Single-Family Zoning and the Police Power: Early Debates in Boston and Seattle

John Infranca
Suffolk University Law School

Abstract

In the early 20th century, proponents of zoning sought to justify what was arguably the most controversial component of zoning ordinances: districts restricted exclusively to single-family residences. This article examines how the national discourse over the legal merits of zoning affected debates on the ground in two cities: Seattle, Washington, and Boston, Massachusetts. In the context of government deliberation and in the popular press, proponents of zoning in these cities defended this new form of regulation as a valid exercise of the police power: the traditional power of government to regulate in furtherance of health, safety, and the general welfare. They responded to criticism that use districting problematically differentiated between neighborhoods and favored a narrow class of people. Emphasizing the comprehensive nature of their zoning ordinances, they also sought to expand the role of planning experts and encourage deference to expert determinations.

In Boston, height limits preceded zoning, and debates over their merits foreshadowed early arguments about use districting (the division of a jurisdiction based on the permitted uses of land). In Seattle, disputes ensued over whether to have only one or multiple residential districts, and if residential uses were differentiated, whether the most restrictive district should also allow two-family residences. Drawing on archival research, this article examines how zoning proponents enlisted justifications for single-family zoning in these two cities articulated by prominent national leaders in the zoning movement. This history suggests lessons for contemporary zoning reform efforts.

Introduction

Single-family housing dominates the American landscape. The percentage of total residences that are *detached* single-family homes in the United States is nearly twice as high as in the European Union (Hirt, 2014: 20–21). Early proponents of zoning in the United States criticized their European counterparts for inadequately separating uses (Williams, 1914: 4–5). As Hirt (2013: 293)

argued, the creation of districts devoted exclusively to detached single-family homes represents a distinctly American departure from zoning's European origins.

In recent years, however, zoning districts restricted exclusively to single-family residences have come under attack. Headlines in the popular press declare, "America's future depends on the death of the single-family home" and "It's Time to Abolish Single-Family Zoning" (Loudenback, 2017; Marohn, 2020). Critics highlight the roots of single-family zoning (and much of zoning more generally) in efforts to exclude on the bases of race, ethnicity, and class (Rothstein, 2017). Others emphasize how low-density zoning calcifies segregated housing patterns and exacerbates racial wealth disparities (Lens and Monkkonen, 2016; Rothwell, 2011; Trounstine, 2020). Prominent planning scholars explicitly call for the elimination of single-family zoning (Manville, Monkkonen, and Lens, 2020; Wegmann, 2020; Yerena, 2020). State and local governments in places such as Minneapolis, Oregon, and California have taken steps to eliminate single-family zoning by allowing the development of multiple units on single-family zoned lots (Infranca, 2023).

This is not the first time that single-family zoning has faced criticism. Writing in 1983, Richard Babcock (1983: 4), a leading land use attorney, went so far as to declare that "the single-family detached house zone, so rampant for so long, is patently invalid under the police power." The "police power" is traditionally defined as the power of state and local governments to legislate in furtherance of health, safety, and public welfare (Novak, 1996: 13–15). How such a power justifies zoning that expressly prohibits anything other than a single-family residence in large swathes of the United States seems strange at first glance. Admittedly, in the mid-20th century, the U.S. Supreme Court would come to accept aesthetics—and not just health, safety, and welfare—as a valid rationale for the exercise of an ever-expanding police power.[1] In the early days of zoning, however, its advocates acknowledged that aesthetics were not yet recognized as a valid basis for the exercise of the police power and strenuously argued that it was not their sole motivation.

Careful consideration of the legal arguments and doctrinal innovations that led to the embrace of single-family zoning in the early 20th century yields important insights for contemporary debates over the merits of such zoning and the paths that reforms might take. A recent article offers an intellectual and legal history of how early zoning proponents defended the legitimacy of single-family districts specifically and, in the process, contributed to a steady expansion of the police power (Infranca, 2023). Critics of zoning contended that use districting, and single-family zoning in particular, departed too much from the fire and other public safety justifications for earlier forms of land use regulation. They questioned why, even if one accepted the police power justifications for single-family zoning, only those wealthy enough to live in a single-family residence should receive these benefits? Why permit greater density anywhere in the city? In response to these critiques, proponents of zoning argued that restrictive residential districts particularly benefited lower-income households. Although single-family zoning advanced health, safety, and public welfare, reasonableness required balancing these benefits against the burdens imposed on private property owners in already dense urban cores. Finally, they distinguished comprehensive zoning, developed by experts following careful consideration of a community's existing and future needs, from more piecemeal restrictions advancing the interests of a particular neighborhood.

[1] *Berman* v. *Parker*, 348 U.S. 26 (1954).

Comprehensive zoning advanced the broader public welfare, consistent with the requirements of the police power, and thereby rendered valid individual components of a zoning ordinance that may not have been independently justified, including single-family districts (Infranca, 2023).

This article builds on that work, moving from the national discourse among leading proponents of zoning and the early cases regarding the validity of single-family districts to focus on debates on the ground in two cities: Seattle, Washington, and Boston, Massachusetts. It explores how, in the context of government deliberation and in the popular press, proponents of zoning advanced the police power justifications for use districting. It also examines their responses to criticism regarding how use restrictions differentiated between neighborhoods and their invocations of the concept of comprehensiveness to defend their plans and to expand the role of planning experts.

