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## THE UNDERSIZED HOUSE: A MUNICIPAL PROBLEM

ROBERT McCLORY\*

THESE IS NO question but what building costs sharply affect the potential size of the intended structure. When costs are low, the floor area and cubical content of any planned building will be apt to expand for dollars can purchase more material and services. Conversely, as prices rise, the money allotted for building purposes will purchase less, thereby forcing a reduction in size or resulting in a finished product of inferior quality. Nowhere is this more evident than in the field of residential building where, under present circumstances, people desiring to build are forced to reduce the dimensions of their dream homes to fit their limited budgets. In much the same fashion, large-scale operators, seeking quick profits from a ready market, find it desirable to erect row on row of cracker-box type dwellings, devoid of ornamentation and minute in proportion. These undersized dwellings, whether standing alone or in rows, are not only incompatible with the character of many of our residential areas but, in the long run, cannot make for comfortable living. The adverse effect these three or four-room homes will have upon a residential community primarily consisting of substantial six to eight-room dwellings, erected when costs were lower, is obvious. To prevent that blight, the question of whether or not a municipal ordinance designed to regulate floor area and cubical content could be validly enacted is a matter of prime importance to many communities.

Any attempt to prevent the erection of undersized dwellings in Illinois, thereby preserving the character of existing residential areas, must necessarily be predicated upon valid restrictions contained in building, zoning or other ordinances.<sup>1</sup> In the past, the

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<sup>1</sup> Illustration of such an ordinance may be found in the following excerpt taken from the zoning ordinance of the Town of Southfield, Oakland County, Michigan. It provides: "Area of buildings: No dwelling shall be erected or altered in this zone (Residence 1) which provides less than five hundred twenty-five (525) square

emphasis has been on regulation designed to limit the maximum use which might be made of property.<sup>2</sup> The issue now is whether statutory authority exists for minimum regulation, for no municipal ordinance can stand unless it rests upon proper statutory authorization. In that respect, municipal authority for such local legislation is to be found, if at all, in provisions permitting the municipality to adopt building ordinances,<sup>3</sup> to exercise police power,<sup>4</sup> or to promulgate zoning ordinances.<sup>5</sup> The first of these may be uncertain warrant for such regulation as the power conferred grants the right to "prescribe the thickness, strength and manner of constructing all buildings and . . . fire escapes thereon." It primarily intends regulation of such things as the materials which are to enter into the finished structure or the manner of their incorporation to the end that the building will be structurally safe.

The second, *i. e.* police power, while worded as a blanket authorization to "pass and enforce all necessary police ordinances," is not so unlimited as it would, at first, appear for that provision has been interpreted to limit the police regulation to only those subjects over which the municipality has been given express authority by other specific paragraphs of the statute.<sup>6</sup> There is, however, some support to be found for regulation of the type

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feet of floor area per family at the first floor level, exclusive of any garage area or area in any accessory building. Size of building: No dwelling shall be erected or altered in this zone (Residence 1) which provides less than ten thousand (10,000) cubic feet of content."

<sup>2</sup> Covenants in deeds or restrictions on building imposed by subdividers are beyond the scope of this article. It has not been uncommon, in such cases, to insert provisions requiring the expenditure of a stated sum, but the amount mentioned has proved to be woefully inadequate in most instances by virtue of the staggering increase in construction costs. In addition, such covenants customarily operate only for a stated time, the life of which, in many instances, has already run out.

<sup>3</sup> Ill. Rev. Stat. 1947, Ch. 24, § 23-70.

<sup>4</sup> *Ibid.*, § 23-105.

<sup>5</sup> *Ibid.*, §§ 73-1 to 73-10. See also Smith-Hurd Ill. Stat. Anno., Ch. 24, § 23-1, particularly note 2.

