

Cleanup on *Ginsburg*: The covenant provides in pertinent part that none of the six lots “shall be used except for one private residence” and that no “apartment buildings, boarding houses, stores, business houses, barns or stables” shall be “erected or maintained”.

I. PUBLIC CONTROL OF LAND USE

1. Public control of land use I propose to do it in 5 classes. We may fall behind in class but we’ll speed up toward the end. Keeping up is particularly important this year because we need to get in a case that the SCOTUS decided just recently.
2. The statute: Standard State Zoning Enabling Act, U.S. Department of Commerce (1926)
 - a. sec. 1 — the notion of the police power

SEC. 1. Grant of Power.—For the purpose of promoting health, safety, morals, or the general welfare of the community, the legislative body of cities and incorporated villages is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of a lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

- b. sec. 2 — uniform for each class and kind

SEC. 2. Districts.—For any or all of said purposes the local legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

- c. sec. 3 — comprehensive plan – and a repeat of the basic police-power type of public purposes

SEC. 3. Purposes in View.—Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

- d. sec. 4 — hearing 15 days’ notice by legislative body

SEC. 4. Method of Procedure.—The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and

from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality.

e. sec. 5 — change and amendment process

SEC. 5. Changes.—Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of 20 percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending feet therefrom, or of those directly opposite thereto extending feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

f. sec. 6 — the commission — the report

SEC. 6. Zoning Commission.—In order to avail itself of the powers conferred by this act, such legislative body shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such legislative body shall not hold its public hearings or take action until it has received the final report of such commission. Where a city planning commission already exists, it may be appointed as the zoning commission.

g. sec. 7 — board of adjustment or board of zoning appeals — special exceptions — appeals — variance

SEC. 7. Board of Adjustment.—Such local legislative body may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this act, may provide that the said board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. [The rest of this section is too long to quote in full, but you should read it for the light that it may cast on what you will do in the legreg course. It draws a distinction between special exceptions and variances that is worrh noting.]

h. sec. 8 — [enforcement by criminal fines, civil penalties, or injunction]

i. sec. ? — the concept of the non-conforming use

3. What was wrong w/the Town of Preble's attempt to zone? (population 1580 in 2000; 1393 in 2010; it was about 2000 in 1970)

<https://www.google.com/maps/place/Preble,+NY+13141/@42.7749345,-76.155907,1583m/data=!3m1!1e3!4m2!3m1!1s0x89da169346afc573:0x760790b5fd66ed2d?hl=en>

http://maps.google.com/maps?hl=en&rlz=1R2RNTN_enUS374&q=preble+ny+google+maps&um=1&ie=UTF-8&hq=&hnear=Preble,+New+York&gl=us&ei=CwKfTYaBKMOC0QGDmsGaBQ&sa=X&oi=geocode_result&ct=title&resnum=1&ved=0CBwQ8gEwAA

- a. zoning commission?
 - b. 12 days' vs. 15 days' notice? — notice of meeting for the Town Board — the map
 - c. lack of plan
 - d. who has the burden of proof?
 - e. court thought “spot zoning”?
 - f. May 23, 1970 was a Saturday, and was, I am told, the date of the first concert that the Grateful Dead held outside the US (in England)
4. Could the town have passed an ordinance banning rock concerts?
- a. statutory authority — take my word for it they had it (see DKM 3, p. 1028)
 - b. constitutionality
 - i. non-conforming use
 - ii. general notion of the police power
 - iii. overbreadth or discrimination
 - iv. making what isn't a nuisance
5. Why doesn't this ordinance do it?
- a. form over substance — Goldblatt (p. S473)
 - b. court control?
 - c. the court didn't see the argument?
6. How would Coase (p. S365) solve this problem?

II. ZONING

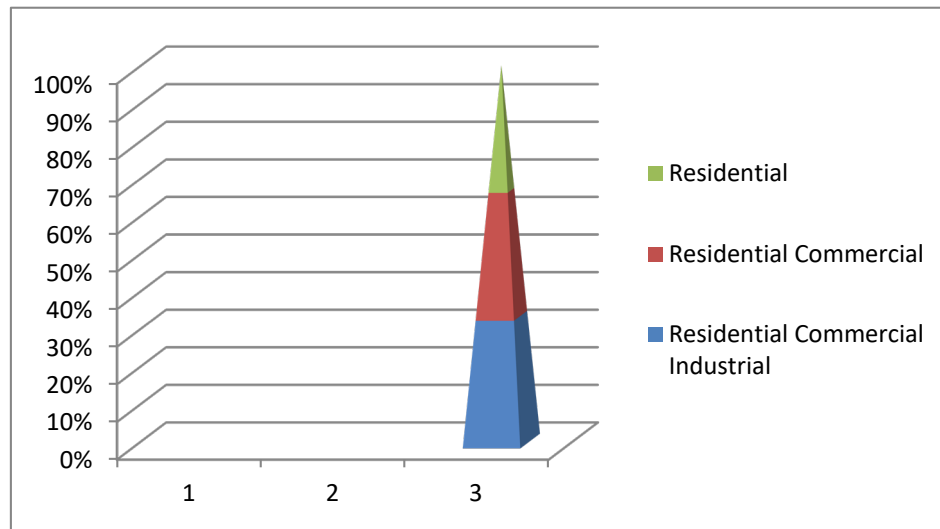
1. *Euclid*

https://www.google.com/maps/place/20001+Euclid+Ave,+Euclid,+OH+44117/@41.5642279,-81.5405689,3a,75y,314.66h,90t/data=!3m7!1e1!3m5!1sqUVuekmulCdEukjP-4UO3Q!2e0!6s%2F%2Fgeo2.ggpht.com%2Fcbk%3Fpanoid%3DqUVuekmulCdEukjP-4UO3Q%26output%3Dthumbnail%26cb_client%3Dsearch.TACTILE.gps

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The Fisher Body plant closed in 1993.

a. Euclidean zoning



- b. general attack on ordinance — standing
- c. churches, courts and libraries
- d. previous Supreme Court cases
- e. the maintenance of residential districts <— nuisance
 - i. overbreadth (how did the court get around this argument?)
 - ii. apartments (how did the court include them)
- f. *Nectow*
- g. consequences
 - i. Ohio Constitution vs. U.S. Constitution
 - ii. Euclid as a separate entity
 - iii. result in fact

2. *Pierro* (Note the case is more than 60 years old)

- a. Motels in Fort Lee vs. motels in Palisades Park [today](#); Temple Terrace [today](#)
- b. legitimate goal of regulation – motive vs. purpose
- c. classification – *Nectow* contrasted
 - i. as to area
 - ii. as to use

- d. possible exceptions for total exclusion
 - e. taking – the effect of regulation on particular property
 - f. the sliding scale of burden of proof
3. Some dichotomies – how do these apply to *Pierro*?
- a. purpose vs. method
 - b. general (zoning) vs. specific (nuisance-type)
 - c. the scheme in general vs. as applied