper is concerned mainly with the zoning cases in which the court, in its discussion or in its opinion of the case, and in some instances in its reaching

a decision, had involved traffic or traffic congestion in its deliberations. These cases will be, for the most part, from the appellate courts; the trial court decisions that have not been appealed have been practically eliminated from this study, mainly because the case proceedings are not normally transcribed and are not readily available. The cases are usually transcribed (Michigan in particular) only when the case goes to a higher court. The decisions were, in many instances, scrutinized as to interpretation of the purposes as stated in the zoning enabling acts.

There is always the possibility that some of the cases reported on as of minor importance for reference material, may have had the problem of traffic and congestion brought up to a greater degree in the lower courts; this fact can only be determined by the reviewing of the entire case proceedings from the local courts through the high court. Therefore, in all cases referred to here, the decisions of the highest court involved were utilized. The evidence for the higher court decisions is taken from the proceedings of the lower courts and sometimes is supplemented by additional information acquired prior to or during the higher court deliberations.

The periods of time included in the data of this study were from various years of 1940-1945 up through various dates of 1960, unless otherwise noted. The states and the courts of these states that were covered are listed in Appendix I, pages 226-228.

New Jersey contributed more cases than any of the other states. The reason for selecting the cases reported was that they include material regarding traffic either of minor or of major importance in relation to this study. Minor importance may be the casual mention or citing of the zoning enabling act in regards to purposes, or the citing of the purposes of zoning including the purpose to "lessen congestion in the public roads and streets," or one brief mention of some phase of traffic. The major importance may include the discussion of traffic counts, intersection discussion, effect of traffic on adjacent property, noises, nuisances of traffic, or description of the surrounding streets and other phases of traffic and congestion.

The states in order of the number of court cases reported are as follows:

| | |
|---|---|
| New Jersey | 84 cases |
| Illinois | 68 cases |
| Pennsylvania | 50 cases |
| Connecticut | 44 cases |
| Michigan | 33 cases |
| California | 21 cases |
| New York | 13 cases |
| Total | 313 cases |

Also a total of six cases was reported from the states of Maryland, Florida, Texas, and Oklahoma.

The case listing in Appendix II presents the date of decision, volume number or citation, and the plaintiffs and defendants involved. It is surprising to find New York in last place in the above listing as New York had the purpose of lessening congestion in the public streets included in some of its zoning enabling acts. California does not have the purpose included in its enabling acts, yet more cases are reported than for New York. The reason that New York has the least cases reported could be that the local governing bodies or the local court satisfied the problems of traffic and congestion in its deliberations and decisions if it was brought up and therefore, does not become a factor in the upper court's deliberations and decisions.

# CHAPTER IV

## ANALYSIS AND DISCUSSION OF COURT CASES BY STATE OR STATES

### Section (a): General Research Findings

One result of the research is an indication that a peak may have been reached in the frequency of zoning cases in which traffic congestion, some phase of traffic involvement, or the purpose sought* and land use relationships were used in the opinions of the courts. Of the seven states studied, California, Connecticut, Illinois, and New York reached peaks in 1956. Michigan and Pennsylvania reached peaks in 1957. New Jersey reached its peak in 1952, four years before the majority of the states studied; the only year that approached 1952 was 1956, when the next highest number of cases was reported.

The entire number of cases, arranged by years reported and states, is shown in Table II, on page 45. Figure 1, on page 46 presents the same information in graph form. Figure 1 also establishes that the peak year

*The phrase "to lessen congestion in the public roads and streets," when not mentioned in its entirety or in part, will be referred to as the purpose or the purpose sought.

for the total number of court cases reported for all the selected states was reached in 1956, and that there has been a steady decline in the totals since that date.

Categories of land use changes were assigned the following codes for use in analysis: the terms of which are explained on pages 44, 47 and 48.

| Case Code | Land Uses |
|---|---|
| A | Residential - Residential |
| B | Business and Commercial - Business and Commercial |
| C | Industrial & Manufacturing - Industrial & Manufacturing |
| D | Residential ⇌ Business and Commercial |
| E | Residential ⇌ Industrial & Manufacturing |
| F | Business and Commercial ⇌ Industrial & Manufacturing |
| G | Residential ⇌ Gas Stations |
| H | Business and Commercial ⇌ Gas Stations |
| I | Industrial & Manufacturing ⇌ Gas Stations |
| J | Res., Bus. & Comm., Industrial & Manufacturing ⇌ Private, Public, and Quasi-Public Uses |
| K | Res., Bus. & Comm., Industrial & Manufacturing ⇌ Parking Facilities, All Types |
| L | Unclassified (Airports, etc.) |

The following explanations apply to the above listing.

1. Items A, B, and C refer to zoning or land use changes from a more restrictive use to a less restrictive classification within the same general classification,

TABLE II

NUMBER OF CASES REPORTED FOR THE SELECTED STATES FROM 1944 TO 1959

| Year | Calif. | Conn. | Ill. | Mich. | N. J. | N. Y. | Pa. | Total |
|---|---|---|---|---|---|---|---|---|
| 1944 | 0 | 0 | 0 | 2* | 1 | 0 | 0 | 3 |
| 1945 | 0 | 0 | 1 | 0 | 3 | 0 | 0 | 4 |
| 1946 | 0 | 1 | 0 | 1 | 3 | 0 | 0 | 5 |
| 1947 | 0 | 3 | 3 | 2 | 3 | 0 | 0 | 11 |
| 1948 | 1 | 1 | 1 | 0 | 8 | 0 | 3 | 14 |
| 1949 | 2 | 3 | 4 | 1 | 7 | 0 | 1 | 18 |
| 1950 | 1 | 1 | 2 | 1 | 3 | 0 | 2 | 10 |
| 1951 | 1 | 2 | 4 | 1 | 2 | 1 | 1 | 12 |
| 1952 | 0 | 5 | 0 | 0 | (12) | 0 | 3 | 20 |
| 1953 | 1 | 4 | 6 | 3 | 2 | 1 | 2 | 19 |
| 1954 | 2 | 4 | 6 | 2 | 8 | 3 | 6 | 31 |
| 1955 | 2 | 4 | 8 | 2 | 7 | 1 | 5 | 29 |
| 1956 | (5) | (6) | (12) | 3 | 9 | (4) | 5 | 44 |
| 1957 | 1 | 1 | 7 | (10) | 5 | 1 | (10) | 35 |
| 1958 | 4 | 5 | 8 | 2 | 4 | 0 | 7 | 30 |
| 1959 | 1 | 4 | 6 | 3 | 7 | 2 | 5 | 28 |
| Total | 21 | 44 | 68 | 33 | 84 | 13 | 50 | 313 |

*Michigan cases listed under 1944 include years 1940-1944.

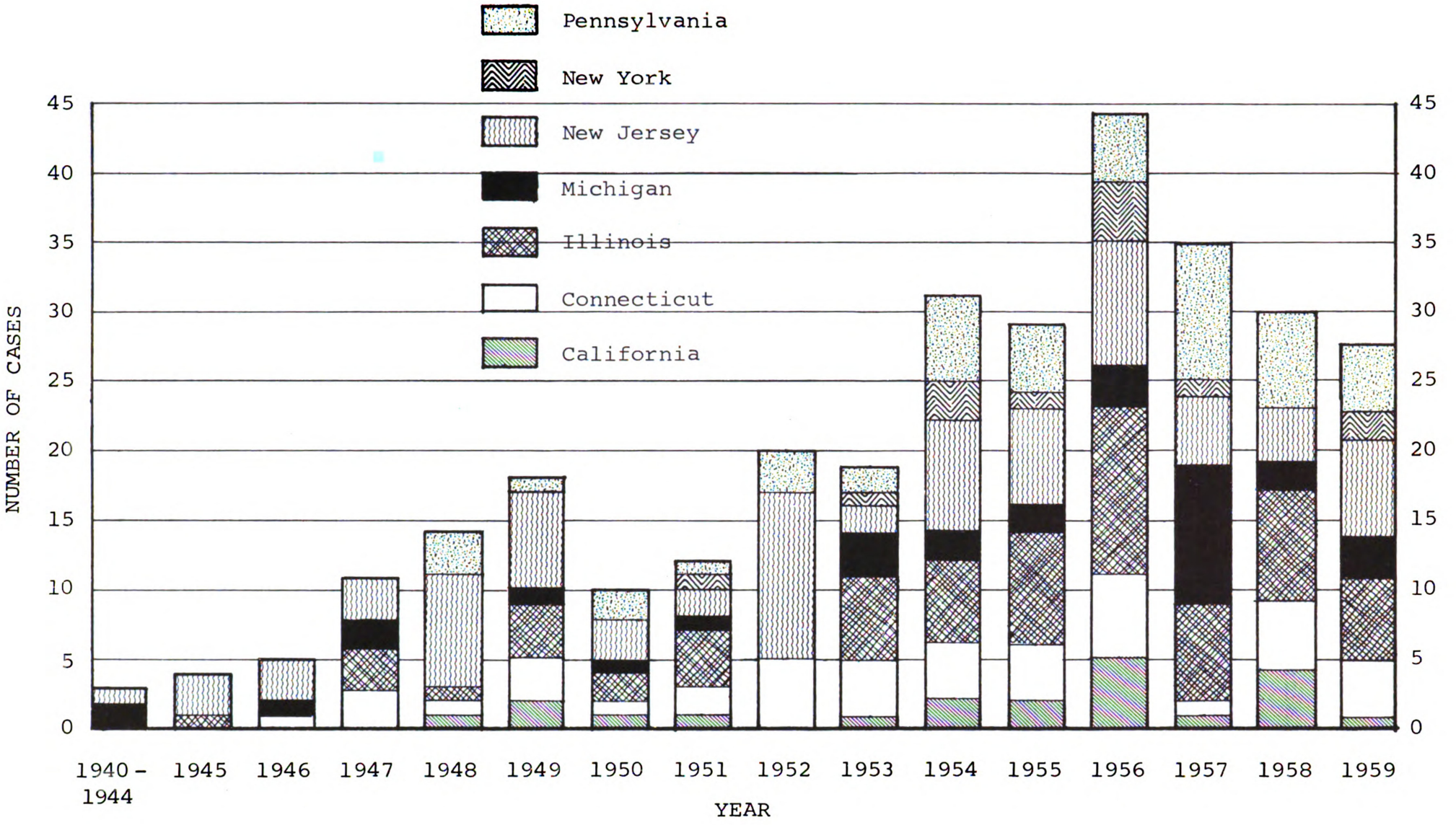


Fig. 1. Total Number of Reported Cases by Years--1940-44 to 1959 for the Selected States

or vice versa. For example, Residential - Residential may mean (1) change of zone or use from single family to a multiple family, or vice versa; or (2) removal of restrictive zoning measures, such as height, ground coverage, or square footage of lot or building area. Agricultural and farming zones, and areas of open residential use are included in the residential category.

2. In D, E, and F, the double arrow means that (1) the case involves a change from a more restrictive use to a less restrictive use of a different type of use classification, or vice versa; or (2) the case involves change from a more restrictive use to a less restrictive use, or vice versa, and a subsequent attempt to nullify the change.
3. Items G, H, and I are used because of the ever increasing number of gas stations being built in all types of land use classifications zones. These cases are ones in which the gas station is the major part of the land use in question. The double arrow means changing the zone from one use to another use and a subsequent attempt to nullify the change.

4. Item J refers to churches, public and private schools, private clubs, public and private swimming pool facilities, and other types of public and private land uses in which numbers of persons are likely to assemble.
5. Item K is also treated separately because of the increase in the number of parking facilities, whether it be a parking lot or a parking structure. If the parking facility was in conjunction with a business or other use, in which the parking facility was secondary, the case is listed under the specific land use categories above.
6. Item L the "unclassifiable" cases are ones in which there were peculiar circumstances which prevented the case from being listed in one of the other 11 categories or was another type of use, such as an airport zone. Also other types of cases, such as nuisance cases, are in this category, but are reported because they had the subject of zoning and/or land use brought up and there was some reference to traffic and congestion.

More cases evolved out of a zoning change from Residential ⇌ Business and Commercial, D, than evolved out of any other change, embracing approximately 33% of the court cases reported.

The second highest of the types of changes was of the A, Residential - Residential type; this group included approximately 14% of the total cases reported.

The third highest of the 12 types of categories was E, with 32 cases reported, Residential ⇌ Industrial and Manufacturing, and then followed B, with 31 cases reported, Business and Commercial - Business and Commercial, or approximately 10% each of the total number of cases reported. Also the J classification had a total of 31 cases reported.

The top five categories accounted for over 76% of the total number of cases. These findings may indicate that these five categories may need more thorough study by the various legal authorities to establish possible reasoning in writing, interpreting, and making decisions regarding zoning ordinances. Possible further expansion upon traffic and traffic congestion is needed in the enabling acts and the zoning ordinances to assist all legal authorities in their decisions. This would also aid

the courts in their determination in explaining and providing them with a more sound factual basis as to when, where, how, or to what extent traffic and the resultant congestion factors should be used in determining their decisions as to whether or not a specific land use increases traffic and congestion. The remaining categories are not to be ignored either, even though they represent a minority of the zoning change requests.

In Table III on page 51, is shown the general category breakdown of all the cases reported for the various states studied. The codes as used on page 44 and in Table III, on page 51, are also used in Appendix II to signify cases fitting this particular category of change classifications.

At the bottom of Table III are listed four additional states and the categories for the cases of these states. These special states are reported because the author felt that for a comparison, other court decisions would broaden the scope of action in certain classifications and therefore show what some other state court actions have been.

TABLE III

CATEGORY OF CASES AS REPORTED BY THE SELECTED STATES

| Type Change--Zone or Uses Only | Code No. | Calif. | Conn. | Ill. | Mich. | N. J. | N. Y. | Penna. | Total |
|---|---|---|---|---|---|---|---|---|---|
| Residential - Residential | A | 3 | 1 | 11 | 4 | 15 | 1 | 8 | 43 |
| Business & Commercial - Business & Commercial | B | 1 | 6 | 2 | 4 | 11 | 1 | 6 | 31 |
| Industrial & Mfg. - Industrial & Mfg. | C | 1 | - | - | 1 | 1 | - | 2 | 5 |
| Residential ⇌ Business & Commercial | D | 4 | 14 | 25 | 15 | 26 | 4 | 14 | 102 |
| Residential ⇌ Industrial & Mfg. | E | 4 | 5 | 12 | 5 | 4 | - | 2 | 32 |
| Business & Commercial ⇌ Industrial & Mfg. | F | 1 | 4 | 2 | - | 2 | - | 1 | 10 |
| Residential ⇌ Gas Stations | G | 1 | - | 6 | 1 | 5 | - | 2 | 15 |
| Business & Commercial ⇌ Gas Stations | H | - | 5 | 2 | - | 1 | 1 | 2 | 11 |
| Industrial & Mfg. ⇌ Gas Stations | I | 1 | 2 | - | - | 1 | - | - | 4 |
| Res., Bus. & Comm., Industrial & Mfg. ⇌ Private, Public, and Quasi-Public Uses | J | 4 | 5 | 5 | - | 7 | 3 | 7 | 31 |
| Res., Bus. & Comm., Industrial & Mfg. ⇌ Parking Facilities, All Types | K | 1 | 2 | 2 | - | 5 | 3 | 4 | 17 |
| Unclassifiable (Airports, etc.) | L | - | - | 1 | 3 | 6 | - | 2 | 12 |
| Totals | | 21 | 44 | 68 | 33 | 84 | 13 | 50 | 313 |

Special cases reported: Maryland 1D, 1E and 1G; Florida 1A, Okla. 1F; Texas 1A 6

GRAND TOTAL . . . . . 319

## Section (b): Analysis and Comparison of Cases by Categories

In the analysis and comparison of the various categorical listings, the following examples, one case from each of the selected states, is used where applicable. The cases used here are not, in most instances, the only ones reported for these states; Appendix II gives a complete listing of other cases within all analysis categories. The states, other than the selected states, will be used where appropriate, but not in all categories.

Section 1: Category A Residential - Residential.

In a 1952 Connecticut case (56)* concerning the contemplated construction of a multiple dwelling unit of 195 families on property which was vacant, the court of common pleas reversed the action of the board of zoning appeals granting a special exception. The land in question was in a multi-family dwelling zone, and the dwellings were limited to not more than eight families per unit. To build a unit which could house over eight families the zoning ordinance required a special exception by the board. The plan commission recommended against the granting of the special exception.

The upper court in sustaining the appeal, referred to the subject of traffic and congestion in several instances. The court said that:

> the board must not only find the existence of these requirements listed previously in the case but also that the proposed building, structure or use of the land (a) [w]ill not create or aggravate a traffic, . . .hazard; (b) [w]ill not block or hamper the town pattern of highway circulation; . . . The board in its decision ruled they "are permitted uses and must be granted" . . . "almost, as it were, by rubber-stamp approval, unless it is shown that they should be denied

---

*Case No. - as here 56 - refers to Case No. 56 in Appendix II and no citations will be made in the text, of these cases.

> because of the existence of certain hazards or nuisances. In cases dealing with permitted uses the burden of proof is on those who claim that they should not be permitted. Those who assert there is a traffic hazard of fire hazard have the burden of proving it. . . ."
>
> Again in this opinion the board states that its approval of the application "would merely be a determination that none of the hazards and nuisances to which our consideration of the case is confined by the regulations" are found to exist. Thus its consideration was limited to the traffic angle required . . . [a section of the ordinance was given here] in view of its holding "that the special exception should be granted, and more particularly that proof as to traffic and fire hazards is insufficient to justify our withholding permission."

The court determined that the action of the board in granting the special exception was arbitrary, illegal, and in abuse of its discretion.

Did the court recognize the effect that such a large multi-family dwelling could have upon the traffic and congestion on the streets in the immediate vicinity of the property in question? In an indirect way, probably it did, even though it did not specifically enlarge on the subject of congestion. The board evidently seemed to think that the congestion and traffic increase was not a serious problem. The board may have needed more sound requirements and standards that could be used in declaring where, when, and how a point is reached in determining when traffic and

congestion will be influenced to a degree that the streets would become stagnated due to the parking along the streets by the residents, increase of regular and commercial traffic servicing this large apartment unit, and general overall effect of the surrounding area.

In an Illinois case (73), decided in 1951, the supreme court affirmed the circuit court's ruling declaring a zoning ordinance unconstitutional and void. This case concerned the restrictive regulations of a multiple-family zone. The height was changed from 50 feet to 35 feet, and the square footage per family was changed from 450 feet to 1,000 square feet per family. The plaintiffs wanted the lesser restrictive regulations made applicable to their property, thus declaring the latter ordinance void. The property in question consisted of four parcels of real estate lying vacant. The village and the plaintiffs both cited one case, and the plantiffs cited a second case, which are also reported here, as (65) decided in 1948 and (66) decided in 1949. The court said that

> In both the Quilici and the Joseph Lumber Co. cases, the evidence disclosed heavily travelled streets with no buildings whatsoever along the travelled highways.
> . . .
> The evidence here clearly indicates that the property in question is located on the western fringe of Oak

> Park on one of the most heavily travelled streets in the Village. . . .
>
> The expert testimony on behalf of the Village was that there would be an increase, not only in congestion on the highways, [here other things mentioned] . . . The trial court below pointed out that the statements in this regard, in an attempt to satisfy the public welfare test, would apply with equal force to 3-story buildings anywhere in the entire municipality. Three-story buildings with multiple occupants increase the burden of the water supply of the sewage passages, and of vehicular traffic.

Evidently the court in this case felt that the increased traffic and congestion caused by the lesser restrictive regulations, thereby allowing more families in a smaller area, was not of enough consequence to warrant the more restrictive regulations, thereby reducing the number of families in the same area. The court could have looked further than just at the property in question. Increasing the number of families per acre on one property may not seem detrimental, but allow the same conditions on numerous other properties in the same general area and the traffic will increase and congestion will eventually result and this congestion will increase to a point where it will become harmful to the neighborhood unless adequate provisions are made.

There are several other Illinois cases which have good material in relation to traffic congestion and this category; they are listed in Appendix II.

In 1944 a Michigan case (128) concerned the construction and operation of a trailer camp or park. The trailer camp had already been under construction when this case went to court. The property in question was located in a residence zone district which was the most highly restricted residential zone. The property was abutted on one side by a trailer camp operated by the city. Four days after construction began, a newly adopted zoning ordinance which came into effect would have prevented the use of the property as a trailer park. Prior to this ordinance there was no local ordinance prohibiting the establishment of a trailer-coach park on the property in question. Adjacent property owner filed a bill of complaint to restrain defendant from constructing or maintaining a trailer camp on his lots. The city intervened in the case as a party plaintiff. The trial court had entered a decree which permanently enjoined the defendant from constructing or maintaining the trailer camp on the property in question, thereby holding that the trailer camp would violate the city zoning ordinance and holding that the ordinance prohibiting the trailer camp was valid. The defendant asked for a decree dismissing the bill of complaint in the supreme court. The defendant also claims,

among other things, that the ordinance was arbitrary, capricious, and unreasonable in forbidding the use of his property as a trailer camp.

The supreme court, in its opinion, discussed the evidence presented in the trial court, including a reference to parking of automobiles. There was a public bathing beach across the street from the property in question, and it was said that

> . . .During the summer months the bathing beach is used in varying numbers, . . .depending upon the weather and the holidays. The bathers park their cars in front of the houses along Conger street and at times park their cars in front of the defendant's premises, sometimes using their automobiles for dressing rooms. On a Sunday afternoon there have been parked at the foot of Lakeview avenue and along Conger street as many as 50 cars. The city has a "Stop" sign at the end of Conger street 50 feet north of the trailer camp, and at this place the cinder drive widens out and forms a turning basin for the beach traffic, using the property in front of defendant's house.

The court had also cited the statute (zoning enabling act) which authorized municipalities to pass zoning ordinances and provided that (L Comp. Laws 1929, §2633 [Stat. Ann. §5.2931])

> Such regulations shall be made in accordance with a plan designed to lessen congestion on the public streets, . . .and shall be made with reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, . . .

The court then referred to its opinion in City of Pleasant Ridge v. Cooper, 267 Mich. 603, which had approximately the same situation as the case here in that the case concerned residential property located not too far distant from a public area (Detroit Zoological Park), which was shown that it too was also visited on Sundays and holidays in the summer by many thousands of people. The court in this case said that

> Zoning regulations, to be valid, must be made in accordance with plan to lessen traffic congestion, . . .and with reasonable consideration to the character of the district, . . .
> Zoning ordinance restricting use of lot to residence purposes held, unreasonable and confiscatory where lot was on boundary of village, on corner of two busy thoroughfares . . . and nearby zoo attracts large crowds on Sundays and holidays making place less desirable for high-class residential purposes.

The court in using the above cited case was comparing the situation with the case here in discussion (128) about the traffic and parking of cars in the streets.

There was no further reference to traffic or congestion in the case. The supreme court said in its decision

> The ordinance before us bears no substantial relationship to the promotion of the public health, . . . Such legislation amounts, in fact, to a capricious invasion of the property rights of the appellee, and as such cannot be sustained.

The court concluded that the ordinance was arbitrary and unreasonable in restricting the property in question solely to a high-class residential purpose. It also said that properly operated trailer camps were not to be classed as nuisances. In view of its conclusion the court said it was not necessary to pass upon other questions raised. The case was remanded for entry of a decree dismissing the bill of complaint.

The subject of traffic and congestion might have been brought up to a greater degree if it had been needed, as there could have been other points brought out, such as the number of cars traveling over the road to the park, future expectation of increase of traffic to the trailer park because of the rather high population density, and so forth. The case here was not decided on traffic or congestion but it was brought up during context of case. Actually this might have been the only solution in this case, as the use had been under construction prior to effective date of the zoning ordinance and thereby should have been allowed to exist as a non-conforming use.

In New Jersey, a case (167) decided in 1947 dealt with the construction of garden type apartment buildings. After the plot plans of the proposed building were submitted,

an amendatory zoning ordinance reclassifying the land to a 1-and 2-family dwelling zone was adopted. The prior ordinance classified the property in question as garden type apartment zone. The property in question abutted upon the easterly side of a heavily traveled highway. The property owners challenged the validity of the ordinance on writ of certiorari.

The court discussion disclosed that the land was located on an avenue which is a heavily traveled highway and the case states as follows that

> Broad Avenue is a heavily traveled highway. A traffic count from 3:00 P.M. to 5:00 P.M. resulted in a count of 1,290 vehicles: . . . The highway is unusual in that it bears the designation U.S. Routes 1 and 9 and State Routes 1 and 5. It is also an important link with U.S. Highway No. 6. The westerly side of the avenue is zoned for business and its entire length on the westerly side is in a transition stage. Obviously, small residential projects would make little return. The most recent improvements on the westerly side of the street have been the building of a garden type apartment and a large restaurant. The area is one of heavy traffic and continuous noise. The property would be best zoned for business an expert testified, but the borough has not grown sufficiently to justify such use. . . . The action of the municipality seems to have been unwarranted. . . . The committee felt that inasmuch as one garden apartment had already come into town that the next garden apartment would severely tax the school facilities, the sewage plant and fire protection service, and that the police force might have to be increased with a further burden on the budget.
> This seems to be specious reasoning. . . .

The court said, "The amendment flouts the mandate of the statute and arbitrarily takes, from prosecutors, property the only use to which it could be economically put." The court in referring to zoning said that "it is no part of zoning to prevent growth." The court decided that the amendment to the ordinance would be set aside.

This case, although it was not decided precisely upon the basis of traffic or congestion problem, is interesting in that it included several other points, heretofore not mentioned: traffic counts, highway designations, and other information.

In a case such as this the traffic and congestion situation is an important factor in determining what uses should be allowed along the highway. In determining what uses should be allowed, maybe certain provisions should be written into the zoning ordinances restricting the number of entrances and exits permitted within a certain distance, thus regulating interference with traffic flow. Parking along the highway is liable to result from a use such as is contemplated here unless drastically restricted. Every effort should be made to minimize the interference with traffic flow and to relieve the congestion caused by the

uses along the highway. Most of the provisions for regulating the items mentioned above can be written into zoning ordinances, except parking prohibitions on the street.

Several other cases listed in Appendix II also concern this category for New Jersey.

A case (244) in New York, decided in 1954, concerned the rezoning of land from a one-family residential district to a multi-family residential classification. Surrounding property owners stated that the rezoning of the land constituted "spot" zoning. The property in question was a part of a country club. The lower court held that the rezoning ordinance was constitutional, and an intermediate court also affirmed the decision.

The opinion of the upper court included, among other things, the plaintiff's statement that the ordinance "would increase traffic congestion in the area." This was the only reference to the subject of traffic and congestion in this case. The court granted a motion to dismiss the appeal.

This case was investigated further out of the author's curiosity. In the two other courts mentioned, one made no mention of traffic or congestion; the other contains very little additional discussion.

An attempt was made here by plaintiffs to nullify a rezoning ordinance by referring to traffic congestion. Maybe if they had delved further into the matter and came up with more definite figures as to traffic volume, effect of multiple-family apartment buildings contemplated by the country club, on parking in the streets, and so forth, they might have had a sounder basis for requesting nullification of the zone change. Traffic and congestion was not in this case a definite factor in the courts' decision, as closely as can be interpreted.

A Pennsylvania case (291) which was before the court in 1954 and again brought to court in 1955 (295) dealt with the contemplated construction of a building containing 54 dwelling units along with an outdoor parking area. The owner had applied for a building permit and a permit for outdoor parking. The zoning division of the department of licenses and inspections granted the permits. The zoning board of adjustment upheld the granting of the permits. Appellants (surrounding property owners) had presented several contentions. One was that the proposed project did not meet certain requirements of the zoning ordinance, such as certain yard requirements, and open air

parking requirements. The property, which was vacant, was in a residential district where new multiple dwelling units were intended. The ordinance provided that "there shall be provided on the same lot parking spaces with adequate access to a street or driveway." In 1954 the court remanded the case for further hearing and consideration. In the 1954 decision the court said:

> A full hearing and a careful study of the facts, and the provisions of the ordinance relating thereto is absolutely essential to a determination of the issues involved. It is apparent from even a cursory examination of the plans that the proposed development, as now planned, could and probably would result in dangerous fire hazards, undue congestion, serious traffic problems, and a possible infringement upon the rights of way held by owners of the properties surrounding this tract of land. The board apparently gave scant, if any, attention to these serious problem.

The case again came to court in 1955, after the zoning board of adjustment again affirmed the action of the zoning administrator. Substantial testimony was heard by the board at the new hearings. The court in its decision again said that

> At its first hearings the zoning board actually ruled out testimony as to the traffic problems. When this court referred the matter back to the board [in 1954], the court pointed out that even a cursory examination of the plans showed that the proposed development, as now planned, could and probably would result in dangerous fire hazards, undue congestion, serious traffic problems. . . .

Then a discussion as to the existing and proposed design of the driveways as to width, radii, lanes, parking spaces, adequacy of parking, construction, access, and many other points followed.

The court said that

> The enabling Act of May 6, 1929, P.L. 1551, and section 1 of the city's zoning ordinance, both state that zoning is "for the purpose of promoting the health, safety, morals, and general welfare of the community." Section 3 of the act expressly provides that zoning regulations "shall be made in accordance with a comprehensive plan, and designed to lessen congestion in the streets, to secure safety from fire, panic and other dangers." The regulations established by our city zoning ordinance are not an end in and of themselves; they exist for the ultimate purposes above set forth, and must be so interpreted.

The court later went on to say

> . . . We believe we have established that the permits in this case should not have been granted. Obviously, the owner had a valuable piece of land and should be permitted to develop it, but only after applying for proper relief, and after full hearings by the zoning board and a careful study to see that the development when completed will conform as closely as possible to the requirements of the zoning ordinance and will not create a fire hazard, traffic congestion and other obvious dangers.
>
> Without in any way foreclosing the working out of the problems which will have to be solved by the owner-applicant and the zoning board, the court points out for their consideration the fact that virtually all the elements of danger might be eliminated if the plans provided for a wide driveway, adequate for commercial vehicles and casual parking and for two-way traffic, to enter the property directly from Seventy-sixth

> Street [here followed further instruction on how to get into the irregular interior lot and parking lot]. If such direct access to the public streets were provided, there should not be too much difficulty in solving the other problems involved.

The court reversed the action of the zoning board of adjustment, and the permits issued to the applicant were revoked.

This case also went to the supreme court in 1956, which entered a decree affirming the decision of the lower court (385 Pa. 295).

In this case the court seemed to be well aware of the problems involved in traffic congestion. It returned the case specifically to be reheard and to investigate the problems of traffic congestion. The board had seemed to ignore the traffic congestion problem, or was unaware of the consequences involved in allowing uncontrolled access to and development of the property.

California, the one state of those selected that has not included the purpose in its enabling act, had some cases which concerned this classification of zoning changes or use considerations.

