

about \$28,730. These several items from a long list indicate the monetary importance, at least, of ample provision of water supply for domestic consumption and fire fighting.

The size of storm water sewers is dependent, among other things, on the amount of surface which is impervious to water and in the zone or districts devoted to cottages, with open lawns, narrow sidewalks, with grass plots between the curb and footway the surface impervious to water is much less than in the solid row house districts, generally with wide concrete footways, a rear yard which is in all probability occupied by a garage and no sideyards. Consequently in the cottage area districts smaller storm water sewers are required than in the solid row house districts. With a zone plan such sewers can be designed to adequately care for the different districts, resulting in the saving of considerable expense.

In the case of sanitary sewers the engineer, with a definite plan controlling the density of population, can design such sewers to adequately serve the different sections of the city at a minimum expenditure of money and the danger to public health is minimized by reason of the immediate and efficient disposition of all sewage. Where the sewage becomes inadequate cess pools must be used.

The location of schools, one of the most important functions of a growing municipality, can only properly be done based upon a city plan effectuated by comprehensive zoning. Suppose the city decides to put a school in a particular neighborhood contemplating the future development in accordance with that which exists, which is to say, about twelve or sixteen families per acre, as in an ordinary cottage neighborhood, and shortly after the erection of the school several rows of houses or large apartment houses are erected in the immediate vicinity increasing the population density from sixteen families per acre to eighty or one hundred families per acre, is it not apparent that the school facilities quickly become inadequate for proper instruction and the health and safety of the children are endangered by overcrowding? Had the cities of the United States accepted zoning and city planning long before they did, no doubt the location of many of the schools which are burdened to such an extent that the students are required to attend in shifts, not only in Baltimore but all over the country, would have been more wisely planned. As is happening in the old sections of Baltimore City today, the city is required to purchase additional ground for school facilities at greatly increased prices, the tax-payers bearing the burden, whereas under a city planning and zoning law this situation would be rare.

A necessary adjunct to the health and welfare of any city is its freedom from slum or tenement conditions. The open spaces assured by zoning, the control of the population density and the control of the height of buildings, especially in the residential areas, offer as much protection from slum conditions as can be obtained. In other words, without zoning, two or three, or perhaps five families may dwell in one house and although the provisions of the building code attempt in substance to prevent this, it is a zoning ordinance which requires that each family be provided with a certain number of square feet of lot area.

It seems the following questions propounded by Judge Bond in his dissenting opinion in the case of *Goldman vs. Crowther*, 147 Md. 282, have been amply justified, both by the number of States subsequently adopting zoning and the decisions of the Supreme Court of the United States. Chief Judge Bond asks the following important

questions at page 317, "Can we confidently say from our own experience that there cannot have been any utilitarian or administrative ends which were thought by promoters of the plan to demand the separation of business and dwellings as a larger method of handling congested populations with which the officials will have to deal in the future?" * * * "And may it not be that the stresses and strains of living in a large modern city, with all its complex activities have grown to a point where the separation of business from dwelling places offers a material, or even necessary, aid in the maintenance of the health and vigor of the city population?"

James Metzenbaum in his work on Zoning,⁷ at page 128, states, "The principles underlying the exercise of police power are old, but it is seen from the decisions of the Courts, that they are constantly being applied to new situations. A very great necessity for this application is in connection with our rapidly growing communities. It has been found that the usual regulations found in building codes are not comprehensive enough to control the growth of a city upon welfare and healthful lines; to restrict manufacturing to sections best adapted to it and where it will produce the least injury; to prevent the blighting of large areas by industrial plants and business of a character unwholesome to inhabitants; to prevent "slums" and congested living quarters, which develop into blighted territory; to provide for the stability of property values, not only to home owners but to business houses and industrial plants as well—which makes for a greater public welfare; to limit fire risks; to prevent lack of air and light; to enforce reasonable regulations as to light and air in building construction; to limit height of buildings—all of which, when properly applied, come well within the municipal powers.

Some cities assume this risk too late—after most of the damage has been done, after its "blighted" territories, its congested districts, its resulting "quarters" and its "mixed" areas have crowded its hospitals, have taxed its Juvenile Courts, have greatly impoverished its tax returns, have made greater police and fire departments necessary, have increased its daily accidents and have driven out many of its homes."

President Hoover at the opening session of the White House conference on Child Health and Protection said: "In the last half century we have herded fifty million more human beings into towns and cities where the whole setting is new to the race. We have created highly congested areas with a thousand changes resulting in the swift transition from a rural and agrarian people to an urban, industrial nation.

"Perhaps the widest range of difficulties with which we are dealing in the betterment of children grows out of this crowding into cities. Problems of sanitation and public health loom in every direction. Delinquency increases with congestion. Overcrowding produces disease.

