

Advocates at Cross-Purposes: The Briefs on Behalf of Zoning in the Supreme Court

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The Question

The Supreme Court reheard arguments in *Village of Euclid v. Ambler* on October 12, 1926. The case was on appeal from a 1924 decision in the United States District Court in Cleveland, Ohio, which had held the village's zoning ordinance unconstitutional under the Fourteenth Amendment to the United States Constitution. It was the long-awaited test case that would determine whether 24,000,000 Americans could continue to enjoy the benefits of comprehensive building zone laws.¹

Village Attorney James Metzenbaum argued on behalf of Euclid. Although by tradition governmental police powers were limited to situations involving health and safety, and suppression of nuisances, Metzenbaum opined that they were "elastic enough" to protect the "general welfare" from threats posed by the new conditions of urban life. He averred that since Euclid's ordinance promoted the "gen-

eral welfare," it was a constitutional exercise of governmental power.²

Alfred Bettman appeared as an *amicus curiae* defending zoning on behalf of the National Conference on City Planning. His brief made a significant tactical departure from the Metzenbaum brief. Rather than expansively defining zoning as a promoter of the general welfare, Bettman narrowly justified it as a nuisance suppressant. "Zoning . . . ha[s] the same fundamental basis as the law against nuisance," he said. It is merely a "new application of sanctioned traditional methods for sanctioned traditional purposes."³

As a matter of appellate advocacy, these two arguments seem consistent. They afforded the Supreme Court a choice—if the Court chose to openly embrace the new "sociological" jurisprudence, it could expand the police power to include city planning; if the Court preferred to pay lip service to *stare decisis*, it could rationalize zoning as consistent with precedent.⁴

But in a surprising turn, Metzenbaum notified the Court that in order to avoid “prejudice to any rights,” his client “earnestly” disassociated itself from Bettman’s brief. The Village rejected the argument that zoning could be constitutionally justified as a suppressant of nuisances.⁵

The advocates for zoning were at cross-purposes. Metzenbaum and Bettman were both staunch defenders of zoning and both presented complementary views. Yet Metzenbaum adamantly rejected Bettman’s line of argument. This essay considers why. The answer may shed light and cast shadows on the still debated conflict between public power and private property.⁶

The Zoning Movement

Building zone laws were part of the turn of the century Progressive Movement, which also advocated municipal reform, civil service, plebiscites, “trust-busting,” railroad legislation, and wage and hour laws. The movers were middle-class businessmen, intellectuals, lawyers, and journalists, all with an interest in preserving the quality of their society.⁷

These reformers were intent on planning urban growth. Thoughtful public choices with respect to the location of sewers, streets, parks, and public buildings, and suburban development, and the design of transit and utilities system, were intended to create cities, beauti-



Because the Euclid ordinance discriminated on the basis of wealth, it could be interpreted as being discriminatory to blacks and immigrants who could not afford to live in single family dwellings. In *Yick Wo v. Hopkins* (1886) the Court had considered a San Francisco ordinance regulating the location of laundries and held it unconstitutional upon a finding that it was administered in a biased fashion so as to exclude laundries operated by Chinese immigrants.

ful and efficient. The first step along the road to the creation of a city plan was zoning, "... the creation by law of districts in which regulations, differing in different districts, prohibit injurious or unsuitable structures."⁸

Building zone laws had an immediate appeal. New York City adopted the first comprehensive ordinance in 1916 and by 1926 there were at least 425 zoned municipalities. Chicago, Boston, Baltimore, Pittsburgh, Los Angeles, Buffalo, and San Francisco headed the list of other zoned cities.⁹

The Fourteenth Amendment

Notwithstanding their legislative successes, zoners had a nagging concern. In 1868, in the aftermath of the Civil War, the United States Constitution had been amended to limit the regulatory power of state and local governments. Language in the amendment read as follows:

No State . . . shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.¹⁰

Was zoning consistent with the Fourteenth Amendment of the United States Constitution?

