

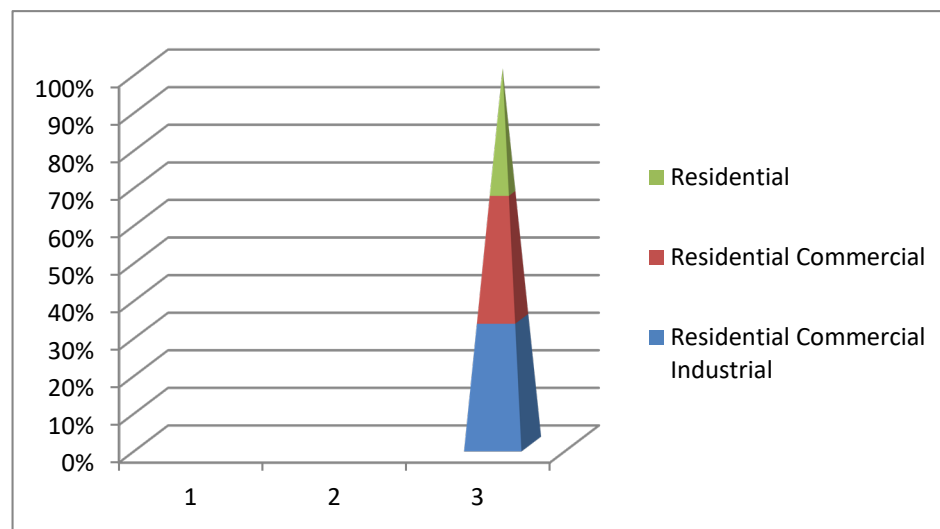
## I. ZONING BASICS

### 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%26thumb%3D2%26w%3D211%26h%3D120%26yaw%3D314.6604%26pitch%3D0%26thumbfov%3D100!7i13312!8i6656!4m5!3m4!1s0x8830fe4b8a43e81f:0xaa967c277fe2384e!8m2!3d41.5656431!4d-81.5425015](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%26thumb%3D2%26w%3D211%26h%3D120%26yaw%3D314.6604%26pitch%3D0%26thumbfov%3D100!7i13312!8i6656!4m5!3m4!1s0x8830fe4b8a43e81f:0xaa967c277fe2384e!8m2!3d41.5656431!4d-81.5425015)

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 v. City of Cambridge* (1928)

<https://www.google.com/maps/@42.3636943,-71.1110232,15z>

<https://www.google.com/maps/place/Henry+St,+Cambridge,+MA+02139/@42.3555923,-71.1095945,194m/data=!3m1!1e3!4m5!3m4!1s0x89e379fb510d43e9:0xbdf04f3548411998!8m2!3d42.3555923!4d-71.1090486>

[https://www.google.com/maps/@42.3559515,-71.1095275,3a,75y,180h,90t/data=!3m6!1e1!3m4!1sa9Ks2gGhQ\\_VloLqHvzWMY\\_A!2e0!7i16384!8i8192](https://www.google.com/maps/@42.3559515,-71.1095275,3a,75y,180h,90t/data=!3m6!1e1!3m4!1sa9Ks2gGhQ_VloLqHvzWMY_A!2e0!7i16384!8i8192)

- g. consequences
  - i. Ohio Constitution vs. U.S. Constitution
  - ii. *Euclid* as a separate entity

- iii. result in fact
- 2. *Pierro* (1955 case, 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
- 4. *Stoyanoff*: What are the issues? (another *Stoyanoff* [design](#))
  - a. aesthetic purpose
  - b. not authorized by the enabling act
  - c. standardless delegation
  - d. review board not authorized
  - e. Is this a good piece of legislation?
    - i. the poor
    - ii. the eccentric

## II. EXCLUSIONARY ZONING

NJ current population 8.8 million, 4th smallest state. At 1189 inhabitants per square mile it is the most densely populated state in US. In the early part of the 17th century, the colony had approximately the same boundaries as the state does today. In 1664, the king divided the colony. Sir George Carteret got East Jersey, basically what today is the northern half of the state, and John Lord Berkeley got West Jersey, basically what today is the southern half of the state. But the state was once more put together in 1689. That was huge mistake. In the mid-1990's 81% of NJ's suburban households were white; 85% of the urban households were African-American or Hispanic. NJ is about 80% suburban. The 2000 census showed some movement of minority populations into the suburbs. The 2010 census shows more, but I did some back-of-the-envelope calculations that suggest that the NJ suburbs are still overwhelmingly white, and that the movement of African-American and Hispanic populations out of the major urban centers, of which there has been some, has largely been to the benefit of lesser urban centers, such as Atlantic City, Bayonne, and Secaucus, not the suburbs.

