Tulsa Law Review

Volume 4 | Number 1

1967

Amortization of Nonconforming Uses

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NOTES & COMMENTS

AMORTIZATION OF NONCONFORMING USES

One of the most serious problems facing municipal planners today is the elimination of nonconforming uses—uses legally in existence at the date of passage of a zoning ordinance.[1] Most commonly these result from the zoning of a particular district containing one or more existing commercial uses for exclusive residential use. Nonconforming uses are in direct contradiction to the purposes of a comprehensive zoning ordinance[2] and are "an admitted cause of residential and commercial slums, traffic congestion, and other indicia of urban obsolescence . . . . "[3]

From the outset the underlying theory of zoning authorities has been that nonconforming uses must be terminated. However, early zoning enabling statutes specifically allowed nonconforming uses to continue. The reason for inclusion of of such provisions was twofold: first, it was thought that nonconforming uses would gradually disappear as a result of normal processes of attrition; and secondly, "even prospective zoning, in its early days, rested on a rather tenuous constitutional basis, and the addition of a retrospective effect might, it was feared, cause the whole structure of zoning to buckle under the force of due process."[4]

[1] A nonconforming use may be defined as "a use of property in existence on the effective date of a municipal zoning ordinance, which use does not comply with the statute . . . ." Young, *The Regulation and Removal of Nonconforming Uses,* 12 W. RES. L. REV. 681, 685 (1961).

[2] "Such incompatible uses often result in inconveniences and undesirable circumstances such as increased and noisier traffic, unpleasant odors, polluted air and water, increased noise generally, diminished aesthetic appearance, and decreases in property values . . . . [A] deviance from this uniformity, in the form of an incompatible use or structure, must necessarily be inimical to the avowed objects of zoning." Graham, *Legislative Techniques For The Amortization Of The Nonconforming Use: A Suggested Formula,* 12 WAYNE L. REV. 435 (1966).

[3] Norton, *Elimination of Incompatible Uses and Structures,* 20 LAW & CONTEMP. PROB. 305 (1955).

[4] Comment, 57 NW. U.L. REV. 323 (1962).

The early theorists' optimism regarding the gradual disappearance of nonconforming uses[5] has proved to be unfounded. There has, instead, been a tendency for nonconforming uses to flourish and even increase in number for the following two reasons:[6] (1) prospective zoning ordinances prohibit additional similar uses in the proximity, thus creating a monopolistic position from which the owner will not retreat; and (2) boards of zoning appeal have often abused their power in granting variances, each of which results in a new nonconforming use.

That a prospective zoning ordinance is a valid exercise of the police power and not a deprivation of property without due process of law was put to rest forty years ago by *Village of Euclid v. Ambler Realty Co.*[7] in which Justice Sutherland made the following statement regarding police power:

> Until recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive . . . [W]hile the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise.[8]

Thus, the cornerstone of comprehensive zoning legislation was laid with a rather far-seeing interpretation of the interrelationship of the police power, property rights, and due process of law as they applied to a rapidly expanding urban society.

[5] Metzenbaum, Zoning, Ch. X-g at 1211 (2d ed. 1955).
[6] Comment, 35 VA. L. REV. 348, 353 (1949).
[7] 272 U.S. 365 (1926).
[8] *Id.* at 386-87.

Legislative resolution of the conflict between the possibility of perpetually existing nonconforming uses and the desire for uniformity in land utilization which forms the objective of comprehensive zoning was initially approached very carefully because of a fear of unconstitutionality. Though by and large no effort was made to abate the nonconforming uses, restrictions were placed on them with an intent to accelerate their demise. Typically, in determining whether or not a nonconforming use had been established, courts strictly required that there be an actual use as distinguished from the bare possession of a building permit. Similarly, a nonconforming use may not be extended, and and once abandoned, cannot be revived. Destruction of the premises results in termination of the nonconforming use, and one nonconforming use cannot be substituted for another. The combination of these restrictions[9] and the passage of time has not, however, proved successful in eliminating nonconforming uses in the majority of cases.

A more direct approach has been followed in some jurisdictions by using the power of eminent domain to remove nonconforming uses.[10] It has not proved to be particularly successful and has been criticized because eminent domain:[11] (1) requires too much red tape; (2) is too expensive; and (3) might be unconstitutional for lack of a public purpose. Although there appears to be little question today that the use of eminent domain is a constitutional method for elimination of nonconforming uses, its utilization has not been extended.

