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PROPERTY—ZONING—THE COURTS FURTHER DEFINE THEIR LIMITED ROLE. *City of Little Rock v. Breeding*, 273 Ark. 437, 619 S.W.2d 664 (1981).

The appellees, Breeding and Henderson, jointly owned a 1.8 acre tract of land which was annexed by the city of Little Rock and zoned for residential use. This tract was bordered by apartment complexes on the west, mini-warehouses on the south, vacant land on the east, and a six-acre tract partially developed as residential on the north.

The appellees requested rezoning from residential to commercial. The Little Rock Planning Commission recommended to the city board of directors that the appellees' request be denied, and, accordingly, the city board of directors denied the request. Thereafter, the appellees filed suit in Pulaski County Chancery Court.

The chancellor found: "(1) that the property involved was located in an established and expanding business district; (2) that the Board of Directors acted in an arbitrary, capricious and unreasonable manner in rejecting appellees' application" ¹ The chancellor then rezoned the property to commercial. The board of directors appealed the chancellor's decision to the Arkansas Court of Appeals, ² where the chancellor's decision was affirmed. ³

The Arkansas Supreme Court granted certiorari because of the significant legal principles involved and reversed on every point. The supreme court held that the property was not in an established and expanding business district, that there was a reasonable basis for the board's decision, and that placing the property in a specific zoning classification was outside the purview of the judiciary. *City of Little Rock v. Breeding*, 273 Ark. 437, 619 S.W.2d 664 (1981).

The first comprehensive zoning ordinance in the United States was adopted by New York City in 1916. ⁴ This plan, which divided

1. *City of Little Rock v. Breeding*, 273 Ark. 437, 440, 619 S.W.2d 664, 666 (1981).
2. Zoning decisions were appealed directly to the Arkansas Supreme Court prior to the passage of ARK. CONST. amend. 58 in May 1979. Amendment 58 changed this procedure, and now the supreme court hears zoning questions only on a writ of certiorari.
3. *City of Little Rock v. Breeding*, 270 Ark. 752, 606 S.W.2d 120 (Ct. App. 1980).
4. N.Y. City, N.Y., Building Zone Ordinance (1916) (as cited in 1 R. ANDERSON, AMERICAN LAW OF ZONING § 1.02 n.8 (2d ed. 1976 & Supp. 1981)). The zoning process involves the competition for rights in property between an individual and society. The private property owner asserts his right to use his property as he chooses, while the public

real estate into residential, business, and unrestricted districts, was upheld by the New York Court as a proper exercise of police power.⁵ However, it was not until the 1926 landmark case of *Village of Euclid v. Ambler Realty Co.*⁶ that the United States Supreme Court upheld zoning based upon the government's right to exercise the police power for the public welfare.⁷

In *Euclid* the Supreme Court limited its holding to an approval of the ordinance itself.⁸ In *Nectow v. City of Cambridge*⁹ the Supreme Court considered the validity of the specific application of a zoning ordinance to a parcel of land. The Court found the ordinance as applied to the specific parcel unconstitutional because it materially reduced the land value without substantially promoting the public health, safety, or general welfare.¹⁰

These two decisions laid the foundation for judicial review of zoning ordinances.¹¹ They illustrate the two types of questions generally reviewed: alleged invalidity of the zoning ordinance as a whole, and alleged invalidity of the ordinance as it affects a particular parcel.¹² In reviewing either category, the Supreme Court uses the same standard. Before an ordinance or its effects on a particular parcel can be declared unconstitutional, it must be "clearly arbitrary and unreasonable, having no substantial relation to the public

asserts its right to interfere in order to benefit the entire community physically, socially, or morally. See, e.g., Feiler, *Zoning: A Guide to Judicial Review*, 47 J. URB. L. 319 (1969).

5. *Lincoln Trust Co. v. Williams Bldg. Corp.*, 229 N.Y. 313, 128 N.E. 209 (1920).

