

Chapter 3. Zoning

- Zoning remains the core tool of land use control.
- Trend toward greater state and regional controls.
- Use of regulatory power to limit land use has been challenged.

Zoning's Predecessors

- Colonial ordinances restricted location of dwellings, imposed affirmative obligations of use, compelled fencing of agricultural land, required owners of wetlands to share cost of drainage, and allowed the public to hunt on private land.

Comprehensive Zoning

- New York enacted first comprehensive zoning ordinance in 1916 (upheld in *Lincoln Trust v. Williams Building Corporation*). Zoning became very popular.
- Major constitutional challenge in 1926 (*Euclid v. Amber Realty Co.*) upheld by Supreme Court
- By 1926, 564 cities and towns had enacted zoning.

Village of Euclid v. Ambler Realty Co. (1926)

- Supreme court decided seminal land use decision upholding validity of an ordinance that set use, height, and bulk restrictions for entire town
- Court said if law was 'fairly debatable, the legislature judgment must be allowed to control'
- Court tempered reach of Euclid 2 years later in *Nectow v. City of Cambridge* where zoning ordinance was held invalid as applied because the public good was not promoted by the zoning classification.
- Deference review of Euclid has prevailed allowing comprehensive zoning to flourish

Sources of Zoning Power

- Public land use controls (zoning, subdivision regulation, building codes, and growth controls) are exercises of police power granted states in Constitution.
- State legislatures can delegate their power to regulate land use (cities, villages, towns, and counties)
- Delegation is generally by way of a state zoning enabling act to local govt. legislative bodies
- Enabling acts may also authorize land use controls for special situations such as airport zoning, flood plain zoning, historic districting, landmark preservation, or watershed management

Standard Zoning Enabling Act

- Developed by Federal government in 1924 as a model for state governments
 - Grant of power—empowers local govts to regulate land use
 - Districts—local govt. can divide municipality into districts to carry out purpose of the act
 - Purposes—lessen congestion, secure safety from fire and other dangers, provide adequate light and air, prevent overcrowding, facilitate provision of transportation, water, sewage, schools, parks, and other public requirements.

Inherent and Implied Powers

- Power to zone is usually not implied from typical legislation conferring general police power on a municipality
- Dillon's rule—limits municipal power to those granted in express words or those necessarily or fairly implied in or incident to powers expressly granted, and essential purposes that are "indispensable"
- Dillon's rule formally rejected in most states but still lurks as a limiting force on municipalities
- State legislature can confer power to zone in a local government charter.
- Home rule powers conferred on local governments by state constitution or statute may or may not be a source of zoning power (courts differ by state)
- Where zoning is authorized by home rule, it only applies to local matters not in conflict with state law
- A few states allow zoning through "initiative" and more states allow a referendum on zoning legislation
- Authority for some zoning may be provided through separate enabling acts (e.g., for airports and flood plain zoning)
- Some states grant the power of municipalities to zone extraterritorially (e.g., in a county that does not zone or where county approves)
- SZA provided no mechanism to zone territory in advance of annexation. Some states permit pre-zoning or interim zoning

Purposes of Zoning (General)

- Purposes are as broad as the source of power from state allows
- Zoning may be invalid because it is beyond power conferred by enabling act
- Courts have upheld numerous ordinances that lack precise ground in the "purposes in view" part of enabling act
 - Golden v. Planning Board of Town of Rampopo found ordinance that limited growth based on availability of public services and infrastructure to be valid
 - Single use zoning covering entire municipality has been upheld
 - Conditional zoning upheld despite not being in enabling act
- Zoning for a particular purpose may be invalid if courts hold if act is beyond the scope of police power
 - Example—if zoning is designed to lower market value of property, that purpose would be unconstitutional

Purposes of Zoning (cont'd)

- Preservation of property values—not, however, explicitly stated purpose of zoning
 - If zoning depresses value of buildings or parcels, it is still valid
- Preservation of character of district but it is not a guarantee against change
- Traffic safety
 - Location and dimension of streets typically not controlled by zoning but control of density can influence traffic
 - Off street parking requirements
 - Dedication of land for streets as condition of development
- Regulation of competition
 - Is said to be improper use purpose of zoning but districting can nonetheless impact competition
- Zoning to increase tax base
 - Courts have mixed rulings on this purpose—some courts recognize desire to stimulate local economy as valid purpose of zoning
 - Some courts reject fiscal zoning

Purposes of Zoning (cont'd)

- Promotion of morals (e.g., liquor stores, bars, and sexually oriented businesses)
 - Regulation of adult uses on moral grounds run risk of First Amendment violations if the measure suppresses protected speech
- Managing growth
 - SZA makes no reference to timing and sequencing controls to manage growth
 - Some states authorize interim zoning by special legislation
 - A number of states specifically authorize growth management
- Zoning to Lower Condemnation Costs
 - Where courts suspect zoning is used to depress values, may hold zoning invalid

Alternatives to Zoning

- SZA remains basic enabling act in many states
- Model Land Development Code
 - Deals with the physical development of land to maximize social and economic objectives
 - Land development, not planning is focus of act
 - Little direct adoption of Model Code
- Wipeout Mitigation and Windfall Recapture (Takings legislation)
 - A number of legislative proposals to compensate landowners who suffer economic loss from land use controls—only a few have been enacted
 - Lacking from these proposals is the question of recapturing for the public the gains conferred on landowners by virtue of public improvements and government regulations