

## EXHIBIT 8 - continued

### References to Rathkopf's

The Law of Zoning and Planning § 2:25 (4th ed.)

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§ 2:25 Zoning regulates the use of land—Zoning is not a..., 1 Rathkopf's The Law...

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merchants urged that the amendment, then in effect, be repealed. Thereafter, at a public hearing scheduled for the purpose of considering a further amendment to the zoning ordinance, the mayor of the village read a statement to the effect that the rezoning to light manufacturing had been adopted after investigation, lengthy public hearings, and the application of experience to the problem of land use within the village, but that because continuing this property in a light manufacturing zone would make merchants throughout the village suffer, would permit shoppers to become intimidated and shop elsewhere, would provoke mass demonstrations, picketing, and so forth, which would result in riots and injury to innocent persons, the Board of Trustees felt that the obligation to prevent riots and injuries outweighed the benefits to the village resulting from the zoning change from residential to light manufacturing. The village board thereupon adopted an amendment re-replacing the same area in a residential district confined to single-family, detached dwellings. The rezoning was invalidated by special term which granted plaintiff's motion for summary judgment, adjudging the amendment to be illegal and void. On appeal, the appellate division said:

The zoning power, as limited by the statutory grant, must operate in relation to the use of land and not for the accomplishment of purposes extraneous to that relation. If safety factors or health measures require zoning controls, they must involve safety and health characteristics which relate to the land under the regulation. The fear of disorder arising from the threat of picketing and demonstration, and the resultant economic loss, which the appellants considered as bases for the zoning regulation here, are alien to the legitimate objects of zoning. Doubtless there exists authority in the Village Law to meet the problem (cf. Village Law Sec. 9, par. 58-a; Sec. 188-a et seq.), but the power of zoning respondent's land to meet the problem was not open to appellants.<sup>5</sup>

Recently, this ultra vires rule has been applied by courts to inclusionary zoning programs,<sup>6</sup> off-site exactions,<sup>7</sup> and various types of development impact fees.<sup>8</sup>

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#### Footnotes

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