The doctrine of nuisance has also been used to eliminate nonconforming uses in some instances.[12] Classically, to invoke the doctrine of nuisance, there must have been a noxious use of the subject property, but this often is not the case with a nonconforming use. Although the utilization

[9] Annot., 87 A.L.R. 2d 4 (1963).
[10] See *e.g.*, State *ex rel.* Twin City Bldg. & Inv. Co. v. Houghton 144 Minn. 1, 176 N.W. 159 (1919).
[11] Young, *supra* note 1, at 698-99.
[12] See *e.g.*, Hadacheck v. Sabastian, 239 U.S. 394 (1915).

of an expanded nuisance doctrine has been noted, in most cases it has been stretched beyond recognition and has added confusion and ambiguity to both the law of nuisance and nonconforming uses.[13]

The most widely accepted approach to termination of nonconforming uses is amortization of the use. It is effected by passage of an ordinance requiring existing nonconforming uses to terminate at the end of a reasonable period of time; thus allowing the user to remain long enough to recoup his investment, make plans to move to a new location, and effectuate an orderly relocation. The reasonable period of time alleviates the undue hardship upon the landowner which is present with summary abatement and arguably meets the requirement of due process of law.

The first adjudications of amortization ordinances were the *Dema Realty Co.* cases.[14] These two cases involved a New Orleans ordinance which required termination of nonconforming uses within a particular district within a year of the effective date of the ordinance. The nonconforming uses were a drug store and a grocery store in a district which was to be residential. The Supreme Court of Louisiana upheld the ordinance, and after quoting at length from *Village of Euclid v. Ambler Realty Co.*,[15] observed the following:

> if the village had the authority to create and to maintain a purely residential district, which the court held it did have, and if such an ordinance was not arbitrary and unreasonable, it follows necessarily that the village was vested with the authority to remove any business or trade from the district and to fix a limit of time in which the same shall be done.[16]

[13] Graham, *supra* note 2, at 441.
[14] State *ex rel.* Dema Realty Co. v. Jacoby, 168 La. 752, 123 So. 314 (1929); State *ex rel.* Dema Realty Co. v. McDonald, 168 La. 172, 121 So. 613 (1929), *cert. denied*, 280 U.S. 556 (1929).
[15] *Supra* note 7.
[16] State *ex rel.* Dema Realty Co. v. McDonald, *supra* note 14, at ———, 121 So. at 617.

These cases have been cricitzied[17] on the basis that the court used a theory of nuisance law and that the period of grace allowed was unreasonably short.

Another important case is that of *Jones v. City of Los Angeles.*[18] Los Angeles had a zoning ordinance providing it to be unlawful not only to establish, but also to operate any sanitorium for the care and treatment of persons suffering from nervous diseases. In 1927, prior to passage of the ordinance, the city annexed the Mar Vista District in which there were four sanitoriums for the treatment of nervous diseases. The operators of the sanitoriums sought to enjoin enforcement of the ordinance which would have required summary abatement of the use. The Supreme Court of California struck down the ordinance saying: "Our conclusion is that where, as here, a retroactive ordinance causes substantial injury and the prohibited business is not a nuisance, the ordinance is to that extent an unreasonable and unjustifiable exercise of police power."[19]

Twenty-four years later the Supreme Court of California upheld an amortization ordinance in *City of Los Angeles v. Gage.*[20] The case involved a retail plumbing business conducted in the owner's residence, and the use as well of racks, bins, and stalls for storage of plumbing supplies on an adjacent lot. The objectionable uses were in existence from 1930 until the passage of the ordinance in 1946. The pertinent part of the amortization ordinance provides:

> (a) The nonconforming use of land shall be discontinued within five (5) years from June 1, 1946, or within five (5) years from the date the use became nonconforming, in each of the following cases: (1) Where no buildings are employed in connection with such use; (2) where the only buildings employed are accessory or incidental to such use; (3) where such use is maintained in connection with a conforming building.[21]

[17] Comment, 31 Mo. L. REV. 280, 288 (1966); Comment, 39 YALE L. J. 735, 736-37 (1930).
[18] 211 Cal. 304, 295 Pac. 14 (1930).
[19] *Id.* at ———, 295 Pac. at 22.
[20] 127 Cal. App.2d 442, 274 P.2d 34 (1954).
[21] Los Angeles Municipal Code § 12.23 B&C.