6. 272 U.S. 365 (1926).

7. For another explanation of the police power inherent in zoning see *Rockhill v. Township of Chesterfield*, 23 N.J. 117, 128 A.2d 473 (1957), in which the court stated:

Zoning is in its essential policy and purpose a component of the reserve element of sovereignty denominated the 'police power,' the sovereign right so to order the affairs of the people as to serve the common social and economic needs, the principle that brought them together in civilized society for their mutual advantage and welfare, to which all property is subject

Id. at 124-25, 128 A.2d at 477.

8. 272 U.S. at 397. See also 1 R. ANDERSON, *AMERICAN LAW OF ZONING* § 3.11 (2d ed. 1976 & Supp. 1981).

9. 277 U.S. 183 (1928).

10. *Id.* at 188.

11. *Moore v. City of East Cleveland*, 431 U.S. 494 (1977), in which Justice Stevens stated:

With one minor exception, between the *Nectow* decision in 1928 and the 1974 decision in *Village of Belle Terre v. Boraas* . . . this Court did not review the substance of any zoning ordinances [D]uring the past half century the broad formulations found in *Euclid* and *Nectow* have been applied in countless situations by the state courts.

Id. at 514-15 (Stevens, J., concurring).

12. See 1 R. ANDERSON, *supra* note 8, at § 3.11; Feiler, *supra* note 4, at 324.

health, safety, morals, or general welfare."¹³

STANDARD OF REVIEW

The local nature of the zoning decision has allowed each state to develop its own variation of judicial review¹⁴ based on custom, on state statutes,¹⁵ and on zoning enabling act requirements.¹⁶ Specific provisions for the review of zoning decisions have been adopted in all but a few states,¹⁷ and while there are differences in procedure, the essential character of the review is the same.¹⁸ As a general rule, most American courts recognize that zoning is a legislative decision and restrict their review to determining whether these decisions are arbitrary, capricious, and unreasonable.¹⁹

This was the standard of review applied in *Herring v. Stannus*,²⁰ the first Arkansas zoning case.²¹ In *Herring* the court acknowledged that zoning decisions are legislative, and, therefore, the court restricted itself to ruling on the question whether the city's decision was arbitrary and unreasonable.²² In establishing this standard of review,²³ the court was following its precedents concerning judicial

13. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926).

14. In Oregon, when the rezoning of a specific piece of property is contested, the court fully reviews the rezoning decision because local and small decision groups are simply not equivalent to state and national legislatures and it would be ignoring reality to continue the full presumption of validity. *Fasano v. Board of County Comm'rs*, 264 Or. 574, 507 P.2d 23 (1973). See Wright, *Zoning Law in Arkansas: A Comparative Analysis*, 3 UALR L.J. 421, 441 (1980).

In contrast to the full inquiry of the Oregon courts, the Wyoming courts recently have refused to hear zoning reclassifications because such legislative action is not reviewable under their Administrative Procedure Act. *McGann v. City Council of Laramie*, 581 P.2d 1104, 1107 n.5 (Wyo. 1978).

15. See D. HAGMAN, *URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW* § 129 (1975).

16. *E.g.*, MODEL LAND DEV. CODE (1975). Arkansas enabling legislation can be found in ARK. STAT. ANN. §§ 19-2804, -2825 to -2831 (1980).

17. 4 R. ANDERSON, *supra* note 8, at § 25.02.

18. *Id.*

19. See 4 E. YOKLEY, *ZONING LAW AND PRACTICE* § 25-5 n.22 (4th ed. 1979), for a state by state survey of the use of this standard of review. For a scholarly examination of the origins of this standard of judicial review see S. GABIN, *JUDICIAL REVIEW AND THE REASONABLE DOUBT TEST* (1980), in which the author asserts that Justice John Marshall found that constitutional ambiguity required judicial deference to reasonable legislative interpretation, and traces the origins of the reasonable basis test to 1798.

20. 169 Ark. 244, 275 S.W. 321 (1925).