Soon after enactment of the Fourteenth Amendment, the Supreme Court had reaffirmed in *Munn v. Illinois* (1876) that the states continued to possess: "the police powers . . . inherent in every sovereignty. . . to govern men and things."¹¹ Two decades later in *Chicago, Burlington and Quincy Railroad Company v. Chicago* (1896) the Court qualified this power with a requirement found implicit in the Fourteenth Amendment that ". . . compensation be made for private property taken for public use."¹²

Early in the twentieth century, the Supreme Court reconstructed the Fourteenth Amendment so as to allow the Court actively to second-guess the wisdom of social and economic legislation. Regulations were made vulnerable to attack on three interrelated constitutional grounds: first, that they were a taking of private property without just compensation; sec-

ond, that they were a denial of due process of law, and; third, that they denied equal protection of the law.¹³

The first Fourteenth Amendment argument challenging the validity of zoning laws was that their application resulted in the confiscation of private property. Some land owners necessarily found their properties devalued as the effects of zoning constraints played out in the real estate market and the laws made no provision for compensation. As Justice Oliver Wendell Holmes, Jr., concluded for the majority of the Court in *Pennsylvania Coal Co. v. Mahon* (1922), if that loss reached a "certain magnitude" and "went too far" it would become a "taking" for which the landowner would be entitled to just compensation. Hence zoning was subject to attack by owners whose property was substantially diminished in value.¹⁴

The second ground for constitutional attack was that zoning laws violated due process since their goals were not limited to the legitimate concerns with "public health, safety and morals." Traditional nineteenth century regulations suppressed nuisances such as sewers, stables, smokestacks, and the like. But zoning aimed to do more—it aimed to promote amenity and aesthetics.

Twentieth century reformers had been attempting to convince the Court to expand the police power to allow the promotion of the "general welfare," but the Court proved reluctant. Between 1920 and 1926 it had struck down more state legislation under the Fourteenth Amendment than in the preceding fifty-two years of the amendment's existence. Among the general welfare laws struck down were wage and hour regulations, compulsory arbitration requirements, and regulations of weights and measures. When zoning promised to plan city growth, it likewise was subject to constitutional attack as being beyond the scope of the police power and therefore violative of due process.¹⁵

The third ground for questioning the constitutionality of zoning was that it amounted to "[i]nvidious discrimination in favor of certain persons to the prejudice of others" and therefore denied equal protection of the law.¹⁶ The Fourteenth Amendment did not prevent the

states from resorting to classification for the purpose of legislation, “[b]ut the classification must be reasonable, not arbitrary, and must rest upon some grounds of difference . . . so that all persons similarly situated shall be treated alike.”¹⁷

Buchanan v. Warley (1917) provided a then current example of a law wherein unreasonable classification amounted to a denial of equal protection. Therein the Court considered:

[a]n ordinance to prevent conflict and ill-feeling between the white and colored races in the city of Louisville, and to preserve the public peace and promote the general welfare, by making . . . provisions requiring . . . the use of separate blocks, for residences, places of abode, and places of assembly by white and colored people respectively,¹⁸

and held it to be an invidious discrimination rather than a legitimate exercise of the police power. Hence proof of the unreasonableness of zoning’s classifications might be used in Justice Holmes’ words as “. . . the last resort of constitutional arguments.”¹⁹

The Test Case

The case testing the constitutionality of zoning came from the Village of Euclid, a town of 4,000 inhabitants on the outskirts of Cleveland. The Ambler Realty Company had purchased sixty-eight acres of vacant land in 1912. The 1922 zoning ordinance prevented it from using the parcel’s Euclid Avenue frontage for industrial, commercial, or apartment purposes. Only single-family and two-family dwellings were permitted along the avenue. Ambler challenged the ordinance under the Fourteenth Amendment as taking of private property, a denial of due process, and a deprivation of equal protection.²⁰

On the taking issue, allegations were presented that the Ambler tract had a free market value of \$10,000 an acre, but not in excess of \$2,500 as restricted by the zoning ordinance. The only real question was whether the magnitude of the loss suffered by Ambler was great enough under the Penn-

sylvania Coal rationale to require compensation. When answering this question the courts would be mindful of Holmes’ qualifying admonition therein that “government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in [the] general law.”²¹

The due process challenge to the Euclid ordinance was that it was not within the scope of the village’s police power. The leading authority on this constitutional issue was Professor Ernst Freund, a member of the law faculty at the University of Chicago, who had written a treatise on the Police Power in 1904. Therein he classified and analyzed all of the hundreds of cases on the subject that had arisen in the thirty or forty years since the Fourteenth Amendment’s enactment.²²