The court distinguished *Gage* from *Jones, supra,* because of the period of amortization, the substantial injury caused in *Jones,* and the fact that the ordinance affected only the use of land and the nonconforming use of a conforming building. The court pointed out that:

> There would be no object in creating a residential district unless there were to be secured to those dwelling therein the advantages which are ordinarily considered the benefits of such residence. It would seem to be the logical and reasonable method of approach to place a time limit upon the continuance of existing nonconforming uses, commensurate with the investment involved and based on the nature of the use; and in cases of nonconforming structures, on their character, age, and other relevant factors.[22]

The court went on to point out that there was no essential difference between the requirement that a nonconforming use be terminated within a reasonable period of time and the various kinds of other restrictions which have been held to be constitutional. Furthermore, the court indicated that the distinction between the termination of a nonconforming use after a reasonable period of time and the prohibition of a future use is merely one of degree, and the constitutionality of the means is dependent on the relative importance given to public gain and private loss. As to due process, the court said:

> The elimination of existing uses within a reasonable time does not amount to a taking of property nor does it necessarily restrict the use of property so that it cannot be used for any reasonable purpose. Use of a reasonable amortization scheme provides an equitable means of reconciliation of the conflicting interests in satisfaction of due process requirements.[23]

Essentially, to determine whether a particular amortization ordinance is constitutional, the California court would determine whether or not it was a reasonable exercise of

[22] City of Los Angeles v. Gage, *supra* note 20, at ———, 274 P.2d at 43.
[23] *Id.* at ———, 274 P.2d at 44.

the police power, in view of the time allotted for termination of the nonconforming use, and the balance between the gain of the public and the loss to the individual.

Also upholding an amortization ordinance is *Standard Oil Co. v. City of Tallahassee,*[24] a case involving a gasoline service station across from the main entrance to the State Capitol of Florida. Plaintiff purchased the property and constructed its service station in 1938 at which time the operation of service stations was permitted by the zoning ordinance in effect. In 1939 the city adopted an ordinance whereby all locations used for motor vehicle service stations within the particular district were to be discontinued in ten years. Plaintiff brought suit to enjoin the City from enforcing the ordinance at the end of the period of grace, but the court upheld the ordinance as a reasonable exercise of the police power. In a rather perfunctory fashion the court noted that it was established in Florida that a city by ordinance could require the discontinuance of an existing property use. The following is illustrative of the court's rationale:

> Here, plaintiff's service station is near the State Capitol and the State Supreme Court Building, as well as several other state office buildings and a public school. It therefore becomes manifest that its discontinuance under the ordinance cannot be viewed as arbitrary and unreasonable, or as having no relation to the safety and general welfare of the community affected .... [C]onsiderations of financial loss or of so-called "vested rights" in private property are insufficient to outweigh the necessity for legitimate exercise of the police power of a municipality.[25]

Little insight was given into what constitutes a reasonable exercise of police power as would appear to have been desirable. A strong dissenting opinion was registered and the following scathing language denotes its character:

> even in this age of enlightenment the Constitution still protects the citizen against arbitrary and unreasonable

[24] 183 F.2d 410 (5th Cir. 1950); *contra,* Standard Oil Co. v. City of Bowling Green, 244 Ky. 362, 50 S.W.2d 960 (1932).
[25] Standard Oil Co. v. City of Tallahassee, *supra* note 24, at 413.

> action, I am in no doubt that in sustaining this admittedly confiscatory ordinance, a good general principle, the public interest in zoning, has been run into the ground, the tail of legislative confiscation by caprice has been permitted to wag the dog of judicial constitutional protection.[26]

The New York courts faced retroactive zoning in *People v. Miller*[27] where a nonconforming use consisted of harboring pigeons; a use developed prior to enactment of a prohibitory zoning ordinance. The court upheld the ordinance as valid and laid down the following rule:

> existing nonconforming uses will be permitted to continue, despite the enactment of a prohibitory zoning ordinance, if, and only if, enforcement of the ordinance would, by rendering valueless substantial improvements or businesses built up over the years, cause serious financial harm to the property owner. This rule, with its emphasis upon the pecuniary and economic loss, is clearly inapplicable to a purely incidental use of property for recreational or amusement purposes only.[28]