21. *Herring* upheld the constitutionality of the 1924 enabling act, ARK. STAT. ANN. § 19-2804 (1980).

22. 169 Ark. at 256, 275 S.W. at 325; *accord* *Riddell v. City of Brinkley*, 272 Ark. 84, 612 S.W.2d 116 (1981).

23. *Herring* was decided one year after *Euclid*. "In the late 1930s, partly because of

review of legislative decisions in general.²⁴

Two years after the *Herring* decision, *Little Rock v. Pfeifer*²⁵ was decided. The court in *Pfeifer* held that if residential property is adjacent to an established and expanding business district, then a refusal to rezone it from residential to commercial would be arbitrary.²⁶ *Pfeifer* was a drastic departure from established zoning principles.²⁷ If the *Pfeifer* rule is applied literally, the control of commercial development and the creation of buffer zones become impossible.²⁸ While *Herring* had established judicial support of the board of directors' discretion,²⁹ *Pfeifer* undercut that support by defining "arbitrary" in a manner contrary to zoning principles.³⁰

In the early 1940s, judicial review became more complex and confusion arose because two cases, *McKinney v. City of Little Rock*³¹ and *City of Little Rock v. Bentley*,³² created changing standards as the litigants went through the reviewing process. In *McKinney* the Arkansas Supreme Court refused to set aside the chancellor's decree, saying it would substitute its judgment for that of the planning commission only when there was evidence that the action of the commission *and* the decision of the court were unreasonable and arbitrary.³³ The court in *Bentley* simplified *McKinney* to mean that

adverse reaction to Supreme Court interventions to overturn New Deal legislation, legal opinion in the United States was shifting to the view that the judiciary should be much more circumspect about interfering with legislative enactments." R. NELSON, ZONING AND PROPERTY RIGHTS 26 (1977).

24. *E.g.*, *North Little Rock v. Rose*, 136 Ark. 298, 206 S.W. 449 (1918); *Pierce Oil Corp. v. City of Hope*, 127 Ark. 38, 191 S.W. 405 (1917), *aff'd*, 248 U.S. 498 (1919).

25. 169 Ark. 1027, 277 S.W. 883 (1925).

26. *Id.* at 1031, 277 S.W. at 885.

27. Gitelman, *Judicial Review of Zoning in Arkansas*, 23 ARK. L. REV. 22, 29 (1969). For a thorough and updated analysis, see Wright, *supra* note 14, at 471.

28. Gitelman, *supra* note 27, at 29; Wright, *supra* note 14, at 471.

29. 169 Ark. at 256, 275 S.W. at 325. Zoning hearings begin in the planning commission and are reviewed by the city board of directors. Even though the planning commission decides the original zoning question, that decision can be appealed to the city board of directors. Thus, zoning authorities will be referred to as "board of directors." ARK. STAT. ANN. §§ 19-2824 to -2833 (1980).

30. Wright, *supra* note 14, at 471-72.

31. 201 Ark. 618, 146 S.W.2d 167 (1941). This zoning dispute involved a refusal by the board of directors to rezone the appellant's property from a residential to a commercial classification. The chancery court upheld the city board's decision, and the case was appealed to the supreme court.

32. 204 Ark. 727, 165 S.W.2d 890 (1942). The appellant requested a change in the status of his property from residential to commercial. After the board of directors denied the request, the chancellor granted the rezoning. The supreme court used the chancellor's findings of fact but not his application of law to those facts to reach the same result; refusal by the board of directors to rezone was held to have been arbitrary.