"Some of the natural advantages of the country child must somehow be given back to the city child—more space in which to play, contact with nature and natural processes. Of these the thoughtless city cheats its children. Architectural wizardry and artistic skill are transforming our cities into wonderlands of beauty, but we must also reserve in them for our children the yet more beautiful art of living."

Growth.

By the end of 1916 there were eight zoned cities in the United States; these were augmented by thirty-eight in 1920 and to seventy-six in 1921. In 1922, New York, New Jersey, Illinois and

Massachusetts showed considerable activity, the additional cities numbering one hundred and one, increasing the total to one hundred and seventy-seven. California and Illinois were quite active in 1923 and, together with a number of States adopting zoning for the first time, brought the number of zoned municipalities to two hundred and eighty-three in 1924. Today more than thirty-nine million people residing in eight hundred and eighty-five cities, towns and villages, comprising a number equal to three-fifths of the urban population of the United States, have the protection afforded by zoning regulations, according to the results of a survey just completed by the Division of Building and Housing of the Department of Commerce. Of the ninety-nine cities having a population of one hundred thousand or more, according to the 1930 census, eighty-eight are now zoned.

The possibilities for the continued rapid growth of zoning have been greatly increased by virtue of State enabling acts which have been passed by the Legislatures of every State in the United States, Vermont being the forty-eighth and last State to pass such an act this year.

Fundamentals.

The time was when the owner of land had the right to do exactly what he pleased with it. It was from the center of the earth to the sky and nothing could interfere with the use of the land for any purpose the owner desired. Then along came the laws designed to abate a nuisance and a restriction was thereby placed on private lands in the interests of public health. As Blackstone has observed, "If a person keeps his hogs or other noisome animals so near the house of another that the stench of them inconveniences him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is if one's neighbor sets up and exercises an offensive trade, as a tanner's, a tallow chandler's, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places."⁸

Later came the building codes, which provided that buildings should be built following very definitely prescribed rules, in the interest of structural safety and sanitation, and thus another limitation was placed on the use of private property. Fire limits were next added, which demanded fireproof construction in certain localities and height regulations grew therefrom.

Step by step the absolute power of the property owner over his land was lessened in the interests of the health, safety, comfort and general welfare of the people and the land owners collectively. By the exercise of this community power the State has divested the individual of certain property rights in order that the good of the community might be secured.

It is upon this same "community power" or "police power" that the legality of zoning rests, and in most of the early cases the sole question presented was whether or not the ordinance in controversy was a rightful exercise of that power.

As long as the building codes, health measures, ordinances prohibiting noxious uses and height limiting ordinances were kept separately they encountered little difficulty in the Courts but as soon as they were united into one ordinance together with other features necessary in modern urban communities, such as the control of population density to prevent slum conditions and the maintenance of open spaces in the interest of the public health, the entire plan was received

with little sympathy by the Courts. Why? Simply because many lawyers and judges substituted their opinions for the opinions of engineers on the technical ramifications of zoning and because engineers substituted their opinions for the opinions of lawyers on the legal features of zoning.

"State Legislatures and City Councils who deal with the situation from a practical standpoint, are better qualified than the Courts to determine the necessity, character and degree of regulation which these new and perplexing conditions require; and their conclusions should not be disturbed by the Courts unless clearly arbitrary and unreasonable,"¹⁰ said the Supreme Court of the United States. And whether a zoning ordinance is arbitrary and unreasonable can only be determined from the entire plan in the light of the engineering principles whence it came. To take one provision of the ordinance aside from the general plan, and look at it singly is not a criterion for the reasonableness of the entire scheme. In the case of *Nectow vs. Cambridge*, 277 U. S. 183, the Supreme Court, although it held that a district line in this particular case was drawn arbitrarily, said, "An inspection of the plat of the city upon which the zoning districts are outlined, taken in connection with the master's findings, show with reasonable certainty that the inclusion of the locus in quo in question is not *indispensable to the general plan*." Here the Supreme Court recognizes the necessity for the collaboration of the different phases of the law—it is not the component parts, but the whole law—districts included, which beneficially effect the health, safety and welfare of the community and are designed so to do.

When some technical provision of a building code is involved, the Court would hardly decide it unreasonable or arbitrary, without first hearing engineers on the subject. Zoning as an engineering science, should be explained by men who know its aims and technicalities.