Six years later the New York court was faced with *Harbison v. City of Buffalo*[29] which did not represent such an inconsequential use of property. Here the property owner had operated his business in a 30-x-40-foot frame building since 1924. In 1953 the controlling zoning ordinance was amended, requiring all junk yards to cease or, in the alternative, conform to the designated residential use within three years from the effective date of the ordinance. The court upheld the ordinance with two judges constituting the majority, two judges concurring on the basis of *People v. Miller, supra,* and three judges dissenting.[30] The opinion of the court

[26] *Id.* at 414.
[27] 304 N.Y. 105, 106 N.E.2d 34 (1952).
[28] *Id.* at ———, 106 N.E.2d at 36.
[29] 4 N.Y.2d 553, 152 N.E.2d 42 (1958).
[30] One author has suggested that "it is doubtful if the Court of Appeals as a whole intended to move too far away from that decision [*People v. Miller*] and its fundamental principle that a prior nonconforming use can be terminated only where it is insubstantial." Note, 44 CORNELL L.Q. 450, 457 (1959).

with regard to nonconforming structures was that if the amortization period was reasonable in relation to the useful life of the structure, the amortization ordinance was constitutional. To determine what that period should be the court indicated: "In ascertaining the reasonable period during which an owner of property must be allowed to continue a nonconforming use, a balance must be found between social harm and private injury."[31] Thus, in determining constitutionality, the court would apply a balancing test similar to that propounded in *City of Los Angeles v. Gage.*[32]

Dissenting in *Harbison,* Judge Van Voorhis heaped criticism on what he considered to be a taking of property without compensation in violation of the Fourteenth Amendment, quoting an earlier New York case as saying "it is argued that what used to be called confiscation is justifiable in an enlightened age, if enough people desire it, and the amount to be taken away from the owner is not too great."[33] The dissent recommended as a solution to the problem that "if this part of the city is to be redeveloped, it should be done through the enactment of a statute similar in principle to slum clearance acts, whereby just compensation can be paid for private property that is confiscated for a public use."[34]

Although it is not clear as to all circumstances to which it is applicable, New York will under some circumstances uphold amortization ordinances.

Another significant case upholding amortization of nonconforming uses is *Grant v. Mayor and City Council of Baltimore,*[35] an action by certain signboard companies and

[31] Harbison v. City of Buffalo, *supra* note 29, at ———, 152 N.E.2d at 46-47.
[32] *Supra* note 20.
[33] Inc. Village of No. Hornell v. Rauber, 181 Misc. 546, 552, 40 N.Y.S.2d 938, 944 (1943).
[34] Harbison v. City of Buffalo, *supra* note 29, at ———, 152 N.E.2d at 51.
[35] 212 Md. 301, 129 A.2d 363 (1957).

their lessors against the City of Baltimore to restrain the enforcement of zoning ordinance. The ordinance required elimination of all billboards located in residential districts within five years after its enactment. The Supreme Court of Maryland held that it was within the legislative power of the city to pass an amortization ordinance:

> Having determined the harm to the public welfare, the Council undoubtedly concluded that an equitable means of reconciling the conflicting interests of the public on the one hand, and those of advertising companies and those leasing land to them on the other, and thus the satisfaction of the requirements of due process, would be a five year amortization period. We cannot say that the remedy chosen was arbitrary, nor that the City Council was wrong in its conclusion that the effect for good on the community by the elimination of billboards within five years would far more than balance individual losses.[36]

Not all of the recent decisions have supported retroactive zoning ordinances. In *City of Corpus Christi v. Allen*,[37] the Supreme Court of Texas held an ordinance restraining automobile salvage yards from continuing their business to be unconstitutional. The period of grace allowed in which to terminate the nonconforming use was two years. The reasoning of the court was not unlike that of other courts upholding amortization ordinances:

> We hold that to exercise the power attempted here would be unreasonable because any benefit to petitioner by its exercise would undoubtedly be relatively very small; respondents would be forced to move from a "light" industrial district, where adjoining uses, admittedly legal, such as second-hand furniture stores, garages and the like, are not substantially out of harmony with, or different from, the uses petitioner would force respondents to quit . . . .[38]

[36] *Id.* at ———, 129 A.2d at 372.
[37] 152 Tex. 137, 254 S.W.2d 759 (1953).
[38] *Id.* at ———, 254 S.W.2d at 761.