A California case (19) involving 12 vacant lots concerned the construction of one six-unit apartment building

on each of the lots. Construction had begun on the project while the area was zoned as a multiple-dwelling district. The property was zoned as a single-family area prior to the rezoning to the multiple-dwelling zone; work had actually begun prior to the granting of permits, pursuant to oral clearances. After some progress was made on the properties the city council rezoned the area again as single-family district, because the area would be soon acquired for airport purposes.

Traffic was brought into this case in a very minor way. It was said, when the facts were given and were not in dispute, that the plaintiffs were owners of 12 lots which are bounded on the one side by a heavily traveled main thoroughfare. The plaintiffs applied for a variance to reduce the distance between the apartment buildings. The local body had granted the variance and then also granted the building permits. After adopting the emergency rezoning ordinance and after work on the project had commenced, the local body sought to revoke the permits that were issued because of an airport expansion possibility. The local court had held the rezoning ordinance invalid. The upper court affirmed the judgment of the local court. A petition for a hearing before the highest court was denied.

Even though California does not have the purpose included in its acts, at least the subject of traffic entered the picture, momentarily. The main emphasis of the airport may have overshadowed the picture of traffic. The construction of these buildings containing a total of 72 apartments would add to the traffic congestion in that the autos of tenants may be parked in the street. Many entrance-exit locations also add to traffic problems. If California had the purpose included in its act, would the subject of traffic have been brought up to a greater degree? It possibly could have been if there had been further evidence needed to substantiate reasons for decreasing traffic and congestion instead of increasing them, which evidently here was not a serious problem. Of course this case had other pertinent reasons upon which the decision of the court had to be based. The use, after it had been started, had the right to continue under a non-conforming use too, if the rezoning ordinance was permitted to continue.

While preliminary investigation was underway to determine what states were to be studied for this paper, the author came upon several court cases from different

states, and these cases will be used where applicable in the remainder of this paper, for comparison of court actions and discussions.

Regarding Residential - Residential, two cases are used here, from the States of Texas and Florida. The Texas case (310), decided in 1953, involved the reclassification of an area from single-family residence to apartment (multiple-residence) use. The property in question was rezoned as apartment usage, after the owners had made numerous applications for changes to other uses, including a change to a commercial use. The surrounding property owners challenged the validity of the zoning ordinance amendment. The lower court granted a temporary injunction, and the defendant property owner appealed.

In the upper court's discussion and review of the case, it cited portions of the zoning code and described the conditions:

> Where the City Plan Commission is considering a change in zoning from a residential or apartment zoning to a lower classification and the area in question involves three or more acres under one or more owners, or if it contains lesser area and would constitute the extension of an existing district where by the provision of off-street parking facilities, screening walls, fences or planting and open space would create a protective transition between a lesser and a more restricted district, or if it would constitute the extension of an existing

> special permit, the City Plan Commission may, within its discretion, make the following recommendations to the City Council: (A) Recommend against the change in zoning. (B) Recommend a change in zoning. (C) Recommend that a special permit for such area be granted, together with its recommendations as to requirements for the paving of streets, alleys, and sidewalks, means of ingress and egress to the public street, provisions . . . parking space and street layouts. . . .

The ordinance also stated that conditions and provisions must be complied with. In discussing the street upon which the property in question fronted, the court said:

> . . . that pursuant to an earlier bond issue, Inwood Road was widened in 1952, consisting of a six-lane divided highway; the traffic thereon between Lovers Lane and University Boulevard having doubled since 1948; [and] that on Lovers Lane at Inwood Road is a large shopping center of many commercial activities; [and continued on describing uses in the shopping center, and other surrounding uses].

The property covered by the ordinance amendment was also over the three acres as required in the ordinance, as it included more than the lots in question. There was also a large shopping center a short distance from the property in question, and there were practically no business structures from the shopping center along the road (upon which property in question fronts) for about one and one-half miles. If real estate experts had been called upon to testify as to the use of the lots in question, there would have been reasonable dispute as to whether they were suitable for residential or business usage, the court said.

The court continued, after considerable discussion and statements about other considerations, saying,

> But aside from all other considerations, only those familiar with Inwood Road since its widening in 1952 can envisage the tremendously increased volume of traffic that has ensued; evidencing without more, such a change of conditions as to constitute a reasonable basis for the rezoning under attack. "The legislative body may determine in the first instance whether or not facts or conditions exist warranting a classification; and its determination of that issue cannot be disturbed in the absence of a clear showing that there is no reasonable basis therefor." Edge v. City of Bellaire, Tex. Civ. App., 200 S. W. 2d 226.

Prior to the above statement the court made reference to amendments to zoning ordinances that they "should be made with the utmost caution and only when changing conditions clearly require the amendment; otherwise, the very purpose of zoning will be destroyed." The court cited this from Mc Quillin, Municipal Corporations, Vol. 8, 3d Ed., sec. 25.68.

After further review and decisions the court said that

> The cause is accordingly reversed and judgment rendered dissolving the temporary injunction; without prejudice to petitioners' claim of deed restrictions on a trial to the merits.

The court reversed and rendered in part, and the case was otherwise remanded to the trial court for further proceedings.

The Florida case (305), decided in 1953, involved ten lots of land interspersed among eighty-six lots in a two-mile length. The whole area was zoned as a single-family residential zone. It was said in testimony given at the trial court that this strip of land, ocean frontage, is the most valuable piece of land in the world, and there were only about 4,500 people in the United States with sufficient means to buy, build, and maintain homes on it.

The owners of these ten lots asked for a reclassification of the lots to permit the erection of hotels and apartment buildings. The city refused the request to change the zone. The trial court held the ordinance arbitrary, unreasonable, oppressive, discriminatory, and confiscatory, and accordingly ordered it rezoned for apartment house and hotel purposes.

The upper court in reviewing the case said that

> The City of Miami Beach declined the request of complainants to rezone on the general theory . . . that due to the location and configuration of the land it is ideally suited to single family estates, that it is a long narrow strip along the ocean transversed on the west by Collins Avenue, which is heavily congested and that to rezone would seriously aggravate the traffic problem, that there is already an undue preponderance of land in the City of Miami Beach zoned for hotel and apartment use, and at present there is no need for more. . . .

The court said in reference to the above that

> There is ample evidence to support the theory of the city; on the other hand, there is much to contradict or offset it. It is not shown, . . . that if the zoning restrictions are removed no other property owner would be hurt or that the general zoning plan would remain unaffected. . . .

Then when the court analyzed the various contentions made by the city it said

> An ordinance may be said to be fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point to a logical deduction that in no way involves its constitutional validity. If such a deduction supports the city's contention that to remove the present zoning restrictions would destroy the entire zoning scheme and bring about the evils contended by the city, then the Court should not substitute its judgment for that of the City Council . . . . When the contention of the city is analyzed and viewed in the large, there are many elements in this case that were not involved in . . . any of the other cases cited. They make this case totally different from any other that has been brought here. The right of access of the public to the beaches, the effect on the zoning scheme, traffic regulation . . . are involved in this case. The amount of property involved is so great that to change its classification would be to necessarily affect the entire general zoning plan of the city. These are matters for the city to settle and adjust and when they enter the picture the Court should not invade the city's authority, absent a paramount constitutional right which is not shown in this case.

In conclusion the court said

> Other questions presented have been considered but they become inconsequential or have no place in the case. Whether answered in the affirmative, or in the negative, the answer to the first question concludes the controversy. We think the first question was fairly debatable and that the decree of the chancellor should be reversed.

The court reversed without prejudice on the part of appellees to assert any right they may have under the city charter.

Two justices concurred in part and dissented in part; their discussions both referred to "spot zoning." The only reference to traffic or congestion was when they said in regards to the properties in question, that

> . . . Located as it is on a heavily travelled state highway, with hotels and apartments on both the north and south sides, and with condemnations proceedings by the city already under way to convert two separate portions thereof to public park purposes, it is understandable that such persons find "the strip" undesirable for residential purposes.

Their decision was that they would affirm that portion of the decree of the lower court which held the residential classification as invalid, but would reverse the lower court's directive of rezoning the properties for apartment and hotel use.

The street widening, as in the Texas case, evidently was demanded because of the volume of traffic and congestion that had been steadily increasing until a point was reached where the traffic flow was impeded and the result was the increase of traffic and congestion on the adjacent streets. When a street is widened it is generally for the purpose of providing more rapid movement of traffic

and relief from congestion. But as streets are so improved there will be more vehicles attracted because of the easier movement and therefore, naturally, the results are that the widened street will again become obsolete due to the increase of traffic and congestion. But why speed up this process? By increasing the number of automobiles that will be attracted to the adjacent land uses, especially if the area is of a highly restricted use, the lessening of the restricted uses on adjacent land uses will be a direct factor in speeding up this obsolescence of the street again. The court in this case possibly felt that after the widening of the street in question and the resultant doubling of the traffic volume, that these should be direct and determining factors in declaring the lesser restrictions valid. This seems to be unwarranted as they are aiding in the increasing of congestion on the streets, and the same can be said of the municipality in its reclassifying of the property. By increasing the number of autos attracted to the rezoned area by reducing the restrictions, more traffic will be generated than for the higher restricted uses.

In the Florida case the city and the upper court both realized that intensifying the land use along a

street will directly add to traffic and congestion, although the upper court did not base its decision strictly on this basis, as closely as can be interpreted. The lower court evidently felt that the changing of the land use would not increase the congestion to any discernible degree, although the city had pointed out that the zone change "would seriously aggravate the traffic problem." Who is right in this case? After taking into consideration the reasons for traffic congestion, the answer can simply be that the city and the upper court made the most valid decision as they were aiding in the relief of congestion on the public streets to a certain degree, whereas the only results that could come about by the lower court's decision would be to increase congestion on the streets.

Section 2: Category B Business and Commercial - Business and Commercial.

A Connecticut case (40), decided in 1955, concerned the reclassification of vacant property from a business B to a business A zone. The owner of the property in question wanted the land to be rezoned (returned) to the business B zone as he felt that the business A zone regulations were too restrictive. The property owner had desired

to build a shopping center. Business A zone, "Planned Unit Business Development," had among its restrictions and regulations, requirements for off-street parking facilities, but none were mandatory in a business B zone. The property owner petitioned the zoning commission to rezone his property, but the petition was denied. The trial court issued an injunction on the ground that the regulation was unconstitutional. The injunction enjoined the enforcement of the regulation of the town plan and zoning commission of the town rezoning the area in which the property in question was located. The town appealed from the judgment.

The appellate court in reviewing the case had said that the entire zoning plan and regulations and factors affecting the growth and economic development of the town was undertaken in 1950, by a professional planning engineer. The court said that the review of the zoning plan by the town

> . . . dealt with traffic and parking problems, the rapid growth in population, land uses, . . . The review indicated that the population of the town would continue to grow and that the number of automobiles would increase more rapidly than the population, causing traffic and parking problems to become worse unless remedial steps were taken. The commission concluded that a lack of adequate parking facilities in the business area was causing traffic congestion in the business center, inconveniencing citizens generally, driving business elsewhere, depreciating the value of business properties, . . .

The court also referred again to traffic, saying:

> The power of regulation is not limitless. It cannot be exercised in a confiscatory or arbitrary fashion. . . .Darien's traffic problems are urgent. They are burdensome and inconvenient to many citizens and property owners. They gravely affect the future welfare of the whole community. They demand drastic measures. Zoning commissions are necessarily vested with broad discretionary powers.

There was discussion as to the construction of modern shopping centers, and one point mentioned was the providing of off-street parking facilities as regulated in various ways, such as the "rule of thumb" commonly used is 60% for parking, 18% for services, and that a ratio of three or four to one between parking space and floor area as some experts agree that is desirable. The court discussed various other regulations of the business A zone:

> We conclude that until the plaintiffs have sought and been granted or denied a variance by the zoning board of appeals they are not in a position to seek injunctive relief on the ground of the unconstitutionality of the action of the zoning authorities.
>
> There is error, the judgment is set aside and the case is remanded with direction to enter judgment for the defendants.

With this decision the court upheld the existing business A zone classification of the property in question.

The court in this case evidently felt that traffic congestion is caused by business and commercial uses. The

court probably felt that the restrictive regulations of business A zone would tend to add less traffic congestion to the streets than a business B zone. The fact that the property was located in or very near to the main business area was held to be a factor in holding the business A classification valid, due to the lack of parking facilities in the central business district. The business A zone might have had more restrictive regulations in regards to the providing of off-street parking and other means of controlling access and theretofore creating less opportunities for additional traffic congestion.

The Illinois case (77), decided in 1953, involved an existing used car lot. The property, consisting of several parcels of land, was rezoned in 1942 for business purposes. The new ordinance prohibited the existing use. The 1923 ordinance zoned the property as commercial use, and the existing use was permitted under certain conditions. The city had threatened to enforce the amended ordinance. The appellees did not start to operate their lots until dates which progress from 1946, and it was not until 1952 that they, the appellees, initiated this action. The lower court held the amendatory ordinance as void and unconstitutional.

In the review of the case the supreme court said that the facts show that the street upon which the property fronts is an important public thoroughfare. "It is a major traffic artery bearing both streetcars and busses and serves as a connecting link to main highways running east and west." There was no other consideration of traffic and congestion given. The supreme court said that the circuit court had not erred in granting the legal and equitable relief sought and its declaratory judgment was therefore affirmed.

Evidently the court in this case felt that a used car lot is not a serious traffic generator as much as other types of business uses where there is a considerable amount of turnover in customers. A used car lot is not like a store which is visited more frequently by customers. A car is an item which the people do not buy as often or as much of as other items for everyday uses. Whether the court considered this in its decision is uncertain. Even thought this opinion favored the continuance of the used car lot, possibly other factors could have been brought out in determining traffic and congestion factors. Parking spaces on a very busy thoroughfare add to conflicts of

traffic movement; entry and exit to a used car lot can cause congestion at various times. The amount of traffic on the adjoining street may have been presented more effectively by traffic counts, number of accidents in the vicinity, and other items of consideration for evidence if it was deemed that the existing use was detrimental to public health, morals, safety, comfort, or welfare as well as to the purpose of relieving traffic congestion on the public streets and roads.

In a Michigan case (135), decided in 1953, the issuance of a building permit to construct an automatic car wash building was the subject. The property was in a business B zone but car washes were not a permissible use there, except upon approval of the board of appeals. The permit was denied by the board.

The opinion of the supreme court while determining and reviewing of all the facts and data of the case, referred to traffic in only one brief statement. There were statements made at the meeting (in circuit court) that

> if the building was erected and operating, traffic would be increased and with cars with running motors would increase the supply of carbon monoxide and thus be injurious to health.

The judgment of the trial court, which had granted the writ of mandamus, was reversed and the petition dismissed.

There is not much that can be added to this case in the discussion of traffic congestion as no information was given about the existing street conditions, volume of traffic, or other factors used in determining extent of possible consequences of the traffic resulting in the proposed land use.

Case (226) in New Jersey, decided in 1955, concerned the desire to sell motor vehicles on plaintiffs' property upon which they already operate an automobile service station. The town council rejected the application and refused the necessary license. The property was in a neighborhood business district. The desired use was nonconforming in this district, and was permitted only in districts of lower classification. Prior to the present zoning classification the property was zoned as residential. The trial court denied relief.

The superior court, appellate division, in reviewing the case and in its decision, made the following references to traffic and congestion. Plaintiffs testified, among other things,

> that Belleville Turnpike, on which the property fronts, is "about the heaviest travelled" road in the West Hudson area; that the restriction of the right to sell motor vehicles on the subject property "would (not) alter the usual traffic situation in anyway whatsoever;" and that the grant of the right would not increase traffic, affect the public safety . . .
>
> The contention that the zoning plan operates arbitrarily as to plaintiffs' property is equally without merit. It is based on the argument that the property is at the intersection of two heavily travelled thoroughfares. . . .
> If necessary, the conclusion of the Board to deny the application is additionally supported by the showing of an already existing infringement upon the reasonable right of access to their garages of nearby property owners occasioned by the cars of business visitors to the plaintiffs' premises.

The court said that it cannot quarrel with the board's conclusion that such conditions might get worse if the variance requested were granted.

The judgment was affirmed (in denying relief sought).

The use of the property in this case would undoubtedly have added to the traffic congestion by allowing cars to enter and leave a service station located on a very heavily travelled highway. Also cars would be parked along the street (unless prohibited) for a use such as the one proposed, whereas in using the gas station the auto generally is removed from the street for servicing. The council and the courts had recognized that an

increase in congestion would result with the additional use. Although no mention was made by either the council or the courts as to parking on the streets, additional movement into and from the proposed use, here were or are additional points that could have been brought up if the case had needed more testimony to further supplement the council's refusal, and the court's decision, in determining whether to issue the required permits and license.

In New York, a case (248) decided in 1956 involved the removal of old buildings on a property and the erection of new buildings with more square footage than is allowable under the zoning ordinance. The board of appeals had granted a variance. Each proposed building would have a floor area of approximately three times the area of the lot, whereas the ordinance limited floor area to one and one-half times the area of the lot. One court had annulled the granting of the variance. An intermediate court reinstated the variance and dismissed the proceeding.

In reviewing the above proceedings and in discussing the premises, the upper court mentioned that the property was on the main business street of the village and was located in a business district. An amendment to

the building zone ordinance limited the floor area of a building in a business district to one and one-half times the area of the lot, thereby limiting the number of occupants and users. The "purpose of the amendment to the zoning ordinance was to improve traffic and parking conditions in the principal business section" of the village. There was no other reference to traffic or congestion. The upper court affirmed the order of the intermediate court which had reinstated the variance. There was no opinion given by upper court.

This case, although limited in its reference to the problem of traffic, points up a phase. That is the attempt to limit the number of autos that would be attracted to a land use, by limiting that use to a certain amount of floor space. By limiting floor space there is automatically a limitation placed upon the number of persons employed by the use and upon the number of persons using the building and therefore would theoretically limit the number of parking spaces, and thereby tend to relieve traffic congestion. On the other side of the picture one can see the possibility that the congestion problem could be substantially increased by more people using the facilities than it was planned for, thereby attracting more

people desiring to park their cars than are allowed in the lot (if there is one) and forcing them to park on the adjacent streets. With this happening, people will tend to double park, temporarily, or ride around until a parking space is available. These factors will increase the congestion of traffic to a considerable degree.

Case (268), of Pennsylvania, decided in 1957, concerned the erection of a car wash building on property formerly occupied by a gas station. The contemplated building would occupy only 16% of the lot, and the property was located in a commercial zone. The board of adjustment refused the certificate. The lower court had sustained the appeal and directed the permit (certificate) to be issued. The case went to the upper court on certiorari.

In the review and the opinion given by the court the traffic factor entered the picture in several instances. The board had refused to issue the certificate on the basis that the proposed use would be contrary to public interest, and in doing so the board declared the use would be offensive because of the noise and the traffic hazards, "and did not fit into the general character of the neighborhood."

In reviewing the evidence, the court went on to say:

> . . .More importantly affecting the Board's findings was the evidence as to possible increase in traffic hazards. As pointed out by the court below [lower court], the only evidence produced by the protestants in this regard was the declared "opinion" of several non-expert witnesses that such use of the premises would increase traffic. Yet the record shows that one of the protestants, who had constructed ten stores in the area, was contemplating construction of ten others - in themselves increasing traffic - which would make the area even more commercial. Further, the conjectured increase in traffic was not shown to be such as to adversely affect the zoned area. . . . Nor was there any foundation for the Board's finding that the use did not fit into the general character of the neighborhood - the evidence, as already indicated, was to the contrary.

The court agreed with the findings of the lower court and affirmed the order.

Here is a case in which the traffic and resultant congestion is pointed out by the court as being an influence affecting the adjacent land use. It was stated that the effect of increased traffic is to make the adjacent area potentially a commercial use. As has been pointed out several times and sometimes quite emphatically, land use affects traffic and congestion, and traffic and congestion affect the adjacent land use; here is a good case where the court has recognized this fact, although this is not a point in direct connection with this case. The court pointed out that the proposed use would not increase the

traffic to a point of affecting the zoned area in itself. This point of view implies that--theoretically each individual land use does not affect traffic enough to warrant a denial of the use. This is taking a rather narrow minded view of the situation. What if an adjacent property owner wanted to use his property also as a commercial use and they went to court because the council refused to grant the permission because of traffic effects, and the court again said the same thing. This could go on up and down the street, yet the court could say to each one that the "conjectured increase in traffic was not shown to be of such as to adversely affect the zoned area." In taking the area in toto there would be a considerable effect upon traffic and congestion in the area. Granted each use adds a little more traffic, but why limit the scope at that time to the one property, why not take the area as a whole and analyze it, and then come up with the answers?

California, not having the purpose included in its enabling act, is used again as a comparison to the States having the purpose included.

In California a case (12) decided in 1956 involved the use of vacant property located in a retail commercial zone. The owner desired to build and operate a mortuary

upon his property situated at an intersection of two streets. Another mortuary was located on another corner of the same intersection directly across the street. The city council granted the "zone variance." The local court upheld the granting of the variance.

In the upper court opinion there was little reference to traffic. The proposed parking for the mortuary was for 32 cars. The opinion was expressed, at a city council hearing,

> . . .that the subject property was not suitable for retail business due to the traffic problem. In this connection one councilman suggested the possibility that the city might desire to acquire these lots for off-street parking. . . .The matter appears to have been thoroughly considered by the city council, after which the body voted to grant the variance.

An investigation was made of the property (by the city council), and one of the items covered was the parking problem in the area in relation to existing businesses. The city council granted the variance after due notice, fair hearings, and a thorough consideration by them and the planning commission. The judgment of the lower court was affirmed.

To what extent the subject of traffic was brought up in this case in the lower court and city council deliberations is not known and could be found out only by

delving into their complete records. But as it stands here the subject of traffic was brought up to a limited, but important degree. Would a mortuary create less traffic than a retail business use? It is doubtful, at least to a certain extent. During a funeral the traffic would be tied up for a considerably longer period of time than at a retail business. At a retail business there ordinarily would be no specific times at which traffic would be held up with long procession of autos entering or leaving a parking lot, such as there would be in a mortuary use. Because there was a traffic problem existing in the area, it could be assumed that a retail business would have less effect upon the traffic than would the proposed mortuary.

Section 3: Category C Industrial and Manufacturing - Industrial and Manufacturing.

Michigan case (146), decided in 1957, involved property classified for "light industrial" use. The owners had been operating a wastepaper, scrap iron, and metal business on their property under a township permit. Plaintiffs sought the issuance of a license to operate a junk yard for purpose of dismantling, wrecking, and disposing of junk from automobiles. The township board refused

to issue the license. The trial court granted a writ of mandamus compelling the issuance of the license. The defendants appealed.

The property was in an area devoted predominantly to industrial uses. Directly across the road from the property in question was a large area zoned as general industrial on which was located a large oil refinery; there were light industrial zones on the two sides and at the rear was a general agricultural zone. The trial court had said that the

> . . .pictures in evidence show that plaintiffs' property is in just that kind of area in which one would expect to see a junk-yard business conducted.

This statement was in the upper court's opinion and discussion of the case.

In the upper court's deliberations mentioned, very little was said about traffic or congestion. Defendant had admitted in its testimony that these uses (railroad freight or passenger stations--which were permitted in the light industrial zone) would

> . . .be productive of as much, if not more, smoke, fumes, noise and traffic as plaintiffs' projected operation and that the same is generally true of the large refinery operation across the road.

There was no further discussion or reference to traffic congestion either existing or contemplated in connection with the junk-yard operations. The upper court affirmed the action of the lower court.

In Pennsylvania, case (283), decided in 1949, was concerned with the erection of a motor truck terminal garage. The property was in an industrial zone. The desired use was not listed in the prohibited uses described in the zoning ordinance. The building inspector issued the building permit. Residents of the community then filed an appeal from the decision of the building inspector. The board of adjustment reversed the building inspector and voided the permit. Appellant filed an appeal.

The court in its review and deliberations and opinion dwelled upon the subject of traffic quite extensively. It reviewed the action of the board in which the

> Board found as follows: ". . . the narrow streets in the vicinity [are] entirely inappropriate for the operation of large vehicles of the size in question. This will constitute not only interference with the present uses of these streets, but will be a hazard to the residence . . . and children of the vicinity who must use these streets for travel to and from school. The fact that there is now vehicular traffic on these streets, including some truck travel, does not lessen the hazard which would be created by markedly increasing the use of the streets by heavy vehicular equipment."

The building would be three stories high, and the use would consist of 18 trailers, 12 tractors, 2 trucks, and 3 automobiles, for transfer of goods and minor repair. The court said that

> . . . The board likewise found that the trucks would be traveling Hector, Elm, End and Sandy Streets to and from the terminal. The average paved cartway of these streets is from 20 to 22 feet in width. The evidence also showed that these streets are in constant use by large trucks, including appelant's, enroute from industrial plants in the area of Trenton, Philadelphia and Reading.

The property was in an area in which in two directions from the property in question was zoned industrial and the board found that the area was predominantly of a residential character. In another direction from appelant's property were two fairly substantial factories, and across the street was a medium-sized chemical plant; also in the vicinity were railroad tracks. Appellant contends that the action of the board was unreasonable, arbitrary, an abuse of discretion, and without any substantial relation to the public health, safety, morals, or general welfare and other reasons.

The court said that the board's action was based on the narrow ground that the contemplated use of the premises would create a public hazard and said as follows that

> The board found that locating a truck terminal on these premises would create a public hazard because of the narrow streets the trucks would use and the large number of children in the vicinity. The fact that the streets are already used by large trucks, including [appellant's], is not considered important, for the board is concerned about the increase which would result from appellant's building his garage. In other words, the board ruled that because there would be more trucks using these streets a public hazard would be created. To the board a public hazard is something more than a nuisance; it is a real, substantial, and serious menace, such as a plant which manufactures acids, explosives, or poisons.
>
> It is readily apparent that the board went beyond the range of its discretion in reaching its conclusion. . . . It must be borne in mind that no matter what use was to be made of the premises in question, an increase in truck travel in the area could be expected. Unless the land is to be idle, a public hazard will be created under the board's reasoning. A similar problem was before this court in Cohen et ux., v. Abington Township Zoning Board of Adjustment, 43 D. & C. 362 (1941), where it was alleged that gas stations create a traffic hazard. See also Wunderle et al., v. Board of Adjustment of the Borough of Hatboro, 62 Montg. 231 (1946), [and other cases were listed].

The court then said that if the terminal were operated and maintained so as to constitute a nuisance, the residents have a remedy in equity to restrain such operation, and that

> After a careful consideration of the entire record and the law, we must conclude that the action of the board in reversing the building permit issued by the building inspector was arbitrary and unreasonable, and not within the meaning of public hazard as used in the zoning ordinance.

The decision was that the appeal was sustained, and the decision of the board of adjustment was reversed, and that the building permit previously issued was declared valid.

These two cases are entirely opposite from one another, for in the first case there was very little mention of traffic, congestion, or width and condition of the streets in the area; in the latter case there was a considerable discussion of traffic, width of streets, and other factors. In both cases the local board refused to approve the issuance of a permit. Also in both cases the court reversed the action of the board. Although the first case was very limited in data, it would be hard to determine whether any other decision could have come about. In the latter case there was residential development in two directions from the property in question. With the increase of traffic which was bound to happen, there would be further additional traffic caused by the other vehicles, besides the trucks: those of the employees of the concern, as the property owners' proposed building was to be three stories high. The increase of this traffic would have the effect of adding to, or speeding up, the deterioration of the residential properties, with the eventual blighted

conditions of the area to set in sooner. With the additional amount of truck traffic that would be generated by the terminal use, the neighborhood would become noisier, suffer more from fumes and smoke, and would become more dangerous to the pedestrians and the automobile drivers alike. There would be, as stated many times before, the possible parking in the streets caused by the new use, therefore reducing the numbers of lanes of moving traffic. The court in the second case should not have approved such use of the property. It based its answer on the belief that "the board went beyond the range of its discretion" and evidently erased the problems of traffic and congestion as a basis for determining its decision. Did the board act so? It can be said that it did because the permit had been legally and properly issued. After the permit was issued and when the complaint was raised, the board evidently realized too late the consequences that would come about and tried to inject points into its position to "relieve congestion in the public roads and streets" and also had in mind, too late, the public health and safety, among other things.

The court had no alternative but to pay attention to the action taken by the board, so therefore it can be

said that it did not purposely ignore traffic or congestion. If the court reviewed and discussed the problem of traffic and congestion as much as it did, it must have felt that this possibly could have been a factor in denying the permit originally, if it was deemed necessary to do so to prevent the further deterioration of the residential area existing.

Section 4: Category D Residential ⇌ Business and Commercial.

A case (50) in Connecticut, decided in 1958, concerned the development of a 39-acre tract of vacant land. The property was in a one-family residence district, and upon application was changed to commercial. Surrounding property owners wanted property returned to the one-family residence district. The owner of the property desired to have the zone changed to allow the construction and maintenance of experimental and research laboratories. The local body granted the zone change upon certain "conditions." The lower court dismissed the appeals and concluded that the board had not acted wrongly and thereby held the zoning change valid.

In the opinion of the upper court there was considerable discussion and testimony in regards to traffic and congestion. In the amendatory ordinance for certain zones, in which was the commercial zone in this case, was included one of the regulations provided that no use shall be permitted that will cause or result in

> "unusual traffic hazard or congestion due to the type of vehicles required in the use or due to the manner in which traffic enters or leaves the site of the use." . . .the Board changed the zone of the subject property to C-D commercial and authorized its use for the purpose sought. One of the conditions of the change was that ingress to and egress from the property be limited exclusively to Buxton Farm Road.

The court cited a case in which the memorandum stated, "The area affected is residential of very fine type, and the change of zone will increase traffic in the vicinity to a considerable degree. . . ." (Treat v. Town Plan & Zoning Commission, 145 Conn. 136, 140, 139 A. 2d 601; Maltbie, Conn. App. Proc., §152). The court continued in reference to the Stamford zoning regulations, and said that

> . . .One of the purposes of zoning in Stamford is to lessen congestion in the streets. . . . An issue before the court, as indicated by its memorandum of decision, was whether the zoning board, upon the facts before it, abused its discretion in determining that the traffic conditions resulting from the proposed change of zone would not create a congestion of traffic in the highways

> affected which would violate the purpose stated in the special law. . . . That the board did not abuse its discretion in this respect is implicit in the court's conclusion sustaining the board's action. Our task is to determine the correctness of that conclusion.