33. 201 Ark. at 621, 146 S.W.2d at 169.

the finding of the chancery court would not be disturbed when that finding was not contrary to the preponderance of the evidence.³⁴ Thus, *Bentley* established the precedent which allowed the Arkansas Supreme Court to review only the evidence supporting the chancellor's decision, while ignoring the evidence supporting the city's decision.³⁵

Subsequently, Act 134 of 1965 provided another standard of review.³⁶ This Act provided for a trial de novo in the circuit court on appeal from a final action taken by an administrative, quasi-judicial, or legislative agency pertaining to a building or zoning regulation.³⁷ Three zoning cases³⁸ were decided by this process before this statute was found to be unconstitutional in *Wenderoth v. City of Fort Smith*.³⁹ The court in *Wenderoth* explained the effect of a de novo trial as the judicial branch acting as if the legislative branch had not acted, subordinating the judgment of municipal lawmakers to the judgment of a circuit court.⁴⁰ This substituting process, although authorized by a statute, was found to be unconstitutional.⁴¹

The language in the *Wenderoth* decision has been used by the Arkansas Supreme Court in stating the narrow inquiry allowed in reviewing a zoning question.⁴² In *Taylor v. City of Little Rock*⁴³ the relationships between the city board, the chancery court, and the

34. 204 Ark. at 731, 165 S.W.2d at 892. See Gitelman, *supra* note 27, at 28, in which he refers to this interpretation as a distortion of the *McKinney* holding.

35. See Gitelman, *supra* note 27, at 27-28; Wright, *supra* note 14, at 439-41; see also *City of Helena v. Barrow*, 241 Ark. 654, 408 S.W.2d 867 (1966); *City of Little Rock v. Miles*, 240 Ark. 735, 401 S.W.2d 741 (1966); *Lindsey v. City of Camden*, 239 Ark. 736, 393 S.W.2d 864 (1965); *City of Little Rock v. Garner*, 235 Ark. 362, 360 S.W.2d 116 (1962); *City of Little Rock v. Hocott*, 220 Ark. 421, 247 S.W.2d 1012 (1952); *City of Little Rock v. Stannus*, 218 Ark. 893, 239 S.W.2d 283 (1951); *City of Little Rock v. Joyner*, 212 Ark. 508, 206 S.W.2d 446 (1947).

36. ARK. STAT. ANN. § 19-2830.1 (1980) (declared unconstitutional for zoning decisions in *Wenderoth v. City of Fort Smith*, 251 Ark. 342, 472 S.W.2d 74 (1971)).

37. *Id.*

38. *Wright v. City of Little Rock*, 245 Ark. 355, 432 S.W.2d 488 (1968); *Arkansas Power & Light Co. v. City of Little Rock*, 243 Ark. 290, 420 S.W.2d 85 (1967); *City of Little Rock v. Leawood Property Owners Ass'n*, 242 Ark. 451, 413 S.W.2d 877 (1967).

39. 251 Ark. 342, 472 S.W.2d 74 (1971).

40. *Id.* at 345, 472 S.W.2d at 75.

41. *Id.* at 347, 472 S.W.2d at 76 (unconstitutional as applied to zoning ordinances).

42. *E.g.*, *City of Conway v. Conway Housing Auth.*, 266 Ark. 404, 584 S.W.2d 10 (1979); *City of Batesville v. Grace*, 259 Ark. 493, 534 S.W.2d 224 (1976); *City of North Little Rock v. Linn*, 252 Ark. 364, 479 S.W.2d 236 (1972); see Newbern, *Zoning Flexibility: Bored of Adjustment?*, 30 ARK. L. REV. 491, 501 (1977); see also *Gorman Towers, Inc. v. Bogoslavsky*, 626 F.2d 607, 613 (8th Cir. 1980) (citing *Wenderoth* as authority for the arbitrary and capricious standard of review).

43. 266 Ark. 384, 583 S.W.2d 72 (1979).