From Freund’s point of view it required no great departure from old principles to recognize the regulatory power to exclude industry and commerce from residential neighborhoods. Courts and legislatures had done that under the rubric of nuisance control for centuries: “zoning simply removes practical difficulties — it does not create any legal problems with which we have not been long familiar.”²³

“[T]he crux of the zoning problem” in Freund’s words “lay in the residential district.” When it came to the designation of “one family home districts” he observed that real justification was “amenity” rather than “health and safety.” Since the Euclid ordinance created a “residential preference” along the Avenue, it called into constitutional question the willingness of the Court to expand the police power to include this pursuit of the “general welfare.”²⁴

The Euclid ordinance also raised the specter of invidious discrimination. A decade before, in *Buchanan v. Warley*,²⁵ the Court had struck down a zoning ordinance that divided Louisville, Kentucky, into white blocks and black blocks, holding the law to be in direct violation of the Fourteenth Amendment. The Euclid ordinance contained no racial classification, but its residential preference certainly discriminated on the basis of wealth. Ambler Realty’s brief seemed to be on the mark when it argued :

All the people who live in the village and are not able to maintain single family residences of the size and lot area herein prescribed, are pressed down into the low-lying land adjacent to the industrial area, congested there in two-family residences and apartments, and denied the privilege of escaping for relief to the ridge or lake.²⁶

The ordinance excluded lower class people from upper class neighborhoods.

More particularly, the effect of "one family home districts" was to discriminate against blacks and immigrants who for the most part lived in tenement buildings and apartment flats. In *Yick Wo v. Hopkins* (1886) the Court had considered a San Francisco ordinance regulating the location of laundries and held it unconstitutional upon a finding that it was administered in a biased fashion so as to exclude laundries operated by Chinese immigrants. The Euclid ordinance was likewise subject to constitutional challenge if it could be shown to be conceived with an "evil eye and unequal hand" so as to exclude colored people and foreigners.²⁷

The Lower Court Decision

In May of 1923, Ambler filed suit in the United States District Court for the Northern District of Ohio. The zoning ordinance was assailed on the grounds that it violated the Fourteenth Amendment. Judge David C. Westenhaver heard the evidence and issued his opinion. He focused on the Equal Protection argument and forcefully concluded:

The plain truth is that the true object of the ordinance in question is to place all the property in an undeveloped area of sixteen square miles in a straight-jacket. The purpose to be accomplished is really to regulate the mode of living of persons who may hereafter inhabit it

In the last analysis the result to be accomplished is to classify the population and segregate them according to their income or situation in life. The true reason why some persons live in a man-

sion and others in a shack, why some live in a single-family dwelling . . . and others in an apartment. . . is primarily economic. [This ordinance]. . . furthers such class tendencies. . . [I]t may not be done without compensation under guise of exercising the police power.²⁸

The sincerity of Judge Westenhaver's concern for the lumpenproletariat can be called into question. Elsewhere in the opinion he lamented the fact that the High Court had denied to cities the power to segregate "the colored or certain foreign races" even though their invasion of white neighborhoods disrupted the public peace and blighted property values. He wrote as a disgruntled inferior court judge reluctantly bound by the Supreme Court precedent of *Buchanan v. Warley*. But there is no discounting the acuity of his conclusion—zoning was well designed to segregate the population according to their situation in life. The Euclid ordinance had failed the first test of its constitutionality.²⁹

The Appeal

With little grounds for optimism, Metzenbaum determined to take an appeal to the Supreme Court. The nine-man Court had come to bear the conservative stamp of William Howard Taft, the former President of the United States who served as the Chief Justice. Among the Associate Justices only Holmes and Louis D. Brandeis had a record of commitment to legislative reform. Justice George Sutherland led the dominant conservative block. He was an ideologue and *laissez-faire* was his ideal. For him, the achievement of freedom was a simple matter of reducing governmental restraints to an absolute minimum.³⁰

When taking the village's appeal to the Supreme Court, Metzenbaum was impressed by the importance of his task. He considered Judge Westenhaver's decision a "challenge to American citizenry"; the *Euclid* case posed the question of whether "the Constitution was meant so to hamper and restrict the American people, or was intended to protect them in their right to make their cities, large and small, liveable and tenable for the present as well as for the