<sup>6</sup> See, for example, *Consumers Co. v. City of Chicago*, 313 Ill. 408, 145 N. E. 114 (1924); *Moy v. City of Chicago*, 309 Ill. 242, 140 N. E. 845 (1923); *City of Marion v. Criolo*, 278 Ill. 159, 115 N. E. 820 (1917); *City of Chicago v. O'Brien*, 268 Ill. 228, 109 N. E. 10 (1915); *People v. City of Chicago*, 261 Ill. 16, 103 N. E. 609 (1913); *City of Chicago v. M. & M. Hotel*, 248 Ill. 264, 93 N. E. 753 (1911); *Wice v. C. & N. W. Ry. Co.*, 193 Ill. 351, 61 N. E. 1084 (1901).

under consideration in the case of *Moy v. City of Chicago*.<sup>7</sup> There an ordinance designed to regulate laundries, and which imposed the requirement that there should be "at least 1,000 cubic feet of air space provided for each person employed therein," was found to be valid. The court, after referring to the grant of police power, also found sanction for the ordinance in a specific provision authorizing municipal legislation designed to promote the public health.<sup>8</sup> It would seem to follow, therefore, that a municipal ordinance fixing a minimum size for residential buildings might well be sustained provided there was also specific authority for its enactment in sections of the statute dealing with building, zoning, or the like.<sup>9</sup>

It is under the third aspect of municipal authority, *i. e.* through the use of the zoning power, that an ordinance of the type proposed might find its greatest support. The zoning provision of Illinois was broadened by amendment in 1943, so that its preamble now recites the desired end to be "that adequate light, pure air, and safety from fire and other dangers may be secured, that the taxable value of land and buildings throughout the municipality may be conserved, that congestion in the public streets may be lessened or avoided, and that the public health, safety, comfort, morals, and welfare may otherwise be promoted."<sup>10</sup>

To accomplish those purposes, each municipality has been empowered, among other things, to (1) regulate and limit the height and bulk of buildings hereafter to be erected; (2) to establish, regulate and limit the building or set-back lines on or along any street, traffic-way, drive or parkway; (3) to regulate and limit the intensity of the use of lot areas, and to regulate and determine the area of open spaces, within and surrounding such buildings; (4) to classify, regulate and restrict the location of trades and industries

<sup>7</sup> 309 Ill. 242, 140 N. E. 845 (1923).

<sup>8</sup> Ill. Rev. Stat. 1947, Ch. 24 § 23—81.

<sup>9</sup> *Father Basil's Lodge v. City of Chicago*, 393 Ill. 246, 65 N. E. (2d) 805 (1946); *City of Bloomington v. Wirrick*, 381 Ill. 347, 45 N. E. (2d) 852 (1943); *Moy v. City of Chicago*, 309 Ill. 242, 140 N. E. 845 (1923). See also *Brougner v. Board of Public Works*, 107 Cal. App. 15, 290 P. 140 (1930).

<sup>10</sup> Ill. Rev. Stat. 1947, Ch. 24, § 73—1.

and the location of buildings designed for specified industrial, business, residential, and other uses; (5) to divide the entire municipality into districts of such number, shape, area, and of such different classes (according to use of land and buildings, height and bulk of buildings, intensity of the use of lot area, area of open spaces, or other classification) as may be deemed best suited; (6) to fix standards to which buildings or structures therein shall conform; and (7) to prohibit uses, buildings, or structures incompatible with the character of such districts.<sup>11</sup>

The statute referred to appropriately closes with the admonitory remark that in all ordinances passed "due allowance shall be made for existing conditions, the conservation of property values, the direction of building development to the best advantage of the entire municipality and the uses to which the property is devoted at the time of the enactment of such an ordinance," and that the power so conferred shall not be exercised "so as to deprive the owner of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted, but provision may be made for the gradual elimination of uses, buildings and structures which are incompatible with the character of the districts in which they are made or located."<sup>12</sup>

Certain parts of the present statute clearly indicate a purpose to carry out original zoning concepts, to-wit: that in the interest of public health, safety and welfare regulation may well be imposed prescribing maximum limits on height and bulk of buildings, fixing their location with respect to lot lines, as well as to control the uses to which structures may be put. It cannot be said, however, that in the interest of regulating maximums, the legislature has overlooked the desirability of fixing minimum standards, for there is much in the statute which looks in that direction. The preamble, for example, suggests the desirability of conserving the "taxable value of land and buildings" as well as preserving the "public health, safety, comfort, morals, and welfare." There

<sup>11</sup> *Ibid.*, subsection (1) to (7).