The property in question was isolated from the public highway without any direct access, except over a private road. All company traffic passes over this road to a public road which connects to a road that connects to the major highway. There was considerable discussion concerning all of these roads. The company prepared a traffic survey by traffic consultants, which showed contemplated personnel, number of persons using busses and automobiles, number of cars expected daily, and traffic on all of the roads concerned. In regards to the major highway it was said that the surveys show

> . . . that the peak hours of traffic on the Merritt Parkway itself and on the High Ridge Road interchange are between 8 and 9 o'clock in the morning and between 5 and 6 o'clock in the afternoon. These are the hours within which the [company] employees would be arriving or leaving. The afternoon traffic between 5 and 6 o'clock is about 25 percent greater than in the morning rush hour.

A considerable amount of other discussion of the amount of traffic at the interchange and the backing up of the traffic on the roads entering the interchange was given. Some roads were discussed as to width and other items. One road,

a school bus route, was not equipped for any kind of heavy traffic, and the traffic consultant had recommended that none of the company traffic be permitted to use it. With this recommendation it was said that

> . . . Its [the school bus route] elimination would require all of the A. M. F. [company] traffic to pass through the bottle neck at Buxton Farm Road, River Road and the feeder road. The capacity of the roadways in the interchange is 600 vehicles an hour. Traffic counts have shown peak-hour volumes two and one-half times that capacity. Under the existing traffic load, the facilities are now taxed to capacity, and with the injection of 400 or more additional cars into the traffic stream at the peak hours, only intolerable congestion with bumper-to-bumper traffic moving at a snail's pace could result. . . .

Another case was cited here that has been reported as case (47). The corrections and planning recommended by the company consultant "to alleviate, but not remedy, the congestion" would require the widening of certain roads, installation of traffic lights, remedial corrections to and from the major highway, and provide for acceleration lanes and so forth, with some corrections involved two miles distance from the major highway.

The court continued and said that

> . . . As the zoning board has no jurisdiction over the physical improvement of the city's streets or the state's parkways or traffic control, . . . it must be governed by actualities and not theories in assessing the impact

> of an exceedingly large additional volume of traffic on present strained facilities. The only answer is congestion.

The Stamford zoning regulations regarding ingress and egress were reviewed. The regulations did not permit passage through certain districts from a public highway to business or industrial districts, unless certain conditions were met. The court said that

> . . . As the regulations do not permit access to a commercial district through an RA-1 [one-family residence district] zone, the board lacked the authority to attach the condition of ingress to and egress from the subject property through Buxton Farm Road.

The property was completely surrounded by the one-family residence zone, with the exception of 86 feet which bordered upon the major highway.

The court said that

> . . . In disregarding the special law and the zoning regulations relating to traffic congestion and access to commercial property through a residential area, the board acted illegally.

There was error in both cases, and the judgments of the lower court were set aside; the cases were remanded with direction to sustain both appeals.

In this case the court has done a rather thorough job of investigation into traffic congestion problems. It has delved into the aspects with such thoroughness that there is no further comment to be made.

An Illinois case (111) decided in 1958 involved an area of unimproved property, which had been classified for single-family use, "since the inception of zoning in 1924." The owners of the property desired to have it rezoned to commercial use to permit the construction of an office building to be occupied as real-estate and doctors' offices. The plan commission recommended rezoning to a commercial classification but the zoning board of appeals and the city council refused to concur. The lower court declared the zoning ordinance unconstitutional and enjoined its enforcement, as applied to plaintiff's property.

During the upper court's discussion and opinion of the case, traffic entered the picture in several instances. The first was in reference to the Tri-State Highway (Route 83) described as a traffic artery lying in the immediate vicinity of the property in question. Another street carries the service ingress and egress from a stone quarry, on which travel the trucks carrying the products of said quarry both away from and into the quarry. These trucks carried ready mix concrete, sand and gravel. It was also said that heavy traffic prevails in this vicinity, the count in a 24-hour period on the road in front of the

property in question was 12,000 motor vehicles; the load was 18,000 vehicles on Route 83. The traffic at the intersection of the two highways was controlled by six stop-and-go lights.

One of the plaintiff's witnesses, a lawyer-member of the city council, testified that in his opinion the property in question was not suitable for residential use because of the noise of the traffic, among other things.

In testimony by defendants, three residents of the immediate neighborhood denied that they were disturbed by traffic noises.

The court continued:

> Moreover, the record in this case is almost devoid of evidence from which it is reasonable to infer that there will be any substantial gain to the public if the present residential classification is maintained. The only reason suggested for the present restriction is the possibility of increased traffic with attendant danger to pedestrians . . . The large shopping center will increase the commercial uses in both area and intensity, the truck weighing station will continue to produce heavy traffic in the vicinity of this busy intersection, and the delivery of ready-mix concrete and sand and gravel from the Elmhurst Chicago Stone quarry will persist. If we give consideration to the size and the proposed use of plaintiff's property, it is reasonable to conclude that the additional traffic generated by such use will indeed be a minor factor in the overall picture. . . .

The decree of the circuit court was sustained by the evidence and was affirmed.

The court may well have considered further that the additional increase of traffic generated by proposed use would tend to add to the reasons of other residential property owners in the neighborhood in seeking to have their properties rezoned as commercial or other use. Each additional business or commercial use adds more motor vehicles, thereby possibly increasing the rate of the deterioration of the neighborhood, and also hinders future sale of property for residential purposes.

Case (144) of Michigan, decided in 1956, concerned the residential classification of a portion of a plaintiff's property, consisting of 30 acres of vacant land located on the west side of Telegraph Road, with a frontage of about 1,616 feet, and with a frontage on Eleven Mile Road of about 1,300 feet. The residential classification to a depth of 200 feet along Telegraph Road was declared invalid, unreasonable, and void by the circuit court. The township appealed from the circuit court's decision.

The affirming justice's opinion said

> Appellant admits that Telegraph Road is a high speed, heavily traveled, arterial highway and the proofs disclosed that approximately 15,000 vehicles travel Telegraph Road each day, at an average speed of 55 miles per hour. . . .
> Ninety per cent of the people seeking lots to build homes on would not consider lots on Telegraph Road and fathers and mothers refuse to consider these lots because of the heavy traffic and high speed, according to the testimony of [a] real estate broker.

Another real estate broker testified that

> I am familiar with the traffic conditions upon Telegraph Road. It would affect the desirability of this property fronting on Telegraph Road for residential purposes very much. . . .

A property owner in close proximity to the property in question had been attempting to sell her home and property for some time. Several prospective buyers said that they were not interested because of its proximity to Telegraph Road. She had described the problems that were caused by the traffic on Telegraph Road. She said:

> I have observed the traffic conditions for these past 17 years. I will say it is increased to an awful amount - much more - because we have our house standing on Franklin Road and our kitchen is on the turn over there, facing Telegraph Road - it is around 160 - maybe a little more - feet, and when the heavy trucks come by, the shaking and vibration I can feel in the kitchen. You do feel it at night. The heavy trucks at night. They start increasing after midnight - haulaway trucks - the vibration is so I can hear the windows shake in the house, so that is the vibration we hear.

A professional city planner that was employed by the township on a per diem basis testified that

> plaintiffs should be confined to residential development because to allow them to develop their property fronting on Telegraph Road for commercial purposes would call for "ribbon zoning," thereby increasing "the hazard of the highway, add to the congestion and slow up the movement of the traffic on the highway itself." He testified that he was quite sure a layout could be prepared for plaintiffs' land that would make it a very sound residential investment, and, being questioned as to how this could be done, stated:
>
> "I am not sure of all the details, it might possibly be (the buildings could face some other street parallel to Telegraph) or we might set the residences back three or four hundred feet from the highway, or they might be backed up to Telegraph."

The court went on to say that the professional city planner's testimony was not persuasive when

> considered with that of the traffic engineer for the State Highway Department, . . . who testified that new commercial development is subject to controls of the State Highway Department regulating traffic going off or onto the highway; that recently such access controls were satisfactorily established on Telegraph Road between Nine Mile and Ten Mile Roads and, also, in Birmingham, Royal Oak, Pleasant Ridge and Pontiac.

The court then said that "it has repeatedly held that each zoning case must be determined upon its own facts and circumstances." The judgment of the circuit court was affirmed. Five justices concurred with the decision.

This case had a dissenting opinion that is very worthy of elaboratin on also. The dissenting justice also injected the subject of traffic into his opinion. He said that

> Careful consideration of . . . [the facts], and the applicable legal principles, compels me to disagree with his [Justice Kelly's affirming opinion] result. The sole issue in this case is: Is it an unconstitutional use of the police power for a township to zone property adjacent to a heavily travelled highway for residential purposes exclusively? An affirmative answer to this question by this Court in my mind would play havoc with all city planning and zoning.
>
> Traffic of greater or lesser degree and in volumes increasing or decreasing by the year, is a part of our modern life. A declaration that as a matter of law proof of heavy travel on an adjacent highway voids a residential zoning provision would constitute a threat to the stability of practically every zoning ordinance in the state of Michigan. Further, it would invite litigation in relation to every piece of property zoned for residence along every heavily travelled highway in the state. Moreover, it would place the trial courts and the Supreme Court squarely in the business of determining just how much traffic and of what character would serve to void a particular litigated zoning provision.
>
> Such a practice would, in my view, represent a major judicial intrusion upon the discretion vested in local legislative bodies who are charged with the adoption of zoning ordinances.

The justice continued with a discussion of the function of a zoning ordinance and other material. Then he went on to say that

The piece of property about which this litigation turns is located at the juncture of Eleven Mile and Telegraph Road. Eleven Mile Road is not a through or traffic street. All of the property for a considerable distance both north and south of this property on both sides of Telegraph Road is zoned* for residential purposes, as is most of the Telegraph Road frontage for several miles to the north . . . where Telegraph runs through an area described in this record as one of fine residences.

All of the property within a mile of plaintiffs' land is residentially zoned with the exception of business zoning at the major intersection of Telegraph and Northwestern highways. Immediately across Telegraph Road from plaintiffs' property there are 6 houses of some considerable value, some of which have been built in recent years since the development of traffic volumes on Telegraph.

As the record stands before this Court, it is apparent that a logical application of Justice KELLY'S opinion would run a strip of commercial and/or industrial development directly through one of the most completely residential areas in the Detroit metropolitan district. . . .

Judge Doty in his opinion brushed aside the interests of the residential property owners across Telegraph Road and in the nearby areas of Southfield Township and found as follows:
"The traffic hazard, noise, smoke and general increasing business and commercial development in the immediate vicinity of plaintiffs' property makes it unsuitable for residential purposes . . ."

There is no testimony in this record relating to increasing business and commercial development in the immediate vicinity of plaintiffs' property. Traffic

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*Authority of C. L. 1948, §125.171 et seq., Stat. Ann. 1949 Rev. §5.2963 (1) et seq.

> hazards, noise and smoke are, indeed, a part of high volume traffic on through highways. The writer does not feel that it lies within the function of the judiciary to establish as a rule of law that these factors of and by themselves render all residential zoning adjacent to arterial highways unreasonable or unconstitutional.

The dissenting judge then said that the zoning ordinance in dispute should be held reasonable and valid, and that the decree of the trial court should be reversed. One other justice concurred.

A considerable amount of space was taken up this case as it seemed that it is very important. Earlier in this report "ribbon development" of business and commercial establishments was mentioned as having a considerable affect upon traffic congestion and land use relationships. The allowing of such a large or long parcel of land adjacent to a highway, as in this case, to develop into business and commercial uses will greatly affect further traffic congestion and land use development, even though the entrance and exits from a "ribbon development" may be controlled by the state.

With the developing of this property into business and commercial uses it will be attracting many more autos thereby increasing the congestion caused by the slowing

down of automobiles on Telegraph Road, which is already heavily traveled upon entering the development, and again hindering the movement of traffic upon reentering the flow of traffic. Although the court may have thought at this time that there may be little effect upon the traffic congestion, this is a case where there will be repercussions felt in the future. With the allowing of this extensive use along Telegraph Road for a considerable distance, a detrimental effect will be felt upon the properties across Telegraph Road from this property, and other properties adjacent and possibly properties to the rear of the rezoned area due to the effect caused by the traffic and congestion problems created.

Eventually Telegraph Road will begin to look like all the other main roads of our cities where long strings of commercial development once flourished. The areas around these "ribbon developments" usually begin to deteriorate and eventually spread out, like a kind of mold enveloping a loaf of bread. Look in and around our cities and it is unmistakably visible. Therefore in the affirming of this case, there is the probability of the same thing happening here. The area will flourish for awhile, affect

surrounding areas, and then the down grading of the area will begin; then the same thing will happen that is visible in and around Detroit today.

It is the opinion of this writer that this case is a very good example of one in which the affirming justice of the supreme court and the judge of the circuit court themselves are not aiding in the relief of traffic congestion in many instances but are hindering such relief when they allow such a thing to happen as in this case. They are not helping "to lessen congestion on the public roads and streets" in this case, as provided by the Township Rural Zoning Act, Act 184 of the Public Acts of 1943 as amended, §125.273.

A New Jersey case (186) decided in 1954 had concerned an amendment to the zoning ordinance of the defendant borough. Suits challenging the amendment were brought by three other adjoining boroughs having borough boundaries in the immediate area. The amendment contested changed the zoning of one block from a residential zone to a business zone. The defendant borough's governing body unanimously adopted the amendatory ordinance after the planning board approved the change. The three adjoining boroughs

wanted the block returned to the residential classification. The lower court entered a decision setting aside the amendment to the zoning ordinance. The defendant borough appealed to the supreme court.

The opinion and decision of the supreme court contained considerable reference to traffic and congestion. One of the witnesses for the defendant testified that the block in question

> . . . "was a logical place to put a business area, in keeping with the plan of the Borough. The best interests of the public would be served by placing a shopping center in an easily accessible area, that would have adequate off-street parking." He further stated that both the planning board and the council had considered traffic problems, parking facilities, the element of safety, the comprehensive zoning plan of the Borough and other important factors . . .

One side of the block in question was bounded by a heavily traveled county highway.

The plaintiffs had several witnesses who testified, on the other hand, as to the undesirable aspects of the zoning amendment both from the standpoint of the traffic conditions and as it related to the comprehensive zoning plan of the defendant borough and the three adjoining boroughs.

There was also testimony give that

> . . .Knickerbocker Road is a heavily travelled two-lane county highway where the traffic congestion, lack of parking facilities, and the general safety problem have for some time been a matter of public concern, and that the rezoning of Block 197 as a business district would increase these problems to the detriment of the public generally and especially to the residents of the area. . .that a new shopping center was unnecessary, since existing shopping facilities were adequate.

A zoning expert testified that the rezoning of the block in question was not in accordance with comprehensive zoning of the borough.

The act was quoted in several parts including the part RS 40:55-32 which included the section; "to lessen congestion in the streets."

The supreme court said that

> the comprehensive zoning plan of the borough reveals an intention to maintain this whole area as a residential one and as testimony clearly shows that the block is suitable for the construction of residences. There is no reason why it should and cannot be used profitably for that purpose. On the other hand, the changing of Block 197 to business use will not "lessen congestion in the streets." . . . On the contrary the proposed use of the land cannot fail to achieve objectives the zoning was designed to prevent. One has but to remember that Knickerbocker Road, though an important artery of traffic from Englewood to the New York line, is merely a two-lane street to realize the consequences which would flow from the congestion of traffic at Block 197 in the event of the construction of a shopping center there. We fully concur in the findings

> of the trial court that the ordinance under review "does not promote any of the statuory purposes relating to zoning."

The court said that the ordinance must be set aside as "spot zoning" in violation of the comprehensive plan of the borough and that it also is contrary to the provisions of the zoning law. The judgment of the lower court was affirmed.

The court in this case recognized the purposes of zoning and the resultant traffic and congestion that would result from the proposed rezoning. Permitting a large shopping center in an area where evidently all of the streets are unable to handle the increase in traffic would result in undesirable effects upon the neighborhood. The resultant traffic congestion would be a detriment to the neighborhood unless adequate zoning regulations protect the residential area. The streets around the shopping center will become "shortcuts" to the shopping area if adequate circulation, ingress and egress and traffic controls are not provided for. Even though adequate provisions are made, there is also the effect that such a use will have upon the surrounding area as mentioned in connection with the preceding case.

A New York case (251) decided in 1954 involved the desire to change the use of a one-family dwelling to that of an undertaking establishment (funeral home), and to erect a one-story addition to the rear and side of the existing building, to erect a three-story elevator shaft, to have a lighted sign, and to provide for one-family living quarters. The dwelling was located in a residence district in which undertaking establishments were allowed if approved by the board of appeals. The board refused to grant a permit. The lower court had annulled the determination of the board and directed the issuance of the permit. The zoning board of appeals appealed from the order.

In the court's opinion, it referred to the hearings and data of the board of appeals. During the hearing before the board several residents of the neighborhood appeared; some spoke in favor of the application but several others objected. The board in denying the application set forth clear and explicit reasons, the court went on, in its "Findings of Fact." Among the findings, the board found that

> . . . "The operation of a funeral home of the size here proposed would greatly increase traffic in the vicinity and would create parking problems and traffic

> hazards, not only upon Lake Avenue but also upon Senaca Parkway and Maplewood Avenue as well." The board was "not satisfied that the proposed off-street parking facilities would be sufficient for the type and number of funeral services the proposed establishment would be designed to accommodate."

Other findings of fact included the location and character of the property in question, the character of the surrounding area (a highly desirable residential area), a smaller funeral home in the vicinity which had slightly impaired the residential character in its immediate vicinity, and other facts. The court went on to say about the above facts that

> It will be seen from the above mentioned findings of the board that the board had in mind the general purpose and intent of the zoning ordinance, analyzed and considered the effect upon the locality of a funeral home, and concluded that to grant a permit for an undertaking establishment in this particular area would be contrary to that general intent and purpose.
>
> The granting or the withholding of such a permit as is asked for here is a matter peculiarly within the discretion of the zoning board of appeals. The court may not substitute its judgment for that of the board, and may not set aside the determination of the board unless it clearly appears that the board's action was arbitrary and unreasonable. . . .
>
> It clearly appears from the facts developed at the hearing and from the circumstances and character of the neighborhood that the board exercised a discretion in harmony with the general purpose and intent of the zoning ordinance. We conclude that the determination of the board was not arbitrary or unreasonable.

The court after further discussion said that the appeal had been properly taken and the order of the supreme court at special term should be reversed and the determination of the board of appeals confirmed.

The final order reversed on the law and determination of the zoning board of appeals was confirmed.

The board in this case evidently had foreseen the results that would have occurred if this use had been permitted. There naturally would have been an increase in traffic. With insufficient parking facilities available in the area, or inadequate facilities provided for by the property owner, the automobiles would automatically be forced to park in the streets, thereby creating additional hazards and congestion by narrowing or reducing the number of the lanes of moving traffic--creating a so-called bottleneck at these points. This would affect not only one street but all surrounding streets. The lower court evidently had just ignored these facts along with the intent and purpose of zoning: "to lessen congestion in the public roads or streets."

A Pennsylvania case (267) decided in 1956 involved a 13-acre tract of land which was zoned for residential

use. Previously much of the land in question had been in a business zone. The owner applied for a building permit to erect a supermarket and adjoining incidental retail stores with parking thereon, and also petitioned for a variance. The building inspector refused to grant the petition and building permit, because the application was for a business purpose in a residential zone. The board of adjustment denied the appeal by the owner. The lower court sustained the appeal and concluded that the zoning ordinance was arbitrary, discriminatory, confiscatory and therefore unconstitutional, as to this tract of land.

The upper court, in its opinion and discussion, reviewed the facts concerning the property in question and also the surrounding area. The court said in using some of the material findings of the lower court, that there is no access to the property except for about 125 feet along one road which is heavily traveled, and therefore is isolated from the adjoining streets, dwellings, and buildings. The court further said that appellant's land was not suited for residential purposes because of the difficult problems presented (among other things, the heavy traffic along the road), and that is would not be economically feasible or practical to build houses on the tract.

The court cited the lower court's finding further:

> "If appellant's land is used for the construction of a super-market, there would be [among other reasons listed] an increase of the traffic on Garrett Road, but such increase would not coincide with the present peak traffic periods and there would be no increased hazard or damage from increased traffic or any other condition. . . . there will be no adverse effect on the adjacent residences by reason of noise, confusion or light. . . .
>
> The literal enforcement of this ordinance would impose an unnecessary hardship on the subject property. The land is not suited for residential purposes because of the difficult problems presented by . . . the heavy traffic along Garrett Road. . . ."

The upper court affirmed the action of the lower court in saying that the zoning ordinance, as applied to this tract of land, was arbitrary, confiscatory and unconstitutional.

There is not much that can be said about this case as the property was in an odd situation, railroad on one side with storage area for freight and heavy machinery, a stream traversing the subject tract and flooding at variouse times among other things. Another boundary of the property in question was the rear property line of the lots of 15 dwellings. Third boundary adjoined vacant land. The fourth boundary was the side toward Garrett Road, with only 125 feet of 372 feet adjoining the road. Although

the property is in an isolated situation, there could be undesirable effects on the 15 dwellings. The addition of such a concentration of use will of course attract considerable traffic. The parking problem should be taken care of in this situation with adequate parking being provided on the premises. The traffic may have detrimental effects on the surrounding property caused by increasing the amount of traffic on the local residential streets. Even though traffic may have little effect upon neighboring residences, the noise, lights, and the glare from these lights as well as other effects of a large commercial development may tend to start deterioration of the residences unless regulations are provided for minimizing their effects by green belts, noise barriers, and so forth. After this parcel is rezoned the owner of the adjacent parcel of vacant land, abutting this property, may enter into the picture by reason of the desire to have commercial or other intensive development on his property. Thus the results would be the tendency to spread the commercial attraction upon other property owners, beginning the cycle of deterioration of residences, then the desire for commercial uses and so forth, with traffic and congestion increasing at each expansion. The property involved here would be

more ideally suited for the commercial use than the previous case but--as has been said before--adequate protective measures should be taken to minimize the effect of the development upon the surrounding property owners.

In comparing cases (251) and (267) the following can be said. The property in (251) was located in an ideally situated neighborhood, uninhibited by other influences of commercial development, natural barriers, topographical influences, and railroads. The street was heavily traveled but evidently it did not inhibit the residential character of the area; therefore it can be seen that there were valid reasons for not desiring a commercial development to get started and form a wedge for other intensive development. Although there was one small business establishment in the area, the result of that use was said to have slightly impaired the surrounding property. Adding another intensive use would have increased both the traffic congestion and deterioration of the area.

In case (267), although there were 15 dwelling lots abutting one side of the property involved, two of the other sides were undesirable because of the railroad and other non-residential development. This property was undesirable for residential development because it was low,

subject to flooding, and had a stream traversing the property. The tract had been used previously for commercial operation as a pay-as-you-go public golf course. Other factors involved made it unsuitable for residential development, extensive land filling to make it usable, sewers and storm sewers traversing the property close to the surface, and relocating the stream bed among other undesirable factors. In this case it is believed that the desired use is more feasible and that it could be properly developed, providing adequate protection is given to the adjacent 15 dwellings, through development of a green strip on that side and other improvements to minimize the commercial development effects upon them.

A California case (4) decided in 1958 involved the rezoning of a tract of land from a residential and agricultural zone to a heavy commercial use zone. Most of the land was planted in citrus trees. The property owners requested a redistricting of their property. The boulevard frontage was finally rezoned as heavy commercial uses by the city council after many delays and previous denials of rezoning applications submitted by the plaintiff property owner. There were several public hearings held during the time the plaintiffs attempted to get the property rezoned.

Many registered voters petitioned to return the property in question to a residential use (single-family zone). At a special election, the citizens voted against the adoption of the rezoning ordinance. Plaintiffs (property owners) sought declaratory relief action to have the ordinance held valid. The trial court, deciding that the boulevard frontage was more suitable for commercial purposes, that the rezoning ordinance was not discriminatory as to plaintiffs, held that the ordinance was valid.

In the upper court's decision there was little discussion of the traffic conditions around the property in question. The boulevard, on which plaintiffs' property fronts, is a widely travelled highway. The property also fronts on another street which is evidently not highly traveled. The defendants' appeal made no reference to traffic conditions. In the chronological listing of the case data the upper court listed, among other things, that the trial court had found:

> That the highway conditions in front of plaintiffs' property rendered its boulevard frontage more reasonably usable and suitable for commercial purposes than for residential or agricultural purposes; that substantially all the property in the county contiguous to and for some distance east and west along Foothill Boulevard was and had been zoned for business; and that next to plaintiffs' property there were a

> reservoir, water well, and pumping plant which for many years had been used for commercial purposes. . . . (item xiii [b] of Chronology).

In the plaintiffs' appeal mention of the highway conditions in regards to the property in question was made by the court in answering stated questions. The first question was

> Was the zoning of plaintiffs' boulevard property for residential and agricultural use in the general zoning ordinance No. 441 unreasonable, oppressive, arbitrary and discriminatory, in the light of the trial court's finding. . . .?

The answer given by the upper court was

> NO . . .
> As hereinabove stated, the trial court found that the highway conditions in front of plaintiffs' property rendered its boulevard frontage more reasonably usable and suitable for commercial purposes and that substantially all the property contiguous to and for some distance east and west along Foothill Boulevard was zoned for business . . .

The judgment of the trial court was reversed, and the plaintiffs' application for leave to produce additional evidence and for the court to make additional findings was denied.

In the dissenting opinion much mention of the traffic and conditions was given. The dissenting justice said he believed that the ordinance rezoning a portion of the property in question as a commercial zone was subject to

referendum, and that the plaintiff property owners' constitutional rights had been invaded by the basic ordinance which zoned the plaintiffs' property for residential and agricultural uses.

The justice then gave a thorough summary and discussion as to the property and the highways on which it fronts. This will be condensed considerably. The property lies at the corner of two roads. Foothill Boulevard, upon which the main part of the property fronts, is not in the city involved in this case, and this frontage is the part that was rezoned. The boulevard also known as U. S. Highway 66, is a heavily traveled highway. An average of 12,800 vehicles per day of all types traverse the road at high speeds during the weekdays; the number increases substantially on weekends. Considerable noise, fumes, odors, gases, and vibration are emitted from the traffic. The noise can be heard over 300 feet from the highway; the odors, fumes, and gases have killed or harmed the citrus trees for at least 100 feet back from the highway. The property had been used for a citrus orchard for many years. There was no posted speed limit in front of the property in question, but speed was restricted from the intersecting street mentioned away from the property in one direction; the

opposite direction past property was unrestricted. These are the main points mentioned in the discussion. This data was taken from the trial court findings which the justice cited. The justice cited the trial court in this conclusion that

> . . .said traffic conditions upon said Foothill Boulevard render plaintiffs' said boulevard frontage more reasonably suitable and usable for commercial uses and purposes, as authorized and permitted in a C-2 Zone by the terms of said Zoning Ordinance No. 441, as amended than for any other purpose . . .

The dissenting justice then cited a case closely in point with this case:

> Summarizing, plaintiffs' property is not usable for either residential or agricultural purposes; it is surrounded by commercially used property; . . . A case closely in point is Skalko v. City of Sunnyvale, 14 Cal. 2d 213 (93 P. 2d 93). There plaintiff's property was, as here, zoned residential, but it was near a large cannery which emitted noise and on a highway carrying heavy traffic . . .

The justice (dissenting) said he would affirm the judgment of the trial court, which had held that the ordinance rezoning plaintiffs' property as commercial property was valid, on the ground that Ordinance No. 441 is unconstitutional as applied to the plaintiffs' property. This conclusion renders it unnecessary to determine whether Ordinance No. 513 rezoning plaintiffs' property for commercial uses was subject to referendum or was otherwise valid and effective.

A petition by the plaintiffs and appellants for a rehearing of this case was denied later in 1958. The dissenting justices in the dissenting opinion said that the petition for a rehearing should have been granted.

The court, in reversing the decision of the trial court, could have, if it had needed to, brought out some additional factors in upholding its own opinion. The very heavy traffic, as brought out by the dissenting opinion, would have been increased and interrupted even more if the heavy commercial uses were allowed. Additional ingress and egress facilities would be built. With each entrance or exit there would be additional hazards created by vehicles leaving and entering this highway from the adjoining uses. Slowing down of traffic would result. Possible parking on the local street could happen, unless prohibited, and unless there were provisions in the zoning ordinance requiring sufficient off-street parking spaces to serve the new uses. The parking on the roads narrows the space for moving traffic and creates hazards for pedestrians. There was a rather large residential area next to the property in question. Deterioration of this area could result unless adequately protected.

The building of housing along a highway, as heavily traveled as this one, is a problem that is hard to solve in many instances. The lots along such a highway could be extra deep or backed up to the highway and planted and fenced in to cut down on the effect of the traffic noises. Although there would be driveways from the residential area, there would be the very minimum of cars entering or leaving the premises. Also another factor that entered the case here was that there was more than sufficient land zoned for commercial uses in the city, as testified by some witnesses. An enabling act could have possibly helped here in this case in that the court (affirming opinion) would have had something in its favor to further rely upon in basing its opinion in regards to traffic and in relieving congestion on the streets.

In the dissenting opinion, with the reasoning that was presented, is every heavily traveled road to become a mecca for various commercial uses? It stated that the traffic, among other factors, rendered the land unsuitable for residential use--therefore should all land bordering upon a heavily traveled road be zoned or rezoned for commercial uses as was iterated by Justice Edwards in Michigan case (144) in his dissenting opinion? This is just

about what was happening in the country along practically all heavily traveled roads, until some adequate provisions were made. There has been a halt to this practice, at least temporarily, due to the construction of freeways and limited access highways, where there are limited or no land uses allowed to connect directly with the roads.

The dissenting opinion had good reasons present upon which to base its decision and deem the property unsuited for residential uses, but as has been stated before it could be used otherwise if adequately planned and regulated.

A case from Maryland will be used for comparison with the selected States. The Maryland case (307), decided in 1954, involved a 65-acre tract of land which was zoned for residence use. A petition was filed to reclassify a portion of the property to commercial zone to permit the erection of a shopping center. The zoning commissioner granted the application subject to certain restrictions. The owners of nearby properties protested and appealed to the board of zoning appeals. The board affirmed the decision of the zoning commissioner, stating that there was a need for a shopping center and that the proposed location

was an appropriate one. The surrounding property owners petitioned for a writ of certiorari in circuit court, and the court affirmed the decision of the board. The protestants appealed to the upper court.

The upper court stated:

> There was also a conflict in the testimony [before the lower court] as to whether the proposed shopping center would produce traffic jams and hazards on the streets in this area. Mr. Beccio [owner of the property involved] claimed that the shopping center would not create any traffic problem on Edmonson Avenue whatever. On the contrary, the protestants claimed that the shopping center would make travel there very dangerous.

There was also conflicting testimony concerning whether the neighborhood had changed enough to warrant the zone change and whether a shopping area less than a half mile away was adequate to satisfy the needs of the residents.