The author argues that zoning laws have traditionally been a way of segregating the social classes by keeping smokestacks, slaughterhouses, and apartment flats or row houses that accommodated blacks and immigrants, on the other side of the railroad tracks from the wealthy.

coming generations.”³¹

The National Conference on City Planning had debated long and hard about joining in this appeal. Some argued that the case was weak and that the Conference should not be involved. Leader Alfred Bettman, however, convinced the Conference that there was too much at stake to remain silent.³²

Bettman undertook to prepare a brief *amicus curiae*, and hoped to argue before the Court in support of zoning. But to his embarrassment he had failed to file his brief on time. In January of 1926, Metzenbaum argued alone in defense of zoning before the Court. As luck would have it, Justice Sutherland was absent that day and most likely did not participate in the vote. The Court failed to reach a decision. Chief Justice Taft scheduled the case for reargument on October 12, 1926. The rehearing gave Bettman a chance to make amends. He was given leave to file a brief on behalf of the National

Conference on City Planning and to participate in the second round of oral argument.³³

Both James Metzenbaum and Alfred Bettman invoked the police power in defense of zoning. Metzenbaum argued that the police power should be expanded to include the “philosophy of zoning” because it promoted the “general welfare.” Bettman parted company. In his view no expansion of the police power was called for since zoning was just a new way of suppressing “nuisances” or “semi-nuisances” that had always been the subject of police power constraints. Metzenbaum disagreed. The village “studiously refrained” from arguing that zoning could be constitutionally justified as a suppressant of “nuisances” or “semi-nuisances.”³⁴

The Answer

Metzenbaum and Bettman disagreed and

we are now in a position to understand why. Zoning regulations, although publicized in terms of the physical constraints they imposed on the use of land, had a social dimension. They were well-conceived to put everything, and everybody in the appropriate place. Smokestacks, slaughterhouses, and stables were placed on the other side of the railroad tracks, and apartment flats and row houses that accommodated second class people (including colored people and foreigners) were not permitted in first-class neighborhoods.

The Supreme Court under the patrician leadership of Chief Justice Taft was an establishment of the ruling elite. Most of the Associate Justices (Pierce Butler, Holmes, James C. McReynolds, Edward Sanford, Harlan Fiske Stone, and Willis Van Devanter) were the well-educated sons of upper-class Protestants of old American stock. The two notable exceptions were Brandeis, who was a product of the German-Jewish aristocracy, and Sutherland who had escaped his background as a poor Mormon immigrant to become a parvenu plutocrat. To the extent that the effect of zoning was to re-enforce the existing social order and to keep everyone in his proper place, Metzenbaum and Bettman could expect a sympathetic ear from such substantial citizens. The task of the advocates was to provide a decision theory with which the Court's *laissez-faire* majority would be comfortable.³⁵

Both briefs had weaknesses. Metzenbaum's view was vulnerable to ideological attack. It required that traditional police power objectives (suppression of nuisances and promotion of public health and safety) be expanded to include the promotion of the "general welfare." The Court was being asked to embrace a "sociological jurisprudence" and to deprive private property owners of their investment-backed expectations.

Bettman's view provided the Supreme Court with a rationalization that it might employ to reconcile zoning with its precedents. But the argument that zoning was designed to suppress nuisances highlighted the fact that zoning discriminated on the basis of class. "One family home districts" were zones in which only the well-to-do could afford to live. Cheap, multi-family housing, nuisances by no stretch of the

traditional legal imagination, were excluded. In his widely read 1904 treatise *Police Power*, scholar Ernst Freund had dogmatically declared: ". . . in defining nuisances no standards may be established which discriminate against the poor."³⁶ Zoning violated that admonition.

By the 1920s, Freund had moderated his views and determined not to make "a fetish" of them. The reason for his change of heart was his residence on the South Side of Chicago. "The coming of colored people in the district" had convinced him of an overriding need for zoning as a means of racial exclusion.³⁷

It seems that the motivation behind zoning had more to do with social engineering than physical planning. The covert intention of the regulation was to exclude colored people (and other second class citizens) from white middle class neighborhoods. *Buchanan v. Warley*³⁸ had outlawed measures that overtly mandated *de jure* racial housing segregation but zoning accomplished the same goal, on the sly. Bettman's "nuisance suppressant" argument threatened disclosure of this "dirty little secret." Metzenbaum's "general welfare" argument avoided this exposure by maintaining the pretense that zoning established physical design standards that benefitted all members of the community.