<sup>12</sup> *Ibid.*, concluding paragraph.

is specific authority for the "regulation" of, as well as limitation upon, the height and bulk of buildings. Standards may be established to which buildings and structures are to conform. Each municipality may prohibit uses, buildings or structures "incompatible with the character" of established zoning districts. But above all, with due regard to private rights, the municipality may act to secure the "conservation of property values, the direction of building development to the best advantage of the entire municipality" in addition to bringing about the gradual elimination of uses, buildings and structures which are "incompatible" with the character of the districts in which they are located.

Regulation in these respects must, of necessity, take into account the fact that values may be as effectively destroyed or diminished by the introduction of cheap, shoddy, or skimpy construction as they would be by permitting overbuilding in the area. Health and comfort may be as seriously endangered in residential areas by inadequate and insufficient housing as they would be by the introduction of pest houses, factories and the like. It would seem, then, that a zoning ordinance which prescribed minimum dimensions for residential building, unless otherwise shown to be arbitrary or unreasonable, should be valid in Illinois, although it must be admitted there are no known decisions in this state dealing precisely with the subject.

Attempts to secure these ends in other states have met with varying success. Probably the leading case on the point is the decision of the Supreme Court of Michigan in the case of *Senefsky v. Lawler*.<sup>13</sup> It was there held that a zoning ordinance which required a minimum floor area of 1300 square feet was unreasonable and invalid as applied to a plaintiff whose building plans called for 980 square feet of usable floor space.<sup>14</sup> The decision

<sup>13</sup> 307 Mich. 728, 12 N. W. (2d) 387, 149 A. L. R. 1433 (1943). Bushnell, J., wrote a dissenting opinion concurred in by Butzel, J.

<sup>14</sup> An analogous situation in this state would probably be found only in communities located in resort areas where housing accommodations are usually of temporary character. Very few persons, in average residential areas, would desire a reduction in minimum area requirements.

cannot be said to stand for the proposition that all minimum standards are invalid, for the court was careful to note that a very substantial portion of existing dwellings in the area did not measure up to the ordinance there sought to be applied, that a large number of vacant lots would be materially restricted, and that there was uncontradicted testimony to the effect that " 'there were a lot of people who wanted to build smaller houses and they couldn't build them after the ordinance was enacted.' " <sup>15</sup> It further appeared that plaintiff's contemplated structure would be in as full accord with the requirements of public safety, health and welfare, as one having a larger area of floor space. The majority were content to order the issuance of a building permit, saying it was not "necessary for decision . . . and we do not hold that under proper circumstances a municipality may not exercise its delegated police power" <sup>16</sup> in the manner there attempted.

The dissenting opinion of Judge Bushnell is even more forceful on the point. He wrote:

This question of minimum floor area is one of first impression in this State. At the outset, we are confronted with the elementary propositions that every intendment is in favor of the constitutionality of an ordinance and the plaintiff must bear the burden of showing that the one in question has no real or substantial relation to public health, morals, safety or general welfare . . . [The] power to zone is not limited to a protection of the status quo, and the city may validly plan its future development . . . [Ordinances] having for their purpose regulated municipal development, the security of home life, the preservation of a favorable environment in which to rear children . . . the safeguarding of the economic structure upon which the public good depends, the stabilization of the use and value of property . . . are within the proper ambit of the police power . . . The legis-

<sup>15</sup> 307 Mich. 728 at 738, 12 N. W. (2d) 387 at 389.