This appears to be the same type of balancing of interests test applied in other cases of this nature; only here, the court found that the balance was such that the ordinance was arbitrary and unreasonable as applied to these property owners. The Texas court left the door open for future cases with the statement:

> Our conclusion is not to be construed as a holding that the ordinance in question may not, under other circumstances, be invoked to terminate a non-conforming use, not a nuisance nor injurious to the public health, morals, safety or welfare.[39]

Similarly, the Supreme Court of Illinois in *Village of Oak Park v. Gordon*[40] did not totally reject amortization in dealing with an ordinance which would require a nonconforming boarding house to reduce the number of roomers to two within five years. The property owner had a conforming structure, but had been renting to four roomers for some time prior to the passage of the ordinance. After analyzing the interests of the public and the individual the court concluded that an ordinance which sought to deprive an individual of a nonconforming use without any apparent public need was unconstitutional. However, they qualified this by stating:

> In so holding we do not intend to express any opinion as to the validity of this or other amortization ordinances as applied to other properties. Each case must be judged upon the particular facts of that case with due consideration given to the respective interests of the public and the individual property owners.[41]

An Ohio amortization ordinance was held to be unconstitutional in *City of Akron v. Chapman*,[42] There the owner and his predecessor in title had operated a junk yard on the

[39] City of Corpus Christi v. Allen, *supra* note 37, at ———, 254 S.W.2d at 761.
[40] 32 Ill.2d 295, 205 N.E.2d 464 (1965).
[41] *Id.* at ———, 205 N.E.2d at 466.
[42] 160 Ohio St. 382, 116 N.E.2d 697 (1953).

subject property since 1916. In 1922 the city passed an ordinance providing that a nonconforming use must be discontinued and removed when, in the opinion of the city council, such use has been permitted to exist or continue for a reasonable period of time. An ordinance was passed in 1950 specifically describing the Chapman property and requiring that it must conform within one year to the residential nature of the neighborhood. The Ohio Supreme Court observed that property is the unrestricted right to the use, enjoyment and disposal of land; and when the right of use is denied, "the value of property is annihilated and ownership is rendered a barren right."[43] After thus defining property the court held:

> The right to continue to use one's property in a lawful business and in a manner which does not constitute a nuisance and which was lawful at the time it was acquired is within the protection of Section 1, Article XIV, Amendments, Constitution of the United States . . . which provides that no person shall be deprived of life, liberty or *property* without due process of law.[44]

Amortization of nonconforming uses was also rejected by the Supreme Court of Missouri in *Hoffman v. Kenealy*.[45] There the pre-existing nonconforming use consisted of the open storage of lumber, building materials and construction equipment, and the amortization period provided for in the ordinance was six years. The court held the ordinance was unconstitutional since termination of the nonconforming use pursuant to its authority would "constitute the taking of private property for public use without just compensation . . . a taking not to be justfied as an exercise of the police power which is always subject to, and may never transcend, constitutional rights and limitations."[46]

As indicated by the cases discussed above, there exists a great deal of disagreement between the courts as to the con-

[43] *Id.* at ———, 116 N.E.2d at 700.
[44] City of Akron v. Chapman, *supra* note 42, at ————, 116 N.E.2d at 700.
[45] 389 S.W.2d 745 (Mo. 1965).
[46] *Id.* at 755.

stitutionality of amortization ordinances in the United States today.[47] However, it is submitted that where the benefit to the public is significant in relationship to the loss to the individual, and the amortization period is reasonable, such an ordinance represents a valid exercise of the police power.

It is fundamental that all zoning ordinances must find their justification in some aspect of the police power, that is, asserted for the health, safety or welfare of the public.[48] As was pointed out in *Village of Euclid v. Ambler Realty Co.*,[49] the tremendous increase in our population and its concentration has required and will continue to require additional restrictions in the use and occupation of private land. This is well illustrated by the gradual emergence of zoning in the fifty years since the first rudimentary comprehensive zoning ordinance was passed[50] to the highly sophisticated city planning tool it is today. However, the ultimate benefit to the public of comprehensive zoning is undermined by the existence of nonconforming uses, which although originally expected to disappear, have instead flourished as a result of their monopolistic nature.

The goal of city planners today is the same as it has been from the inception of comprehensive zoning—conformance. In view of public interest in realizing this end, it appears logical that it can be achieved through a reasonable exercise of the police power. It has been stated that "every exercise of the police power is apt to affect adversely the property interest of somebody."[51] Unlike eminent domain, the incidental injury to an individual does not prevent its operation as long as it is exercised for the purpose of public health, safety, morals or general welfare and is not arbitrary or unreasonable.