The upper court also said that

> . . . the [trial] court should not substitute its own judgment as to the wisdom or soundness of action taken by the board, but should decide only whether or not such action was arbitrary or discriminatory. It is not the function of the court to zone, or rezone, and it is only where there is no room for reasonable debate as to whether the facts justified the board in deciding the need for its action, or where the record is devoid of supporting facts, that the court is justified in declaring the action of the board arbitrary or discriminatory and therefore void.

The court said that there was cogent testimony on both sides of the case, and went on to discuss the action taken at the public hearings and recommendations given at the hearings.

The planning commission advised the board

> . . . that Edmondson Avenue is the main thoroughfare through this section of Catonsville, and the intersection of Edmondson Avenue and Lee Drive will be a focal point for the movement of traffic and a logical place for a shopping center.

This report was not placed either before the board or the lower court, and in conclusion the upper court said that

> . . . In reviewing the action of the zoning board, the court on appeals considers the board's action, not the opinion of its members. We will therefore reverse the order appealed from and remand the case for further hearing when the report of the Planning Commission may be introduced in evidence, and the parties may produce any further evidence and have the right of cross-examination.

In this case, although not brought out here, there may have been considerable testimony given as to traffic conditions. With the erection of a shopping center, there is always an increase of traffic. Whether the streets that surround or serve the shopping center are adequate to handle the increase of traffic should be considered. If the shopping center is not adequately supplied with parking facilities, or the center is not required through the zoning ordinance to supply sufficient parking places, there is

the possibility of the cars parking on the adjacent streets, thereby congesting the traffic flow by reducing the number of moving lanes of traffic. Also if the shopping center is not provided with adequate internal circulation and access routes, congestion within the center itself will result. Incidentally the problem of parking upon the streets will depend upon the size of the shopping center, whether it is a one-or two-small-store, neighborhood center or a large, well-planned area shopping center.

Shopping centers should have sufficient provisions and regulations provided for in the zoning ordinances so as to minimize the effects they have upon surrounding land uses, especially if they are in or adjacent to residential uses. These provisions and regulations can designate the amount of parking per square foot of floor space or possible customer demand, size of stores, size of property involved to limit size of building upon the property--or minimum area covered by buildings, and also by providing adequate but well regulated access routes, ingress and egress openings, and by limiting the location of shopping centers in areas where there are already adequate roads and streets.

Section 5: Category E Residential ⇌ Industrial and Manufacturing.

A California case (16) decided in 1956 involved the rezoning of an area by an amending ordinance to light industrial. The vacant 785-acre parcel had previously been zoned for agricultural uses. Nearby property owners wanted the area returned to its previous classification and attacked the amending ordinance as arbitrary and unreasonable. The planning commission and the city council held elaborate hearings at which the various objections then urged were advanced, considered, and held not to be valid reasons for withholding the rezoning. The trial court upheld the rezoning.

In the upper court's deliberation and decision there was considerable interjection of the traffic situation. The appellants' major contentions were that

> . . . the rezoning has and will depreciate the value of their homes situated in the general neighborhood, and that permitting light industry in that portion of the valley is not consistent with the general welfare because inter alia existing roads and sewers are inadequate to accommodate the traffic which will be developed by the improvement of this vacant land in conformity with the new ordinance.

In the findings of the trial court it was mentioned, among numerous other things, that the master plan of the city

had indicated ample highway and roadway access to the rezoned area. Another of the findings concerned the number of commuting employees which leave the San Fernando Valley for their employment. The finding was that more persons were commuting from the San Fernando Valley than were entering for such purpose.

The argument, the court went on, that

> . . . development of the 785 acres (1.226 square miles) for industrial uses would create intolerable congestion of traffic and inadequacy of sewer service presupposes that roads and sewers will remain in their present limited capacity, rather than growing in proportion to the increasing public demands. This is a faulty notion of the basis for testing validity of a zoning, which necessarily looks to the future and proceeds upon the assumption that development of properties and facilities within and without the zoned area will proceed harmoniously with its requirements. . . .

The appellants also contended that the industrial use of the 785 acres would create, among other things, a great increase in the dust, noise, and traffic and would occur in what was a predominantly residential community.

This court affirmed the judgment of the trial court. The appellants' petition for a hearing by the supreme court was denied in 1957.

Michigan case (137) decided in 1953, concerned property of 6 acres which was in two zone classifications

and had two dwellings, one about 160 years old. Part of the lot was zoned for two-family dwellings and the remainder was zoned for one-family dwellings. Property adjoining the property in question on two sides is zoned residential and the other two sides are zoned as light manufacturing. The property in question was purchased for the development as residential area, but there were no buyers because no financial institution would accept mortgages, because of the location and proximity to an airport and manufacturing plants. Plaintiffs had requested to rezone the property for manufacturing purposes, because of the inability to sell the property for residential uses. The application for rezoning was denied upon the recommendations of the city plan commission. The lower court held the ordinance invalid as applied to the plaintiffs' property. The defendant city appealed.

The upper court's opinion and discussion reported that the residents testified, on behalf of the city, that if light manufacturing were permitted on the lot in question, it would increase traffic on the streets, make parking difficult, increase noise and dust, and in general would make the area less desirable from a residential standpoint. The court went on to say that

> . . . While residents of the area immediately adjacent do not approve of a light manufacturing use of plaintiffs' property because of a probable increase in traffic, noise, smoke and dust, the record indicates that the area is already characterized as an undesirable residential area because of the existence of those conditions in larger degree than is normally found in residential areas. The character of the area will be changed in slight degree if light manufacturing is permitted on plaintiffs' property.

The court declared that the zoning ordinances were unreasonable and confiscatory and therefore invalid as imposed upon plaintiffs' property. A decree was to be entered accordingly. (This affirmed the lower court's decision.)

This California case was one of the best ones found in regards to the traffic question being included in the discussion by the court, even though California does not have the purpose included in its enabling acts. Although it was alleged that the industrial use would create intolerable congestion of traffic, the court upheld the rezoning. The same factors could apply here as has been stated many times before, parking in the streets and so forth.

An ideal situation to be considered in the development of a large industrial site is the so-called industrial park type development. The effect upon a residential area that a use such as is contemplated in the California case

can have can be minimized by providing adequate controls, measures, and regulations--formulated and required so as to provide for adequate parking, streets, traffic control, landscaped settings, and roads, among other things, to serve such an area without allowing it to become an instrument in causing the deterioration of a residential area.

There are several differences between the property involved in these two cases. One is that there were industrial areas on two sides of the property involved in the Michigan case; the California property was completely surrounded by residential area (as closely as could be determined). The Michigan case in its approval of the rezoning as industrial, could bring upon the residential area additional effects by increasing the traffic that already existed to the already existing industrial areas, whereas in the California case there might be similar effects upon the residential area, but to a much more limited degree, for there was no other intensive use in the area. Also in the California case, because the property was an exceptionally large, undeveloped area for which the master plan shows adequate highway and roadway access, there was a chance to provide appropriate streets within

the area and to develop the parcel into an ideal "industrial park" type development, which has been shown generally to have no effect upon the surrounding residential areas. Therefore the effects upon the residential areas caused by the rezoning in these two cases will be of two distinct differences. There are more reasons applicable in the favorable rezoning as industrial, the area in the Michigan case, than there were in the California instance, because of the adjacent industrial uses, but it has been shown that the California rezoning can be allowed if adequately regulated. More information as to street conditions, traffic volume, and other pertinent data might have been used in both cases to deter the rezoning for industrial uses <u>if</u> it had been definitely felt that the use should not be allowed. Of course the California case, as has been stated previously, could be developed into the ideal industrial park if the adequate protection was provided through the zoning ordinance.

Would the inclusion of <u>the purpose</u> in the enabling acts of California have helped in deterring the rezoning of the area as industrial if it had been decided that the use should not be allowed at all? It is believed that it would

have, because then the court would have had an additional legal basis upon which to base its decision, as it had recognized the serious traffic situation that would be involved and promoted if the desired use had been permitted.

Maryland case (308) decided in 1955 concerned the expansion of an existing manufacturing plant. The lot in question was in a residential area, where it was a legal non-conforming use. The building, occupying less than 10% of the lot, was used for the manufacturing and repair of motor truck bodies. Owner desired to add to the existing building another building about the same size. The ordinance provided that non-conforming uses could be extended only with the approval of the board of zoning appeals. The board granted the approval for the extension. Surrounding property owners appealed to the circuit court upon the decision of the board of appeals. The court reversed the decision of the board. The owner of the property involved in this case had previously sought to expand his building under the previous ordinance, but was denied by the zoning commissioner and the court affirmed that decision.

The upper court said in its opinion that the board had given careful consideration to the testimony presented by the surrounding property owners, and it was impressed that they

> . . . had purchased his land and built his house after the applicant had started in business, and by the further fact that none of the protestants had been disturbed by any noise or odor from the applicant's plant.

The upper court said that this appeal required it to review and consider the zoning regulations which were adopted. The part that is pertinent to cite here is

> Section 24, entitled "Limitations, Guides and Standards," directs that the Board shall not approve an application for a permit where it finds that the "proposed building, addition, extension of building or use, sign, use or change of use would menace the public health . . . or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood."

The court then said that the above quoted section specifically provided that in deciding such matters that the board shall give consideration, among other things, to

> 1. . . .
> 2. Traffic conditions including facilities for pedestrians, such as sidewalks and safety zones and parking facilities available and the access of cars to highways.
> . . .
> 5. The purpose of these regulations as provided in Sections 1 and 2.
> . . .
> 13. As developed, the master plans for highways, . . . and the like.

Sections 1 and 2 were not cited in the case but it is assumed that in one of these the purpose of lessening the congestion on the public streets was included.

The court said there was no dispute over most of the limitation, guides and standards in this case. It said that

> . . . There is no problem as to masses of people residing, working or studying in the neighborhood. No difficulties are expected from traffic conditions, such as facilities for pedestrians, parking facilities, and access of motor vehicles to the highway. . . . There are no structures in the vicinity where people are apt to gather in large numbers, such as schools, churches, theatres, and hospitals. And finally there was no controversy over any master plan for highways, parks, or schools or other facilities.

The court also said that the property owners that protested had not been disturbed in the past and that they fear they might be in the future, and that their properties might be depreciated. One of the protestants said that his only protest was against "driving a wedge in this zoning business." Others said that they couldn't see the building because of the trees, and other statements were cited.

The court said that

> However sincere the protestants may have been in their belief, the Board was entitled to rely upon the expert opinions of the real estate appraisers. The function of a zoning board is to exercise the discretion of experts, and on an appeal from a decision of the board

> the Court, although it may not arrive at the same conclusion, may not disturb the decision if the board complied with all of the legal requirements of notice and hearing, and the record shows substantial evidence to sustain the finding. . . .
>
> Our conclusion is that there was substantial evidence before the Board to warrant it in granting the permit. As the Court below had no right to substitute its judgment for the judgment of the Board, we must reverse the order reversing the decision of the Board and remand the case for the passage of an order affirming the decision.

The upper court upheld the granting of the permit to expand the business of the non-conforming use.

The board in this case evidently felt that the increase in the size of the building used for industrial purposes had no effect upon the traffic conditions, at least not to a degree where it would further congestion. Other reasons for the possible effects upon the surrounding residence area would be essentially the same as in the preceding cases but to much more limited degree. The only thing that can be said about this case is that if the area had been completely residential with no other intensive uses in the area, here would have been a good chance for the elimination of the use, because it was already non-conforming, and therefore would have definitely helped in the reducing of traffic in the area.

Section 6: Category F Business and Commercial ⇌ Industrial and Manufacturing.

The case from Connecticut (52),decided in 1948, involved property of two acres which was in an area classified as a business zone. The existing use was of a light industrial character in the manufacturing of wire cable grips. The business zone regulations forbade industrial uses save those clearly incidental to the conduct of a retail business conducted on the premises. The main part of the defendant's business was done on adjacent property. Incidentally, there were no industrial zones in the town in this case. Through the litigation presented here, the town of Westport, its zoning and planning commission, and its zoning enforcement officer sought to enjoin the defendants from the operation of the manufacturing process described. The defendants' challenged that the town's zoning regulations were not uniform for each class or kind of building or structure in the Saugatuck district, since there were other buildings in the business district being used for manufacturing purposes. Among other contentions, they claimed that the prohibition against light industry amounted to an unconstitutional taking of property without due process of law.

The court in its opinion and discussion cited the General Statutes of Connecticut in the following way:

> The standard by which Westport's regulations are to be scrutinized is to be found in General Statutes, Section 424, providing: "Such regulations shall be made in accordance with a comprehensive plan and shall be designed to lessen congestion in the streets; . . ."

and then went on to say that

> A personal inspection of the affected area satisfies me [the Judge] that the Saugatuck district poses Westport's most complicated traffic problem in that a vast number of commuters use the principal arteries of the locality to carry them to the railroad station, located but a few hundred feet from the defendants' plants. Likewise, the school children of the area are required to use the same principal arteries to reach the district school, also located a comparatively short distance from the defendants' property. If industry is permitted to continue to expand, then inevitably there will be a substantial increase of street congestion with consequent hazard from fire and other dangers and with added exposure to school children. Saugatuck is an area of Westport, and is the most densely populated area.
>
> I conclude, therefore, that the town's zoning regulations, as presently drafted, do not offend the statutory mandate in the matter of safety and health and general welfare.
>
> Accordingly, on the complaint and the counterclaims the issues are found for the plaintiffs. The defendants, and each of them, may be enjoined and restrained from using or permitting to be used for industrial or manufacturing purposes their land and buildings thereon standing, as well as the leased building adjoining the aforesaid land. . . .

The Illinois case (72),decided in 1951, concerned an 18-acre tract of unimproved land within an industrial district. Plaintiffs desired to erect an out-door motion picture theater and related buildings. The use was permitted in the district, as all uses permited in any of the use districts were likewise permitted in all districts of a lower classification. Plaintiff in 1949 had applied for a building permit for constructing an out-door drive-in theater. The board of trustees of the village denied the application. Later in 1949 the board of trustees adopted an amendment to the zoning ordinance, which by its provisions excluded the plaintiffs from erecting a motion picture theatre upon the property in question. The lower court had granted appellees a writ of mandamus commanding the village and the proper authorities to approve the application for the building permit.

The upper court's decision and reviewing said that the plaintiff's land was located on the west side of McCormick Boulevard near an intersection and had an 824-foot frontage on that boulevard. Surrounding the tract in question were several industrial plants and unimproved vacant land. The boulevard had four paved lanes but was

not a major highway carrying through traffic. Plaintiffs contended that the refusal to issue the permit was not based upon any considerations of the public welfare or safety, health, or morals, but was arbitrary, capricious, and willful on the part of the village. Defendants had several experts testify, among them a "zoning expert and city planner." The planner testified that

> . . . the protection of industrial districts was a proper element for zoning and that the highest and best use for plaintiffs' tract was for industrial purposes. His opinion was that the location of a drive-in theater would have an adverse effect upon the surrounding industries traffic-wise.

Other testimony, including that given by police officers, claimed that the out-door theater would unduly increase traffic on McCormick Boulevard.

The court concluded that the passage of the amendment was unreasonable, arbitrary, and had no firm basis in, or relation to the public health, morals, safety, or public welfare, thus affirming the judgment of the lower court.

This case (72) is an excellent example of action arising wholly out of a strictly poor zoning ordinance.

In case (52) is an example of the court's citing the enabling act, or statute, and then basing its decision upon portions of it.

In (52) the court had recognized that the street was already congested and realized that the addition of further traffic would hinder the movement of the traffic and add additional hazards to the pedestrians. Although the town did not provide for industrial uses in its zoning ordinance, it is unfortunate that an area was not provided for controlled industrial development, but of course this type of development was not in vogue in the mid 1940's. The court realized that there were no areas set aside for industrial uses, and that if industry were permitted to expand, the traffic would always be on the increase and there would be no lessening in the traffic congestion in the area.

In the Illinois case (72) the problem of the drive-in movie theater is somewhat special. Although these out-door theaters are used only in the nighttime, the traffic flow into and out of the theaters usually poses a different kind of problem. In the early evening the traffic into out-door theaters is not a definitely concentrated movement; granted, the attraction adds more automobiles upon the roads approaching them, but it is usually spread over a fairly long time. The greatest

interference that an out-door movie exerts upon the streets is at the time a movie ends; then a mass exodus begins. Whether or not in this case the court took appropriate action is debatable. The village, in prohibiting out-door theaters from being built in any part of the village, may have had other reasons for prohibiting them than the one stated below. For example, the village may not have had sufficient vacant land within its boundaries for possible future expansion of even the more desirable uses. Out-door theaters are usually deemed to be a "lost use" or "un-wanted use" as few municipalities want them within their boundaries. The prohibiting of out-door theaters completely from a city, village, or town is a touchy subject, and, as in the case presented here, one in which a definite analysis seems to be lost.

The municipality in this case evidently had no qualms about allowing drive-in theaters <u>until after</u> the application for the construction of one had been made. This situation has often existed in other municipalities where it is noticeable that all drive-in theaters are located outside the municipal boundaries.

The amount of traffic generated by outdoor theaters is unquestionable more than the normal flow of traffic,

but this is only at certain times. This increase of traffic can be taken care of by adequate controls and regulations included in the zoning ordinances providing for safer traffic movements and controls in the area in which the proposed out-door theater is to be built. Some of these stipulations can be the additional lanes of traffic, to separate normal traffic from the movie traffic to assist in the merging of the two traffic flows, through widening of roads, installation of stop lights, turning lanes, and any other improvement or function which is deemed necessary to minimize the effect of increased traffic and congestion upon the roads in the area of the out-door theater.

The Oklahoma case (309), decided in 1955, involved property classified as commercial. The plaintiff property owner constructed water and sewer pipelines for municipalities, and his offices and storage area for the pipe and equipment were located on the property in question. The property owner had applied to rezone his property from the general commercial zone to the light industrial classification. The board of county commissioners abided by the planning commission's decision and approved the change. The district court refused to reclassify the property.

The upper court in its opinion and discussion reviewed the evidence which included the fact that the property in question fronted upon a boulevard and

> . . . MacArthur Boulevard is a paved north-south through street running from Will Rogers Field on the south, and continuing north to the county line. . . . Photographs of plaintiff's property and property surrounding it were introduced showing a car lot, grocery store, construction yard (analogous to plaintiff's premises), a beauty shop, sand pit, feed lot and a dancing school. . . .
> MacArthur Boulevard is an industrial, or heavy traffic, street and zoning for industry is made on such traffic arteries.

There was no further reference to traffic or congestion. The upper court said that the trial court's decision to refuse reclassification of the plaintiff's property was based upon the statement of one witness (who operated a well drilling outfit and who had upon his premises all the material and equipment to operate said business), that he intended to remove the pipe and equipment stored and maintained at the rear of his property. In further discussion the court said:

> The court's duty when change from classification of property under zoning regulations is sought is to determine whether the restriction on use of the property is a reasonable exercise of power under zoning regulations and statutes, and whether the restriction is an arbitrary, unreasonable and capricious exercise of that power.

> The evidence in this case clearly shows that one of the defendants is conducting a similar, or analogous, business as being conducted by plaintiff.
>
> In view of the general character of the neighborhood and the surrounding circumstances, we hold that the refusal of the trial court to rezone plaintiff's property, which bears no reasonable relation to public health, safety, morals or welfare, should not be sustained.

The court covered abuse of discretion, debatable evidence, and other material and said that there was an abuse of sound legal discretion when the trial court refused to rezone plaintiff's property. A judgment reversing the trial court was entered. The court gave directions to enter an order rezoning plaintiff's property to light industrial.

There is not much that can be discussed about this case because there was very limited reference to traffic and congestion. The street was heavily traveled; the surrounding properties were devoted essentially to commercial and industrial uses.

It was probably felt that this proposed change would have no effect upon the traffic, although it could if the use were to be expanded. If there were no provisions in the zoning ordinance covering regulations for off-street parking facilities, the traffic and congestion could adversely affect the adjacent streets.

Section 7: Category G Residential ⇌ Gas Stations.

Illinois case (109), decided in 1957, concerned a large parcel of vacant property on a corner of the intersection of two heavily traveled roads. Property was zoned for single-family residences, with minimum lot size restrictions, and was located in unincorporated territory. The plaintiff desired to erect a gasoline service station and wanted his property rezoned for commercial uses. The county evidently refused to change the classification. The lower court held that insofar as the zoning ordinance applied to plaintiff's property, it was unconstitutional and invalid.

In the court's opinion, review, and discussion, traffic was mentioned several times. The two roads upon which the property fronts were four-lane arterial highways heavily traveled with the traffic exceeding 15,000 vehicles per day. One of the plaintiff's expert witnesses testified that

> the highest and best use of the property was for commercial purposes; . . . that the property is not suitable for homes because it is at a heavy-traffic intersection, . . . adjacent to two four-lane heavy-traffic roads and to a deep ditch. . . .

It was also testified by plaintiff's witnesses that commercial improvement would have no harmful effect on the

neighboring property but would be beneficial because of the increased taxes, additional light on the corner, and the elimination of some of the traffic hazards.

The defendant's only witness, a city planner, said that

> four or five houses could be built on the property and that if commercial use was permitted it would be inharmonious with residential development, attract additional traffic, create additional light glare. . . .

The higher court said that the master's report of the lower court

> found that the zoning ordinance ignored the intermixed character of the neighborhood, surrounding uses, the traffic situation, and the highest and best use of the property; . . . that denial of nonresidential use to plaintiff's property was discriminatory since the ordinance classified for business use other properties at similar intersections. . . .

The defendant urged as ground for a reversal of the trial court's judgment and findings that they were not supported by the evidence and that, because of the conflicting evidence, the ordinance should have been sustained.

Much evidence was heard before the trial court concerning traffic conditions, general character of the neighborhood, highest and best uses, and other things. Each side had produced expert witnesses to sustain its contentions.

The court said that a

> Difference of opinion does not render plaintiff's evidence unbelievable or require a finding that the reasonableness of the ordinance is debatable.
>
> No one factor is controlling. It is not the mere loss in value alone that is significant, but the fact that the public welfare does not require the restriction and resulting loss. . . .
>
> After examining the record we are satisfied that the master in chancery and trial court were justified in their conclusions. . . . We believe the findings and judgment of the trial court are supported by the evidence and should be affirmed.

The upper court with the above decision upheld the decision of the lower court.

The Michigan case (150) decided in 1957 concerned the refusal to issue a building permit for the construction of a gasoline station. The property in question was first restricted to a residential classification and then by amendment, permitted the construction of professional buildings (in the nature of doctors' offices) to be built. The application for the permit was made prior to the amendatory ordinance. It was shown that there was no zoning ordinance in effect at the time application was made. When the village adopted a new charter for a new city the old zoning ordinance of the township was in effect for only a few months after the charter was adopted. The new ordinance

was not adopted in the allowed time, so for several months there was no effective zoning ordinance. The professional building district was known at TP-1, which was Transition Professional District, which evidently was to serve as a transition zone from the commercial areas to the residential areas. The plaintiff sought a writ of mandamus to compel the issuance of the building permit. The lower court ordered the granting of the writ.

The upper court in its decision referred to traffic in only one brief sentence. This reference was when the plaintiff oil company claimed a constitutional right to build a gasoline station on its lots.

> It points to long-time business restrictions and 20 x 100-foot platting of its 7 lots, along with heavy traffic on Southfield road as rendering the restrictive zoning unreasonable.

The defendant village points to

> an immediate neighborhood of fine homes, the long-time (if by chance interrupted) residential zoning of the particular lots, and the claimed detrimental effect of a gasoline station on nearby, though not adjacent, homes. . . . The streets of Lathrup Village are winding and shaded. There are only a few commercial buildings in the entire city. There is no manufacturing, and as of now there are no gasoline stations.

The upper court reversed the decision of the lower court, thus dismissing the writ of mandamus issued by the lower court.

A New Jersey case (171) decided in 1948 involved property at an intersection in an area zoned "A" Residential, the highest residential classification, on which an oil company desired to build a gasoline service station. The building inspector and the license bureau both refused to issue the permit for the erection of the gasoline service station. At a public hearing, the board of commissioners also refused to approve the granting of the permits. The property is located at an intersection that could be appropriately called "litigation corner," as the property in question and land directly opposite on three occasions had on previous occasions, been involved in zoning litigation.

The court, in its opinion, in reviewing and discussing the case, brought the subject of traffic and congestion into the case. In referring to the location of the property in question, it was brought out that

> . . . Bloomfield Avenue, east and west street, carries a heavy volume of motor vehicle traffic, acting as a feeder to three state highways and the Holland and Lincoln Tunnels. . . . A gasoline station was judicially allowed on the premises here in question, at one time, Hayes v. Blank, 2 N. J. Mis. R. 959. . . .
>
> The nature of the heavy traffic on Belleville Avenue, presence of the lumber company and the noisy operation of its saw mill, adjacent gasoline station and

> lower restrictions of the neighboring community make the use of this land for residential use untenable.
>
> It remains to determine whether the board acted arbitrarily and without relation to the standard there established. Belleville Avenue is a main thoroughfare and is heavily traversed by motor vehicles. . . . It was testified congestion on the streets would not be increased nor would fire hazards be created with the establishment of the gasoline station. Considering the general character of the neighborhood and all the pertinent testimony, the refusal of the board to grant the requested permit was arbitrary and unreasonable.

The property owner was entitled to the permit sought, the court said, and the resolution of the board of commissioners was accordingly reversed and set aside.

Gas stations are one of the necessary land uses created by the motor vehicle. Requests for permitting gas stations in residential areas have been one of the results of the motor vehicle.

In cases (109) and (171), can a gas station located at an intersection where there is a very heavy volume of traffic, eliminate some traffic hazards as stated in case (109) by witnesses and subsequently by the court? Of course not. Allowing a gas station at an intersection would have created additional hazards and possible congestion. With the moving of cars in and out of a gas station there is the slowing down of traffic movement, creation of

additional conflict points (creating greater accident potential), and an increase of traffic, even though slight, will result from the motor vehicles' being attracted to such use. As to having harmful affect upon the neighboring residential property, there is always the possibility of this happening unless the gas station has adequate area upon which there can be adequate measures provided for to protect adjacent property owners, such as an adequate area for a "green" space around the property, minimum property size, lighting and access restrictions, among other requirements. Although the property in case (109) was fairly large, there was a small frontage on the intersection, thereby placing openings close to the intersection and thus increasing traffic hazards at the intersection.

Approximately the same discussion can be applied to case (171). Here the property was located in a residence zone of the highest classification. Even though there were some surrounding commercial uses, the addition of more commercial uses would tend to increase the traffic hazards on the adjacent streets. The effect of lower restrictions on property of the neighboring community was felt to be influential in the deciding that the property in question should be of a commercial use.

It was said that traffic on the streets would not be increased, but nothing was said about other effects that would be created.

Though there were some surrounding commercial uses and very heavy traffic volume, surrounding property owners objected to the proposed use. There would be an effect felt upon the residential area as has been evidenced by existing gasoline stations in practically every community.

In case (171) there was an existing gas station in the area of the property in question; in case (109) there was no gas station in the area of the property in question; and in case (150) there was no gas station in the entire community at the time of this action!

In case (150) because it was so limited in reference to traffic discussion, not much needs to be added. The proposed gas station, if it had been allowed would have been situated in an area which evidently was an area of fine homes. The village was trying to protect these homes from the encroachment of the gas station. The lower court should not have compelled the issuance of such a permit as this was a case of encroachment into a residential area of a gas station in a municipality which theretofore had no gas stations within its boundaries.

The upper court did the right thing in reversing the trial court's decision. When one gas station is permitted to be built in an area where there were no other stations, others are sure to follow.

The Maryland case (306) concerning property of about two acres, located in a residential or agricultural district, was decided in 1954. The owner applied to have the zone changed to a heavy commercial classification so as to allow the erection of a gasoline station. The zoning commissioner disapproved the application for rezoning. The planning and zoning commission approved the zoning commissioner's decision and was requested to set a hearing. The board of county commissioners approved the requested change to heavy commercial use. The owners of residences in the immediate neighborhood filed a suit asking that the rezoning be stricken down. The lower court granted the relief prayed.

The court in its discussion and decision brought up traffic to a considerable extent. In the location of the property it was said that it lies between two roads, one Ritchie Highway leading from Baltimore to Annapolis, and the other was old Annapolis raod; the property was triangular in shape, and the apex of the triangle was located

where old Annapolis road joins, but does not cross, Ritchie Highway. Eighteen other applications for rezoning of lands on Ritchie Highway and Revell Highway were refused by the commissioners for commercial uses, but other properties in the area were rezoned upon requests to heavy commercial--one of them for a service station.

The court in reviewing the action that had taken place in this case reported the reasons of the zoning commissioner in refusing the rezoning and recommending that the zoning remain as established by the ordinance. The reasons for disapproving were:

> "1. The zoning for the Governor Ritchie Highway has established certain commercial intersections. These intersections are not completely developed along commercial lines at this time and therefore it is the opinion of the Zoning Commissioner that no additional commercial zones are necessary at this time.
> 2. In establishing the above plan the Board of County Commissioners took into consideration the key intersections of the highway. In the Arnold area it was determined that the key intersection is the one adjacent to this intersection where there is not a blinker light and accordingly the commercial zone at Arnold was established at the latter intersection rather than at the one now under consideration. [Arnold is the name of a street that intersects with Ritchie Highway.]
> 3. Nothing has taken place on the Governer Ritchie Highway since this request was originally filed and acted on by the Board of County Commissioners to warrant a change in the recommendation of the Zoning Commissioner at this time.

> 4. Letters of protest were received from (7) property owners in this area and no letters have been received in favor of the application."

The court also reviewed the reasons for the board of county commissioners' approval of the change. The resolution for the approval contained the following:

> "Whereas, the traffic on the Governor Ritchie Highway will be considerably increased upon the completion of the bridge over the Chesapeake Bay on U. S. Highway No. 50 thus increasing the need for areas zoned for commercial on the Governor Ritchie Highway, and
> Whereas, there is now an inadequate number of districts zoned as commercial on the Governor Ritchie Highway, said inadequacy resulting in unreasonable prices or rents being demanded by the owners of said commercially zoned properties . . . and
> Whereas, it is the opinion of the Board that additional commercial zones at proper locations would not interfere with the safety, comfort, convenience and welfare of the users of the Governor Ritchie Highway * * * "

It might be injected here that the complaining property owners declared that the service station would depreciate their properties, destroy comfort and well-being and property rights, that action by commissioners was arbitrary, unreasonable, discriminatory, without relation to public health, morals, and general welfare, and that the action constituted "spot" zoning.

The court then said that

> From the resolution of the Commissioners, it is evident that they based their action for rezoning on the following: increase in traffic upon the completion of

> the Chesapeaker Bay Bridge; inadequate number of sites zoned commercially; . . . and that additional commercial zones at proper locations would not interfere with the safety, comfort, convenience and welfare of the users of the highway.
>
> As to the increase in traffic [a traffic analyst-traffic control supervisor and attorney for the State Roads Commission, (this is one person)] testified as to the record of the State Roads Commission showing traffic count on the Ritchie Highway.