The Court of Appeals of Maryland, in the case of *Goldman vs. Crowther*, *supra*, held the "use" provisions of Ordinance Number Nine Hundred Twenty-two of the Mayor and City Council of Baltimore, adopted May 19, 1923, invalid, and Judge Offutt speaking for the majority of the Court said, "From an examination of the maps which form a part of the ordinance, it appears that the residence zones or districts of Baltimore City comprise a number of separated areas varying in extent, irregular in outline, and located *without apparent reference to any definite plan*, but which nevertheless in the aggregate include a very large part of the total area of that city. And by reference to the ordinance it appears that in those districts no land or building can be used and no buildings erected except for one of the fifteen specified uses, to which reference has already been made, unless specially authorized by the Board of Zoning Appeals. These restrictions are wholly arbitrary and have no legal relation to public welfare but rest solely upon aesthetic grounds." Before Ordinance Nine Hundred Twenty-two was passed, engineers and their assistants spent nearly two years preparing the following studies at a cost to the municipality of \$26,000.¹¹

Areas unavailable for resident use.

Athletic fields and playgrounds.

Deaths due to tuberculosis in 10 years, 1891-1900.

Distribution of place of residence of employees of Maryland Casualty and Maryland Assurance Corporation in relation to place of employment.

Existing and proposed drainage systems and areas.

Existing parks and proposed parks as suggested by the City Plan Commission.

Existing and proposed public schools. Existing and proposed major street plan.

Existing and proposed sanitary collecting sewers.

Existing and proposed sanitary systems.

Existing and proposed police stations.

Existing public schools, white and colored.

Existing parks in relation to population distribution.

Existing and proposed parks and cemeteries in relation to population distribution.

Existing parks and residences and proposed parks as recommended by City Plan Commission.

Growth of Baltimore, 1752-1914.

Existing industrial areas, 1921.

Electrical Commission plan of conduit system, old city and Annex.

Grade crossings.

Hospitals, sanatoriums, homes, asylums and institutions.

Industrial sites with railroad sidings. Infant mortality.

Location of births during 1921.

Location of existing and proposed free Pratt Libraries.

Location of employees of L. Greif & Company, Milton and Ashland avenues, in relation to place of employment.

Location of employees of American Wholesale Corporation.

Location of employees of Wise Bros.

Location of employees of General Electric Company.

Location of employees of Henry Sonneborn & Company.

Location of fire apparatus.

Location of fires during 1920.

Location of fire houses.

Location of industrial areas.

Location of leading hotels.

Location of markets.

Location of monuments.

Location of post offices.

Location of public baths.

Location of public baths according to population distribution.

Location of playgrounds, public and private.

Location of playgrounds and their relation to population distribution.

Location of recreation centers.

Location of sanitary sewers.

Location of storm water sewers.

Location of water mains and size.

Location of wooded areas.

Main radial streets of the tentative arterial street plan.

Natural and uncontrolled segregation tendency of certain races.

Plan of conduit system, old city and Annex, Electrical Commission.

Public streets.

Population distribution, its relation to present industrial areas.

Population distribution.

Police beats used in housing survey.

Parks and public squares.

Parks, cemeteries and public squares.

Present park system.

Plan for streets, parks and waterfront development, City Plan Commission.

Relation of residence areas to all property devoted to business use.

Steam and electric railroads within Baltimore City.

Street car system.

Streets 66 feet wide or over.

Streets paved with improved paving

December 31, 1919.

Tentative arterial street plan in relation to existing park system.

Tentative arterial street plan, City Plan Commission.

Tentative arterial street plan in relation to proposed and existing park system.

Tentative arterial street plan in relation to population distribution.

Tentative use map with suggested changes.

Tentative use map as submitted for public hearing.

United Railways and Electric Company fare zone map.

United Railways and Electric Company complete system.

Land value map.

Height map.

Non-taxable property.

Widths of existing streets.

The Zoning Commission designed the districts and regulations applicable thereto based upon these studies. Yet, a majority of the Court of Appeals of Maryland, without the benefit of testimony of engineers held the "use" provisions of the ordinance were predicated upon aesthetic grounds and hence beyond the police power of the State and municipality.

In many early cases the ordinance was defeated because those defending it failed to present to the Court the engineering foundation of the subject from which flows the very essence of its relation to the police power.

Police Power.

Dr. Willoughby in his work on Constitutional Law,¹² in discussing the police power states, "It extends to every possible phase of what the Courts deem to be the public welfare it is a general right upon the part of the public authority to abridge, or if necessary, to destroy, without compensation, the property or contract rights of individuals, and to control their conduct in so far as this may be necessary for the protection of the community or a particular class of the community, against danger in any form, against fraud, or vice, or economic oppression, or even for the securing of the public convenience." Or as briefly stated in the Bank Guaranty case,¹³ "It may be said in a general way that the police power extends to all the great needs."