[47] Annot., 42 A.L.R.2d 1146 (1955).
[48] Village of Euclid v. Ambler Realty Co., *supra* note 7, at 387.
[49] *Id.* at 386.
[50] 1 Metzenbaum, Zoning, Ch. 1 at (2d. ed. 1955)
[51] Zahn v. Bd. of Pub. Works, 195 Cal. 497, 512, 234 Pac. 388, 394 (1925).

The primary difference between the police power and the power of eminent domain, aside from the requirement of the payment of just compensation in the latter, is that in eminent domain the property is taken from the individual for the use of the public. In comparison, the application of the police power is to regulate the use of the property and it results in an impairment of rights in the property because the free exercise of these rights would be detrimental to the public interest.[52] An amortization ordinance enacted pursuant to the police power does not result in such an extreme impairment of rights as to constitute a taking which would require compensation. Rather, it operates to require the owner of property to conform his use to that of the zoning district in which he is located as opposed to leaving his property useless. Although some damage will probably be suffered by the individual, it has long been recognized that damage resulting from the proper exercise of the police power is one of the prices an individual is forced to pay as a member of society.[53]

Although regulation of property can be so onerous as to constitute a taking which requires compensation,[54] a prohibition against the use of property for purposes that are declared by valid legislation to be injurious to the health, morals, or safety of the community cannot be deemed a taking of property for public benefit. The legislation does not disturb the owner in the control or use of his property for lawful purposes, nor does it restrict his right to dispose of it. Instead, it is a declaration by the state that its use by any one for these purposes is prejudicial to the public interests.[55]

When examining an amortization ordinance the courts should accord to it the presumption of constitutionality that

[52] Windsor v. Whitney, 95 Conn. 357, 111 Atl. 354, 356 (1920).
[53] City of Los Angeles v. Gage, *supra* note 20, at ————, 274 P.2d at 40.
[54] Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922).
[55] Goldblatt v. Town of Hempstead, 369 U.S. 590, 593 (1962).

is accorded other legislation. The court's function is to determine whether a reasonable basis for the action of the zoning authority exists, and if the reasonableness of the ordinance is fairly debatable, the legislative determination must not be disturbed.[56]

In determining the reasonableness of an amortization ordinance there are two basic considerations which should by weighed by the legislative body: (1) the benefit to the public; and (2) the hardship to the individual. The reasonableness of any particular ordinance, of course, is determinable only by a review of the particular facts of the case, but some generalizations as to the public benefit can be made. Some reasons for excluding buildings devoted to business, trade, and similar uses from residential areas are: promotion of the health and security by safeguarding children from injury, suppression and prevention of disorder, faciliating the extinguishment of fires, enforcement of street traffic regulations[57]—in short, all of the factors that cumulatively create the necessity for any type of comprehensive zoning.

Examination of the hardship to the individual requires an anlysis of the amortization ordinance. To minimize the burden placed on the operator of the nonconforming use, the period of time granted for the abatement of the use should approximate the useful life of the structure. If this is the case, the property owner will be able to amortize the value of the structure at its normal depreciation rate so that his effective investment in the property at the end of the amortization period is the fair market value of the property in its unimproved state prior to the passage of the zoning ordinance. Ideally, then, the loss he suffers at the end of the amortization period is the same loss the owner of unimproved realty situated for the same use would suffer if his land were similarly zoned. Two additional factors which must be taken into consideration are good will and

[56] Oklahoma City v. Barclay, 359 P.2d 237 (Okla. 1960).
[57] Village of Euclid v. Ambler Realty Co., *supra* note 7, at 391.

moving expenses. The amortization approach does not relieve the burden of these costs. However, balanced against the loss of good will and moving expense is the additional benefit derived from the monopolistic position the property owner has enjoyed from the date his use became nonconforming to the end of the amortization period. From this it can be seen that where an ordinance is carefully tailored to the type of nonconforming use in existence, the loss to the property owner need not be substantial. Thus, where the balancing test utilized in those cases accepting amortization as a valid exercise of the police power is used, these ordinances do not work hardships on the individuals to which they are applied.

Whether or not the particular ordinance is valid depends upon whether it is a reasonable exercise of the police power—whether it bears a substantial relation to the public health, safety, morals and general welfare. In those cases where such a substantial relation exists, the ordinance will be a valid exercise of the police power if the amortization period is reasonable and the benefit to the public outweighs the harm sustained by the individual.

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