<https://www.google.com/maps/place/Mt+Laurel+Township,+NJ/@39.9574914,-74.9861735,12z/data=!3m1!4b1!4m5!3m4!1s0x89c1358348cce9f5:0xfa02e26f02ceb97b!8m2!3d39.934002!4d-74.8909988> shows Mt. Laurel Tp. in relation to Philadelphia

- 1. Summarize the 3 cases:
  - a. *Mt. Laurel I* (1975)—there is a constitutional obligation to be open to low and moderate- income housing

- b. *Mt. Laurel II* (1983)—the courts will enforce this obligation by special procedures
  - c. *Mt. Laurel III* (1986)—the courts will defer to a legislatively- established commission to enforce the *Mt. Laurel* obligation
2. Where does the *Mt. Laurel I* obligation come from? Due process? Equal protection? By emphasizing how N.J. differs from the feds on the latter (largely edited out), court seems to be suggesting that it's equal protection, but when it gets through, it seems to be something else. What is it?.
  3. I thought that courts were supposed to defer to legislative determinations. What happened here?
  4. What are the mechanisms of *Mt. Laurel II*? How would you summarize this list of
    - a. Must raise level of housing for resident poor.
    - b. Realistic opportunity for fair share of present and prospective poor without regard to whether the area is “developing”. Deference to the State Development Guide Plan.
    - c. Proof of fair share in numeric terms.
    - d. Three specialized judges.
    - e. Affirmative steps must be taken, e.g., tax incentives.
    - f. Both low and moderate housing.
    - g. Just least cost housing won't do.
    - h. Builder's remedies.
    - i. One trial and one appeal.
    - j. Long-term obligation and phase-ins.
  5. What does *Hills Development (Mt. Laurel III)* hold?
    - a. Delay does not make the Fair Housing Act unconstitutional when the delay is designed to allow the development of a State Development and Redevelopment Plan.
    - b. Moratorium on builder's remedy not unconstitutional where limited, and it was never part of the constitutional law.
    - c. No evidence that only delay will result nor that builders will lose interest. Must give it a chance.
    - d. Not an interference with the judicial constitutional power to manage the courts.
    - e. All cases must be transferred unless transfer would preclude the building of housing. (“Manifest justice” strictly construed.)
  6. What happened as a result of all this (the Hall article and beyond)? Some lower- and middle-income housing is being built, not enough to meet the need but probably more than was being built during the *Mt. Laurel* era. The fear of the environmentalists that any attempt to increase the amount of housing, particularly cheaper housing, would lead to environmental disasters has not been realized. Many of the wealthier suburbs meet their fair share housing obligations by transferring money to the largely segregated New Jersey cities rather than by allowing lower- and middle-income housing to be built within their borders. I have little doubt that if the *Mt. Laurel* standard could have been made to work through judicial enforcement, it would have resulted both in more housing and in a more integrated New Jersey. The fact, however, is that it could not be

made to work, and the reason why it could not be made to work may reflect something about the capacity of courts as institutions that goes beyond the immediate politics of New Jersey. On June 29, 2011, Governor Christie abolished the Council on Affordable Housing, and transferred its powers to the State Department of Community Development. On July 10, 2013, the NJ Supreme Court held the Governor's actions unconstitutional, ruling that such action could be accomplished only by the legislature. A State Development and Redevelopment Plan adopted in 2001 was revised, but the hearings on the revised plan encountered considerable opposition, particularly from environmental groups. The revised plan, scheduled to be adopted in 2012, was postponed because of Superstorm Sandy. As we all know New Jersey took a big hit from Superstorm Sandy. How and whether affordable housing is going to work into the substantial amount of redevelopment that will have to be done is anyone's guess.

7. Although New Jersey is unique in the extent to which the courts in that state were, at one point, willing to go to get local zoning ordinances to be more accommodating to low- and moderate-income housing, it is by no means the only state that has been willing to strike down blatantly exclusionary zoning. A number of states have interpreted their constitutions or their zoning enabling acts to require that local authorities consider needs broader than those within the borders of the town if there is a proper plaintiff, normally a property-owner who is seeking planning permission and has been denied it.
8. Few attempts to make a federal constitutional issue out of this have succeeded. There remains the possibility that such ordinances may violate the Civil Rights Act because a racially-exclusionary motive has been shown, and at least one lower court has held that the Federal Fair Housing Act may be violated by a zoning ordinance that has a racially exclusionary effect even if a racially exclusionary motive cannot be shown.
9. Another approach.
  - a. In 1973, the Second Circuit struck down a local ordinance that limited occupancy in certain residential districts to those related by blood marriage or adoption. The Supreme Court reversed. *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974).
  - b. In 1977, however, the same Court reversed decisions of the Ohio Courts that had sustained a local ordinance that had limited certain residential areas to families more narrowly defined (the case involved a grandmother who was living with two grandsons who were the children of two different children of hers). *Moore v. City of East Cleveland*, 431 U.S. 496 (1977).
  - c. Is the constitutional principle involved in *Village of Belle Terre* and *Moore* the same as that in *Mount Laurel I*?