<sup>16</sup> 307 Mich. 728 at 742, 12 N. W. (2d) 387 at 390.

lative authorities in the City of Huntington Woods are better acquainted with the necessities of their city than we are . . . They are also better able to determine whether the ordinance in question will accomplish the desired result of stabilizing and preserving property values . . . We cannot say that the requirement . . . is clearly unreasonable because, under the circumstances, it is at least a debatable question. Whether or not the means adopted by defendant City will accomplish the desired end is also debatable. That being the case, we cannot substitute our judgment for that of the legislative body which is charged with the responsibility of deciding that question.<sup>17</sup>

Viewed in that light, the decision in the Senefsky case is not conclusive even though it appears to have been followed in two later decisions from the same state.<sup>18</sup> In the most recent of these, that of *Elizabeth Lake Estates v. Waterford*,<sup>19</sup> the primary reason for nullifying the minimum floor area requirement, there fixed at 500 square feet, appears to have been the fact that the township ordinance in question applied to only two square miles out of the total thirty-six square miles in the township, the balance being left unzoned. When it is remembered that the Michigan statute is not nearly as broad as the one found in this state,<sup>20</sup> and that there is at least tacit recognition in the Senefsky case for some minimum standard, although perhaps not as high as the

<sup>17</sup> 307 Mich. 728 at 733-4, 12 N. W. (2d) 387 at 392.

<sup>18</sup> *Frischkorn v. Lambert*, 315 Mich. 556, 24 N. W. (2d) 209 (1946); *Elizabeth Lake Estates v. Waterford*, 317 Mich. 359, 26 N. W. (2d) 788 (1947).

<sup>19</sup> 317 Mich. 359, 26 N. W. (2d) 788 (1947).

<sup>20</sup> Mich. Comp. Laws 1929, Vol. 1, § 2634, provides: "The legislative body of cities and villages may regulate and limit the height and bulk of buildings hereafter erected, and regulate and determine the area of yards, courts, and other open spaces, 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 purposes of this section. Such regulations shall be uniform for each class of buildings throughout each district, but the regulations in one (1) district may differ from those in other districts. Such regulations shall be made in accordance with a plan designed to lessen congestion on the public streets, 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." See also Mich. Stat. Ann. 1936 § 5.2932.

1300 square feet there required, the way is still left open for some form of regulation.<sup>21</sup>

Similar questions have been considered in other states. The Nebraska Supreme Court, in *Baker v. Somerville*,<sup>22</sup> reversed a trial court decree which had enjoined the defendants from proceeding with the erection of a one-story home containing approximately 1500 square feet of floor space as being in violation of a city ordinance placing a minimum of 2000 square feet on one-story residences. The zoning provision was extended to cover defendants' property after the lot had been purchased, after a building permit had been obtained, and after some \$5,600 had been invested in the partially completed structure. It seems to have been conceded that the purpose of the ordinance was to discourage the construction of one-story residences in an area where other homes were two stories in height. The upper court not only refused to give the ordinance retroactive effect but also declared that a zoning provision could not be sustained on aesthetic grounds alone as such would not "promote public health, safety, morals or the general welfare."<sup>23</sup> Such language is clearly in accordance with general rules governing zoning regulations, but it would not necessarily render invalid the minimum floor area requirement, especially if the latter bore a reasonable relationship to the character of existing buildings in the area involved.

