

PROPERTY

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CLASS 23: ZONING

Class Outline

1. Zoning
2. Exclusionary zoning

Approaches to the Law of Neighbors

- Tort (nuisance)
- Modification of property rights (easements)
- Contracts running with the land (covenants)
- Regulation (zoning)



Zoning

1. Starts with a comprehensive plan (but in practice this is an easy requirement – need not be in writing. Or can be implicit in the zoning ordinance).
2. Zoning Ordinance is passed by local government (county commission, city council, etc.). People can seek amendments, but they may be challenged as “spot zoning” (which is frowned upon).
3. Board of Zoning Appeals (variously named): (i) hears appeals from official’s denial of a building permit, (ii) hears requests for variances (in cases of unnecessary hardship, discretionary), and (iii) hears requests for special exceptions (variously named – permitted uses only if conditions specified in the ordinance met but as of right).

“[T]he man who seeks to place the home for his children in an orderly neighborhood, with some open space and light and fresh air and quiet, is not motivated so much by considerations of taste or beauty as by the assumption that his children are likely to grow mentally, physically and morally more healthful in such a neighborhood than in a disorderly, noisy, slovenly, blighted and slum-like district. ... Disorderliness in the environment has as detrimental an effect upon health and character as disorderliness within the house itself.”

*Southern Burlington County NAACP v.
Township of Mount Laurel*



Zoning Justifications

- internalizes externalities;
- collective action problems;
- a house is a large, expensive, undiversified asset with a lot of subjective value and govts want to protect that value so as to encourage homeownership (why?);
- can prevent fiscal freeriding – apartment dwellers will send a disproportionate number of students (per sq ft) to use the public schools, for example
- Most govt officials will say zoning helps to maintain a robust tax base