The Opinion

Justice Sutherland was present along with his eight Brethren to hear the reargument in the *Euclid* case. Chief Justice Taft directed him to write the opinion for the majority. Sutherland likely had difficulty making up his own mind as to the constitutionality of zoning.³⁹

On one hand, the physical design standards mandated by zoning were an ideological anathema. Such constraints on the use of property were a novel and intrusive entry by government into a private market. But on the other hand, zoning promised to keep everything and everybody in its proper place. Zoning would protect the class system by segregating people according to their station in life. Blacks and immigrants could be kept out of first-class neighborhoods.

Writing for a 6-3 majority of the Court,

Justice Sutherland upheld the validity of the ordinance. On the confiscation issue, he discounted Ambler's evidence of economic loss, implicitly finding that the regulation did not go "too far." On the due process issue he followed Bettman's lead and held that zoning merely suppressed activities that came "very close to being nuisances." He dodged the equal protection issue by unapologetically assuming the plutocratic posture. Apartments were "parasites" degrading single-family detached neighborhoods by cutting off light and air, and by increasing noise and traffic. He ignored the fact that single-family zoning was designed to promote segregation by class and race.⁴⁰

Bettman's advocacy carried the day. In the final analysis Sutherland favored his social self-interest over his economic ideology. Bettman provided him with a rationalization that reconciled zoning with the precedents, and that made expansion of the police power unnecessary. Metzenbaum's concern that talk of nuisance would expose zoning's invidious discrimination proved misplaced; Sutherland overlooked the evidence of class and racial bias. The Village was free to put its ordinance into force and effect.⁴¹

And in a final note of irony Euclid Village lawyer James Metzenbaum gained a national stature. He became a nationwide expert and his book, **The Law of Zoning** became the standard legal treatise. All his fame and recognition seem based upon the success of an argument he studiously disdained.⁴²

Endnotes

¹ Arthur V. N. Brooks, "The Office File Box—Emanations from the Battlefield" in Charles M. Haar and Jerold S. Keyden, eds., **Zoning and the American Dream** (1989) 3-5; *Ambler Realty v. Village of Euclid*, 297 F. 307 (N.D. Ohio 1924); Metzenbaum "Briefs on Behalf of Appellants," 139, reprinted in **Landmark Briefs and Arguments in the Supreme Court of the United States**, vol. 24, 560.

² Metzenbaum "Briefs on Behalf of Appellants," 45, 81, 137 reprinted in **Landmark Briefs and Arguments in the Supreme Court of the United States**, vol. 24, (1975) 466, 502, 558.

³ Bettman, "Brief on Behalf of National Conference on City Planning," 23-28, 62, reprinted in **Landmark Briefs and Arguments in the Supreme Court of the United States**, vol. 24, (1975) 785-790, 824.

⁴ See, e.g., *Goldman v. Crowther*, 147 Md. 282, 128 A. 50

(1925).

⁵ Metzenbaum "Briefs on Behalf of Appellants," 42-43 reprinted in **Landmark Briefs and Arguments in the Supreme Court of the United States**, vol. 24, (1975) 870-871.

⁶ See, e.g., Richard Epstein, **Takings: Private Property and the Power of Eminent Domain** (1985).

⁷ Howard Gillman, **The Constitution Beseiged** (1993) 148.

⁸ John M. Gries, "The City Plan and What It Is," in "Zoning in the United States," *The Annals of the American Academy of Political Science*, Vol. 155 Part II (1931) 180.

⁹ United States Department of Commerce, **A Standing Zoning Enabling Act**, Washington (rev. ed. 1926) "Foreword"; United States Department of Commerce, **A Zoning Primer** (1926) 6.

¹⁰ U.S. Const. Amend. XIV.

¹¹ *Munn v. Illinois*, 94 U.S. 113 (1877).

¹² *Chicago, Burlington and Quincy Railroad Company v. Chicago*, 166 U.S. 226 (1896).