<sup>21</sup> In the unreported case of *Most v. Township of Southfield*, decided in 1944, the Circuit Court of Oakland County, Michigan, upheld the ordinance quoted in note 1, ante, fixing a minimum floor area of 525 square feet, on the ground that there was no showing that the ordinance did not bear a reasonable relationship to the welfare, peace and public health of the community, the court declaring that the size of a building might have direct bearing on public health and welfare. Citation supplied by the Chicago Regional Planning Association. In the more recent case of *Thompson v. City of Carrollton*, 211 S. W. (2d) 970 (Tex. Civ. App., 1948), the plaintiff sought to enjoin the enforcement of a part of a city zoning ordinance which required a minimum floor area of 900 square feet. Plaintiff's application to build a home containing an area of 752 square feet had been denied. The Court of Civil Appeals, affirming the trial court, held that the section of the ordinance attacked was not unreasonable and that the minimum floor area requirement bore a reasonable relationship to the general welfare. It declined to hold that the case of *Senefsky v. Lawler*, 307 Mich. 728, 12 N. W. (2d) 387 (1943), was contra, referring to distinguishing language in the majority opinion and also quoting with approval from portions of the dissenting opinion.

<sup>22</sup> 138 Neb. 466, 293 N. W. 326 (1940).

<sup>23</sup> 138 Neb. 466 at 471-2, 293 N. W. 326 at 329.

As a matter of fact, the same court, in the later case of *Dundee Realty Company v. City of Omaha*,<sup>24</sup> distinguished the earlier holding of the Baker case when it sustained the validity of an ordinance requiring a minimum area requirement of 1200 square feet for two-story dwellings and of 1000 square feet for one-story homes. After pointing out that the ordinance involved in the Baker case had been repealed subsequent to the decision therein and had been replaced with the one under consideration, the court went on to state that the case before it did not conflict with the earlier holding. It said:

The facts are not analogous. In that case, the engineer testifying to parts of the ordinance now repealed stated that the section in question was zoned purely for aesthetic reasons, while in the instant case the facts deal decisively with the welfare, morals and safety of the people of the city of Omaha . . . We hold . . . that such ordinance is not arbitrary or unreasonable, as applied to plaintiff's land, but is to the best interests of the city of Omaha . . . [and is] constitutional and valid.<sup>25</sup>

It may be said, then, that if an ordinance is predicated upon clear evidence of necessity in the interest of public health, safety, and the like, there is every reason to believe that it should withstand attack.

The Maryland Court of Appeals, in the case of *County Commissioners of Anne Arundel County v. Ward*,<sup>26</sup> likewise sustained the denial of a writ of mandamus by which it was sought to compel the issuance of a building permit for the erection of several rustic cabins. The application for a license had been denied by the lower court for non-compliance with a county zoning ordinance which provided in part, that the area involved was to be "strictly residential . . . limited to one-family residences . . . no house shall be constructed to contain less than 3200 cubic feet." The

<sup>24</sup> 144 Neb. 448, 13 N. W. (2d) 634 (1944).

<sup>25</sup> 144 Neb. 448 at 455, 13 N. W. (2d) 634 at 637.

<sup>26</sup> 186 Md. 330, 46 A. (2d) 684 (1946).

higher court, without commenting specifically on the subject of the cubic feet requirement, held that the denial of the permit was not arbitrary nor unreasonable.<sup>27</sup>

A slightly different type of ordinance was involved in the Florida case of *City of West Palm Beach v. State*,<sup>28</sup> for it directed that "every new building or structure must substantially equal that of the adjacent buildings or structures in said subdivision in appearance, square foot area and height." Upon complaint against the building inspector who had refused to permit the erection of a five-room house, that portion of the ordinance was declared invalid for the obvious reason that it provided no adequate standards to be followed by the administrative officer, the failure to specify a minimum floor area appearing to be the primary point for criticism. As the court itself observed, when regulations of this type are to be imposed in order to promote health, welfare, safety and morals "it is necessary that exactions be fixed in the ordinance with such certainty that they not be left to the whim or caprice of the administrative agency."<sup>29</sup>

So far as height is concerned, it is not felt that any useful analogy could be made between the instant problem and cases in which minimum height regulations have been considered.<sup>30</sup> For one thing, the present popularity of ranch-type houses and other one-story residences would seem to make obsolete decisions such as that in *City of Mobridge v. Brown*<sup>31</sup> which overthrew an ordinance prohibiting one-story buildings, obviously designed to prevent the spread of bungalows. In that regard a nip and tuck decision by the highest court of New Jersey in the case of