Arkansas Supreme Court were explained: "The chancellor does not try a city zoning decision *de novo* but, instead, determines whether the city's action was arbitrary . . . [The Arkansas Supreme Court] only determines whether the chancellor's finding was contrary to the preponderance of the evidence."⁴⁴ *Taylor* represents a renewed awareness of the need to maintain the integrity of the planning and zoning process in Arkansas.⁴⁵

JUDICIAL ZONING

Considering the amount of litigation which zoning generates, the United States Supreme Court has heard relatively few cases.⁴⁶ In *Village of Belle Terre v. Boraas*⁴⁷ Justice Marshall explained what the standard of judicial review should be:

I therefore continue to adhere to the principal of *Euclid v. Ambler Realty Co.*, . . . that *deference* should be given to governmental judgments concerning proper land-use allocation. That deference is a principle which has served this Court well and which is necessary for the continued development of effective zoning and land-use control mechanisms.⁴⁸

Although the Arkansas Supreme Court has purported to adopt the deferential⁴⁹ standard of review, it has not always applied that standard. In many cases the court has failed to defer to the city board's substantive decision, conducted its own inquiry, and fashioned remedies which reflect its view of the facts. Thus, the court has often acted in the capacity of a "super" zoning commission.⁵⁰

44. *Id.* at 388, 583 S.W.2d at 74.

45. Wright, *supra* note 14, at 442.

46. See R. BABCOCK, THE ZONING GAME 109 (1966). In explaining the reluctance of the United States Supreme Court to grant certiorari in zoning cases, Babcock says that since *Nectow*,

the United States Supreme Court has stoutly resisted attempts to foist on it responsibility in this area. I would like to believe that among the justices of our highest court, conservative or liberal, Democrat or Republican, southerner or Yankee, corporate lawyer or ex-professor, there has been consensus on only one point: if we cherish our equilibrium, never agree to review a zoning case.

Id. at 110.

47. 416 U.S. 1 (1974).

48. *Id.* at 13 (Marshall, J., dissenting) (emphasis added). The majority held that the zoning ordinance was constitutional because it was reasonable, not arbitrary. Justice Marshall, dissenting on the main issue, an exclusionary zoning question, agreed with the Court in this standard of review.

49. See *supra* text accompanying notes 20-24.

50. See, e.g., *Olsen v. City of Little Rock*, 241 Ark. 155, 406 S.W.2d 706 (1966); *City of Little Rock v. Miles*, 240 Ark. 735, 401 S.W.2d 741 (1966); *Downs v. City of Little Rock*, 240 Ark. 623, 401 S.W.2d 210 (1966); *City of Little Rock v. Gardner*, 239 Ark. 54, 386 S.W.2d

This judicial zoning began in 1964 with *Little Rock v. Andres*,⁵¹ but the court in *City of Conway v. Conway Housing Authority*⁵² discouraged this practice. In *Conway* the court found the planning commission's refusal to rezone arbitrary and remanded with directions to rezone the property.⁵³ However, the court would not rezone the property judicially, saying, "Courts are not super zoning commissions and have no authority to classify property according to zones."⁵⁴ Thus, the Arkansas Court echoed Justice Marshall, who said in *Belle Terre* that courts should not sit as a zoning board of appeals.⁵⁵

City of Little Rock v. Breeding

In *City of Little Rock v. Breeding*⁵⁶ the court acknowledged not only the legislative nature of zoning decisions,⁵⁷ but also that judicial intrusion upon this legislative prerogative would violate the constitutional requirement of separation of powers.⁵⁸ Recognizing the judiciary's limited function in reviewing a legislative decision, the court⁵⁹ stated that the only question before the chancellor or the court was whether the city had acted arbitrarily, capriciously, or unreasonably. The question was not whether "the Chancellor, or this court, agrees with [the city's] decision or determines that it is wise or unwise or whether it is supported by the greater weight of evidence."⁶⁰ The court said that a presumption exists that the city board of directors acted in a reasonable manner, and as long as it

923 (1965); *City of Little Rock v. Andres*, 237 Ark. 658, 375 S.W.2d 370 (1964); *City of Little Rock v. Joyner*, 212 Ark. 508, 206 S.W.2d 446 (1947); *City of Little Rock v. Breeding*, 270 Ark. 752, 606 S.W.2d 120 (Ct. App. 1980), *rev'd*, 273 Ark. 437, 619 S.W.2d 664 (1981).