¹³ Ray A. Brown, "Due Process of Law, Police Power, and the Supreme Court," *Harvard Law Review* 40 (1927) 943-44.

¹⁴ *Pennsylvania Coal Company v. Mahon*, 260 U.S. 393 (1922).

¹⁵ Ray A. Brown, "Due Process of Law, Police Power, and the Supreme Court," *Harvard Law Review* 40 (1927) 943-44. See, e.g.: *Adkins v. Children's Hospital*, 261 U.S. 525 (1923); *Wolff Co. v. Industrial Court*, 262 U.S. 522 (1923); *Burns Baking v. Bryan*, 264 U.S. 504 (1924).

¹⁶ *Hagar v. Reclamation District*, 111 U.S. 701 (1884).

¹⁷ *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920).

¹⁸ *Buchanan v. Warley*, 245 U.S. 60, 70 (1917).

¹⁹ Justice Holmes in *Buck v. Bell*, 274 U.S. 200, 208 (1927).

²⁰ *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

²¹ *Pennsylvania Coal Company v. Mahon*, 260 U.S. 393, 413 (1922).

²² Ernst Freund, **The Police Power: Public Policy and Constitutional Rights** (1904), reprint edition 1976 Arno Press.

²³ Ernst Freund, "Some Inadequately Discussed Problems of the Law of City Planning and Zoning," *Planning Problem Town, City and Region: Papers and Discussion at the Twenty-first National Conference on City Planning* (1929) 92.

²⁴ Freund, "Some Inadequately Discussed Problems . . ." 81, 92.

²⁵ *Buchanan v. Warley*, 245 U.S. 60 (1917).

²⁶ Newton E. Baker & Robert Morgan, "Brief on Behalf of Appellee" 79 reprinted in **Landmark Briefs and Arguments in the Supreme Court of the United States**, vol. 24, (1975) 649.

²⁷ *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

²⁸ *Ambler Realty v. Village of Euclid*, 297 F. 307, 316 (N.D. Ohio 1924).

²⁹ *Ambler Realty v. Village of Euclid*, 297 F. 307 (N.D. Ohio 1924).

³⁰ Joel Francis Paschal, **Mr. Justice Sutherland: A Man Against the State** (1951) 236-238; Seymour Toll,

Zoned American (1969) 248-253.

³¹ James Metzenbaum, **The Law of Zoning** (2d ed. 1955) Vol. 1, 57.

³² Toll, **Zoned American**, 236.

³³ Metzenbaum, **The Law of Zoning** 56-58; Toll, **Zoned American**, 235-239. Timothy A. Fluck, "Euclid v. Ambler: A Retrospective" *J. Amer. Planning Association* 52 (1986) 330-35. Felix Frankfurter and James M. Landis in their preface to **The Business of the Supreme Court** (1928) vii-viii, suggest (but do not confirm) that in 1926 Supreme Court Justices who miss the oral argument do not participate in the decision.

³⁴ Metzenbaum "Briefs on Behalf of Appellants (On Rehearing)," 42-43 reprinted in **Landmark Briefs and Arguments in the Supreme Court of the United States**, vol. 24, (1975) 870-871.

³⁵ Toll, **Zoned American**, 245-248; Constance Perin, **Everything in its Place: Social Order and Land Use in America** (1977) passim.

³⁶ Freund, **The Police Power** 161.

³⁷ Freund, "Some Inadequately Discussed Problems..." 81, 92-93.

³⁸ *Buchanan v. Warley*, 245 U.S. 60 (1917).

³⁹ According to a law clerk's recollection Sutherland originally had been writing an opinion holding zoning unconstitutional and then changed his mind. But the clerk's recollection is almost certainly garbled. He remembers Sutherland as involved in writing an opinion for the Court following the first argument in the *Euclid* case who then requested a reargument after which he changed his mind and upheld the ordinance. Since Justice Sutherland was not present for the first argument in the *Euclid* case, it seems unlikely that he would have been writing the opinion. Alfred McCormack, "A Law Clerk's Recollections," 46 *Columbia Law Review* 710 at 712 (1946).

⁴⁰ *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

⁴¹ *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

⁴² Metzenbaum, **The Law of Zoning**.