The traffic counts given showed that traffic had increased from a daily count of 7,803 vehicles in 1948, to 12,777 in 1952. The year 1952, the year the bridge was opened, showed an increase of traffic of about 17% over 1951. It was also stated in testimony that there were 41 gasoline stations within a given area near and on Ritchie Highway, and that the American Oil Company had eight of these. Then the court continued with the testimony and said that

> There is no testimony here to show that the service stations in existence on the Ritchie Highway, when the resolution was passed, could not reasonably accommodate all the traffic thereon. . . . In the instance case, with the number of service stations on the Ritchie and Revell Highways and with no testimony that these could not accommodate the traffic, we are of opinion that an increase in traffic of seventeen per centum did not make the rezoning debatable.

The contention that there was an inadequate number of sites zoned as commercial was also discussed. The court said that

> . . . with all the unused land zoned "Heavy Commercial" on this highway, availability of adequate sites does not seem to be debatable.

The court, in deciding on the resolution of the board of county commissioners concerning interference on the highway, said

> As to whether this service station would interfere with the safety, comfort, convenience and welfare of the users of the highway, there was testimony that some of the houses in this vicinity were built with the idea of getting away from commercial establishments and that the service station would depreciate the value of the properties. . . . [a real estate businessman] testified that the service station would seriously reduce the value of the residential properties in the neighborhood. There is no testimony to the contrary.

Then the court finally said:

> Finding in this case that there was no mistake in the original zoning; that the character of the neighborhood had not changed to such an extent as to justify the rezoning; and that the reasons given by the Commissioners are not supported by the facts in the case, we agree with the finding of the chancellor [lower court].

The decree of the lower court was affirmed.

Here is a case that seems to be decided on quite a different basis than the preceding ones. There was a consideration of the number of gas stations in the area of the property in question, and part of the decision was based upon this fact. Another factor injected here that was not in the preceding cases was the amount of area

already zoned for commercial uses, and the decision was also based in part upon this fact, because a considerable number of these were still unusued. Of course there were other reasons shown by the court for holding the rezoning as null and void.

The above two factors used by this court could well be taken into consideration more seriously by all municipalities and courts concerned. It appears that in many areas, that gas stations seem to be permitted anywhere though there may already be an adequate supply of stations to serve the existing traffic. There are gasoline "alleys" where new stations will be going up, or requests submitted for zone changes to allow the use while in the same area some of the existing stations may be on the verge of collapsing because of the lack of customers.

It seems that any time that traffic increase on any street, the first thing any property owner or oil company does is request permission for a gas station. There are many purely residential areas where, when a street becomes rather heavily traveled, usually the first commercial use will be that of a gas station; this will usually be the beginning of other stations and/or other

commercial uses in the same area. The practice or the desire to make every intersection of two rather heavily traveled streets a haven for gas stations, regardless of the surrounding uses, should be halted or severely curtailed until thorough investigation is made to determine if the station is seriously needed.

Section 8: Category H Business and Commercial ⇌ Gas Stations.

Connecticut case (38), decided in 1955, concerned the desire of the property owner to build a gasoline station. This case in court previously is listed in the Appendix as case (33), which was decided in 1953. Data for the two cases are practically the same. The property in question was vacant and was located in a business zone.

Because this is a rather odd case, a paragraph summary has been taken directly from the court records to orient the reader:

> Owners of premises at a busy intersection near the Milford Green obtained from the defendant board a certificate of approval for the use of the location as a gasoline station in 1946. In 1952, the new owner of premises, unaware of the existence of the prior certificate which had never been used, applied for a new certificate of approval. Application was denied. Instead of appealing from the denial, the owner having

> learned of the 1946 certificate, obtained a license under it to sell gasoline. The license was invalidated by a decision of this court [upper court] which held that the 1952 action of the board served to revoke the 1946 certificate. The present application was then made to the defendant board for a certificate of approval and was denied. The Court of Common Pleas dismissing the appeal, . . . [the owners had also applied in 1953-54 and were denied].

The Connecticut cases are interesting because of the conditions that are required in the general statutes in which certain conditions have to be satisfied before the local authorities can issue a license and a certificate.

The section of the general statutes requires that any person desiring to sell gasoline must receive a license from the commissioners of motor vehicles.

Section 2539 of the General Statutes of Connecticut provided in part that the local authority cannot issue a certificate unless it

> shall find that such location is suitable for the sale of gasoline and other products, due consideration being given to the proximity of schools, churches, theatres or playhouses or other places of public gatherings, intersecting streets, traffic conditions, width of highway and effect of public travel, and that such use of such proposed location will not imperil the safety of the public.

The court in its decision reviewed the reasons of the board for denying the application as follows:

> It is the opinion of the Board that the traffic conditions at #247 Broad Street, Milford, Connecticut, are very hazardous and traffic has not decreased at this location since the Board denied a similar application by the Atlantic Refining Company at their meeting. . . .

The court then reviewed testimony of the plaintiff in which the plaintiff before the board

> produced a traffic engineer who expressed the opinion that a gasoline station at the site would not increase the traffic hazard . . . The traffic engineer's own testimony was to the effect that the traffic on all three streets was great and at peaks was enormous. The chief of police of Milford, as well as several residents in the neighborhood, testified that traffic on the three streets on which the property had frontages was frequently congested. . . .

The court further said that

> it was also pointed out that the many cars, in leaving and entering a gasoline station at that location, would have to cross lanes of traffic.
>
> On all the evidence, therefore, we cannot say that the board acted unreasonably in concluding that a gasoline station on the site in question would increase the traffic hazard materially and for that reason the application should be denied.

An attorney for the plaintiffs, in reply made substantially the same contention

> that there had been a change in the traffic situation since 1952. It rested its decision on the ground that the location of a gasoline station at the site in question would be hazardous because of the traffic condition. It is true that the board added a statement to the effect that traffic had not decreased since the board denied the application.

The court said in conclusion that

> The first ground, the conclusion that a gasoline station on the proposed site would create a traffic hazard, is ample to support the board's decision. The second ground for decision whether well taken or not was the one regarding that the traffic had not decreased since the board denied the 1952 application.
>
> The plaintiff's further contention that, if the board believed that it was powerless to reverse its former decision, that consideration would affect its determination of whether a traffic hazard would be created is based upon a surmise so nebulous that it has no validity.

The upper court said that there was no error.

Case (255), of New York, decided in 1959, involved a vacant parcel of land, located in a business district. The property was located at the intersection of two streets, one of which was a one-way street. The oil company involved applied to the building commissioner for a permit to construct a gasoline station, and the permit was granted. The board of zoning appeals affirmed the action of the building commissioner. The lower court annulled the determination of the board of zoning appeals, thereby revoking the permit and reversing the action of the board.

The upper court quoted Section 2 of Article 7 of the zoning ordinance:

> In business districts, no business or industry may be carried on which is generally described as a "Wholesale" or "Heavy" business or industry; nor any which

> involves noxious fumes, strong odors, objectionable noise or undue hazard for pedestrian or other traffic.

The court came to the conclusion that

> The real controversy before the board for all practical purposes was pinpointed to the issue of whether the erection of a gas station on the disputed site would create an undue hazard for pedestrian or other traffic. The Special Term (10 Misc 2d 530) in its decision did not pretend to pass upon the merits of the controversy so far as this issue was concerned. It reversed the board, because it determined that the board in making its determination went outside the record before it. The essence of its decision is contained in the following paragraph: "It is clear that the board went outside of the record of the hearing to obtain information which was relied upon in reaching its decision. The opinion of the prevailing members recite: To further explore this 'undue hazard' claim, the whole board has examined Ithaca's accident experience records;" . . . "On investigation, in an interview at Ithaca's Traffic Bureau, we find that the accident experience is excellent. . . ."

The court said that this case was not a case of a proposed variance, or for an exception to a prohibitive use within a zoning area. The persons attacking the permit therefore had upon them the burden of proving that the issuance of the permit was in violation of the zoning ordinance. Also the court said:

> The prevailing members of the board conceded that considerable congestion of pedestrian and vehicular traffic occurred at the intersection on Sunday mornings during the change of Masses, but it found on its on its own knowledge that this situation is duplicated many times at other locations and was not undue or abnormal. . . . We have no doubt that the board

> could examine on its own initiative any records kept by city agencies relative to traffic or fire hazards, and any incidental interviews with those in charge of such records would not amount to error sufficiently important to void the action of the board. The circumstances of the case lend weight to this conclusion. Ithaca is not such a large city and unquestionably the members of the board were familiar with the intersection in question, and moreover they made their own inspection of traffic conditions there. . . .

The court reversed the order of the lower court and confirmed the determination of the board.

The court in case (38) realized the effect upon traffic of cars entering and leaving a gasoline station. The streets were already frequently congested and had enormous traffic at the peak times. The congestion would be further increased by the movement into and out of the gasoline station, additional accident points would be created, additional traffic could be attracted by the proposed use. These and other reasons mentioned under G category can generally apply here except that this was a business zone.

It can be said that generally in the "neighborhood" type of business or commercial zones, gasoline service stations are usually undesirable because of the effect upon adjacent business or commercial uses created by the noise, confusion, and possible odors of the gas

stations. Gas stations should be more readily allowed in business zones than residential zones, but as has been said before, in some instances they are undesirable. No matter where gasoline stations are permitted, adequate regulations and restrictions should be provided to make the gasoline station an attractive business spot in the community. Protection of adjacent uses by adequate measures for gas station uses such as large plots of land, screening or green areas around the station, light glare, parking restrictions, ingress and egress restrictions are just a few of the provisions that would help in locating gasoline stations. Some of these provisions would also aid in controlling the traffic hazards and congestion created by the gas station.

In case (255), which court was right? The lower court had reversed the action of the board which had granted the permit. The upper court reversed the action of the lower court.

The city board should be more familiar with the local conditions than possibly would be the court. The board evidently felt that under normal circumstances a gasoline station at this intersection would not aggravate

the traffic conditions, because the Sunday changes of religious services at a church on the opposite corner created the only real traffic congestion. There was a school two and one-half blocks from the intersection. One of the streets, it may be pointed out, was a one-way street. The one-way street would eliminate the possibility of crossovers.

Because the local board felt that the traffic would not be aggravated at this corner, it is presumed that they are right, and the upper court in reversing the lower court's determination seemed logical. If the board and the upper court deemed it necessary to deny the application, they could possibly have obtained additional information in regards to traffic counts, conflict points of the intersection, and other data if they felt the use should not be allowed at this intersection.

Section 9: Category I Industrial and Manufacturing ⇌ Gas Stations.

Case (42), of Connecticut, decided in 1956, involved a parcel of vacant land located in an industrial zone. Plaintiffs sought a certificate of approval of the location for the sale of gasoline, and also sought a special exception. In this case also, the general statutes were cited

as stated in the previous section H, but in a little more detail. The industrial zone permits gasoline service stations, with certain qualifications. Before a license for the sale of gasoline can be issued by the commissioner of motor vehicles a certificate of approval of the proposed site has to be obtained from the local authority. The zoning board of appeals refused to grant the certificate. The lower court sustained the appeal of the plaintiff, and the board appealed to the upper court.

In the upper court's decision, the statute was cited again as in case (38) in classification H. The further discussion of the court concerned traffic in a few instances. The defendant board concluded, the court said, on the evidence before it that the plaintiff's location was not suitable for the sale of gasoline and other products because,

> "due consideration being given to the width of the highway and effect on public travel," the presence of a gasoline station there would imperil the safety of the public. The sole question on this appeal is whether the defendant was warranted in coming to that conclusion.

In the statement of the facts concerning data of the case it was said that certain facts were not disputed, among them,

> . . . It is an industrial zone. The highway consists of two ten-foot concrete lanes with ten-foot shoulders. There is a bend in the road about 400 feet west of the plaintiff's property which would limit the range of vision of drivers entering the highway from it. ["It," is the property in question.] On the appeal of the case, the court permitted to call as a witness . . . a civil engineer engaged in traffic work. He said that he had first seen the area the day before, [at times listed in the case]. . . . (the) testimony is printed in full and is made the basis of the court's finding. The court's conclusion was that the evidence before the defendant on the amount of traffic was not sufficient for the defendant to conclude that a serious hazard would result from the granting of the permit. In so holding, the court misconceived the point involved. In Atlantic Refining Co. v. Zoning Board of Appeals, 142 Conn. 64, 69, 111 A. 2d 1, [case 38], we approved the conclusion of the local authority that the location of a gasoline station at the site in question would be hazardous because of the traffic conditions. The most that can be said of [civil engineer's] testimony in the present case is that in his opinion a serious traffic hazard was not apparent. The defendant, however, had before it ample matter, in the way of verbal testimony and exhibits, to support a conclusion that a gasoline station at the point in question presented a traffic hazard and involved a safety factor.

The court said that the defendant in considering the application for a special exception was acting in its capacity as a zoning board of appeals as stated in the zoning regulations, and that

> . . . Since the defendant found that a gasoline station at the location in question would constitute a traffic hazard, its refusal of the certificate was justified even if the zoning regulations permitted the use of the property for a gasoline station. . . .

The court's decision was that there was error; the judgment of the lower court was set aside, and the case was remanded with the direction to dismiss the appeal, thereby upholding the action of the board of appeals.

In New Jersey case (170), decided in 1948, the court was concerned with vacant property located at a corner of two intersecting streets in an industrial zone. The property owner desired to erect a gasoline service station. Gasoline stations were not ordinarily permitted in this zone, but were permitted by an ordinance which empowered the board of adjustment to recommend to the governing body whether a permit for a gasoline service station should be issued

> if, in its judgment, it will not be detrimental to the health, safety and general welfare of the community, and is reasonably necessary for the convenience of the community. . . .

Gasoline stations were permitted in a second type of industrial zone directly across the street from the property in question. And there was a gasoline station directly opposite from the property in question. The board of adjustment denied the application of the owner of the property in question to erect and operate a gas station.

The court said in regards to the location of the property that

> Raymond Boulevard admittedly is an important traffic artery starting at the Passaic River and ending at the intersection of Warren and Wickliffe Streets, running east and west. It carries practically all of the traffic leaving the Pulaski Skyway from New York to Newark and the suburbs. The other street is three blocks long.

It also mentioned that the neighborhood of the property in question included manufacturing plants, elevated railroad tracks, eating establishments, warehouses, stores, houses, and vacant lots. There was also testimony given by an inspector for a fire insurance bureau and by a traffic investigator for the department of motor vehicles who said that they could see no harmful effects resulting from the operation of the proposed gas station.

The court said:

> We are satisfied from the general character of the neighborhood and the surrounding circumstances and the proof of this application that the refusal of the Board of Adjustment to grant the application bears no reasonable relation to the public health, safety and general welfare and its decision is therefore arbitrary, unreasonable and capricious.
>
> The record discloses no cogent reason why the application was denied. True, the decision of the Board of Adjustment is presumably correct, but its decision will not stand where, as here, it is clearly against the weight of the evidence.

The court's decision was that the board's refusal of this application was set aside and reversed.

Gasoline stations in industrial areas would seem to be one place where logically there would be no opposition to such use, as in many instances the stations are more attractive or form a "bright spot" in an otherwise dull area. This could be said of the older industrial areas where there has been no planned or regulated development.

In case (42) and (170), both pieces of property were in industrial zones; one station was eventually allowed to be built, and the other was refused. The one that was refused by the upper court was also refused by the local body because of consideration being given to the width of a highway. The use was a permitted use in this zone with certain qualifications. The highway was narrow, the range of vision was limited, and therefore the cars entering and leaving a gas station would be in a dangerous situation through creating additional traffic hazards, among them greater possibility of collisions. The highway traffic was evidently of insufficient volume to have caused congestion, and the amount of traffic that would be attracted by the use would not be increased to a point of congestion.

Another (seldom considered) factor injected into the case was the very narrow width of the highway.

In case (170), gas stations were not permitted but could have been if the local body had approved. The difference between this case (170) and the preceding one (42) is that there was an important and heavily traveled traffic artery passing in front of the property. Here the local body denied the use and the upper court approved the use.

The fact that the traffic was very heavy was evidently the reason for the local body's refusing the permit. Although there was sufficient reason for allowing the use--area had a mixture of manufacturing, business, commercial, and some residential uses--the question was whether the reasons for allowing the use were more important than those for denying the use.

Although the upper court felt that the surrounding area and the traffic conditions warranted the decision it made, did it make the right choice? Actually, in the opinion of the writer, it could have been decided either way. The writer feels that because the boulevard was an important artery, further consideration should have been given to the effects that such a use has upon the traffic movement and flow.

It has been said that the industrial and manufacturing zones are the areas in which gasoline stations could be permitted without any question, but even in these zones, as has been shown by these two cases, there are also times when they should not be allowed. The provisions, regulations, and restrictions for all zones and for all types of gasoline stations may be the means in which there can be definite measures set up to either quality or disqualify the gasoline station location. Granted, the provisions, restrictions, and regulations can be written so as to exclude gas stations from all zones, but discretion should be followed when writing them.

Before concluding the discussion on the last three categories concerning gas stations, it may appear that the analysis and discussion undertaken seem to be completely one-sided, i.e., no gas stations should be allowed anywhere. This is not to be construed that gas stations are the one and only use that is not desired in any zone classifications. Admittedly there are other commercial uses that have the same effect, or worse, upon traffic, traffic movement, and congestion as the gas station. These uses are the many various types of drive-in facilities, of which the drive-in quickee hamburger establishment

is the latest use that seems to have suddenly sprung up all over the nation. A majority of these uses have developed directly in response to people using their automobiles more and more and to the growing shortage of parking facilities, and to the desire for faster and more convenient service.

Gas stations are definitely needed and will be needed more in the future. However, proper consideration of their influences on traffic suggest the need for more thorough study of the appropriate numbers of stations, their site plans, locations, and intervals, and the restrictions and regulations to be applied to them.

Section 10: Category J Residential, Business and Commercial, Industrial and Manufacturing ⇌ Private, Public and Quasi-public Uses.

New York case (246), decided in 1956, involved a tract of 14 acres of land upon which there were two dwellings. The property was located in a residential district. Appellants (the diocese) agreed to purchase the property upon obtaining a permit from the planning board of the town to erect and use a church and school on part of the property. The zoning ordinance stated that in this residential district certain uses and accessory uses were

permitted. Among the permitted uses were educational or religious buildings, if approved by the planning board.

The diocese applied to the planning board and the board of appeals for permission to subdivide the property, part as a life estate for the widow of the deceased property owner, a portion to be used and constructed upon as a church and school, and the remainder into four L-shaped lots, with one dwelling on each and each having a frontage of 100 feet or so, on the avenue, or, as an alternative, for a variance from the provisions of the zoning ordinance permitting the continuance of the said two existing dwellings as they then existed. About four acres had restrictions which confined their use to residence only. There was also to be a parking lot accommodating 144 cars in conjunction with the church and school.

The planning board denied the diocese's application. The board of appeals also denied the application for a variance, based upon the planning board's decision. A review of the decisions was applied for and was heard by the town board; the board filed a decision affirming the determinations of the planning board and the

board of appeals. The lower court dismissed the petition on the ground that no triable issue of fact had been raised and affirmed the respondents' decisions denying petitioner's application for a permit to build the church and school with the necessary accessory buildings and for a variance. Another court affirmed the above order.

In the upper court's decision there were several instances where traffic was concerned. During the public hearing before the planning board and the board of appeals, evidence was presented on behalf of the diocese, alleging that there would be no traffic problem, and that ample parking facilities were provided.

The respondents' (planning board and others) answer to the petition set forth several denials and separate defenses:

> The first, second and third allege that the proposed playgrounds, parking lot and other combined uses are prohibited uses in a Class A [residential] district. The fourth defense alleges respondents' good faith, and a variety of elements taken into consideration, among them: that the proposed buildings and parking lot would cause serious traffic problems.

The court said that

> The text writers agree that churches and schools should be allowed in Class A residential areas which are usually the quietest and least congested areas of the town (Bassett on Zoning [1940 ed.], pp. 70-77,

> 200; 1 Rathkopf on Law of Zoning and Planning [3rd ed., 1956], p. 259; Yokely on Zoning Law and Practice [1st, ed., 1948], §183, p. 367). It is well established in this country that a zoning ordinance may not wholly exclude a church or synagogue from any residential district.

Then the court, continuing to examine the reasons advanced by the planning board in its denial of the permit, said in regard to the traffic hazards that

> Although nothing is mentioned in the planning board's decision about possible traffic hazards, evidence was presented on this question to that board, and much is made of it in respondents' answer and brief, apparently by way of afterthought. This was the very question presented in Matter of Small v. Moss (279 N. Y. 288) where the regulation was stricken as an improper delegation of legislative authority. There we held that the commissioner of licences had no power to deny a licence to a theatre on the ground that traffic and parking problems would be created, since no such policy or standard was declared in the statute. Several jurisdictions have held that it is arbitrary and unreasonable to deny a permit to a church or parochial school because of possible traffic hazards that may be created.

There were then listed several cases from the states of Florida, Indiana, Ohio, and Oregon.

The court's decision said:

> In the light of the foregoing cases, and under the facts presented by this record, the decisions of the planning board, the board of appeals and the town board of Brighton bear no substantial relation to the promotion of the public health, safety, morals or general welfare of the community; they must therefore be deemed arbitrary and unreasonable and should be annulled. That is not to say that appropriate

> restrictions may never to imposed with respect to a church and school and accessory uses, nor is it to say that under no circumstances may they ever be excluded from designated areas. In this case, however, and in reference to this property, the decisions of the townbodies are arbitrary and unreasonable.
>
> Accordingly, the orders below should be reversed, the decisions of the townbodies annulled and the matter remitted to them for further proceedings, not inconsistent with this opinion. Inasmuch as the board of appeals has not passed upon the merits of the application for a variance, we do not pass upon this phase of the appeal.

In essence, the court held the actions of the various local legislative bodies as inappropriate.

There was one dissenting opinion, but its author affirmed the majority opinion. In this dissenting opinion there was reference to several points discussed previously. It stated that the use here in question was permitted in the zoning ordinance "if approved by the Planning Board," and that the planning board had denied approval. This dissenting opinion said that

> . . . The evidence is ample to sustain the view that the proposed use will depreciate the value of real property and change the nature of the neighborhood, and create a traffic hazard at that location. . . . Zoning Ordinances are required to regulate the use of districts according to a comprehensive plan.

The final judgment was that the

> Order of the Appellate Division and that of Special Term reversed, the determinations of the planning

> board, the board of appeals and the town board of the Town of Brighton annulled, and the matter remitted to those bodies for further proceedings not inconsistent with the opinion herein.

Pennsylvania case (282), decided in 1957, concerned vacant property situated at an intersection of two roads. The property was located in a residential district. Appellants desired to erect a church upon the property in question and they sought a variance. The residential district classification expressly permits a church, among other uses, to be built. There is an off-street parking requirement for churches and other similar places of assembly; the restriction states that there should be "one car space (300 sq. ft.) for every five seats or fraction thereof." One other requirement listed in the case was that "None of the uses listed in Item 8 above shall be permitted within 1/4 mile of each other." Item 8 listed church, school, auditorium, stadium, and similar places of assembly as the permissible uses. Incidentally, Item 8 was the off-street parking requirement provision. The zoning board of adjustment refused the building permit. The lower court affirmed the decision of the board. The board of adjustment and the lower court found

> . . . on adequate evidence, that the appellants' proposal violates the 1/4 mile requirement in that the proposed location is 877 feet from the nearest place of assembly and that it violates the off-street parking requirement in that 17 parking spaces are required under the ordinance and only 13 spaces will be provided.

There was another church located within the one-fourth mile restriction limit.

In the upper court's decision there was extensive reference to traffic and congestion while discussing and reviewing the case. It reviewed the board of adjustment's and the lower court's findings and said that they

> . . . found that appellants' land is located at the intersection of Bethel Church Road and Fort Couch Road, which intersection is heavily traveled and is further complicated by the presence of traffic islands in the intersection; that the erection of appellants' church at this intersection would substantially increase traffic dangers and congestion. . . . Appellants concede that traffic regulation is a proper exercise of police powers but they argue that these powers may not be exercised against a church.

The court said in response to the above that

> In Schaub Appeal, 180 Pa. Superior Ct. 113, we pointed out that "The Enabling Act also provides: 'Such regulations shall be made in accordance with a comprehensive plan,and designed to lessen congestion in the streets, to secure safety from fire panic and other dangers . . . to facilitate the adequate provision of transportation . . .' Act of May 4, 1927, . . . Our Supreme Court, in McSorley v. Fitzgerald et al., 359 Pa. 264, 269, 270, 59 A.2d 142, passed upon the validity of a regulation which protects against the dangers of traffic congestion in the following language: "those attacking the constitutionality

> of such a law as that which is here under consideration obviously labor under the mistaken notion that its purpose is merely to cater to the convenience of the owners and operators of motor vehicles; on the contrary its effect may be to interfere with the perhaps greater convenience of parking on the public street; its real purpose is to promote the larger and more general good of the community by freeing the streets of the impediments and perils arising from dangerous and often intolerable conditions of traffic congestion. And since the Act [parking authority law] is concerned with the regulation of the transporation of persons and property along the highways of the municipality, and since the evils it seeks to remedy vitally affect conditions for the transaction of business, the prevention of accidents, the effective operations of life and activities, its justification stems directly from the exercise of the police power, which is the supreme power of government."

The zoning ordinance in this case did not prohibit churches in the residential district but expressly permitted them subject to certain restrictions. The court said that the restrictions which impose certain conditions upon the site on which a church may be built was the question concerned in this case.

The court continued in saying that

> The grouping of a number of public assembly buildings in a residential district would obviously create additional traffic hazards. . . . <u>Street and traffic control facilities of a residential district are not normally prepared to handle the large concentration of people or automobiles which results from public assembly use</u> [emphasis supplied by the writer of this thesis]. It is reasonable to suppose that several public assembly structures located closely together would create an additional threat to the safety of their occupants and the traveling public. Proximity requirements are

> designed for the purpose of lowering the hazards which can arise from the close grouping of assembly buildings or structures which are exceptional in a residential district. We are of the opinion that there was ample evidence to justify the findings below to the effect that both regulations here involved bear a reasonable relation to the safety of the public. The evidence shows that the intersection, where appellants propose to locate their church building, is on a traffic route connecting two major arterial routes, U. S. 19 and State 88. It also constitutes a connection between the county system of belt routes. Motor vehicle traffic, largely trucks, is heavy, especially on week-ends. In addition to passenger cars, large trucks hauling freight, steel, chemicals and gasoline pass through this intersection. The vehicles leaving appellants' lot would enter the intersection opposite the islands located in its middle. . . . The double island and the three-way intersection at appellants' site and the additional automobiles of appellants' congregation would certainly further complicate and increase the traffic hazard already existing at this point.

In regards to the above quotation the court also described the complications involved when an automobile would leave the proposed parking lot to go in certain directions, in one instance the auto leaving the lot and desiring to go to the left would have to turn right and pass through the intersection and go far enough in the opposite direction and then make a U-turn and then come back through the intersection a second time. This movement was due to the lot's outlet's being located opposite one of the traffic islands where the traffic was one-way.

The court then said that

> Certainly freedom of worship does not mean that churches are exempt from reasonable police power regulations. . . . Board of Zoning Appeals of Decatur v. Decatur, Ind. Co. of Jehovah's Witnesses, 117 N. E. 2d 115, 123. The language used at page 123 is applicable to the present case: "It is quite evident that the members of the appellee could be killed just as dead going to and from church as going to and from a theater or a basketball game. It is a proper exercise of the police power to protect appellee's members from their own negligence as well as from the negligence of the traveling public. There would be just as much logic in holding that the members of appellee when going to church were not required to comply with the traffic regulations as in holding that the appellee is not required to make reasonable provisions for lessening of the traffic hazards by off-street parking.
>
> "If it was a proper exercise of the police power for the city by its zoning ordinance to require the appellee to comply with the average setback line of the residences, which only has a very remote bearing on traffic hazards, a fortiori it was a reasonable exercise of the police power to require appellee to provide space for 25 cars to park off the streets. The right of appellee to exercise its religious freedom is not violated in either case." . . .
>
> If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control. . . .

In conclusion after discussion of other phases brought out by the appellant, such as bias to their religion, hardship, and other general conditions the court said

> The appellants' lot does not possess any unique or unusual characteristics which would make it unusable for residential use.
>
> We have examined this record and find there is evidence to sustain the lower court's findings and we can find no violation of law or any manifest abuse of discretion.

The court therefore affirmed the order of the lower court which had affirmed the decision of the zoning board of adjustment which had refused to issue the building permit and refused to grant a variance from the provisions of the borough zoning ordinance.

Churches, schools, private clubs, and other types of private, quasi-public, and public buildings are uses which are needed by a municipality. Should churches and schools which are always used by numbers of people be allowed in all zones? It is known that these buildings are used by the people and therefore may be termed as essentially an incidental use to residential use. A school located in a strictly business and commercial district or in an industrial and manufacturing district would be of no use whatsoever. Other buildings, such as a city hall, or library, and other municipal buildings actually could be located in practically any zone because they are tied in with all different types of land uses, but they all attract automobiles to a certain extent and this should be taken into consideration when they are being located, especially if in a residential zone. One thing for sure is that all these uses generate traffic and create possible congestion.

In the two cases under discussion here, cases (246) and (282), it is known that both of the uses will create an increase in traffic. In case (246) the decision by the higher court seemed right. Taking into account all of the factors that influence traffic hazards and congestion, the off-street parking being provided for in this case evidently was sufficient, and there was no mention of the conditions of the street. The volume of traffic upon the streets in this area probably was slight. Allowing such a use as contemplated here does not create a steady stream of traffic to and from the proposed use. There would be rather specific times when the traffic would be increased: in the morning when church services or school hours begin and again when they end. On weekends the only traffic would be usually at times of services at the church. These rather specific hours will create a pattern as to when the streets in the area will be used most. Actually there is not much that can be said about this case, as churches and schools of the present day are not the incompatible uses they once were. The style of architecture today will usually blend in and be an asset to a residential area, and not the usual rigid and decidedly statuesque buildings they

once were. And of course schools nowadays are usually provided with sufficient acreages so the buildings are not tightly set in the residential areas.

In case (282), the location of the proposed church was just the opposite of the preceding case. It was located at an intersection where there was heavy traffic and also the intersection had traffic islands to separate traffic flow. The traffic into and out of the proposed parking lot would interfere with the traffic flow at the intersection as was stated very appropriately by the court. It could create greater confusion of the traffic by the turning movements, create more conflict points for the automobiles, and interfere with the efficient movement of traffic, which had been the purpose of the placing of the existing traffic islands at the intersection in the first place. The parking lot was small and therefore would force more autos to park in the streets than would normally park if the parking lot were adequate to serve the church.

