

that State acquisition of the property within the "EL" loop was not for a public purpose; and (3) permitting access from the abutting property to both Le Grange Street and Linden Drive, thereby destroying the very characteristics of a limited-access highway. The appellate court stated that the designing of a freeway and its interchanges was a matter of engineering judgment. It pointed out that an engineer from the highway department had stated that a highway was just as good as the access points and that a breakdown at the access meant the highway would not operate as well as it could.

The supreme court noted that the State's constitution provided that whenever an attempt to take private property for a use alleged to be public, the question whether the contemplated use was really public was a judicial one, without regard to any legislative assertion that the use was public. However, the court had long adhered to the theory that administrative determination that the use was a public one was conclusive, in the absence of bad faith, arbitrary, capricious or fraudulent action.

When considering the first phase of an action of eminent domain--the issuance of an order adjudicating public use -- the decision had to pivot on three interrelated findings: (1) That the proposed use was really a public use; (2) that the public interests required it; and (3) that the property appropriated was necessary for the proposed public purpose.

The court stressed that it was beyond dispute that the use of land for highway purposes was a public one and that public interest required the construction, operation and maintenance of highways. The crux of its review, therefore, was whether the property sought to be appropriated was necessary for the proposed public use. If the nonaccess area was carried behind the point necessary to assure that traffic would move in and out of the interchange in a safe and orderly manner, then it could not be said that the area was needed for a public use. However, maximum access to the interchange compatible with safety and efficient design should always exist. The court believed that a cloverleaf, if designed within reasonable limits, was an integral part of the limited-access highway and must be so in order to insure that the traffic pattern would be free-flowing through the interchange area. On this point, the State engineer had testified that it had never been a possibility that a property could remain within an interchange loop and not destroy the workability of that interchange.

The court stated that "necessary" had been defined in statutory condemnation as reasonable necessity in the circumstances of the particular case. From the record, it could not be said that the administrative and engineering determinations of the highway commission were made in bad faith, or were arbitrary and capricious. It concluded that all the property sought by the State was necessary for the proposed public purpose and it remanded the case with instructions to modify the order adjudicating public use in accordance with this opinion. (State v. Dawes, 404 P.2d 20, June 1965)

176-3 PENNSYLVANIA SUPREME COURT DECIDES ORDINANCE PROVIDING PERMITTING ONLY MOTELS TO ADVERTISE ALONG TURNPIKE WAS DISCRIMINATORY AND ENTIRE ORDINANCE PROHIBITING ALL OFF-SITE ADVERTISING IN THE TOWNSHIP WAS INVALID

In September 1959 Upper Moreland Township adopted a "Sign Regulations" ordinance which made it unlawful to erect any sign or other advertising structure

anywhere in the township without first securing an erection permit and paying a stipulated fee. Prior to November 13, 1962, Section 3(b) of the Sign Ordinance provided that signs were not permitted except those advertising that which has handled, sold or manufactured on the premises. On November 13, 1962, Section 3(b) was amended as follows: "With the exception of signs advertising motels located within the Township, signs are not permitted except those advertising that which is handled, sold or manufactured on the premises. By special exception of the Zoning Board of Adjustment, motels shall be permitted two signs on properties other than the motel site, such signs are restricted to the industrial area along the Pennsylvania Turnpike."

A corporation which operated a motel applied for a special exception under Section 3(b) to erect two signs at designated points on the Turnpike. The zoning board of adjustment denied the special exception and such denial was upheld by the trial court. That court did not agree with the zoning board that the signs would adversely affect the community but did agree that Section 3(b) was invalid in that it was unreasonably discriminatory. The corporation appealed to the supreme court from the trial court's order upholding the board's denial of the special exception, claiming that Section 3(b) of the Sign Ordinance was valid, but that if that section was invalid, the Sign Ordinance itself was invalid as an improper exercise of the police power.

The supreme court ruled that Section 3(b) was invalid for two reasons. First, the special exception was restricted to advertising by motels in the "industrial area along the Pennsylvania Turnpike." Thus, businesses other than motels and the owners of all other industrially zoned property in the township were discriminated against, but zoning ordinances must be uniform throughout the districts in a township. This was of great importance as it affected not only the reasonableness but the validity of the ordinance. Second, the section did not contain any standards to be applied by the zoning board in the granting or refusal of a special exception under the ordinance. The court stated that it was surprising, to say the least, to find in an ordinance adopted as late as 1959 such an unlimited and unfettered delegation of power to a quasi-judicial body. Such an attempt to bestow an arbitrary discretion upon the Board was, of course, improper. Absent any guideline standards, the board was constitutionally powerless to act so it could not have granted the application for a special exception and its denial thereof must be affirmed.

The supreme court agreed with the corporation, however, that the entire ordinance was invalid because it did not attempt to regulate but to prohibit, and the prohibition, without any regard for the districts set up under the Zoning Ordinance, extended throughout the township to all "off-site" sign advertising. Such ordinance was patently unreasonable and invalid. The court pointed out that in the adoption of a comprehensive zoning plan, a municipality could divide the municipal area into districts -- residential, commercial, industrial, etc. -- and could prohibit or regulate activities as to advertising in areas whose character was not consistent with the use of advertising. It stated that while the tendency was growing to regard with more liberality the police power of a municipality to regulate or prohibit sign advertising, such regulation or prohibition must be neither arbitrary or discriminatory. The order of the trial court denying permission to erect the signs was, therefore, reversed. (Norate Corp. v. Zoning Bd. of Adjustment, 207 A.2d 890, March 1965)