<sup>27</sup> The court was likewise not convinced by the argument that the "technical violation of the regulations" should be excused in view of the "housing shortage." See 186 Md. 330 at 340, 46 A. (2d) 684 at 688. See also *Potts v. Board of Adjustment*, 133 N. J. L. 230, 43 A. (2d) 850 (1945), where an application to convert a single-family dwelling to a two-family apartment, because of the "critical housing shortage," was denied.

<sup>28</sup> —Fla.—, 30 So. (2d) 491 (1947).

<sup>29</sup> —Fla.— at —, 30 So. (2d) 491 at 492.

<sup>30</sup> The case of *Brown v. Board of Appeals*, 327 Ill. 644, 159 N. E. 225 (1927), held invalid a provision of a zoning ordinance requiring that buildings in a certain business area had to be "not less than forty feet" in height. See also annotation on the point in 56 A. L. R. 247.

<sup>31</sup> 39 S. D. 270, 164 N. W. 94 (1917).

*Brookdale Homes Incorporated v. Johnson*<sup>32</sup> is of more than passing interest,<sup>33</sup> for it too dealt with an ordinance regulating maximum and minimum heights for buildings in residential areas. That ordinance specified that no building should be "erected to a height in excess of 35 feet" or "with its roof ridge less than 26 feet above the building foundation." It was held invalid, by a vote of seven to six, when the majority adopted and approved a lower court opinion attacking the minimum height limitation as an attempt to legislate a minimum cost.

An excerpt from the lower court opinion illustrates one side of the argument. That court wrote:

It is insisted that the presence of buildings less than 26 feet in height does not tend to conserve the value of property, but rather tends to reduce ratables and thus increase the general tax burden. The testimony of the single witness to that effect lacks persuasion. . . . But be that as it may, there is persuasive proof that there is a substantial demand for one story houses in the neighborhood and that the cost of construction of such houses may often be equal to, if not greater than, the costs of construction of two or two and one-half story houses. And, as pointed out for prosecutor, if respondents' theory be sound, a municipality under the cloak of its zoning power, might provide that no house costing less than a certain sum should be erected in a specified area. This it cannot legally do. For obviously such a provision or regulation could not properly be said to be made 'with a view of conserving the value of property and encouraging the most appropriate use of land throughout such municipality.' . . . No person under the zoning power can legally be deprived of his right to build a house on his land merely because the cost of that house is less than the cost of his neighbor's house.<sup>34</sup>

<sup>32</sup> 123 N. J. L. 602, 10 A. (2d) 477 (1940), affirmed in 126 N. J. L. 516, 19 A. (2d) 868 (1941).

<sup>33</sup> It should be remembered that the Illinois Supreme Court, in *Brown v. Board of Appeals*, 327 Ill. 644, 159 N. E. 225 (1927), relied largely on the earlier New Jersey case of *Dorison v. Saul*, 98 N. J. L. 112, 118 A. 691 (1922).

<sup>34</sup> 123 N. J. L. 602 at 605-6, 10 A. (2d) 477 at 478.

The dissenting opinion written by Justice Heher, concurred in by five other justices, is much more persuasive. After commenting on the factual situation,<sup>35</sup> the justice continued:

The classification in this respect is not unreasonable or arbitrary. I hold the opinion that the general zoning scheme takes the category of a reasonable regulation for public convenience, prosperity and welfare; and the particular provision is justly classable as an integral part of the plan. If, for reasons of public safety and the like, dwelling houses may be limited to a fixed maximum height, so also may a minimum height be prescribed if reasonably necessary to secure the use for which the land in the district is peculiarly suitable, considered from the standpoint of the community at large, and thus to conserve its character and value and promote the general prosperity and welfare. If not, dwellings even less in keeping with the character of the district, *e. g.*, shacks and the like, would be unobjectionable. Can it be that our sovereignty is so circumscribed that one-room shanties may not be excluded from a community peculiarly suited to materially higher residential uses, and devoted to such, even though this radical departure will substantially depreciate property values and otherwise disserve the essential public interest? In this behalf, the difference between such structure and the common bungalow would seem to be one of degree merely and not of kind; certainly, such classification is not to be condemned as palpably unreasonable, arbitrary or oppressive. As said, we are not at liberty to nullify a legislative enactment unless its constitutional invalidity is not open to reasonable doubt. . . . Viewed as a whole, the regulations are designed, not for the special benefit of par-

<sup>35</sup> The court said there was evidence "tending to show that the use thus prescribed, considered in relation to the character and location of the land, and the existent dwelling houses and the general zoning scheme, is the most appropriate and suitable; and that the erection of the banned bungalow type of structure upon the vacant land in the district would result in a depreciation of land values and a reduction of ratables to a degree materially affecting the public welfare. Respondent is the owner of 'undeveloped' land in the district to the extent of 'about 3000 feet frontage'; and it is proposed to use these plots, in large part at least, for the erection of bungalows to meet a 'demand for all living rooms on one floor.'"

ticular landowners, but for the material advancement of the entire community as a social, economic and political unit.<sup>36</sup>

It would seem that identical reasoning can well be applied with respect to minimum floor area provisions.

While regulations of this character have not received entirely favorable treatment at the hands of courts, there is enough to indicate that if they are not applied in arbitrary fashion to existing conditions,<sup>37</sup> nor made invalid by retroactive features<sup>38</sup> or lack of suitable standards,<sup>39</sup> there is some occasion to believe zoning restrictions of the kind in question may be upheld in Illinois.<sup>40</sup> Municipal officers, then, should be realistic and fortify their intended action with adequate data assembled in advance to meet constitutional attack. Before adopting such an ordinance, a survey should be made of existing residences in the area to be zoned. That survey should include not only the over-all size of the buildings but the size of the room units as well. It might even be wise to establish tables of valuation to show how taxables might be affected by the erection of incompatible structures. From such data, a reasonable and proper minimum area requirement could then be calculated consistent with the realities of the situation. So fortified, it is doubted that authority for the adoption of such a plan would be denied to the municipality. To hold otherwise would mean that municipalities would be powerless to prevent the erection of one, two or three room shacks in well-to-do neighborhoods so long as the former met the bare structural requirements of a municipal building code.<sup>41</sup>

<sup>36</sup> 126 N. J. L. 516 at 527, 19 A. (2d) 868 at 873.

<sup>37</sup> *Senefsky v. Lawler*, 307 Mich. 728, 12 N. W. (2d) 387, 149 A. L. R. 1433 (1943); *Elizabeth Lake Estates v. Waterford*, 317 Mich. 359, 26 N. W. (2d) 788 (1947).

<sup>38</sup> *Baker v. Somerville*, 138 Neb. 466, 293 N. W. 326 (1940).

<sup>39</sup> *City of West Palm Beach v. State*, — Fla. —, 30 So. (2d) 491 (1947).

<sup>40</sup> See, in support thereof, *County Commissioners v. Ward*, 186 Md. 330, 46 A. (2d) 648 (1946); *Dundee Realty Co. v. City of Omaha*, 144 Neb. 448, 13 N. W. (2d) 634 (1944).

<sup>41</sup> It is believed that a stronger case for minimum floor area requirements can be made out under the zoning powers granted by Ill. Rev. Stat. 1947, Ch. 24, §§ 73—1 to 73—10. The possibility that a building ordinance might find approval as a proper exercise of the police power, in the light of the decision in *Moy v. City of Chicago*, 309 Ill. 242, 140 N. E. 845 (1923), should not be overlooked.