Although every case dealing with the constitutionality of zoning raises the question, by virtue of Section I of the 14th Amendment to the Constitution, the Supreme Court has said repeatedly that the 14th Amendment to the Constitution does not impair the police power of a State or a municipality.¹⁴

In short, the police power, as such, is not confined within the narrow circumscription of precedents, resting upon past conditions which are not at all applicable to present-day conditions, obviously calling for revised regulations to promote the health, safety, morals or general welfare of the public. As a commonwealth develops politically, economically and socially the police power likewise develops within reason to meet the changed and changing conditions. What was at one time regarded as an improper exercise of the police power may now, because of changed living conditions, be recognized as a legitimate exercise of that power. This is so because: "What was a reasonable exercise of this power, in the days of our fathers may today seem so utterly unreasonable as to make it difficult for us to comprehend the existence of conditions that would justify same; what would by our fathers have been rejected as unthinkable is today accepted as a most proper and reasonable exercise thereof."¹⁵

"The police power of a State is an indispensable prerogative of sovereignty and one that is not to be lightly limited. Indeed, even though at times its operation may seem harsh, the imperative necessity for its existence precludes any limitation upon its exercise save that it be not unreasonably and arbitrarily invoked and applied."¹⁶

In its inception the police power was closely concerned with the preservation of the public peace, safety, morals and health without specific regard for the general welfare. The increasing com-

plexity of our civilization and institutions later gave rise to cases wherein the promotion of the public welfare was held by the Courts to be a legitimate object for the exercise of the police power.¹⁹ As our civic life has developed so has the definition of "public welfare" until it has been held to "embrace regulations to promote the economic welfare, public convenience and general prosperity of the community."²⁰ Thus it is apparent that, "the police power is not a circumscribed prerogative, but is elastic and, in keeping with the growth of knowledge and the belief in the popular mind of the need for its application, capable of expansion to meet existing conditions of modern life and thereby keep pace with the social, economic, moral and intellectual evolution of the human race. In brief there is nothing known to the law that keeps more in step with human progress than does the exercise of this power and that power may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."²¹

In an effort not to limit unreasonably the elasticity of the police power, the Supreme Court has declined to define the extent of this power. Consequently we find quotations such as the following taken from the Supreme Court reports: "We content ourselves with saying that this Court has refrained from any attempt to define with precision, the limits of the police power,"²² and as Mr. Justice Day has said, "The limitations upon the police power are hard to define, and its far-reaching scope has been recognized in many decisions of this Court. At an early day it was held to embrace every law or statute which concerns the whole or any part of the people, whether it relates to their rights or duties, whether it regards them as men or citizens of the State, whether in their public or private relations, whether it relates to the rights of persons or property of the public or any individual within the State."²³

Probably before the Euclid Village case it would have been necessary to justify zoning by tracing very carefully the history of the police power, and its fickle application by the Courts, but interesting as this may be, the Euclid Village case has very definitely settled the question as to the general scheme of zoning. Suffice it to say the Supreme Court has suggested it would be unwise to define this power, that it is elastic and that conceptions as to its application are rapidly changing to a broader and, I might add, to a beneficial degree, resulting in the betterment of urban living conditions.

As far as zoning is concerned the arms of the police power have always been long enough to encircle it but the Courts have failed to permit it so to do. With the change in the attitude toward the police power has come the universal acceptance of zoning.

Change in Query.

In the early zoning cases the question presented to the Court in almost every instance was whether the ordinance under consideration was constitutional in its entirety, but since the Euclid Village case, the query has changed to whether or not a particular boundary line is arbitrarily determined or whether some provision of the ordinance is arbitrarily or unreasonably drawn as regards some particular person's property.

Although the Supreme Court in the Euclid Village case expressly upheld zoning, the following caution is to be observed, "Under these circumstances, therefore, it is enough for us to determine, as we do, that the ordinance in

its general scope and dominant features, so far as its provisions are here involved, is a valid exercise of authority, leaving other provisions to be dealt with as cases arise directly involving them."

This thought of the Court was exemplified in the case of *Nectow vs. Cambridge*,²⁴ which reached the Supreme Court from a decision of the Supreme Judicial Court of Massachusetts. The lower Court upheld the reasonableness of a district line of the zoning ordinance of the City of Cambridge.

Some people thought, after the decision in the Nectow case, that the Supreme Court had reversed itself as expressed in the Euclid Village case, but even a cursory examination of the cases reveals the distinction between them. In the latter case the Court held constitutional the general scheme of zoning but remarked that all of the provisions of any given ordinance (although the scope of the entire ordinance may be valid) are not necessarily valid and that each provision is, in a given case, subject to the scrutiny of the Courts.

In the latter case we have an illustration of what the Court stated in the former case, that is, that in the Nectow case the ordinance was conceded to be valid but the plaintiff contended the zone line, dividing his property into two different districts, was unreasonably and arbitrarily drawn, with which contention the Supreme Court of Massachusetts disagreed but with which the Supreme Court of the United States agreed.