51. 237 Ark. 658, 375 S.W.2d 370 (1964).

52. 266 Ark. 404, 584 S.W.2d 10 (1979).

53. *Id.* at 410, 584 S.W.2d at 14.

54. *Id.* at 409, 584 S.W.2d at 13.

55. 416 U.S. at 13 (Marshall, J., dissenting). Both the positive and negative effects of judicial zoning are analyzed in Note, *The Rezoning Dilemma: What May a Court Do With an Invalid Zoning Classification?*, 25 S.D.L. REV. 116 (1980). When the remedy is limited to judicial invalidation of an exclusionary zoning ordinance, little relief is provided to the persons excluded from the community. For an examination of this complex problem, refer to Hartman, *Beyond Invalidation: The Judicial Power to Zone*, 9 URB. L.J. 159 (1975).

56. 273 Ark. 437, 619 S.W.2d 664 (1981).

57. *Id.* at 442, 619 S.W.2d at 667. The Arkansas legislature delegated the power of comprehensive planning and zoning to municipalities in ARK. STAT. ANN. §§ 19-2804 to -2830 (1980).

58. 273 Ark. at 444, 619 S.W.2d at 668 (citing *Wenderoth v. City of Forth Smith*, 251 Ark. 342, 472 S.W.2d 74 (1971)).

59. Sidney H. McCollum, serving as Special Justice, delivered the opinion of the court.

60. 273 Ark. at 445-46, 619 S.W.2d at 668.

had a reasonable basis for its decision, the court would uphold that decision.⁶¹

The chancellor did not focus his inquiry on the reasonable basis for the board's decision because he applied the *Pfeifer* rule.⁶² The Arkansas Supreme Court avoided applying the *Pfeifer* rule in *Breeding* by narrowly interpreting the phrase "adjacent to an existing and expanding business district."⁶³ The court noted that responsible planning of a city and application of the *Pfeifer* rule are mutually exclusive⁶⁴ and concluded that *Pfeifer* has very limited applicability and little, if any, validity.⁶⁵

Aside from *Pfeifer* considerations, the court acknowledged that the appellees had presented considerable evidence supporting their request for commercial zoning.⁶⁶ The court said, however, that the power to weigh these arguments rests with the city board and not with the chancellor or a reviewing court.⁶⁷ The court applied the preponderance of the evidence test to the question whether there was a reasonable basis for the city board's decision.⁶⁸ They found that the board's reliance on the expertise of the planning staff supplied that reasonable basis, and, therefore, this decision was not arbitrary or capricious.⁶⁹

Finally, the court explained that it is not within judicial power to rezone property, because this is a legislative power given by the Arkansas Legislature to the governing board of a city.⁷⁰ Since the

61. *Id.* at 445, 619 S.W.2d at 668.

62. *Id.* at 446, 619 S.W.2d at 669 (citing *City of Little Rock v. Pfeifer*, 169 Ark. 1027, 277 S.W. 883 (1925)). The *Pfeifer* rule is that any attempt to restrict the rights of a person owning property next to an established and expanding business district is arbitrary.

63. 273 Ark. at 449, 619 S.W.2d at 670 (court's emphasis). Vacant land was not within a "business district" just because it was zoned commercial or because there were commercial establishments nearby. The land was not "adjacent to" a business district if the business was across the street or in the sixty-five acre tract.

64. *Id.* at 448, 619 S.W.2d at 670 (citing *City of Conway v. Conway Housing Auth.*, 266 Ark. 404, 584 S.W.2d 10 (1979)).

65. 273 Ark. at 448, 619 S.W.2d at 670. See Wright, *supra* note 14, at 421, section entitled *An Arkansas Oddity: The "Pfeifer Rule" and its Lingering Demise*.