Again the uses of this classification are difficult to evaluate. The two cases here in discussion, to the writer were of two distinct categories as one was located at a heavily traveled intersection and one was evidently located on a normal residential street. Schools are

essential--whether they are public or private; and churches are one of the uses which are also necessary for as freedom of worship is one of the basic foundations of this country and therefore both uses can be termed essential. They normally are not a detriment, according to present day standards, to the community, except for the result that they do attract traffic, and create some noises; but it is not the usual steady stream found in some other uses, and the traffic created will not normally be by the entire municipality but generally of the neighborhood being served.

Section 11: Category K Residential, Business and Commercial, Industrial and Manufacturing ⇌ Parking Facilities.

The California case (7), decided in 1951, involved the use of several parcels of land used or to be used as parking lots. The plaintiffs had leased three lots at the intersection of two streets. The lease required a three-story building to be constructed by the plaintiff, with two lots being used for parking of cars. The city council granted variance under certain specified conditions. Four other lots in the area were paved and used for parking.

Numerous other, similar zone variances, were granted to other applicants in the same area.

A group of citizens had asked the city council to call a special election in 1947 for the sole purpose of enabling the voters of the city to decide whether to prohibit similar future zoning variances and to enforce the existing zoning regulations. The plaintiff, which was a corporation, objected and had given notice that it would contest the legality of any such action so taken on the submission of the above question to the electorate.

Subsequently, in 1947, an ordinance was adopted. The ordinance "provided for the revocation of all of the variances theretofore granted and amended the zoning ordinance so as to prohibit the granting of any such variances in the future." The plaintiff was using nine and one-half lots for parking facilities at this time.

After the above action the plaintiffs immediately filed an action to enjoin the enforcement of the above ordinance, stating that it was arbitrary, unreasonable, was improperly adopted, and so forth. Again a group of citizens wanted the city council to take action by revoking the variances granted to plaintiff. The city council declined to take the desired action.

Subsequently, in 1949, another ordinance was adopted by the city council. The ordinance was essentially the same as the previous one. It "purported to revoke the variances in zoning ordinances previously granted permitting parking lots" as described. Plaintiff commenced action.

The action of the lower court, after an extended trial, had held that the plaintiff was entitled to the relief sought, and judgment was given accordingly. The actions were for restraining the enforcement of the revocation of the variances, and for injunctive and declaratory relief.

In the upper court's opinion of the case, traffic was brought up in a few instances. In answering questions raised the court said:

> Was there substantial evidence to sustain the trial court's findings: Yes.
>
> In the present case there is an abundance of evidence to support the findings of fact questioned by defendant city. The trial court found that as a result of the business development along Wilshire Boulevard it is indispensable to the public welfare to provide and maintain off-street parking, to take care of customers who patronize business establishments in the city; that it was impossible to provide parking spaces for these automobiles in the established commercial-zoned areas since all the lots not already built upon are presently in use for such parking; that the

> existence of this shortage required the use of over 1,200 curb-parking spaces in the residential zones, and the result of prohibiting parking upon the lots to which variances had heretofore been granted would be proportionately to increase such use of curb-parking space in the residential area [emphasis supplied]; that there is no noise, dust or fumes arising from the use of the parking lots which are offensive to persons of ordinary sensitivity and the use of said lots would not in any respect depreciate the value of surrounding residential property; that during the Christmas shopping season and on sale days considerable traffic congestion occurs in the vicinity of the parking lots in question, but the effect of prohibiting the use of such lots would be to increase rather than decrease such congestion, and the prohibiting of parking upon plaintiff's lots does not, did not and cannot in any respect promote the public peace, health, safety or general welfare.

Here is an excellent showing that where there is an insufficient number of parking spaces provided within the developed commercial areas the result will be the parking of automobiles on the streets within residential areas. Did the citizens in taking away what parking facilities were available realize that they were bringing undesirable consequences upon themselves, as there would be more parking and heavier traffic in their neighborhoods? The trial court and the upper court here have given considerable thought to this problem.

The court went on to say that

> These findings were supported by evidence of three city planning experts and evidence of other witnesses including the findings of the city council of

> defendant city over a period of many years that the parking lots in question, by relieving traffic congestion and taking cars off the streets, were beneficial to the public welfare. In addition the trial judge inspected the area in question. This "view" of the area was independent evidence which could be considered by the trier of facts in arriving at his conclusion and is substantial evidence in support of his findings consonant herewith.

The court answered two other questions:

> Was Ordinance 698 [amending ordinance] invalid and ineffective to terminate plaintiff's rights? YES. Is plaintiff estopped to attack the validity of Ordinance No. 698? NO.

The court's conclusion was

> In view of our conclusions no useful purpose would be served by discussing other propositions urged by counsel for defendant city since, should we agree with them, it would not result in a reversal of either judgment.

The judgments of the lower court were, and each was affirmed.

This case was petitioned for a rehearing which was denied, and appellant's (the city involved) petition for a hearing by the supreme court was also denied.

The Illinois case (115), decided in 1958, concerned a lot which had been used as a parking lot prior to litigation. The property was in a residential district. The owners of the lot desired to continue using it as a parking lot. The plaintiffs, the City of Loves Park and its zoning

enforcement officer, sought to restrain the owner from using the lot for parking.

It might be well to mention here that the company maintained area for seven to eight-hundred-car parking on one side of the plant for employees, and the smaller lot was located on the opposite side of the plant and used for salesmen, executives, and customers only. The lot in question, classified as "B" residential, allowed apartment houses with 12 dwelling units, and storage space for one car per family could be maintained. The company parking lot in question could accommodate about 14 cars. There were several parking lots in the immediate area of the one here complained, and these parking lots were maintained by other industrial facilities also in the area. These parking lots bear the same zoning classification as the lot in question. The plaintiffs contended that the lot in question--in this case, the small lot--caused increased traffic.

The lower court had issued a decree restraining the plant's owners from using the lot for parking.

The upper court's decision included the following remarks in reference to traffic:

> . . . The lot is not used for industrial purposes nor is any revenue directly gained since no charge is made for parking thereon. Hardship can consist of something other than a direct monetary loss. Here, the lot is for quick and easy access by customers, salesmen who want to visit the purchasing department and executives. The lot serves a useful purpose in giving the users an opportunity to park without searching the streets of the area for an open parking space.
>
> Several of plaintiffs' witnesses complained that the lot caused increased traffic. This seems improbable since the same number of executives, salesmen and customers drive into, and park in, the area. If it were not for the parking lot provided for them, they would park in the street in front of the lot or on other streets as close as possible to their destination. The undisputed evidence was that Sydney Street is not wide and that at peak hours of traffic the flow is narrowed down to one-way traffic when cars are parked on the street. The evidence establishes that the use of the lot for parking will not increase traffic hazards to the public but, on the contrary, strongly indicates that residents of the neighborhood and the traveling public will gain by alleviation of some of the hazards caused by parking on the streets.

The court in making its conclusions and opinion made excellent reference to the problem faced by local authorities in relation to zoning ordinances and traffic. The court said that

> We recognize the dilemma of municipal authorities. They are faced with the problem of preventing erosion of their zoning ordinances on the one hand and the ever-increasing question of how to keep the streets clear for traffic on the other. Off-street parking is decried by some property owners, while the urban automobile driver is plagued by congestion caused by on-street parking. We do not interfere with a zoning classification where there is a fair difference of

> opinion concerning its reasonableness. . . . but where, as here, the prohibited use will not appreciably depreciate values, does not tend to expose surrounding property to untoward offensive noises, dirt or traffic, and will help prevent traffic congestion, we are of the opinion that the zoning classification as applied to this property is unreasonable. The loss to the public, if any, appears to be offset by the public good in permitting the present use of the lot, to say nothing of the hardship which would be worked upon the defendant in refusing to permit the use of the lot for parking.
>
> In our opinion there is not such a substantial relation between the zoning restriction and the public welfare which requires the invocation of the police power. We therefore hold that the ordinance is void as to the defendant's lot, and the decree of the circuit court must be reversed.

Therefore the upper court upheld the use of the lot in question as a parking lot thus reversing the action of the city authorities and the lower court.

The increase of parking facilities is becoming one of the uses which is a direct result of the increase in the automobile population. As more autos are attracted to the land uses, there is a greater demand for parking spaces, whether it be on the streets or in publicly or privately owned parking lots or structures. If parking facilities are not provided, there is the evident increase in congestion caused by parking on the streets and possible double parking, which in turn slows down traffic through the narrowing down of the streets thus having fewer lanes

of moving traffic, creating more possible points of conflict and other effects created by congestion and traffic increase.

In case (7), if any one of or all of the parking lots were suddenly closed, traffic and congestion would be increased. It might have been, in this case, that the citizens objected because of the possibility that there were not adequate provisions in the zoning ordinance for protecting the surrounding properties. Regulations, restrictions, and conditions can be provided for in zoning ordinances to make parking lots practically "unnoticeable" by requiring the enclosing of the lot so it cannot be seen by the adjacent properties, made to be anti-glare, and also in limiting the entrances and exits and many other provisions.

In case (115) the same general factors can be applied. This parking lot was in a residential area. The citizens complained that the lot caused increased traffic, and it is wondered if they stopped to consider the results that would happen if the cars were forced to park in the streets, that this would be furthering congestion, possibly having cars parked in front of their own homes, which

it is certain they would complain about. The upper court recognized the consequences that would result if the owner of the lot were forced to discontinue the use of the property for parking.

The lot in question was actually very well kept; it was black-topped and was surrounded on all except the company's side by a neatly trimmed hedge. Actually, one of the plaintiffs' witnesses had said that the defendant kept its grounds better than anybody in the city, and that "the lot looks better than the house that was there." So with the above statement, how can a person say that the surrounding properties would be depreciated in value. The court said in response to the above statement and other testimony in regards to depreciation that "based on this record it is unrealistic to say that the value of the surrounding property will be depreciated."

The municipality should have realized the consequences of forcing the discontinuance of the use of the lot. Instead, the authorities should have recognized its advantages and attempted to prevent a recurrence of the problem by enacting regulations and provisions to make the parking lots more desirable, as mentioned previously.

Section 12: Category L Unclassified Cases.

These cases concerned other uses that did not seem to fit in the preceding classifications and also cases that were considered nuisance cases, condemnation cases, and others, but were reported because of the reference to traffic or congestion being injected into the proceedings. These cases will be found in Appendix III, on page 266, with a brief description; therefore they will not be elaborated upon as the preceding categories were. These cases are as follows:

| | | |
|---|---|---|
| Illinois case numbers: | (122) | 1953 |
| Michigan case numbers: | (129) | 1946 |
| | (131) | 1947 |
| | (139) | 1954 |
| New Jersey case numbers: | (160) | 1945 |
| | (166) | 1947 |
| | (180) | 1952 |
| | (188) | 1954 |
| | (218) | 1954 |
| | (222) | 1955 |
| Pennsylvania case numbers: | (256) | 1948 |
| | (261) | 1953 |

After digesting the cases in all of the categories used in this chapter, the conclusion can be that there is still no definite way of determining when traffic and congestion should be deemed as the one condition for approving or denying a certain use upon a parcel of land. The opinions vary from state to state, and it is therefore thought desirable that possibly a standard set of rules, regulations, and provisions should be considered. They could be written and made available to all the political governments on the same basis as the zoning enabling acts, or possibly made part of the acts. Further conclusions follow in the next chapter.

# CHAPTER V

# SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

## Summary and Conclusions

Traffic congestion on the public streets has been steadily increasing since the invention of the motor vehicle. This increase was not considered a serious problem prior to World War II. Since the War the increase in the number of automobiles has been greatly accelerated by the increase in the percentage of the population owning automobiles and by the increase in the number of two-car families. The influence of the automobile has been felt in many ways, one of which has been the effect upon the central business districts of municipalities by the new and specialized land uses which have generally taken place in the outer fringes of the municipality and have catered primarily to the automobile. This has caused the central business districts to deteriorate to a certain degree, and has forced the municipalities into considering redevelopment, planning additional parking facilities, widening existing streets, as well as providing new highways to the Central Business District to bring the population "back to town." Also the desire for the American to live in the

"suburban" atmosphere has added considerably to traffic and congestion.

Motor vehicle use is and will be on the increase, and it will continue to influence land uses. Land use usually generates traffic, and traffic, in turn, influences land use. There are several ways in which land use can be controlled. One of the ways is the use of the limited-access or expressway type of highway; this action will aid in the relieving traffic and congestion considerably, but it does not provide a relief of congestion upon the local streets within the municipalities themselves or in other areas not affected by the limited access or expressway type highway. Zoning of land uses is another way in which there can be control of the land uses adjacent to heavily travelled streets; by controlling land use through these ordinances, the amount of traffic generated by them can be controlled.

The effect of traffic congestion has been seen on practically all of the major travelled streets. It has deteriorated many residential areas, and has often caused the "ribbon commercial" type development. Another effect of traffic and congestion is the increase in requests by

property owners to rezone their properties to a more intensive use, usually as a result of traffic and congestion.

In McSorley v. Fitzgerald et al., 359 Pa. 264, (May 24, 1948), case (256), the court in its decision gave an excellent description of the further effects of traffic and traffic congestion:

> . . . That there has been an ever-increasing trend in cities . . . in the number of persons entering the business sections by private automobiles; that the free circulation of traffic of all kinds through the streets of such cities is necessary to the health, safety and general welfare of the public; that the greatly increased use of motor vehicles of all kinds has caused serious traffic congestion on the streets of such cities; that the parking of motor vehicles on the streets has contributed to this congestion to such an extent as to interfere seriously with the primary use of such streets for the movement of traffic; that such parking prevents the free circulation of traffic, impedes rapid and effective fighting of fires and the disposition of police forces in the district and endangers the health, safety and welfare of the general public; that such parking threatens irreparable loss in property valuations; that this parking crisis can be reduced by providing sufficient off-street parking facilities properly located. . . .

The above quotation describes well most of the remaining effects created by traffic and traffic congestion: parking in the streets, effect upon property valuations, flow of traffic upon the streets, and so forth. The case above concerned the constitutionality of the State of Pennsylvania Parking Authority Law of June 5, 1947, P. L. 458.

The control of land uses along the streets is one way of attaining some relief of traffic congestion. Land uses may be controlled by judicious employment of the zoning enabling acts; one of their specific purposes is to lessen the congestion on the public streets and roads.

The relationship between land use and traffic and traffic congestion has been established by discussion here of the cases which show that there is a recognition by the various governmental units and by the courts of the serious problem of traffic congestion and its relationship to the use of land bordering upon the streets. The results also show that, even though legislation has been provided, many faults can still be found in the individual zoning ordinances of the municipalities, and much controversy has ensued in relation to the question of congestion when a zoning case is brought before the courts. Several of the cases discussed herein, in addition to having the subject of traffic or congestion included in their proceedings, have shown the court action arose out of grossly inadequate zoning ordinances, as in case (72).

Summarizing and analyzing these cases have shown that there is a wide discrepancy between the actions taken

by the various courts of the states selected upon cases that have practically the same factual situations. In cases (144) and (186) an ideal comparison is shown. The properties in both instances

1. were zoned for residential purposes,
2. were situated so as to have frontage on a heavily travelled highway,
3. were rezoned to commercial uses,
   (a) 144 by the local court as the municipality would not rezone the property in question
   (b) 186 by the municipality.

In the actions in the courts the following actions occurred:

In 144 the lower court held the zoning ordinance as invalid as to residential purposes.

In 186 the lower court set aside the amendment that rezoned the property to commercial purposes.

In 144 the upper court upheld the action of the lower court which approved the use of the property for commercial purposes.

In 186 the upper court upheld the action of the lower court which returned the use of the property to residential purposes.

Some cases have shown that zoning ordinances require off-street parking facilities in proportion to the land use. In case (40), there is some evidence of these provisions, but it is not known whether all phases concerning off-street

parking provisions in the zoning ordinance covering the specific land use were presented in the case; a complete comparison cannot be made without consulting the particular municipal zoning ordinance. But at least, it was shown that off-street parking provisions in the zoning ordinances are not a "new" innovation.

Other categories or points could be compared; but the above examples indicate that considerable discrepancy exists concerning zoning, land use, traffic, and traffic congestion. A widespread and intensive attempt should be made to erase such discrepancies.

Of the 44 cases covered in the text of Chapter IV, 15, approximately 33%, were decided by the various courts with the subject of traffic or traffic congestion being a part of that court decision.

The 44 cases are further analyzed as follows:

| State | Number of Cases Reported in Text | Number of Cases Decided with the Subject of Traffic or Traffic Congestion Being Part of the Decision |
|---|---|---|
| California | 5 | 1 |
| Connecticut | 6 | 4 |
| Illinois | 6 | 3 |
| Michigan | 6 | 1 |
| New Jersey | 5 | 3 |
| New York | 5 | 1 |
| Pennsylvania | 5 | 2 |
| Other Various States | 6 | 0 |
| Totals | 44 | 15 |

The above analysis can mean then, that in the states where there are proportionately fewer case decisions regarding traffic or traffic congestion, either of two things is happening. If the subject of traffic or congestion is injected into the case at the local level, either the subject becomes satisfactorily answered or clarified or it does not become an important subject in material presented to the court. The analysis also shows that in California

the subject of traffic congestion has entered into the case and has become a part of the decision without the California Zoning Enabling Act having the purpose of "lessening congestion in the public streets," included.

In Connecticut, Illinois, and New Jersey, where a large proportion of the cases concerned traffic or congestion, the local zoning ordinances may not adequately provide for the lessening of congestion in the public streets.

Then in the analysis of the three main categories in which all of the selected states were represented, the results show that in category A one case was decided with the factor of traffic or congestion being involved in the decision of the court; in category B, also, one case was decided involving the factor above, and in D, four cases were decided involving the same factor as above. This may suggest that the D category (Residential ⇌ Business and Commercial) is the one which should be concentrated upon, in reviewing the traffic and congestion problems. This does not mean that the other categories should be ignored, however. A complete breakdown of the categories, the number of states involved, and the number of the cases that were decided on the basis of traffic or traffic congestion is as follows:

| | | | | |
|---|---|---|---|---|
| A | 9 | Cases | 1 | Decision involved factor |
| B | 7 | " | 1 | " |
| C | 2 | " | 0 | " |
| D | 8 | " | 4 | " |
| E | 3 | " | 0 | " |
| F | 3 | " | 1 | " |
| G | 4 | " | 2 | " |
| H | 2 | " | 2 | " |
| I | 2 | " | 1 | " |
| J | 2 | " | 1 | " |
| K | 2 | " | 2 | " |
| Totals | 44 | | 15 | |

The above results show that although the D category has the most cases decided upon traffic or congestion, the other categories need further consideration in zoning ordinances also.

Therefore it can be said that there are inadequacies in both the zoning enabling acts and more specifically in the municipal zoning ordinances.

The principal inadequacies are as follows:

(1) The enabling acts are very limited in describing specific methods for lessening congestion

(2) There are no definitions or explanations in either the acts or the zoning ordinances, that can help in determining when, why, how, or where congestion would actually exist and should be taken into consideration in a decision

(3) There are no standards by which a court or a local government can base a finding that traffic congestion is a valid basis for a decision

(4) The zoning ordinances provide no means of limiting land use through restrictions concerning parking facilities, street conditions, egress and ingress, traffic volume, surrounding area and its condition, and many other points that could always be assumed but not actually stated as facts for comparison on which to determine a decision.

The courts have often injected into their decisions or opinions a discussion of traffic and congestion, but the decisions were based on other reasons which of course were entirely valid. Case (72), as stated before, is a good example. If traffic and congestion was not a deciding factor in a particular case, why did the court discuss traffic and, in some instances, discuss it to a great extent? The court must have felt that traffic and traffic congestion was or could have been a factor in determining its decision, but because of the other types of illegal action committed by the local government body it was prevented from doing so.

Evidence presented in the Table II, on page 45, and the Figure 1, on page 46, has also shown that the number of zoning cases in the upper courts in which traffic congestion, or the enabling act, or other reference to traffic was used, had reached a high in 1956 and that since that date the number of cases has been steadily declining. Does this mean that the cases are properly decided in the lower courts, or by the local governmental body, or could it mean that since there is no definite way to determine when traffic congestion really exists or would

be created by a specific land use in the consideration of a zoning case, that this phase of the purpose of zoning has come to be relatively insignificant and that the local body or the lower court has deemed this to be a useless aspect in trying to approve or deny a specific use even though it would have serious effect or add to the traffic congestion. We hope that this is not so.

The conclusions can be stated simply: the present zoning enabling acts and many zoning ordinances are not doing one of the important jobs for which they are intended--to lessen the congestion in the public streets. The existing zoning enabling acts and many zoning ordinances are antiquated according to today's standards. Governmental agencies should rewrite them to make them adequate to deal with today's traffic congestion problems.

Recommendations

The first recommendation is that the zoning enabling acts should be rewritten or new ones prepared that would bring up to date the standards deemed necessary to adequately cover all phases of traffic congestion and the factors that should be used in considering the relieving of traffic congestion.

These acts or revisions should include, along with the purpose of zoning, the fundamental methods that could be used in regulating, restricting, and providing for standards to be used in deciding a zoning problem or court case:

1. The stated purposes of zoning in relieving traffic congestion,
2. Suggested restrictions for determining egress and ingress requirements of a land use,
3. Some suggested restrictions and regulations such as, how to determine the number of parking spaces needed for a specific use, how to determine the existing conditions of traffic and congestion upon the street, and other things that would have to be determined after

a very thorough study made by qualified personnel and without preventing flexibility, as each municipality has its own special problems.

There are possibly other restrictions, regulations, and provisions that could be employed, to ably assist the courts and the local governing bodies in having a definite means available upon which they could base a decision.

Secondly the zoning ordinances of many municipalities are usually inadequate or inadequately written. With antiquated legislation, there are no regulations, restrictions, and provisions available to effectively combat the problem of traffic congestion. They could be brought up to date in the following manner by including at least the items mentioned here:

1. The parking facilities should be adequate enough to allow all automobiles to park off the street. This can be taken care of by using a ratio of the number of square feet in a building, or the maximum number of customers or other persons to be accommodated.

Many zoning ordinances include some such ratio now, but in many cases they probably will have to be brought up to date with the numerous new types of land uses that have developed in recent years.

2. The ingress and egress to property should be specifically controlled as to location on the property, and relationship to intersections, street widths and other things, to control turning movements and automobile accident points.
3. Ways should be included to determine the conditions of the street serving the land use and limitations made as to the street width, traffic flow, volume of traffic, and topographical and sight distances and other points which would aid in determining whether the street was adequately prepared to accommodate an additional increase of automobiles generated by specific land uses.
4. The conditions of the neighborhood, adjacent land uses, and other specified conditions should

be determined to see if the proposed land use will affect the neighborhood as well as the traffic in and around the land use being planned.

There are other specific conditions, regulations, restrictions, and provisions that also should be taken into consideration when preparing a zoning ordinance. The ordinance should be diligently prepared, and all items that can be foreseen that would influence existing and possible future traffic congestion should be taken into consideration. Also the ordinances should be periodically reviewed and rewritten as new conditions develop.

Control of the land use abutting on the streets is the one way left in which we can relieve traffic congestion, after the street has been built; the traffic regulations of most municipalities do not regulate land uses. As has been pointed out before, the effectiveness of the zoning enabling acts and the zoning ordinances of today usually falls short of relieving traffic congestion.

The courts have not had adequate provisions upon which they can completely rely in determining a zoning case when rezoning a property to a more intensive use than was previously allowed, especially upon a street

which carries heavy traffic loads. The local governing bodies, in most cases, have at their disposal provisions upon which they can rely, but in many instances the regulations have been inappropriately prepared and in others they are ineffective. Future judges and local governing bodies should be given sufficient background and enforce the purpose of the zoning enabling act and the zoning ordinance.

Justice Edwards in the case of White v. Township of Southfield, 347 Mich. 548, 79 N. W. 2d 863, case (144), gave a good analysis and opinion regarding the effects of rezoning all streets for uses other than residential, and the problem that would be involved for the municipality and its planning agencies and its zoning in general. His opinion is to serve as a conclusion to this thesis:

> . . . Is it an unconstitutional use of the police power for a township to zone property adjacent to a heavily travelled highway for residential purposes exclusively? An affirmative answer to this question by this Court in my mind would play havoc with all city planning and zoning. [Emphasis supplied.]
>
> Traffic of greater or lesser degree and in volumes increasing or decreasing by the year, is a part of our modern life. A declaration that as a matter of law proof of heavy travel on an adjacent highway voids a residential zoning provision would constitute a threat to the stability of practically every zoning ordinance in the state of Michigan. Further, it would invite

> litigation in relation to every piece of property zoned for residence along every heavily travelled highway in the state. Moreover, it would place the trial courts and the Supreme Court squarely in the business of determining just how much traffic and of what character would serve to void a particular litigated zoning provision.
>
> Such a practice would, in my view, represent a major judicial intrusion upon the discretion vested in local legislative bodies who are charged with the adoption of zoning ordinances.

With the above statement by Justice Edwards it is deemed essential that the zoning enabling acts and the zoning ordinances be rewritten and brought up to date under the influence of today's way of life. Adequate regulations and provisions included in the enabling acts and the ordinances would relieve the courts themselves in determining traffic conditions as Justice Edwards so ably stated.

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Michigan Department of Economic Development. Michigan Laws Related to Local Planning. Lansing, Michigan, 1949.

Mitchell, Robert B., and Rapkin, Chester. Urban Traffic A Function of Land Use. New York: Columbia University Press, 1954.

U. S. Department of Commerce, Advisory Committee on Zoning. A Standard State Zoning Enabling Act. Washington, D.C.: U. S. Government Printing Office, revised edition, 1926.

Yokely, E. C., Zoning Law and Practice. Vol. II, 2nd Edition. Charlottesville, Virginia: The Michie Company, Law Publishers, 1953.

## Law Reports

Village of Euclid v. Ambler Realty Co. 272 U. S. 365, (47 S. Ct. 114, 71 L. ed 303, 54 A.L.R. 1016), November 22, 1926.

Cohen v. Mayor. 113 N. Y. 532, 21 N. E. 700, June 4, 1889.

Rex v. Cross. 3 Camp. 224, 170 Eng. Rep. 1362 (1812).

# APPENDIX I

## BIBLIOGRAPHY OF MATERIAL COVERED FOR EACH STATE'S COURT REPORTS

This appendix includes all of the various State reports used in compiling the court cases listed and used in this report. These are for the selected States only.

CALIFORNIA

California Reports (2d Series)

Reports of Cases Determined in the Supreme Court of the State of California.
Vol. 25, Oct. 1944 - Vol. 53, April 1960.

California Appellate Reports (2d Series)

Reports of Cases Determined in the District Courts of Appeal of the State of California.
Vol. 67, Nov. 1944 - Vol. 176, Jan. 1960.

CONNECTICUT

Connecticut Reports

Cases Argued and Determined in the Supreme Court of Errors of the State of Connecticut.
Vol. 131, May 1944 - Vol. 146, Nov. 1959.

Connecticut Supplement

Memoranda Filed in the Superior Court and the Court of Common Pleas of the State of Connecticut.
Vol. 13, May 1944 - Vol. 21, Jan. 1960.

Note: Connecticut cases of 1959 were mainly acquired from the Atlantic Reporter, 2nd Series, but are cited with Connecticut Report Numbers.

ILLINOIS

Illinois Reports (Regular) and (2d Series)

Reports of Cases at Law and in Chancery Argued and Determined in the Supreme Court of Illinois.
Vol. 387, May 1944 - Vol. 415 (end of regular series).
Vol. 1 (2d Series) - Vol. 18, Feb. 1960.

Illinois Appellate Court Reports (Regular) and (2d Series)
Reports of Cases Determined in the Appellate Courts of Illinois.
Vol. 324, Feb. 1944 - Vol. 351(end of regular series).
Vol. 1 (2d Series) - Vol. 24, Mar. 1960.

MICHIGAN

Michigan Reports
Cases Decided in the Supreme Court of Michigan.
Vol. 295, Oct. 1940 - Vol. 360, Sept. 1960.

NEW JERSEY

New Jersey Law Reports
Reports of Cases Argued and Determined in the Supreme Court and, at Law, in the Court of Errors and Appeals, of the State of New Jersey.
Vol. 132, Dec. 1943 - Vol. 137, Oct. 1948.

New Jersey Equity Reports
Reports of Cases Decided in, the Court of Chancery, the Prerogative Court, and on Appeal in, the Court of Errors and Appeals of the State of New Jersey.
Vol. 136, Nov. 1944 - Vol. 142, Sept. 1948.

Note: The New Jersey Law Reports and the New Jersey Equity Reports were combined in 1948 to form the New Jersey Reports.

New Jersey Reports
Report of Cases Argued and Determined in the Supreme Court of New Jersey.
Vol. 1, Nov. 1948 - Vol. 31, Mar. 1960.

New Jersey Superior Court Reports
Reports of Cases Argued and Determined in the Superior Court, Appellate Division, Chancery Division, Law Division, and in the County Courts of the State of New Jersey.
Vol. 1, Sept. 1948 - Vol. 59, Feb. 1960.

New Jersey Miscellaneous Reports
Containing Cases Decided in the Court of Errors and Appeals, Court of Chancery, Prerogative and Supreme Courts that are not Reported in the New Jersey Law and Equity Reports. Also important cases decided in the New Jersey Courts of Common Pleas, District and Circuit Courts, and by the Surrogates and Department of Labor.
Vol. 22, Jan. 1944 - Vol. 26, Jan. 1949.

NEW YORK

New York Reports--Court of Appeals (Regular) and (2d Series)

Reports of Cases Decided in the Court of Appeals of the State of New York.
Vol. 295, Oct. 1945 - Vol. 309 (end of regular series).
Vol. 1 (2d Series) - Vol. 7, April 1960.

Appellate Division Reports--Supreme Court of New York (Regular) and (2d Series)

Vol. 270, Nov. 1945 - Vol. 286 (end of regular series).
Vol. 1 (2d Series) - Vol. 10, May 1960.

Note: There is also available in the Michigan State Law Library the following volumes which were not reported upon but may have yielded additional cases for study.

Miscellaneous Reports of New York.

Reports of Selected Cases Decided in Courts of the State of New York other than the Courts of Appeals and the Appellate Division of the Supreme Court.

PENNSYLVANIA

Pennsylvania State Reports

Cases Decided by the Supreme Court of Pennsylvania.
Vol. 351, Oct. 1944 - Vol. 398, April 1960.

Pennsylvania Superior Court Reports

Cases Decided by the Superior Court of Pennsylvania.
Vol. 156, Aug. 1944 - Vol. 191, Mar. 1960.