The pertinent facts in the Nectow case are set out herewith because they offer at least an example of what the Supreme Court means by unreasonable. The Zoning ordinance of Cambridge divides the city into use, height and area districts and the use districts are further subdivided into residential, business and unrestricted districts. The plaintiff in error owned, before, and at the time of the passage of the zoning ordinance a tract of land containing 140,000 square feet, lying southeast of the intersection of Brookline and Henry streets. Brookline street runs in a northeasterly and southwesterly direction and Henry street in an easterly and westerly direction. A strip of the plaintiff's property 100 feet in depth and some 300 feet long, fronting on Brookline street was placed in a residential zone (R-3) while the remainder was placed in an unrestricted area (U-2).

It was shown that the city had made provisions for taking 35 feet of the plaintiff's property for widening Brookline street which would leave a strip 65 feet in width fronting on Brookline street. There are dwellings to the west across Brookline street and dwellings to the north across Henry street and to the south and southeast there are the tracks of the Boston and Albany Railroad, an assembling plant of the Ford Motor Company and a soap factory. The master found the 65-foot strip could not properly be used for dwelling purposes and the proximity of business made the drawing of the district line 100 feet (reduced to 65 by widening) from Brookline street unreasonable. Upon these facts the Supreme Court upheld the findings of the master.

Cases like the Nectow case are bound to arise since the district lines must be drawn somewhere. Perhaps the most difficult task which confronts a city in adopting zoning is the districting of the city. The commission, committee or board charged with this duty must necessarily exercise some degree of discretion and unless the district lines are clearly unreasonable, the Courts should be reluctant to disturb them.

State Court Summary.

Alabama—The Supreme Court of Alabama has not passed upon the constitutionality of zoning, although it has decided several cases involving the subject. *Longshore vs. City of Montgomery*, 218 Ala. 597.

Arizona—Zoning is to be upheld unless clearly arbitrary or unreasonable. *City of Tucson vs. Arizona Mortuary*, 272 Pac. 923.

Arkansas—The highest Court of Arkansas has held zoning a valid exercise of the police power. *Herring vs. Stanmus*, 169 Ark. 244.

California—Perhaps no other State Court with the exception of New York has so whole-heartedly adopted and upheld zoning as has California. *Miller vs. The Board of Public Works of Los Angeles*, 195 Cal. 477.

Colorado—Zoning held to be constitutional. *Averch vs. City and County of Denver et al.*, 78 Colo. 246.

Connecticut—The Courts of Connecticut have uniformly upheld the constitutionality of zoning. *Whitney vs. The Town of Windsor*, 95 Conn. 357.

An interesting case came from the Supreme Court in October, 1929, involving a section of the zoning ordinance concerning non-conforming uses. The ordinance provided that where more than fifty per cent. of a non-conforming use had been destroyed by an act of God the business must be discontinued. More than fifty per cent. of a barrel plant was destroyed by fire and the Court held that the above mentioned provisions of the ordinance required the company to remove its stock and discontinue business. *State vs. Hillman*, 147 At. 294.

Delaware—Delaware has sanctioned zoning in *Wilmington vs. Turk*, XIV Del. Chancery Rep. 392, but held in that case that the exclusion of a particular use from a certain district was not a valid exercise of the police power.

Florida—The Florida Court in the case of *Shad vs. Fowler*, 90 Fla. 155, which was decided before Florida had a State Enabling Act, held that a municipality did not have power to pass a zoning law.

Georgia—Zoning has been held unconstitutional by the highest Court of Georgia, especially as to the districting. *Smith vs. The City of Atlanta*, 161 Ga. 769; *Barton vs. Rogers*, 166 Ga. 802.

Illinois—Although the Illinois Court decided adversely to zoning in *Roos vs. Kaul*, 302 Ill. 317, after the State Enabling Act was passed, the Court overruled its former decision. *Aurora vs. Burns*, 319 Ill. 84.

Iowa—The case of *Marquis vs. The City of Waterloo*, 228 N. W. 870, decided by the Iowa Court after the passage of a State Enabling Act, held that zoning was constitutional.

Kansas—Zoning was declared to be constitutional in the case of *Ware vs. The City of Wichita*, 113 Kansas Rep. 153. Subsequent cases have followed this decision.

Kentucky—Even before the State Enabling Act the highest Court of Kentucky upheld zoning under the general delegation to the municipality of the right to exercise the police power. *Fowler vs. Obier*, 224 Ky. 742.

Louisiana—Several attempts were made at zoning in Louisiana before the State Enabling Act was passed and two of the most important cases that reached the Supreme Court before such Act was passed were: *Calvo vs. City of New Orleans*, 136 La. 480 and *Blaise vs. The City of New Orleans*, 142 La. 73. These two cases have improperly been cited as authorities for the proposition that zoning is unconstitutional but the Court in these cases merely declared that the Legislature had not given the municipality such broad power. And so in *Civello vs. City of New Orleans*, 154 La. 271, we find the

Court sanctioning zoning after the Enabling Act was passed.