66. 273 Ark. at 452, 619 S.W.2d at 672. The appellees argued that without the rezoning, the tract could not be put to its highest and best use, and further that the planning staff's report listed a lack of adverse effects on the immediate area as a result of the requested rezoning. *Id.* at 451, 619 S.W.2d at 672.

67. *Id.* at 452, 619 S.W.2d at 672.

68. *Id.* at 453, 619 S.W.2d at 672.

69. *Id.* The planning staff's findings indicated that more property had been designated for commercial use than was actually needed or used.

70. *Id.* (citing *City of Conway v. Conway Housing Auth.*, 266 Ark. 404, 584 S.W.2d 10 (1979); *City of Batesville v. Grace*, 259 Ark. 493, 534 S.W.2d 224 (1976)).

lower court had placed the property in a specific zone, the court said it had acted beyond its power. The court found that an injunction was the only proper judicial remedy.⁷¹

Breeding is significant because it answers several questions of vital importance in zoning litigation in Arkansas. When the court of appeals⁷² analysis is contrasted with the supreme court's analysis, it is apparent that *Breeding* clarified much of the confusion that permeated previous holdings.

The court of appeals applied a broad interpretation of the *Pfeifer* rule, finding the *Breeding* tract to be adjacent to an existing and expanding business district.⁷³ The court stated that the property is part of, and surrounded by, approximately sixty-five acres of land either used or zoned for commercial purposes.⁷⁴

In contrast, the supreme court found that none of the surrounding land could be considered a "business district," because there was no actual commercial development on any adjacent property.⁷⁵ By narrowing the interpretation of "adjacent to an existing and expanding business district," the supreme court further limited the future use of this rule.

While the chancery court actually rezoned the property, the supreme court said zoning is beyond a court's power.⁷⁶ The supreme court created a new judicial limitation by stating that an injunction is the only proper judicial action in a zoning case.⁷⁷

Both courts said they used the arbitrary, capricious, and unreasonable standard to review the decision of the board of directors. However, the court of appeals appeared to review the evidence the chancellor used in making his decision and to hold that his decision was supported by a preponderance of the evidence.⁷⁸ The supreme court made it clear that there is only one question to be reviewed at any level: Did the city board have a reasonable basis for its decision?⁷⁹ In delivering this definitive opinion, the Arkansas Supreme Court has clarified and changed Arkansas zoning law.⁸⁰

71. *Id.*

72. 270 Ark. at 762, 606 S.W.2d at 125.

73. *Id.* at 760-61, 606 S.W.2d at 124.

74. *Id.* at 754, 606 S.W.2d at 121.

75. 273 Ark. at 449, 619 S.W.2d at 670.

76. *Id.* at 453, 619 S.W.2d at 672-73.

77. *Id.*

78. 270 Ark. at 760, 606 S.W.2d at 124.

79. 273 Ark. at 445, 452, 619 S.W.2d at 668, 672.

80. The court followed the reasoning of *Breeding* in *McMinn v. City of Little Rock*, No. 82-20 (Ark. Apr. 12, 1982).

The ultimate effect of *Breeding* on zoning depends both on the litigants' and the planning commissions' reactions. If the reasonable basis measure is consistently applied to zoning cases, the future Arkansas zoning litigant will have an "extraordinary burden"⁸¹ when he contests a city board's decision. When the chances of judicial success are unlikely, the land developer, who has a great deal at stake financially, may put his energy and resources into influencing the local political body. This pressure on the local zoning commission, when successful, results in rezoning based on political considerations rather than planning expertise.

It is equally possible that a more positive effect will flow from the added importance of the zoning commission's decisions. As the commission and its reviewing board realize the near finality of their deliberations, they may place greater reliance on the objective expertise of the city planning department. Then the entire community's needs, as projected by people educated and employed to stay abreast of them, will be a vital part of each decision. The more limited judicial role could strengthen the nexus between planning and zoning, resulting in a benefit to all.

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81. See R. ANDERSON, *supra* note 8, at § 3.16 n.60.