

WASHTENAW COUNTY
DEPARTMENT OF PLANNING AND ENVIRONMENT

The Comprehensive Plan
As a Tool for the Enforcement of the Zoning Ordinance

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#1

“[Zoning] may indeed be the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life.

-- Village of Belle Terre v Boraas, 416 US 1, 13; 94 S Ct 1536; 39 L Ed 2d 797 (1974), Justice Marshall, dissenting.

#2

SUMMARY OF PRESENTATION

- ◆ **BRIEF HISTORICAL PICTURE – REFLECTING THE NEED FOR AND APPROVAL OF ZONING**
- ◆ **THE COMPREHENSIVE PLAN AND THE “DUE PROCESS CLAUSE”**
- ◆ **THE COMPREHENSIVE PLAN AND THE “TAKINGS CLAUSE”**
- ◆ **WORKSHOP EXERCISES**

#3

***VILLAGE OF EUCLID v AMBLER REALTY* (1926)**

COURT REACHED A MOMENTOUS DECISION TO ALLOW COMMUNITIES TO EXERCISE ZONING AUTHORITY TO:

- ⇒ **PROACTIVELY AVOID THE OCCURRENCE OF NUISANCES, AND,**
- ⇒ **EVEN PROMOTE A POSITIVE URBAN ENVIRONMENT**

#4

WHAT LEGAL CONCEPT WAS THE *EUCLID* COURT APPROVING WHEN IT SAID YES TO ZONING?

FUNDAMENTAL POINT:

DIVIDE THE ENTIRE COMMUNITY INTO ZONING USE DISTRICTS BASED UPON A COMPREHENSIVE PLAN

#5

“THE MATTER OF ZONING HAS RECEIVED MUCH ATTENTION AT THE HANDS OF COMMISSIONS AND EXPERTS, AND THE RESULTS OF THEIR INVESTIGATIONS HAVE BEEN SET FORTH IN COMPREHENSIVE REPORTS. THESE REPORTS, WHICH BEAR EVERY EVIDENCE OF PAINSTAKING CONSIDERATION, CONCUR IN THE VIEW THAT THE SEGREGATION OF RESIDENTIAL, BUSINESS, AND INDUSTRIAL BUILDINGS WILL . . .:”

#6

The exclusion of places of business from residential districts is not a declaration that such places are nuisances or that they are to be suppressed as such, but it is a *part of the general plan by which the city's territory is allotted to different uses*, in order to prevent, or at least to reduce, the congestion, disorder, and dangers which often inhere in unregulated municipal development.

#7

VILLAGE OF EUCLID v AMBLER – DEFINED THE DUE PROCESS CHALLENGE IN A ZONING CASE:

IF IT IS DEMONSTRATED IN FUTURE CASES THAT, AS APPLIED TO PARTICULAR PROPERTY, A ZONING ORDINANCE IS CLEARLY ARBITRARY AND UNREASONABLE, HAVING NO SUBSTANTIAL RELATION TO THE PUBLIC HEALTH, SAFETY, MORALS, OR GENERAL WELFARE, THE COURT WOULD INVALIDATE THE ORDINANCE AS SO APPLIED.

#8

THE COMPREHENSIVE PLAN – IF PROPERLY ESTABLISHED -- IS A MOST IMPORTANT VEHICLE BY WHICH THE ARRANGEMENT, SEPARATION AND ULTIMATE REGULATION OF USES IN A RATIONAL MANNER IS ACCOMPLISHED.

#9

FIVE COMPONENTS OF THE COMPREHENSIVE PLAN

TIE TOGETHER:

- **LEGITIMATE ZONING OBJECTIVES**

AND,

- **PUBLIC HEALTH, SAFETY AND WELFARE**

#10

- (1) **Community Character** - to ensure that growth and development will maintain or enhance the community's desired physical character.
- (2) **Compatibility** - to maintain the quality of life and economic viability of existing residents, farmers and businesses.
- (3) **Conservation and Open Space** - to maintain important natural features for wildlife and resident use.
- (4) **Capacity** - to ensure that future development can be adequately served with public facilities and services and to minimize tax burdens on existing residents.
- (5) **Consistency with Other Plan Provisions** - to ensure that other important community goals are realized.

#11

TAKINGS CLAUSE ANALYSIS

◆ **CATEGORICAL TAKING**

◆ ***AD HOC* BALANCING TEST TAKING (3-PART INQUIRY):**

- (1) THE CHARACTER OF THE GOVERNMENTAL ACTION.**
- (2) THE ECONOMIC EFFECT OF THE REGULATION ON THE PROPERTY REGULATED**
- (3) THE EXTENT TO WHICH THE REGULATION INTERFERED WITH DISTINCT INVESTMENT-BACKED EXPECTATIONS.**

#12

“[T]YPICAL ZONING RESTRICTIONS MAY, IT IS TRUE, SO LIMIT THE PROSPECTIVE USES OF A PIECE OF PROPERTY AS TO DIMINISH THE VALUE OF THAT PROPERTY IN THE ABSTRACT BECAUSE IT MAY NOT BE USED FOR THE FORBIDDEN PURPOSES. *BUT ANY SUCH ABSTRACT DECREASE IN VALUE WILL MORE THAN LIKELY BE AT LEAST PARTIALLY OFFSET BY AN INCREASE IN VALUE WHICH FLOWS FROM SIMILAR RESTRICTIONS AS TO USE ON NEIGHBORING PROPERTIES.* ALL PROPERTY OWNERS IN A DESIGNATED AREA ARE PLACED UNDER THE SAME RESTRICTIONS, NOT ONLY FOR THE BENEFIT OF THE MUNICIPALITY AS A WHOLE BUT ALSO FOR THE COMMON BENEFIT OF ONE ANOTHER. IN THE WORDS . . . THERE IS ‘AN AVERAGE RECIPROCITY OF ADVANTAGE.”

Penn Central Transp. Co. v. City of New York (1978)
Justice Rehnquist, Dissenting

#13

PART 3 OF BALANCING TEST –
INVESTMENT-BACKED EXPECTATIONS

#14

Crucial question: *on the basis of what criteria does a property owner formulate an expectation concerning the future use and development potential of land?*

#15

THE COMPREHENSIVE PLAN REPRESENTS THE FORMAL STATEMENT OF THE REGULATING GOVERNMENTAL ENTITY WITH REGARD TO THE MANNER IN WHICH EACH PROPERTY IN THE COMMUNITY IS EXPECTED TO BE USED IN THE FUTURE

SUGGESTION:

THE COMPREHENSIVE PLAN CONSTITUTES AN IMPORTANT ELEMENT IN FORMULATING A PROPERTY OWNER'S LEGITIMATE "INVESTMENT-BACKED EXPECTATIONS."