Pennsylvania District and County Reports (Regular) and (2d Series)

Containing Reports of Cases Decided in All the Judicial Districts of Pennsylvania.
Vol. 51, various dates in 1944 - Vol. 89 (end of regular series).
Vol. 1 (2d Series) - Vol. 20, June 1960.

Note: Pennsylvania cases are complete only through reports available as of September 1960.

# APPENDIX II

## DATA FOR CASES REPORTED--NAME, DATE, CASE NUMBER, CASE CODE, AND CITATION

| Case no. | Case code | Date | Citation | Name |
|---|---|---|---|---|
| CALIFORNIA | | | | |
| 1 | F | 1949 | 33 Cal. 2d 453 | Charles C. Lockard, et al., Respondents, v. City of Los Angeles, Appellant. |
| 2 | D | 1950 | 36 Cal. 2d 95 | Charles L. Clemons, Appellant, v. City of Los Angeles, et al., Respondents. |
| 3 | J | 1955 | 45 Cal. 2d 325 | The Roman Catholic Welfare Corporation of San Francisco (a Corporation), Petitioner, v. City of Piedmont, et al., Respondents. |
| *4 | D | 1958 | 49 Cal. 2d 826 | Philip F. Johnson, et al., Plaintiffs and Appellants, v. City of Claremont, et al., Defendants and Appellants. |
| 5 | D | 1948 | 86 Cal. App. 2d 277 | Safeway Stores, Incorporated (a Corporation), Appellant, v. City Council of San Mateo, et al., Respondents. |
| 6 | D | 1949 | 92 Cal. App. 2d 77 | L. H. Price, et al., Appellants, v. John V. Schwafel, as City Building Inspector, etc., Respondent. |
| *7 | K | 1951 | 107 Cal. App. 2d 260 | Saks and Company (a Corporation), Respondent, v. City of Beverly Hills, Appellant. |

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| 8 | A | 1953 | 116 Cal. App. 2d 856 | Morris, v. City of Los Angeles. |
| 9 | E | 1954 | 126 Cal. App. 2d 220 | Wallace Stegner, et al., Appellants, v. Bahr and Ledoyen, Inc., et al., Respondents. |
| 10 | A | 1954 | 126 Cal. App. 2d 804 | County of San Diego, Appellant, v. Walter Williams, Respondent. |
| 11 | E | 1955 | 135 Cal. App. 2d 180 | D. Edgar Cohn, et al., Appellants, v. County Board of Supervisors of the County of Los Angeles, et al., Respondents. |
| *12 | B | 1956 | 138 Cal. App. 2d 598 | Earl P. Miller, Appellant, v. Planning Commission of the City of Torrance, et al., Respondents. |
| 13 | E | 1956 | 140 Cal. App. 2d 33 | Rodolfo Endara, et al., Respondents, v. City of Culver City et al., Appellants. |
| 14 | J | 1956 | 140 Cal. App. 2d 874 | Al Schumm, et al., Appellants, v. The Board of Supervisors of San Joaquin County, et al., Respondents. |
| 15 | C | 1956 | 141 Cal. App. 2d 446 | Desert Turf Club (a Corporation), Appellant, v. The Board of Supervisors of Riverside County, et al., Respondents. |
| *16 | E | 1956 | 146 Cal. App. 2d 810 | Theodore C. Robinson, et al., Appellants, v. City of Los Angeles, et al., Respondents. |
| 17 | G | 1957 | 156 Cal. App. 2d 138 | Jean C. Flagstad, Plaintiff and Appellant, v. City of San Mateo, et al., Defendants; Harry Regan, et al., Defendants and Appellants. |

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| 18 | I | 1958 | 157 Cal. App. 2d 507 | C. L. Griffin, et al., Respondents, v. County of Marin, Appellant. |
| *19 | A | 1958 | 161 Cal. App. 2d 454 | Jane Reed Kissinger, et al., Respondents, v. City of Los Angeles, et al., Appellants. |
| 20 | J | 1958 | 164 Cal. App. 2d 12 | Robert F. Minney, Appellant, v. City of Azusa, Respondent. |
| 20A | J | 1959 | 176 Cal. App. 2d 136 | Garden Grove Congregation of Jehovah's Witnesses (a Corporation), Appellant, v. City of Garden Grove, et al., Respondents. |
| CONNECTICUT | | | | |
| 21 | D | 1946 | 132 Conn. 537 | Michael Devaney, et al., v. Board of Zoning Appeals of the City of New Haven, et al. |
| 22 | K | 1947 | 134 Conn. 28 | Antonetta Abbadessa, et al., v. The Board of Zoning Appeals of the City of New Haven. |
| 23 | I | 1947 | 134 Conn. 149 | Peter Mrowka, et al., v. Board of Zoning Appeals of the Town of Plainville. |
| 24 | B | 1947 | 134 Conn. 240 | Michael W. Delaney, et al., v. Zoning Board of Appeals of the City of Hartford, et al. |
| 25 | H | 1949 | 135 Conn. 706 | George Dadukean, v. Zoning Board of Appeals of the City of Bridgeport. |
| 26 | D | 1949 | 136 Conn. 89 | Harry E. Bartram, et al., v. The Zoning Commission of the City of Bridgeport, et al. |
| 27 | B | 1950 | 137 Conn. 36 | William Strain, et al., v. Zoning Board of the Town of Greenwich, et al. |

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| 28 | J | 1952 | 138 Conn. 434 | Fairlawns Cemetery Association, Inc., v. Zoning Commission of the Town of Bethel, et al. |
| 29 | H | 1952 | 138 Conn. 452 | Executive Television Corporation, v. Zoning Board of Appeals of the City of Dansbury. |
| 30 | F | 1952 | 138 Conn. 610 | Charles H. Miller, v. Zoning Board of Appeals of the City of Hartford. |
| 31 | D | 1952 | 139 Conn. 59 | Charles Eden, et al., v. Town Plan and Zoning Commission of the Town of Bloomfield, et al. |
| 32 | B | 1953 | 139 Conn. 577 | Joseph J. Farr, et al., v. Zoning Board of Appeals of the Town of Manchester, et al. |
| 33 | H | 1953 | 139 Conn. 677 | Town of Milford, v. Commissioner of Motor Vehicles, et al., The Atlantic Refining Company, v. Philip B. Wilkinson, Building Inspector of the Town of Milford. |
| 34 | E | 1953 | 140 Conn. 433 | Terrence McMahon, et al., v. Board of Zoning Appeals of the City of New Haven, et al. |
| 35 | F | 1953 | 140 Conn. 527 | Mitchell Land Company, v. Planning and Zoning Board of Appeals of the Town of Greenwich, et al.<br>James C. Bell, et al., v. Planning and Zoning Board of Appeals of the Town of Greenwich, et al. |
| 36 | D | 1954 | 141 Conn. 349 | Norman W. Couch, et al., v. Zoning Commission of the Town of Washington. |

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| 37 | E | 1954 | 141 Conn. 595 | Rowley Plumb, et al., v. Board of Zoning Appeals of the City of New Haven, et al. |
| *38 | H | 1955 | 142 Conn. 64 | The Atlantic Refining Company, v. Zoning Board of Appeals of the Town of Milford. |
| 39 | J | 1955 | 142 Conn. 349 | Domenick Antenucci, et al., v. The Hartford Roman Catholic Diocesan Corporation. |
| *40 | B | 1955 | 142 Conn. 415 | Nicholas J. Florentine, et al., v. Town of Darien, et al. |
| 41 | J | 1956 | 143 Conn. 263 | The West Hartford Methodist Church, v. Zoning Board of Appeals of the Town of West Hartford, et al. |
| *42 | I | 1956 | 143 Conn. 316 | Silver Lane Pickle Company, v. Zoning Board of Appeals of the Town of East Hartford. |
| 43 | K | 1956 | 143 Conn. 322 | Michael Devaney, et al., v. Board of Zoning Appeals of the City of New Haven, et al. |
| 44 | E | 1956 | 143 Conn. 609 | The Calve Brothers Company, v. City of Norwalk. |
| 45 | F | 1956 | 143 Conn. 634 | Joseph Mason, v. Board of Zoning Appeals of the City of Bridgeport. |
| 46 | J | 1957 | 144 Conn. 641 | Alfred Goldreyer, et al., v. Board of Zoning Appeals of the City of Bridgeport, et al. |
| 47 | D | 1958 | 145 Conn. 435 | Ferdinand H. Pecora, et al., v. Zoning Commission of the Town of Trumbull, et al. |
| 48 | D | 1958 | 145 Conn. 476 | Everett A. Clark, et al., v. Town Council of the Town of West Hartford, et al. |

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| 49 | D | 1958 | 145 Conn. 592 | Margaret Wade, et al., v. Town Plan and Zoning Commission of the Town of Hamden, et al. |
| *50 | D | 1958 | 145 Conn. 597 | Seema Gordon, v. Zoning Board of the City of Stamford, et al.<br>George W. Baker, et al., v. Hugh D. Catty, et al. |
| 51 | B | 1958 | 145 Conn. 625 | Samuel Neuger, et al., v. Zoning Board of the City of Stamford, et al. (Two cases.) |
| 51a | D | 1959 | 146 Conn. 321 | James F. Whalen, et al., v. Town Plan and Zoning Commission of the Town of Fairfield, et al. |
| 51b | D | 1959 | 146 Conn. 397 | William W. C. Ball, et al., v. Town Plan and Zoning Commission of the Town of Windsor, et al. (4728)<br>(Two appeals disposed of as one.) Identically same wording in the second appeal as the one listed above (4729). |
| 51c | E | 1959 | 146 Conn. 595 | Steve Bonaldo, et al., v. Board of Zoning Appeals of the City of New Haven, et al.<br>Louis Pecorado, et al. v. Board of Zoning Appeals of the City of New Haven, et al. |
| 51d | D | 1959 | 147 Conn. 65 | Thomas J. Tarasovic, et al., v. Zoning Commission of the Town of Trumbull, et al. |
| *52 | F | 1948 | 15 Conn. Sup. 485 | Town of Westport, et al., v. The Kellems Company, et al. |
| 53 | D | 1949 | 16 Conn. Sup. 187 | Helene L. Hawley, et al., v. Zoning Commission of the City of Bridgeport, et al. |

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| 54 | E | 1951 | 17 Conn. Sup. 268 | State, ex. rel. Anthony Collucci, et al., v. Milford Town and Planning and Zoning Board. |
| 55 | H | 1951 | 17 Conn. Sup. 309 | The Texas Company, v. Zoning Board of Appeals of the City of Hartford. |
| *56 | A | 1952 | 18 Conn. Sup. 43 | Olin F. Harvey, et al., v. Board of Zoning Appeals of the Town of Greenwich, et al. |
| 57 | D | 1954 | 18 Conn. Sup. 518 | Town of Waterford, et al., v. Eugene H. Lamphier, et al. |
| 58 | J | 1954 | 19 Conn. Sup. 131 | Domenick Antenucci, et al., v. Hartford Roman Catholic Diocesan Corporation. |
| 59 | D | 1955 | 19 Conn. Sup. 455 | Edward H. Hamelin, et al., v. Zoning Board of the Borough of Wallingford. |
| 60 | B | 1956 | 20 Conn. Sup. 188 | The Lakeside Realty Company, v. Town of Berlin. |
| ILLINOIS | | | | |
| 61 | E | 1945 | 390 Ill. 138 | Mercer Lumber Companies, Appellant, vs. The Village of Glencoe, Apellee. |
| 62 | A | 1947 | 396 Ill. 404 | Angeline DeBartolo, Appellee, vs. The Village of Oak Park, Appellant. |
| 63 | D | 1947 | 398 Ill. 142 | Federal Electric Company, Inc., Appellee, vs. Zoning Board of Appeals of the Village of Mount Prospect, et al., Appellants. |
| 64 | D | 1947 | 398 Ill. 265 | Offner Electronics, Inc., Appellant, vs. Paul Gerhardt, Jr., et al., Appellees. |

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| 65 | D | 1948 | 399 Ill. 418 | George L. Quilici, et al., Appellees, vs. The Village of Mount Prospect, Appellant. |
| 66 | E | 1949 | 402 Ill. 321 | The People, ex rel. Joseph Lumber Company, Appellant, vs. The City of Chicago, et al., Appellees. |
| 67 | D | 1949 | 402 Ill. 581 | Metropolitan Life Insurance Company, Appellant, v. The City of Chicago, Appellee. |
| 68 | A | 1949 | 404 Ill. 473 | William L. Pringle, et al., Appellants, vs. The City of Chicago, Appellee. |
| 69 | D | 1950 | 405 Ill. 396 | Arthur T. Galt, et al., Appellants, vs. The County of Cook, Appellee. |
| 70 | D | 1950 | 405 Ill. 410 | Robert J. Dunlap, et al., Appellants, vs. The City of Woodstock, et al., Appellees. |
| 71 | A | 1951 | 408 Ill. 91 | The Trust Company of Chicago, Trustee, et al., Appellees, vs. City of Chicago, Appellant. |
| *72 | F | 1951 | 408 Ill. 397 | The People, ex rel. The Trust Company of Chicago, Trustee, et al., Appellees, vs. The Village of Skokie, et al., Appellants. |
| *73 | A | 1951 | 408 Ill. 458 | Pioneer Trust & Savings Bank, Trustee, et al., Appellees, vs. The Village of Oak Park, Appellant. |
| 74 | D | 1951 | 410 Ill. 21 | John Downey, et al., Appellants, vs. Charlotte V. Grimshaw, et al., Appellees. |

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| 75 | E | 1953 | 414 Ill. 162 | Miller Brothers Lumber Company, Appellant, vs. The City of Chicago, Appellee. |
| 76 | A | 1953 | 414 Ill. 313 | Ronda Realty Corporation, Appellee, vs. Samuel T. Lawton, et al., Appellants. |
| *77 | B | 1953 | 415 Ill. 488 | Ray Zilien, et al., Appellees, vs. The City of Chicago, Appellant. |
| 78 | E | 1953 | 1 Ill. 2d 28 | Hannifin Corporation, Appellee, vs. The City of Berwyn, Appellant. |
| 79 | E | 1953 | 1 Ill. 2d 200 | Midland Electric Coal Corporation, Appellees, vs. The County of Knox, et al., Appellants. |
| 80 | D | 1954 | 2 Ill. 2d 350 | The People, ex rel. Alco Deree Co., Appellant, vs. The City of Chicago, Appellee. |
| 81 | D | 1954 | 3 Ill. 2d 206 | Herzog Building Corporation, Appellee, vs. The City of Des Plaines, Appellant. |
| 82 | D | 1954 | 3 Ill. 2d 247 | George Eleopoulos, et al., Appellants, vs. The City of Chicago, Appellee. |
| 83 | J | 1954 | 3 Ill. 2d 531 | Wilma Nichols, et al., Appellees, vs. The City of Rock Island, Appellant. |
| 84 | E | 1954 | 4 Ill. 2d 432 | The Northern Trust Company, Trustee, et al., Appellees, vs. The City of Chicago, Appellant. |
| 85 | J | 1955 | 5 Ill. 2d 11 | Tower Cabana Club, Inc., Appellee, vs. The City of Chicago, Appellant. |

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| 86 | D | 1954 | 5 Ill. 2d 22 | Catherine Bullock, et al., Appellants, vs. City of Evanston, et al., Appellees. |
| 87 | D | 1955 | 5 Ill. 2d 49 | Harvey Langguth, et al., Appellees, vs. The Village of Mount Prospect, Appellant. |
| 88 | G | 1955 | 5 Ill. 2d 270 | Ntina Petropoulos, Appellant, vs. The City of Chicago, et al. Appellees. |
| 89 | A | 1955 | 5 Ill. 2d 344 | LaSalle National Bank of Chicago, Trustee, et al., Appellees, vs. The City of Chicago, Appellant. |
| 90 | G | 1955 | 6 Ill. 2d 22 | LaSalle National Bank, Trustee, Appellee, vs. The City of Chicago, Appellant. |
| 91 | E | 1955 | 6 Ill. 2d 419 | The Exchange National Bank of Chicago, Trustees, et al., Appellees, vs. The County of Cook, Appellant. |
| 92 | D | 1955 | 7 Ill. 2d 213 | The First National Bank of Lake Forest, Trustee, Appellant, vs. The County of Lake, et al., Appellees. |
| 93 | D | 1956 | 8 Ill. 2d 104 | S. H. Krom, et al., Appellees, vs. The City of Elmhurst, Appellant. |
| 94 | E | 1956 | 8 Ill. 2d 155 | Mary H. Garner, et al., Appellants, vs. The County of Du Page, et al., Appellees. |
| 95 | D | 1956 | 9 Ill. 2d 156 | James A. Mahoney, et al., Appellees, vs. The City of Chicago, Appellant. |
| 96 | F | 1956 | 9 Ill. 2d 326 | Rams - Head Company, Appellant, vs. The City of Des Plaines, Appellee. |

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| 97 | A | 1956 | 9 Ill. 2d 448 | Dr. Robert Reitman, et al., Appellees, vs. The Village of River Forest, et al., Appellants. |
| 98 | J | 1956 | 9 Ill. 2d 561 | Harold M. Bohan, et al., Appellants, vs. The Village of Riverside, et al., Appellees. |
| 99 | A | 1956 | 9 Ill. 2d 568 | Carl Anderson, et al., Appellees, vs. The County of Cook, Appellant. |
| 100 | D | 1956 | 9 Ill. 2d 577 | Clarence Regner, et al., Appellants, vs. The County of McHenry, et al., Appellees. |
| 101 | E | 1956 | 9 Ill. 2d 596 | Stanley J. Williams, et al., Appellees, vs. The Village of Schiller Park, Appellant. |
| 102 | K | 1956 | 10 Ill. 2d 130 | 222 East Chestnut Street Corporation, Appellant, vs. The Board of Appeals of The City of Chicago, et al., Appellees. |
| 103 | A | 1956 | 10 Ill. 2d 132 | 222 East Chestnut Street Corporation, Appellant, vs. The Board of Appeals of The City of Chicago, et al., Appellees. |
| 104 | D | 1956 | 10 Ill. 2d 137 | Liberty National Bank of Chicago, Trustee, et al., Appellees, vs. The City of Chicago, Appellant. |
| 105 | G | 1957 | 10 Ill. 2d 198 | Lillian V. Foz, et al., Appellees, vs. The City of Springfield, et al., Appellants. |
| 106 | E | 1957 | 10 Ill. 2d 582 | Helen Kaczorowski, et al., Appellants, vs. Elmhurst Chicago Stone Company, et al., Appellees. |

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| 107 | D | 1957 | 10 Ill. 2d 596 | John A. Bolger, et al., Appellees, vs. The Village of Mount Prospect, Appellant. |
| 108 | G | 1957 | 10 Ill. 2d 604 | Ethel Wehrmeister, Appellee, vs. The County of Du Page, Appellant. |
| *109 | G | 1957 | 12 Ill. 2d 40 | LaSalle National Bank of Chicago, Appellee, vs. The County of Cook, Appellant. |
| 110 | D | 1957 | 12 Ill. 2d 284 | George G. Gordon, et al., Appellees, vs. The City of Wheaton, Appellant. |
| *111 | D | 1958 | 12 Ill. 2d 537 | Thomas O. Myers, et al., Appellees, vs. The City of Elmhurst, Appellant. |
| 112 | E | 1958 | 13 Ill. 2d 169 | Otto A. Bauske, et al., Appellees, vs. The City of Des Plaines, Appellant. |
| 113 | D | 1958 | 13 Ill. 2d 329 | Dr. Edward J. Skrysak, Appellee, vs. The Village of Mount Prospect, Appellant. |
| 114 | J | 1958 | 13 Ill. 2d 562 | Alvina W. Eckhardt, Appellee, vs. The City of Des Plaines, Appellant. |
| *115 | K | 1958 | 14 Ill. 2d 623 | The City of Loves Park, et al., Appellees, vs. Woodward Governor Company, Appellant. |
| 116 | D | 1958 | 15 Ill. 2d 26 | First National Bank and Trust Company of Evanston, Appellee, vs. The County of Cook, Appellant. |
| 117 | A | 1958 | 15 Ill. 2d 408 | Fifteen Fifty North State Building Corporation, Appellee, vs. The City of Chicago, et al.-(Cosmopolitan National Bank of Chicago, Trustee, Appellant). |

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| 118 | E | 1959 | 16 Ill. 2d 72 | The County of Cook, Appellant, vs. Glasstex Company, Appellees. |
| 119 | D | 1959 | 16 Ill. 2d 183 | The People, ex rel. Skokie Town House Builders, Inc., Appellee, vs. The Village of Morton Grove, et al., Appellants. |
| 120 | B | 1959 | 16 Ill. 2d 589 | Drovers Trust & Savings Bank, Trustee, Appellee, vs. the City of Chicago, Appellant. |
| 120a | D | 1959 | 17 Ill. 2d 342 | Leonard Dalkoff, et al., Appellees, vs. The City of Rock Island, Appellant. |
| 120b | G | 1959 | 18 Ill. 2d 233 | Joseph J. Kovack, et al., vs. The Village of LaGrange Park, Appellant; --(Mary D. Kovack, Appellee). |
| 121 | J | 1949 | 337 Ill. App. 157 | Bertha D. Baur, et al., Appellees, v. The Ray Schools-Chicago, Inc., Appellant. |
| *122 | L | 1953 | 350 Ill. App. 343 | Wacker-Wabash Corporation, et al., Plaintiff - Appellant, v. City of Chicago, Defendant - Appellee. |
| 123 | H | 1955 | 8 Ill. App. 2d 37 | Margaret Mary Ward and Wilmer W. Foster, Appellees, v. Village of Elmwood Park, Appellants. |
| 124 | D | 1957 | 12 Ill. App. 2d 365 | John W. Hibser and Frances F. Hibser, Plaintiffs - Appellants, v. Zoning Board of Appeals of Peoria County, Illinois, et al., Defendants - Appellees. |
| 125 | H | 1958 | 16 Ill. App. 2d 555 | Phillips Petroleum Company, Appellant, v. City of Park Ridge, a municipal corporation, James L. Galloway, et al., Appellees. |

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| 126 | A | 1959 | 23 Ill. App. 2d 183 | Samuel Papanek, Jr., et al., Appellees, v. John Rayniak, et al., Appellants. |
| MICHIGAN | | | | |
| 127 | B | 1943 | 307 Mich. 219 | Spence v. Kuznia. |
| *128 | A | 1944 | 309 Mich. 179 | Pringle v. Shevnock. |
| *129 | L | 1946 | 314 Mich. 326 | Rohan v. Detroit Racing Association. |
| 130 | A | 1947 | 317 Mich. 359 | Elizabeth Lake Estates v. Township of Waterford. |
| *131 | L | 1947 | 319 Mich. 372 | Village of St. Clair Shores v. Village of Grosse Pointe Woods. |
| 132 | E | 1949 | 326 Mich. 387 | Grand Trunk Western Railroad Company v. City of Detroit. |
| 133 | D | 1950 | 329 Mich. 146 | Long v. City of Highland Park. |
| 134 | D | 1951 | 330 Mich. 338 | Rockenbach v. Apostle. |
| *135 | B | 1953 | 336 Mich. 261 | Janigan v. City of Dearborn. |
| 136 | A | 1953 | 337 Mich. 326 | Tel-Craft Civic Association v. City of Detroit. |
| *137 | E | 1953 | 337 Mich. 549 | Janesick v. City of Detroit. |
| 138 | D | 1954 | 340 Mich. 355 | Penning v. Owens. |
| *139 | L | 1954 | 341 Mich. 84 | Plum Hollow Golf and Country Club v. Township of Southfield. |
| 140 | A | 1955 | 342 Mich. 436 | Gust v. Township of Canton. |
| 141 | D | 1955 | 343 Mich. 413 | McGiverin v. City of Huntington Woods. |
| 142 | D | 1956 | 344 Mich. 701 | Bassey v. Huntington Woods. |

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| 143 | D | 1956 | 346 Mich. 667 | Industrial Land Company, v. City of Birmingham. |
| *144 | D | 1956 | 347 Mich. 548<br>79 N.W. 2d 863 | White v. Township of Southfield. |
| 145 | D | 1957 | 348 Mich. 153 | South Central Improvement Association v. City of St. Clair Shores. |
| *146 | C | 1957 | 348 Mich. 184 | Kurpinski v. Brownstown Township Board. |
| 147 | D | 1957 | 348 Mich. 193 | Korby v. Township of Redford. |
| 148 | D | 1957 | 348 Mich. 311 | McHugh v. City of Dearborn. |
| 149 | E | 1957 | 349 Mich. 296 | Township of Bloomfield v. Beardslee. |
| *150 | G | 1957 | 349 Mich. 650 | Highland Oil Corporation v. City of Lathrup Village. |
| 151 | D | 1957 | 349 Mich. 693 | Frendo v. Township of Southfield. Perry v. Same. |
| 152 | D | 1957 | 350 Mich. 187 | Scholnick v. City of Bloomfield Hills. |
| 153 | D | 1957 | 350 Mich. 425 | Brae Burn, Inc., v. City of Bloomfield Hills. Robinson v. Same. |
| 154 | D | 1957 | 350 Mich. 489 | Bzovi v. City of Livonia. |
| 155 | E | 1958 | 351 Mich. 435 | Certain-teed Products Corporation v. Paris Township. |
| 156 | B | 1958 | 351 Mich. 550 | Dipboye v. Acchione. |
| 157 | E | 1959 | 355 Mich. 252 | Spanich v. City of Livonia. |
| 158 | B | 1959 | 357 Mich. 459 | McClain v. City of Hazel Park. |
| 158a | D | 1959 | 358 Mich. 136 | Lamb v. City of Monroe. |

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| 159 | D | 1944 | 132 N.J.L. 145 | L. Elizabeth P. Griggs, Samuel Cohen, Edward H. Saltzman and Frances B. Saltzman, his wife, William I. Lewis and Philip J. Rappaport, Prosecutors, v. The City of Paterson, a Municipal Corporation, The Board of Adjustments of the City of Paterson, The Board of Public Works of the City of Paterson and John H. Stead, Agent for Donald Gerguson, Defendants. |
| *160 | L | 1945 | 132 N.J.L. 370 | Yara Engineering Corporation, a New Jersey Corporation, Prosecutor, v. City of Newark, et al., Defendants. |
| 161 | D | 1945 | 133 N.J.L. 194 | Romana Ingannamort, Prosecutor, v. Borough of Fair Lawn, a Municipal Corporation, etc., Defendants. |
| 162 | B | 1945 | 133 N.J.L. 485 | Pioget-Del Corporation, Realtor, v. Jacob Kulik, Building Inspector of the City of Clifton, and City of Clifton, Respondents. |
| 163 | G | 1946 | 133 N.J.L. 518 | R. Wesley Grant, Petitioner, v. Board of Adjustment of the Borough of Haddon Heights and Borough of Hadden Heights, Respondents. |
| 164 | E | 1946 | 133 N.J.L. 544 | Fannie Weininger and Jacob Bass, Prosecutors, v. Borough of Metuchen in the County of Middlesex, and Howard Krough, Building Inspector of said |

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| 164 cont. | | | | Borough, and Holger G. Holm, Recorder of said Borough, Defendants. |
| 165 | B | 1946 | 134 N.J.L. 473 | John A. Schaible, Jr., and Anna V. Schaible, Prosecutors, v. Board of Adjustment of the Township of Millburn, Albert F. Doly, Building Inspector of the Township of Millburn, and Township Committee of the Township of Millburn in the County of Essex, Defendants. |
| *166 | L | 1947 | 135 N.J.L. 599 | Emily L. Yoemans, Kenneth B. Dates and Edson W. Beatty, Prosecutors, v. The Township of Hillsborough in the County of Somerset, The Township Committee of the Township of Hillsborough, Frederick Kaiser, et ux., et al., Defendants. |
| *167 | A | 1947 | 136 N.J.L. 311 | Ridgefield Terrace Realty Company, a Corporation, and George Gooss, Prosecutors, v. Borough of Ridgefield, a Municipal Corporation of the County of Bergen and the State of New Jersey, Defendant. |
| 168 | A | 1947 | 136 N.J.L. 330 | The De Mott Homes at Salem, Inc., Prosecutors, v. City of Margate City, et al., Respondents. |
| 169 | D | 1948 | 137 N.J.L. 39 | Harry Krilov, Prosecutor, v. The Board of Adjustment of the City of Newark, Defendant. |
| *170 | I | 1948 | 137 N.J.L. 110 | William Lehrer, Prosecutor, v. Board of Adjustment of the City of Newark, New Jersey, Respondent. |

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| *171 | G | 1948 | 137 N.J.L. 388 | Tulsa Oil Company, a Corporation of the State of New Jersey, Prosecutor, v. Florence E. Morey, Clerk of the Town of Belleville, James J. Tully, William H. Williams, Patrick A. Waters, Joseph King, Lewis Noll, Constituting the Board of Commissioners of the Town of Belleville, Campbell McCall, Building Inspector of the Town of Belleville, and William J. Friel, Head of the License Bureau of the Town of Belleville, Respondents. |
| 172 | A | 1948 | 137 N.J.L. 398 | Spring Brook Gardens, Inc., a New Jersey Corporation, Prosecutor, v. Board of Adjustment of the Township of Springfield, and the Township of Springfield in the County of Union, Defendants. |
| 173 | D | 1948 | 137 N.J.L. 423 | Edward W. Siegel and Oscar L. Cohen, Partners Trading as Commercial Overall Cleaning Company, Prosecutors, v. Board of Adjustment of the City of Newark, Defendant. |
| 174 | D | 1948 | 137 N.J.L. 559 | Harry Ramsbotham, et al., Prosecutors, v. The Board of Public Works of the City of Paterson, et al., Defendants. |
| 175 | F | 1949 | 1 N.J. 509 | Duffcon Concrete Products, Inc., a Corporation, Prosecutor-Respondent, v. The Borough of Cresskill, Defendant-Appellant. |

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| 176 | G | 1950 | 4 N.J. 577 | James H. Lumund, Plaintiff-Appellant, v. Board of Adjustment of the Borough of Rutherford, and Clarence Harden, Building Inspector of the Borough of Rutherford, Defendants-Respondents. |
| 177 | E | 1952 | 9 N.J. 64 | Monmouth Lumber Company, a Body Corporate of the State of New Jersey, Plaintiff-Appellant, v. Township of Ocean, a Municipal Corporation of the State of New Jersey, and Benjamin Harvey, Building Inspector of the Township of Ocean, Defendants-Respondents. |
| 178 | D | 1952 | 9 N.J. 182 | Scarborough Apartments, Inc., a New Jersey Corporation, and Other New Jersey Corporations, Plaintiffs, and Others as Plaintiffs-Respondents, v. The City of Englewood, a Municipal Corporation, Defendant-Appellant. |
| 179 | C | 1952 | 9 N.J. 424 | Delawanna Iron and Metal Company, Plaintiff-Appellant, v. Walter E. Albrecht, Building Inspector and Zoning Officer of the City of Clifton, and Municipal Council of the City of Clifton, Defendants-Respondents. |
| *180 | L | 1952 | 9 N.J. 548 | Edward M. Pyatt, Charles W. Smith, Stephen J. Brishey, and Others Plaintiffs-Appellants, v. Mayor and Council of the Borough of Dunellen in the County of Middlesex, and Art Color Printing Company, a Corporation of the State of New York, Authorized to Transact Business in this State, Defendants-Respondents. |