Maine—The zoning ordinance of York Harbor Village was upheld in the case of *York Harbor Village vs. Libby*, held. 126 Me. 537.

Maryland—The "use" provisions of Baltimore's first comprehensive ordinance were declared unconstitutional in *Goldman vs. Crowther*, 147 Md. 282. The side yard provisions of the area regulations were expressly held to be a valid exercise of the police power in *R. B. Construction Co. vs. Jackson*, Mayor, 152 Md. 671. No case has been decided under a new comprehensive zoning ordinance, passed pursuant to a State Enabling Act.

Massachusetts—Opinion of Justices, 234 Mass. 597, rendered before the State Enabling Act was passed, supported the fundamental legality of zoning. See *Lowell vs. Stocklosu*, 250 Mass. 52.

Michigan—Zoning has been in effect since 1925. Particular districting held not valid in *City of North Muskego vs. Miller*, 227 N. W. 743. But see *Dawley vs. Collingwood*, 218 N. W. 766.

Minnesota—The Supreme Court of this State upheld zoning in *Beery vs. Houghton*, reported in 164 Minn. 146, overruling the case of *Banner Grain Co. vs. Houghton*, 142 Minn. 28 which was decided before an Enabling Act was passed.

Mississippi—Before the State Enabling Act was passed the Court held it was not within the police power of a municipality to prohibit stores in a residential neighborhood. *Fitzhugh vs. City of Jackson*, 132 Miss. 585. In *Dart vs. City of Gulfport*, 147 Miss. 534, the Court declined to pass on the constitutionality of zoning.

Missouri—Zoning in Missouri has had trouble similar to that encountered in Maryland. From the very first cases the Supreme Court decisions have been by a divided Court. After the Enabling Act was passed, however, the majority of the Court upheld comprehensive zoning in *State ex rel. Oliver Cadillac Co. vs. Christopher*, 317 Mo. 1179.

Nebraska—In the case of *Westminster Church vs. Edgecomb*, 108 Neb. 859, the Court held the zoning ordinance of Omaha invalid as to the percentage of lot permitted to be occupied because the ordinance did not provide for a Board of Adjustment, to grant relief in meritorious cases.

New Hampshire—Zoning declared constitutional in *Sundeen vs. Rogers*, 83 N. H. 253.

New Jersey—Zoning has encountered considerable difficulty in New Jersey. Even with an Enabling Act the Courts refused to sanction it. An amendment to the New Jersey Constitution was submitted to the people and became a part thereof in 1928. Shortly thereafter the case of *Koplin vs. Village of South Orange* was presented to the highest Court and was upheld. 144 at 920.

New York—A host of cases from New York, including the first zoning case decided in this country (*Lincoln Trust Co. vs. Williams Building Corp.*, 229 N. Y. 313), uphold zoning as a valid exercise of the police power. See *Wulfsohn vs. Burden*, 241 N. Y. 288.

North Carolina—Zoning upheld in the case of *Harden vs. City of Raleigh*, 192 N. C. 395.

North Dakota—In the case of *City of Bismarck vs. Hughes*, 53 N. D. 838, the zoning ordinance of Bismarck was upheld.

Ohio—The Cincinnati zoning ordinance was presented to the Ohio Supreme Court in *Pritz vs. Messer*, 112 O. S. 628 and its constitutionality upheld.

Oklahoma—A temporary zoning ordinance was upheld in *McCurley vs. City of El Reno*, decided in 1929, and found in 280 Pac. 467.

Oregon—In *Kroner vs. City of Portland*, 116 Or. 141, the zoning ordinance of Portland was upheld by a divided Court.

Pennsylvania—Zoning was declared unconstitutional in *White's Appeal*, 287 Pa. 258, decided before the United States Supreme Court decided the Euclid Village case, but in *Ward's Appeal*, 289 Pa. 458, the Court followed the Euclid Village case and upheld reasonable zoning as constitutional.

Rhode Island—Although the constitutionality of zoning seems not to have been presented, it seems the fundamental legality of zoning was conceded in *Richard vs. Zoning Board of Review*, 47 R. I. 102.

Tennessee—The Memphis Zoning Ordinance was upheld in *Spencer-Stucia Company vs. Memphis*, 155 Tenn. 70.

Texas—The decisions from this State indicates that the zoning laws have been drawn including features clearly objectional throughout the country and hence, to date, the Court has failed to uphold any ordinance presented. *Span vs. Dallas*, 111 Texas 350, probably the first case decided in Texas, is not a case involving a comprehensive zoning ordinance.

Utah—Certain uses may be prohibited from residential sections—not under a comprehensive zoning law—*Salt Stove Repair Works*, 55 Utah 447. Although a zoning ordinance has not been presented to the Court, the reasoning in the above case is indicative of the Court's attitude toward the general subject.

