

# Court in a minefield!

NEW JERSEY'S Public Advocate, Joseph Rodriguez, called it "the most dramatic opinion handed down by any court anywhere in the United States since the one-man, one-vote decision."

Municipal authorities and pressure groups representing property owners are still reeling from the implications of the pronouncements by New Jersey's Supreme Court.

These can be summarised in one passage from the unanimous decision on zoning ordinances and low- and moderate-income housing.

"The State controls the use of land, all of the land. In exercising that control, it cannot favour the rich over the poor. It cannot legislatively set aside dilapidated housing in urban ghettos for the poor and decent housing elsewhere for everyone else. The government that controls this land represents everyone. While the State may not have the ability to eliminate poverty, it cannot use that condition as the basis for imposing further disadvantages."

The pronouncement stems from a ruling in 1975 which first established the doctrine that municipal land-use regulations must provide a realistic opportunity for low- and moderate-income housing.

But that decision, far from stimulating the provision of cheaper homes in valuable locations, has provoked a mountain of paperwork and appeals - which is why the State Supreme Court notched some angry barbs into the opinion handed down in January.

In the U.S., municipalities use zoning regulations as a means of raising and preserving the value of land. One way to do this is to forbid the construction of houses on plots smaller than, say, two acres. The result is that properties are expensive, and low-income families are excluded from the residential area.

Usually, of course, the preservation of property values is *not* advanced as the reason for zoning regulations. This motive is cloaked behind talk of conserving open spaces, or the protection of farmland or natural resources.

The New Jersey ruling, however, has fundamental implications for the way in which zoning ordinances can be used.

The Supreme Court ruled: "When the exercise of that power by a municipality affects something as fundamental as housing, the general welfare includes more than the welfare of that municipality and its citizens: it also includes the general welfare - in this case the housing needs - of those residing outside of the municipality but within the region that contributes to the housing demand within the municipality."

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reports from New York

The ruling, declared the court, was not designed "to sweep away all land-use restrictions or leave our open spaces and natural resources prey to speculators."

"No forests or small towns need to be paved over and covered with high-rise apartments as a result of today's decision."

Instead, to meet their legal obligations, "municipalities, at the very least, must remove all municipally-created barriers to the construction of their fair share of lower-income housing."

THE COURT invited the world to consider what New Jersey would be like if the State ignored the ruling.

"The clarity of the constitutional obligation is seen most simply by imagining what this State could be like were this claim never to be recognized and enforced: poor people forever zoned out of substantial areas of the State, not because housing could not be built for them but because they are not wanted; poor people forced to live in urban slums forever not because suburbia, developing rural areas, fully developed residential sections, sea-shore resorts, and other attractive locations could not accommodate them, but simply because they are not wanted."

"It is a vision not only at variance with the requirement that the zoning power be used for the general welfare but with all concepts of fundamental fairness and decency that underpin many constitutional obligations."

*But how do you overcome the power of property owners to exclude the poor?*

The court recognised that it was entering a political minefield.

"We act first and foremost because the Constitution of our State requires protection of the interests involved and because the Legislature has not protected them. We recognise the social and economic controversy (and its political consequences) that has resulted in relatively little legislative action in this field.

"We understand the enormous difficulty of achieving a political consensus that might lead to significant legislation enforcing the constitutional mandate better than we can, legislation that might completely remove this court from those controversies. But enforcement of constitutional rights cannot await a supporting political consensus."

Municipalities are ordered to remove zoning and subdivision restrictions and exactions that are not necessary to protect health and safety. But what else might be done to ensure a balanced programme?

The court made two suggestions:

- Greater use of available State or Federal housing subsidies; and
- Provision of incentives to private developers to set aside a portion of their developments for lower-income housing.

This piecemeal approach would not meet the scale of today's housing need; nor would it be either fair in the distribution of subsidies nor efficient in the way in which housing for low-income families was provided.

But had the court entered into a wider discourse on the housing problem, it would have been attacked as prejudiced, and of going beyond the bounds of its competence.

Nonetheless, its ruling, and particularly the philosophy that it develops concerning the control of land use, opens up the debate for politicians and the public. They are the ones who should now develop the elements of an efficient land-use system that is fair to everyone in society.

NOTE: The court's opinion was written by Chief Justice Robert N. Wilentz. Extracts appear in *The New York Times*, January 21, 1983.

**'The most dramatic decision since one-man, one-vote'**