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| 181 | A | 1952 | 10 N.J. 165 | Lionshead Lake, Inc., Plaintiff-Respondent, v. Township of Wayne, Defendant-Appellant. |
| 182 | D | 1952 | 11 N.J. 117 | George B. Ward, Plaintiff-Appellant, v. Donald H. Scott, Mayor, et al., Constituting the Town Council of the Town of Bloomfield, a Municipal Corporation of the State of New Jersey; and Others, Defendants-Respondents. |
| 183 | A | 1952 | 11 N.J. 194 | Herman W. Fischer, Plaintiff-Appellant, v. Township of Bedminister, in the County of Somerset and State of New Jersey, a Municipal Corporation, Defendant-Respondent. |
| 184 | J | 1953 | 11 N.J. 341 | Samuel Yanow, Reshela Yanow, H. D. Myrtle, G. E. Myrtle, A. T. Horowitz, R. S. Horowitz, Plaintiffs, v. Seven Oaks Park, Inc., a New Jersey Corporation, Max Masin, and Others, Defendants, and Eastern Christian Institute, a New Jersey Corporation, Intervening-Defendant Respondent, City of Orange, Cross-Claimant-Appellant. |
| 185 | J | 1954 | 14 N.J. 529 | Robert W. Beirn and Mary Beirn, His Wife, Plaintiffs-Appellants, v. August N. Morris, Building Inspector of the Township of Piscataway (and Others), Defendants-Respondents. |
| *186 | D | 1954 | 15 N.J. 238 | Borough of Cresskill, et al., Plaintiffs-Respondents, v. Borough of Dumont, Defendant-Appellant. |

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| 187 | D | 1954 | 16 N.J. 16 | George B. Ward, Plaintiff-Appellant, v. Donald H. Scott, Mayor, et al., Constituting the Town Council of the Town of Bloomfield, Others. |
| *188 | L | 1954 | 16 N.J. 150 | Camden Plaza Parking, Inc., a New Jersey Corporation, Plaintiff-Appellant, v. City of Camden, a Municipal Corporation of the State of New Jersey, Defendant-Respondent. William H. Heiser and Mary C. Heiser, Plaintiffs-Appellants, v. City of Camden; Nedman Associates, Inc., a Corporation; and Camden Plaza Parking, Inc., a New Jersey Corporation, Defendants-Respondents. |
| 189 | B | 1956 | 21 N.J. 180 | Max Raskin, Ruth R. Raskin, and Others, Plaintiffs-Appellants, v. Town of Morristown, and Others, Defendants-Respondents. |
| 190 | D | 1956 | 21 N.J. 199 | Daniel J. Moriarty, et al., Plaintiff-Appellants, v. Jack Pozner, Board of Adjustment of the Township of North Bergen and Others, Defendants-Respondents. |
| 191 | J | 1956 | 21 N.J. 226 | John E. Tomko, et al., Plaintiffs-Appellants, v. William Vissers, Mayor, et al., Defendants-Respondents. |
| 192 | B | 1956 | 21 N.J. 400 | Pietro Roselle, Veronica Roselle, and Others, Plaintiffs-Respondents, v. Thomas Wright, Jr., Building Inspector of the Township of Livingston, Defendant-Appellant. |

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| 193 | E | 1957 | 24 N.J. 154 | Kozesnik, v. Montgomery Twp. |
| 194 | A | 1957 | 25 N.J. 57 | Howard D. Bogert, John J. Bogert and M. Catherine Dwyer, Plaintiffs-Appellants, v. The Township of Washington, a Municipal Corporation Exercising its Faculties in the County of Bergen and State of New Jersey, Pursuant to the Authority of that State, Defendant-Respondent. |
| 195 | B | 1958 | 26 N.J. 320 | Salvatore J. Fanale and Mary K. Fanale, His Wife, Plaintiffs-Respondents, v. Borough of Hasbrouck Heights, a Municipal Corporation, Defendant-Appellant. |
| 196 | D | 1958 | 29 N.J. 256 | Elise L. Grundlehner, et al., Plaintiffs-Respondents, v. J. Henry Dangler, et al., Defendants-Appellants. |
| 197 | A | 1959 | 29 N.J. 481 | Laura Napierkowski, Plaintiff-Respondent, v. Township of Gloucester, Defendant-Appellant. |
| 198 | B | 1959 | 29 N.J. 599 | Hugo Zampieri, et al., Plaintiffs-Respondents, v. Township of River Vale, Defendant-Appellant. |
| 199 | J | 1959 | 30 N.J. 273 | Allendale Congregation of Jehovah's Witnesses, Plaintiff-Appellant, v. Edwin W. Grosman, Borough of Allendale Board of Adjustment and Borough of Allendale, Defendants-Respondents. |

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| 200 | D | 1948 | 1 N.J. Super. 29 | Wanda Martha Roberts, Plaintiff-Appellant, v. Board of Adjustment of the Borough of Fort Lee and the Borough of Fort Lee, Bergen County, New Jersey, Defendants-Respondents. |
| 201 | D | 1948 | 1 N.J. Super. 69 | Edward J. Ackerman and Jeane G. Ackerman, Plaintiff-Appellants, v. Board of Commissioners of the Town of Belleville, et al., Defendants-Respondents. |
| 202 | G | 1949 | 1 N.J. Super. 638 | Arthur J. O'Connor and Joseph Calo, Plaintiffs, vs. Mayor and Council of the Borough of North Arlington, and Cordon Motors, Inc., a Corporation of the State of New Jersey, Defendants. |
| 203 | D | 1949 | 2 N.J. Super. 590 | Kerrigan Development Co., a Corporation of the State of New Jersey, Plaintiff, v. City of Newark, et al., Defendants. |
| 204 | D | 1949 | 2 N.J. Super. 605 | William A. Anderson and Marjorie E. Anderson, His Wife, et al., Plaintiffs, v. The Mayor and Council of the Town of Bloomfield, et al., Defendants. |
| 205 | B | 1949 | 4 N.J. Super. 422 | J. Russell Lacey and Perry Albert M.D., Plaintiffs-Respondents, v. Zoning Board of Adjustment of the Township of Hamilton in the County of Mercer, Simon Rednor and Joseph Rainear, Samuel Bombara and Fred Bombara, Defendants-Appellants. |

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| 206 | G | 1949 | 6 N.J. Super. 474 | James H. Lumund, Plaintiff., v. Board of Adjustment of the Borough of Rutherford, and Clarence Hardin, Building Inspector of the Borough of Rugherford, Defendants. |
| 207 | B | 1949 | 6 N.J. Super. 495 | The N. T. Hegeman Co., a Corporation of the State of New York, Plaintiff, v. Mayor and Council of the Borough of River Edge, a Municipal Corporation of the State of New Jersey, Defendant. |
| 208 | A | 1950 | 8 N.J. Super. 310 | Nathan N. Hendlin and Annette Hendlin, et al., Plaintiffs, v. Fairmount Construction Company, a Corporation, and the City of Newark, a Municipal Corporation, et al., Defendants. |
| 209 | A | 1950 | 8 N.J. Super. 468 | Lionshead Lake, Incorporated, a New Jersey Corporation, Plaintiff, v. Township of Wayne, a Municipal Corporation of the County of Passaic and State of New Jersey, Defendant. |
| 210 | A | 1951 | 13 N.J. Super. 490 | Lionshead Lake, Incorporated, v. Township of Wayne. |
| 211 | A | 1951 | 16 N.J. Super. 365 | Charles J. Shipman, 2nd, Plaintiff-Appellant, v. Town of Montclair, Board of Adjustment of the Town of Montclair, and William F. Karl, Defendants-Respondents. |
| 212 | D | 1952 | 18 N.J. Super. 36 | George B. Ward, Plaintiff, v. Donald H. Scott, Mayor, et al., Constituting the Town Council of the Town of Bloomfield, a Municipal Corporation of the State of New Jersey; Howard |

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| 212 cont. | | | | Weikel, et al., Constituting the Board of Adjustment (Zoning) of the Town of Bloomfield; Brooks C. Martin, Building Inspector of the Town of Bloomfield; and Ligham Construction Company, a Corporation of the State of New Jersey, Defendants. |
| 213 | A | 1952 | 21 N.J. Super. 81 | Herman W. Fischer, Plaintiff, v. Township of Bedminster, in the County of Somerset and State of New Jersey, a Municipal Corporation, Defendant. |
| 214 | K | 1952 | 22 N.J. Super. 161 | Fred E. Preye, et al., Plaintiffs-Respondents, v. Board of Adjustment of the Township of North Bergen, Defendant and Edward Motors, Inc., a corporation of New Jersey, Defendant-Appellant. |
| 215 | F | 1952 | 22 N.J. Super. 188 | Borough of West Caldwell by Stephen Simony, Building Inspector, Plaintiff, v. Morris Zell and Ralph Rinehardt, Defendants. |
| 216 | E | 1952 | 22 N.J. Super. 204 | William C. Closterman, et al., Plaintiffs-Appellants, v. Township of Cranford, a Municipal Corporation, et al., Defendants-Respondents, and the H. A. Wilson Company, a Corporation, Defendant. |
| 217 | D | 1953 | 28 N.J. Super. 26 | Borough of Cresskill, a Municipal Corporation of the State of New Jersey, et al., Plaintiffs, v. Borough of Dumont, a Municipal Corporation of the State of New Jersey, Defendant. |

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| *218 | L | 1954 | 29 N.J. Super. 514 | City of Trenton, Plaintiff-Respondents, v. Lenzner, Defendant-Appellants. |
| 219 | D | 1954 | 32 N.J. Super. 397 | Walter H. Jones and Alice Henshaw Jones, Plaintiffs-Appellants, v. The Zoning Board of Adjustment of the Township of Long Beach, The Board of Commissioners of the Township of Long Beach, Julis Edna Frazier, Claude W. Taylor, Edna M. Taylor, S. Robert Laslocky, Amelia A. Laslocky, Defendants-Respondents. |
| 220 | D | 1954 | 33 N.J. Super. 115 | Arthur E. Sieber, Darwin A. Sieber, and Others, Plaintiffs, v. Harold W. Laawe, Stanley O. Styles, and Others, and the Township Committee of the Township of Wayne, Defendants. |
| 221 | K | 1954 | 33 N.J. Super. 205 | Philip Mistretta, Plaintiff, v. The City of Newark, New Jersey, and Board of Adjustment of the City of Newark, New Jersey, and the Berkely Savings and Loan Association, of Newark, New Jersey, a Corporation of New Jersey, Defendants. |
| *222 | L | 1955 | 35 N.J. Super. 94 | Marie's Launderette, Inc., a Corporation of the State of New Jersey, et al., Plaintiffs-Appellants, v. City of Newark, a Municipal Corporation of the State of New Jersey, et al., Defendants-Respondents. |

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| 223 | J | 1955 | 35 N.J. Super. 215 | Agnes Skaf, Plaintiff-Appellant, v. Zoning Board of Adjustment of the City of Asbury Park, a Municipal Body, City of Asbury Park, a Municipal Corporation, and the Women's Club of Asbury Park, an Eleemosynary Corporation, Defendants-Appellees. |
| 224 | A | 1955 | 35 N.J. Super. 583 | David V. Izenberg, Leon, Lanson, and Harry S. LaPoff, and David Wajdengart, Plaintiffs-Appellants, v. The Board of Adjustment of the City of Paterson, The Board of Public Works, and Mayfair Realty Co., Inc., Defendants-Respondents. |
| 225 | D | 1955 | 36 N.J. Super. 586 | Daniel J. Moriarty, Morris E. Schwartz and Morton Goldstein, Plaintiffs-Appellants, v. Jack Pozner, Sam Pozner, Board of Adjustment of the Township of North Bergen and the Township Commission of the Township of North Bergen, Defendants-Respondents. |
| *226 | B | 1955 | 37 N.J. Super. 262 | Julis Gross, Arthur Gross and Moe Gross, Plaintiffs-Appellants, v. Donald Allan, Town Clerk of the Town of Kearny, Charles F. Warren, Building Inspector, and Others, Defendants-Respondents. |
| 227 | D | 1955 | 37 N.J. Super. 507 | Roselle, Plaintiff, v. Wright, Defendants. |
| 228 | A | 1955 | 38 N.J. Super. 468 | Rockaway Estates, Inc., a New Jersey Corporation, Plaintiff-Appellant, v. Rockaway Township, a Municipal Corporation, Defendant-Respondent. |

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| 229 | K | 1956 | 39 N.J. Super. 452 | Joseph Cummins and Baltimore Holding Company, a New Jersey Corporation, Plaintiffs-Respondents, v. Board of Adjustment of the Borough of Leonia, County of Bergen and State of New Jersey, Defendant-Appellant. |
| 230 | K | 1956 | 40 N.J. Super. 206 | Havelock I. James and Dorothy James, Francesco F. Fonseca and Rugh J. Fonseca, Edna B. Post, Robert Kerr and Dorothy Kerr and Others, Plaintiffs, v. Board of Adjustment of the Town of Montclair, The Inspector of Buildings of the Town of Montclair, The Montclair Art Association, Inc., Defendants. |
| 231 | D | 1956 | 40 N.J. Super. 276 | Arthur Hochberg, Hanna Hochberg, Carl J. Steinmetz, Anna Steinmetz, Lee Isaacson, Harold Hirsh, Ruth Hirsh, and Others, Plaintiffs-Appellants, v. Borough of Freehold, a Municipal Corporation, Freehold Racing Association, a Body Corporate, Abraham Zlotkin and Walter J. Schiverea, Defendants-Respondents. |
| 232 | A | 1956 | 41 N.J. Super. 47 | Edmund B. Clary, Plaintiff-Appellant, v. The Borough of Eatontown, a Municipal Corporation of the State of New Jersey, Defendants-Respondent. |
| 233 | B | 1956 | 41 N.J. Super. 74 | The Van Corporation and Stillman & Hoag, Inc., Corporation of the State of New Jersey, Plaintiffs-Respondents, v. The Mayor and Council of the Borough of Ridgefield, a Municipal |

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| 233 cont. | | | | Corporation of the State of New Jersey, The Board of Adjustment of the Borough of Ridgefield, and James Lauria, Building Inspector, Defendants-Appellants. |
| 234 | D | 1957 | 45 N.J. Super. 1 | Thomas A. Gartland, et al., Plaintiffs-Appellants, v. Borough of Maywood, a Municipal Corporation of the State of New Jersey, Defendant-Respondent, and Bergen Mall and May-Par Garden Center, Intervening Defendants-Respondents. |
| 235 | D | 1957 | 45 N.J. Super. 574 | Marion E. Grimley, et als., Plaintiffs-Appellants, v. Village of Ridgewood, et als., Defendants-Respondents. |
| 236 | D | 1957 | 47 N.J. Super. 306 | Newark Milk and Cream Company of Newark, New Jersey, a Corporation of the State of New Jersey, Plaintiff, v. Township of Parsippany-Troy Hills, a Municipal Corporation of the State of New Jersey; etc. |
| 237 | J | 1958 | 51 N.J. Super. 589 | The Saddle River Country Day School and Chestnut Ridge Land Co., Inc., Plaintiffs-Appellants, v. The Borough of Saddle River, Defendant-Respondents. |
| 238 | K | 1958 | 53 N.J. Super. 252 | Rain or Shine Box Lunch Co., a Corporation of New Jersey, Plaintiff-Respondent, v. Board of Adjustment of the City of Newark and Norman J. Muller, Defendants-Appellants. |

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| 239 | J | 1959 | 54 N.J. Super. 483 | Harvey Tullo and Irmgard Tullo, His Wife, and Others, Plaintiffs-Appellants, v. The Township of Millburn in the County of Essex, a Municipal Corporation of New Jersey, Board of Adjustment of the Township of Millburn and Short Hills Club, a Corporation of New Jersey, Defendants-Respondents. |
| 240 | D | 1959 | 56 N.J. Super. 135 | Borough of Leonia, Plaintiff-Appellant, v. Borough of Fort Lee, Defentant-Respondent, and Mae Blauvelt, Emma Merkle, Fortunato DiBartolo, Vincent DiBartolo and Rose DiBartolo, Intervenors-Respondents. |
| 241 | H | 1959 | 56 N.J. Super. 310 | Socony Mobil Oil Co., Inc., a Corporation of the State of New York, Plaintiff, v. Township of Ocean, Defendant. |
| 242 | B | 1959 | 57 N.J. Super. 142 | Ridgeview Co., a Corporation of the State of New Jersey, Plaintiff, v. Board of Adjustment of the Borough of Florham Park, et al., Defendants. |
| NEW YORK | | | | |
| 243 | D | 1954 | 307 N.Y. 493 | Vernon Park Realty, Inc., Respondent, v. City of Mount Vernon, Appellant. |
| *244 | A | 1954 | 308 N.Y. 736 | Leo Greenberg, et al., Appellants, v. City of New Rochelle, et al., Respondents. |
| 245 | J | 1956 | 1 N.Y. 2d 455 | In the Matter of the Community Synagogue, Appellant, against Chester E. Bates, et al., Constituting the Board of Appeals |

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| 245 cont. | | | | of the Incorporated Village of Sands Point, Respondents, and the Incorporated Village of Sands Point, Intervenor-Respondent. |
| *246 | J | 1956 | 1 N.Y. 2d 508 | In the Matter of the Diocese of Rochester, et al., Appellants, against Planning Board of Town of Brighton, et al., Respondents and John C. Romano, et al., Intervenors-Respondents. |
| 247 | K | 1956 | 1 N.Y. 2d 798 | In the Matter of Rae A. Oleet, Respondent, against Elmer Hildreth, et al., as Members of the Common Council of the City of Mount Vernon, Appellant. |
| *248 | B | 1956 | 1 N.Y. 2d 839 | In the Matter of the Village of Bronxville, et al., Appellants, against Clarence Francis, et al., Constituting the Board of Appeals of the Village of Bronxville, Respondents, and Pondfield Road Company, Inc., et al., Intervenors-Respondents. |
| 249 | D | 1951 | 279 App. Div. 762 | The People of the State of New York, ex rel., Ralph L. Polcini, Petitioner, against Lawrence S. Scofield, et al., Constituting the Zoning Board of Appeals of the Village of Larchmont, et al., Respondents. |
| 250 | D | 1953 | 281 App. Div. 214 | In the Matter of Adelaide M. Delpriore, Appellate, against Richard Ball, et al., Constituting the Zoning Board of Appeals of the Town of Amherst, County of Erie, Respondents. |

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| *251 | D | 1954 | 283 App. Div. 282 | James C. Corbett, Respondent, against Zoning Board of Appeals of the City of Rochester, et al., Appellants, and Mrs. Thomas Chambery, et al., Intervenors, Respondents. |
| 252 | K | 1955 | 286 App. Div. 886 | Rae A. Oleet, Appellant-Respondent, against Elmer Hildreth, et al., as Members of the Common Council of the City of Mount Vernon, Respondents-Appellants. |
| 253 | J | 1957 | 3 A.D. 2d 644 | In the Matter of Great Neck Community School, Appellant, against James K. Dick, as Building Inspector of the Incorporated Village of Thomaston, Nassau County, Respondent. |
| 254 | K | 1959 | 7 A.D. 2d 193 | In the Matter of Rose Rosenbloom, Appellant, against Harry B. Crowley, et al., Constituting the Board of Appeals of the Incorporated City of Rochester, Respondents, and Lincoln Rochester Trust Company, et al., Intervenors-Respondents. |
| *255 | H | 1959 | 7 A.D. 2d 575 | In the Matter of C. Paul Russo, as Member of the Lay Committee of the Immaculate Conception Church, et al., Respondents, against William T. Stevens, et al., Constituting the Board of Zoning Appeals of the City of Ithaca, et al., Appellants. |

PENNSYLVANIA

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| *256 | L | 1948 | 359 Pa. 264 | McSorley v. Fitzgerald et al. |
| 257 | G | 1948 | 359 Pa. 326 | Bortz et al., Appellants, v. Troth et al. |
| 258 | A | 1950 | 364 Pa. 578 | Gratton et al., Appellants, v. Conte et al. |
| 259 | A | 1952 | 369 Pa. 317 | Borden Appeal. |
| 260 | K | 1952 | 371 Pa. 251 | Katzin, Appellant, v. McShain. |
| *261 | L | 1953 | 374 Pa. 450 | Rolling Green Gold Club Case. |
| 262 | D | 1954 | 376 Pa. 175 | Pincus, Appellant, v. Power. |
| 263 | D | 1955 | 382 Pa. 401 | Michener Appeal. |
| 264 | D | 1956 | 384 Pa. 100 | Pierce Appeal. |
| 265 | B | 1956 | 384 Pa. 288 | Food Corporation, v. Zoning Board of Adjustment (et al., Appellant). |
| 266 | B | 1956 | 384 Pa. 294 | Novello, Appellant,v. Zoning Board of Adjustment. |
| *267 | D | 1956 | 385 Pa. 328 | Garbev Zoning Case. |
| *268 | B | 1957 | 388 Pa. 98 | Garner v. Zoning Board of Adjustment (et al., Appellant). |
| 269 | J | 1957 | 389 Pa. 35 | Archbishop O'Hara's Appeal. |
| 270 | A | 1957 | 389 Pa. 295 | Schmalz et ux., Appellants, v. Buckingham Township Zoning Board of Adjustment. |
| 271 | B | 1957 | 390 Pa. 206 | Sears, Roebuck & Company, Appellant, v. Power. |
| 272 | F | 1958 | 391 Pa. 111 | South Philadelphia Dressed Beef Company, Appellant, v. Zoning Board of Adjustment. |
| 273 | A | 1958 | 392 Pa. 188 | Edwards Zoning Case. |

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| 274 | K | 1958 | 392 Pa. 278 | Nicholson, Appellant, v. Zoning Board of Adjustment. |
| 275 | B | 1958 | 393 Pa. 10 | Scranton Board of Zoning Appeals, Appellant, v. Silas. |
| 276 | A | 1958 | 393 Pa. 62 | Bilbar Construction Company, Appellant, v. Easttown Township Board of Adjustment. |
| 277 | D | 1959 | 395 Pa. 118 | English, Appellant, v. Zoning Board of Adjustment. |
| 278 | J | 1959 | 395 Pa. 122 | Kotzin v. Plymouth Township Zoning Board of Adjustment (et al., Appellants). |
| 279 | D | 1959 | 395 Pa. 338 | Fifty-fourth Street Center, Inc., Appellant, v. Zoning Board of Adjustment. |
| 280 | D | 1954 | 176 Pa. Superior Ct.463 | Putney, Appellant, v. Abington Township. |
| 281 | K | 1955 | 180 Pa. Superior Ct.105 | Schaub Appeal |
| *282 | J | 1957 | 183 Pa. Superior Ct.219 | Jehovah's Witnesses Appeal. |
| *283 | C | 1948 | 67 D. & C. 591 | Tornetta v. Township of Whitemarsh. |
| 284 | D | 1949 | 69 D. & C. 251 | Pontzer v. Borough of St. Marys. |
| 285 | J | 1950 | 72 D. & C. 168 | Stark et al., Appeal. |
| 286 | D | 1951 | 75 D. & C. 504 | Kellman v. Philadelphia Zoning Board of Adjustment. |
| 287 | B | 1952 | 83 D. & C. 69 | Reed v. Borough of North Wales. |
| 288 | J | 1953 | 86 D. & C. 408 | Kelly et al., v. Philadelphia et al. |

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| 289 | A | 1954 | 88 D. & C. 265 | Hinton v. Zoning Board of Adjustment (No. 2). |
| 290 | H | 1954 | 88 D. & C. 538 | Silver et ux., v. Board of Appeals, etc. |
| 291 | A | 1954 | 2 D. & C. 2d 45 | Fleishon v. Zoning Board of Adjustment et al. |
| 292 | J | 1954 | 2 D. & C. 2d 468 | Liddell et al., v. Swarthmore Swim Clib et al. |
| 293 | J | 1955 | 5 D. & C. 2d 8 | Steppler et al., v. Board of Adjustment of Radnor Township. |
| 294 | D | 1955 | 6 D. & C. 2d 289 | Seeney v. Dintenfass, Inc. |
| *295 | A | 1955 | 6 D. & C. 2d 337 | Fleishon v. Zoning Board of Adjustment. (Note: This decision was affirmed in the Supreme Court, 385 Pa. 295, but was not included in the list because traffic did not enter into the decision.) |
| 296 | K | 1956 | 6 D. & C. 2d 688 | The First Pennsylvania Banking and Trust Company, v. Zoning Board of Adjustment. |
| 297 | H | 1957 | 12 D. & C. 2d 696 | Prince Realty Corp. v. Zoning Board of Adjustment. |
| 298 | D | 1957 | 13 D. & C. 2d 43 | Seitchik v. Zoning Board of Adjustment. |
| 299 | D | 1957 | 13 D. & C. 2d 203 | Gibson v. Zoning Board of Adjustment. (Note: Degree Nisi 13 D. & C. 2d 209.) |
| 300 | G | 1957 | 13 D. & C. 2d 697 | Esso Standard Oil Co. v. Cheltenham Township Zoning Board of Adjustment. |

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| 301 | D | 1958 | 16 D. & C. 2d 346 | Udylite Corp. v. Philadelphia Zoning Board of Adjustment. |
| 302 | E | 1958 | 16 D. & C. 2d 584 | M. & M. Stone Co. v. Zoning Board of Adjustment of Lower Salford Township. |
| 303 | C | 1957 | 17 D. & C. 2d 57 | Schugar Appeal. |
| 304 | D | 1959 | 18 D. & C. 2d 104 | Stofflet & Tillotson Application. |
| 304A | E | 1959 | 20 D. & C. 2d 149 | Theresa Friedman & Sons, Inc., v. Zoning Board of Adjustment. |
| | | | | (Note: The 1959 cases as reported in the D. & C. 2d Series will not be completed as the reporting of cases for certain years continued for up to three years after the case was decided.) |
| FLORIDA | | | | |
| *305 | A | 1954 | Fla., 71 So. 2d 148 | City of Miami Beach v. Lachman et al. |
| MARYLAND | | | | |
| *306 | G | 1954 | 204 Md. 32 | American Oil Co., v. Miller et al. |
| *307 | D | 1954 | 205 Md. 489 | Temmink et al., v. Board of Zoning Appeals for Baltimore County et al. |
| *308 | E | 1955 | 207 Md. 389 | Board of Zoning Appeals of Howard County et al., v. Meyer et ux. |

OKLAHOMA

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| *309 | F | 1955 | Okl., 285 P. 2d 183 | W. E. Fletcher, Plaintiff in Error, v. Board of County Commissioners of Oklahoma County, State of Oklahoma, Defendent in Error. |

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| *310 | A | 1953 | 263 S. W. 2d 820 | Clesi et al., v. Northwest Dallas Imp. Ass'n. et al. |

# APPENDIX III

## LISTING AND BRIEF DESCRIPTION OF CASES

## IN THE "L" CLASSIFICATION

| State | Case no. | Date | Brief Description |
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| Illinois | (122) | 1948 | This case concerned condemnation proceedings for street construction. |
| Michigan | (129) | 1946 | This case dealt with the operating and maintenance of a race track and horse barns. Plaintiffs sought to enjoin said race track and horse barns and to have a Public Act declared unconstitutional. |
| Michigan | (131) | 1947 | This case concerned the establishment of a bathing beach by one municipality on property purchased by them within the confines of another municipality. Plaintiff village sought a decree to restrain the defendant village from establishing and operating a public or municipal park and bathing beach within its confines. |
| Michigan | (139) | 1954 | This case concerned the desire of a golf club to reclaim some of its lands by filling with rubbish. Land in question was in a residential zone. The rubbish was to be hauled from Detroit. Plaintiff golf club sought an application to allow the fill. The permit was refused by the Township Board. The Zoning Board of Appeals upheld action by the Township Board. |

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| New Jersey | (160) | 1945 | This case concerned the legality of an "Airport Zoning Ordinance." Owner of vacant land within the airport area challenged the legality of this ordinance. |
| New Jersey | (166) | 1947 | This case concerned proposed airport development. Owners attack the legality of the zoning ordinance of the municipality. The residential and agriculture zone expressly prohibited airports. |
| New Jersey | (180) | 1952 | The case here dealt with the vacating of one street and providing a detour over another street. This was done through the provisions of two ordinances. The defendant desired to expand his present industrial facilities and the only method was to expand the width of the street to be vacated. Defendant had facilities on both sides of the street to be vacated. Plaintiffs sought to have the ordinances set aside. |
| New Jersey | (188) | 1954 | This case concerned action by the unsuccessful bidder for proposed lease by the city of land for purpose of the construction and maintenance of an off-street parking facility. The facility was to be constructed in the Central Business District. Taxpayers also initiated action in this case. |
| New Jersey | (218) | 1954 | Defendant city sought action to condemn certain property for the purpose to use the land for public parking facilities. There was a city ordinance, which was empowered by the Legislature for any municipality, to provide for acquisition by condemnation of lands for the public parking of vehicles. Plaintiffs seek to hold ordinance illegal, invalid, null and void as to their property. |

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| New Jersey | (222) | 1955 | This case concerned action by owners of launderettes to have a provision of the city zoning ordinance declared invalid. That provision was that no pick-up or delivery by the management of the launderettes was to be permitted. Four of the plaintiff's businesses were located in business zones and the fifth was located in a residential zone. |
| Pennsylvania | (256) | 1948 | This case was concerned with the Parking Authority Law of Pennsylvania. Plaintiff, a taxpayer of Pittsburgh, challenges the constitutionality of this law. The City of Pittsburgh established a Public Parking Authority to help solve the parking and traffic congestion of Pittsburgh. Plaintiff also sought an injunction to restrain the City from appropriating any public funds to it or entering into any agreement with it for the waiver of taxes on its properties, and from exercising the powers granted by the law. This case is a very good case in the problem of traffic congestion and is cited very frequently by many other states and by Pennsylvania itself. |
| Pennsylvania | (261) | 1953 | This is a zoning case, but it was not for change of zone. The property in question was in a residential district. The golf club, owner of property in question, sought a special exception to construct a road on this property from an adjoining road to its parking lot, thus making a second entrance and exit to said parking lot. Zoning Board of Adjustment refused to grant the permit as a special exception to the zoning ordinance. |

[illegible] USE ONLY