Virginia—In *Gorub vs. Fox*, 145 Va. 554, the highest Court of Virginia upheld zoning, and this decision was sustained on appeal to the United States Supreme Court in 274 U. S. 603.

Washington—The constitutionality of comprehensive zoning not questioned in this State. See *Liberty Lumber Co. vs. City of Tacoma*, 142 Wash. 377, also *Washington State vs. Robert*, 144 Wash. 74, which was reversed by the Supreme Court of the United States in 278 U. S. 116.

West Virginia—So far, the only case decided in this State is adverse to zoning, *Fruth vs. Board of Charleston*, 75 W. Va. 456.

Wisconsin—Zoning upheld in *State ex rel. Carter, vs. Harper, Commissioner of Building of Milwaukee*, 182 Wis. 148.

Wyoming—No pronouncement of the constitutionality of zoning, but see *Wikstrom vs. City of Laramie*, 37 Wyo. 389.

It seems that the highest State Courts of the following States have not passed upon the constitutionality of comprehensive zoning: Idaho, Indiana, Montana, Nevada, New Mexico, South Carolina, South Dakota, Vermont.

Conclusion.

It may be properly said that zoning has caused the cry "too much law" to be heard again even as it was heard time and time again during the so-called "formative stages" of American law. But, as Dean Pound has said, "It is not the business of the lawyer to fight an obstinate rear guard action in such a period of legal growth."

The crest of the long uphill fight for zoning has undoubtedly been reached.

Yet, we must remember that reasonable zoning is the kind of zoning of which the Courts speak. But what is *reasonableness* in the constitutional sense? "In constitutional law, reasonableness may be said to mean intellectual genuineness and thoroughness, in contrast with the arbitrariness of a haphazard, guesswork, careless solution of the problems before the legislative body. The fact that the zone plan is genuinely and carefully wrought to secure a development of the territory of the city which will promote the health, safety, convenience, prosperity and social welfare of the people of the city, and that the map and regulations are all based on a careful and thorough survey and a genuine taking of the economic and social factors into account, will demonstrate the reasonableness of the ordinance. The constitutional validity is the product of, or, we might say, the reward of the social and moral validity of the plan, its sincerity and thoroughness."²²

City officials having the power of appointing Zoning Commissions and Boards hold the fate of zoning in their hands, especially in the States where zoning has not been firmly established. Men of the highest integrity and intellect and possessing sound and sane judgment should compose the board or commission charged with administering or drafting the law and the zoning districts. Thus it may be said the success of zoning depends largely upon the men who administer or draft the law and the responsibility for the selection of capable men rests with the possessor of the appointing power.

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ZONING

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Zoning.

Comprehensive zoning is the division of a city into one or more use, height and area districts and the prescription of certain rules and regulations governing the use of land and/or buildings in the different use districts, the height of buildings in the different height districts and the bulk and location of buildings in the different area districts, the regulations being the same for similar districts and different for dissimilar districts, and such division of land and adoption of rules and regulations being designed to promote the public health and safety; to secure safety from fire; to provide adequate light and air; to prevent the over-crowding of land; to avoid undue concentration of population; to lessen congestion in the streets and to facilitate the adequate provision of water, sewerage, schools, parks and other public requirements.

Origin.

Although the fundamentals of zoning seem first to have been applied in Germany, Baumeister,¹ the German authority, records that zoning was created by a decree of Napoleon I, issued October 15, 1810. It cannot be definitely said just what the purpose of this edict was but it is likely it was intended as an emergency measure to ban those uses which were considered detrimental to health, within a certain distance from the "home sections." Whether the purpose was as above indicated or not, it seems when the Prussian Code was adopted the principles of the decree of Napoleon formed the nucleus of a plan just a little broader in scope and, although far from zoning as understood today, the groundwork of the structure was unmistakably there. Based in all probability upon the general scheme as laid down by the Prussian Code and Napoleon's mandate, the laws of the German Empire truly contained the first conscious attempt at something resembling modern zoning, though of course, still not of the comprehensive type.

The Prussian Courts upheld ordinances segregating industries, offensive by reason of the emission of odor, smoke, noise, etc., and ordinances excluding from residential districts, not only these industries, but all activities likely unduly to increase traffic or in any way to disturb the peace and quiet of such localities.² According to the authorities "use" provisions were the first to appear (call them "nuisance laws," "health measures," or what you will), while the bulk, height and density of population control came later.

England, by the Town Planning Act of 1909, was introduced to a scheme which, while city planning in nature, contained many of the principles of zoning already known to the Germans and in effect in many German cities.

