

EXHIBIT 8

References to Rathkopf's

The Law of Zoning and Planning § 2:15 (4th ed.)

Page 2 of 4

Zoning restrictions and conditions on an owner's proposed use of land which directly relate to the physical use of land, such as regulation in regard to fences, building height and appearance, landscaping, traffic access, open space, and lot size, etc., and which are designed to render the owner's use of land compatible with nearby properties are, no doubt, related to the "objects" and "purposes" of regulation authorized and delegated by a zoning enabling statute. However, the above referred to ultra vires issue may arise where a zoning restriction or condition is directed at controlling some aspect of the manner or operation of an owner's use which is only tangentially related, if at all, to the authorized "objects" and "purposes" of a zoning enabling act. A number of state court decisions have ruled that "a zoning enabling act authorizes as the proper object of regulation only *the use of land itself* and therefore have held zoning controls on the details of an owner's operation ultra vires."¹⁰

This ultra vires test for zoning restrictions requires that regulation directly relate to the physical use of land. Courts have applied this test to hold invalid the following types of zoning restrictions:

- (1) that a concrete plant not operate more than 200 days per year, only during daylight between 8 a.m. and 5 p.m., and that no more than 40 trucks per day should visit the plant;¹¹
- (2) that a kennel be used only for training "Seeing Eye" dogs;¹²
- (3) that a wholesale florist not operate more than a specified number of hours and not have more than a certain number of employees;¹³
- (4) that a nursery school be open only during certain hours, with not more than a certain number of students, and fixing the maximum age of students;¹⁴
- (5) that yachts at a boating club not be occupied between 9 p.m. and 7 a.m.;¹⁵ and
- (6) that open space of a planned unit development be used in perpetuity for a particular sport or recreation (a golf course).¹⁶

This "directly related to the physical use of land" ultra vires rule has not always been applied in a narrow or strict sense.¹⁷ In a number of states, including New York and New Jersey, recent court decisions in some cases focus on whether there is a "substantial relationship" between an authorized purpose for