Subsequent to the World War and predicated largely upon conditions which arose therefrom, Parliament adopted an Act which made town planning (including some of the various zoning features hereinafter mentioned) mandatory upon every city in England that, on January 1st, 1923, would have twenty thousand or more population.³

Canada adopted Town Planning Acts just before the earliest ordinances were passed in the United States and although they were patterned largely after England's, at the beginning, many of them now bear a striking similarity to those of the United States.

Although not properly termed zoning ordinances, several of the States of the United States passed ordinances containing some of the features of zoning between 1910 and 1916. In July, 1916, New York passed the first comprehensive zoning ordinance adopted in this country. The ordinance divided the city into use, height and area districts and prescribed rules and regulations governing the several districts and sub-districts.

Like all legislation containing even a shade of infringement upon the old "bulwark of man's rights over his property" (which has a tune something like this—"a man may use his property in any way he pleases so long as he does not injure the rights of others"⁴), zoning ran the gauntlet of the many lawyers singing the refrain above mentioned, the unsympathetic views of the members of the "old school" adorning the American Bench, in whose ears the common law tune of property rights found a welcome reception, the stupidity and nearsightedness of care-laden State and city legislators, and those over-zealous souls who thought zoning was a panacea for all civil evils. Although the child zoning, after a rather peaceful entry into our country in 1916, has been buffeted from the Atlantic to the Pacific and from Canada to Mexico the mistakes which were made, the cuffings received, and the adverse criticism rendered during the child's maturity have only served to strengthen it and to help it to emerge victorious in 1926 when the United States Supreme Court upheld zoning in the case of *Euclid Village vs. Ambler Realty Company*.⁵

Even avowed opponents of zoning, if there remain any, must admit that there is not much argument, legal or otherwise, adverse to zoning which has not already been advanced and this in a large measure makes the decision in the Euclid Village case all the more remarkable. In other words, the opponents of zoning have used their strongest legal arguments, their keenest minds, their most talented spokesmen and these have not been enough.

Nature and Benefits.

One can hardly understand the benefits of a comprehensive zoning ordinance to a city unless the engineering principles upon which the ordinance is based are studied. Nor could the separation of one provision from another, or one district from another furnish the test as to the merits of zoning as a preserver of the public health, welfare and safety. The entire plan must be considered when questions concerning the relation of zoning to the police power, and its benefits to a city are discussed.

Strange to say, the conception that many people have of zoning goes no

further than an attempt to prohibit stores from residential neighborhoods and to restrain dollar seeking builders from erecting solid rows of brick houses in cottage areas, but there are a host of benefits to both the people at large and the municipality not commonly known, a few of which are mentioned below.

More readily understood by the average layman is the benefit derived from zoning measures in facilitating the fighting of fires. Without zoning, buildings could cover one hundred per cent. of the lot, could be erected close to street lines or alley lines and as high as the owner desired, thereby hampering the movement of firemen and making large areas of the city susceptible to conflagration. With buildings in such close proximity to one another, the isolation of nearby buildings becomes improbable, and access to the rear of the buildings impossible.

The size of a water main necessary to supply a residential development is smaller than one required to supply a neighborhood which has a sporadic commercial development. Consequently if commercial enterprises continue to be interposed throughout residential districts, the water main must be replaced with a larger main, sufficient to adequately supply the neighborhood with its changed conditions. Under a comprehensive zone plan, water mains may be so designed, predicated upon the growth and utility of property as controlled by the zoning ordinance, as to take care of the development without repeated change of mains, reducing the cost to the municipality and ultimately redounding to the benefit of the taxpayers in the form of a lower tax rate.

Another situation prevalent in many cities before zoning, was the introduction of high apartment houses or office buildings into districts where high-pressure water service had not been placed or planned. The water engineer in many instances had designed only the ordinary residential water service. Changed conditions naturally necessitated a change in the size of mains. Since the advent of zoning the size of water mains may be predetermined from the general zone districts. Frequently tall buildings had to be served with a special service at considerable expense to the city. Illustrative of these conditions are the following facts furnished by a former water engineer of the City of Baltimore.⁶ A seven-story apartment house in Roland Park on Upland avenue required a change of water service; the Industrial building on Preston street had a slack water supply if water was drawn from a twenty-inch valve in the vicinity; the Union Memorial Hospital on 33rd and Calvert streets could not be served from the same supply from which buildings in the neighborhood were served and a number of mains were required to be replaced with larger ones because of the introduction of business in residential districts or row houses in cottage districts.

A few examples will serve to illustrate the significance of the above statements. A six-inch main in Park Heights avenue from Belvedere avenue to Clark's lane valued at \$6,600 was replaced by a twelve-inch main at a cost of about \$50,400; three and four-inch mains in Old Pimlico road from Kate avenue to Belvedere avenue worth about \$3,900, were replaced by six and eight-inch mains at a cost of