In Boston, height limits preceded zoning, and debates over their merits foreshadowed early arguments about use districting. In Seattle, debate ensued over whether to have only one residential district or multiple residential districts, and if residential uses were differentiated, whether the most restrictive district should be limited to single-family residences or should allow two-family residences as well. Drawing on archival research, this article examines how individuals engaged in early debates over zoning in these two cities invoked justifications for single-family districts developed by prominent national leaders in the zoning movement.

Early Debates Over Zoning and the Police Power

Deliberations in Boston and Seattle occurred amid broader discussions over the scope of the police power and the merits of land use regulation, particularly single-family districting. This section situates the discussions that follow within these broader discussions. It first explores how advocates of zoning framed this new form of regulation as a valid exercise of the police power. It then turns to the specific arguments made to support single-family zoning, the most controversial component of early zoning ordinances.

The Police Power's Uncertain Scope

Early advocates of zoning sought to ground this new form of regulation in the police power, rather than rely on analogies to the common law of nuisance. A late 19th-century law review article provides a succinct statement of the police power as "the inherent and plenary power of a State ... to prescribe regulations to preserve and promote the public safety, health, and morals, and to prohibit all things hurtful to the comfort and welfare of society" (Hockheimer, 1897: 158). In contrast, nuisance law enables a property owner to challenge, and potentially enjoin, neighboring uses of property that are already in effect and that are found to cause a substantial and unreasonable interference with the property owner's use and enjoyment of their land.

Supporters of zoning acknowledged that not every activity it prohibited could be classified as a nuisance. As Alfred Bettman argued in his influential amicus brief in *Euclid* v. *Ambler Realty*, zoning moved beyond nuisance law, both by acting prospectively and by constraining a broader set of detrimental tendencies.[2] Bettman asserted that zoning, "by comprehensively districting the

[2] Brief on Behalf of the National Conference on City Planning et al., Amici Curiae, *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365 (1926) (No. 665): 27.

whole territory of the city and giving ample space and appropriate territory for each type of use, is decidedly more just, intelligent and reasonable" and provides a greater degree of fairness and assurance by avoiding the uncertainty of nuisance law.[3] Bettman's words suggest an oft-repeated claim that comprehensive zoning would adequately address current and future needs for a range of uses.

In the decades immediately prior to *Euclid*, the Supreme Court embraced a broader understanding of the police power's scope. The Court pushed the police power beyond protecting from detrimental effects on health, safety, and morals and toward affirmatively promoting public welfare, convenience, and prosperity.[4] In a 1912 decision involving early land use regulations in Richmond, Virginia, the Court emphasized that the police power extended "not only to regulations which promote the public health, morals, and safety, but to those which promote the public convenience or the general prosperity."[5] However, as courts and commentators recognized, the general or public welfare was a "novel, broad and sweeping" basis for the exercise of the police power and its limits remained uncertain (Veiller, 1916: 153).

Cautious of how they would fare in the courts, the drafters of the earliest forms of land use regulation, which predated use districting, emphasized the health and safety concerns that the measures in question addressed. Concerns regarding fire motivated the building height restrictions that predated zoning and that the courts broadly accepted (*The Yale Law Journal*, 1923: 835). Similar concerns were invoked in support of restrictions on lot coverage, open space requirements, and setbacks, all of which, by maintaining a greater distance between buildings, could be defended on the grounds that they provided increased safety from fire and the spread of disease (Infranca, 2023: 688).

In both Seattle and Boston, local officials were aware of the police power constraints on the zoning power, at least in the most general terms, and referenced them in their work. Invocations of the police power served both as legal justification for zoning and as an ambiguous constraint on its scope. A representative of the Seattle Zoning Commission, in a February 1921 speech before the American Association of Engineers, declared "[z]oning is a legitimate exercise of the police vested in the city authority ... for the best interests of the public in the safety, health, happiness and the general welfare and convenience of a community" (*Seattle Post-Intelligencer*, 1921a). Ervin S. Goodwin, president of Seattle's Zoning Commission, stated in an April 1922 *Seattle Times* article that "[t]he advent of zoning marks a new epoch in municipal government. It is an extension of the community power, legally termed the 'Police Power' of the state, into a new phase of city planning, giving better protection to homes, to business and to industry by preventing conflict which result to their mutual disadvantage and, too often, to heavy loss" (*The Seattle Times*, 1922).

The Seattle Times article, composed largely of direct quotations, recounted many of the leading talking points of zoning advocates. It noted that recent court decisions "have broadly interpreted

[3] Brief on Behalf of the National Conference on City Planning et al., Amici Curiae, *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365 (1926) (No. 665): 28.

[4] *Chicago, Burlington & Quincy Railway* v. *People of Illinois ex rel.* Drainage Commissioners, 200 U. S. 561 (1906).

[5] *Eubank* v. *City of Richmond*, 226 U.S. 137, 142 (1912), citing *Chicago, Burlington & Quincy Ry.* v. *People of Illinois ex rel.* Drainage Comm'rs, 200 U. S. 561 (1906).

the police power of cities" to include the power to control heights, size, and use of buildings to benefit the whole community (*The Seattle Times*, 1922). The article contended that "zoning in its comprehensive form" was a rather recent invention that had benefited other cities by preventing the depreciation of property values (*The Seattle Times*, 1922). This language reflected a concerted effort to distinguish a newer form of comprehensive zoning ordinance from earlier measures that did not apply citywide but instead served merely to protect a particular neighborhood or block (Infranca, 2023: 711). It also emphasized a public welfare rationale—benefiting cities by broadly protecting property values—consistent with the police power, which served to distinguish zoning from problematic class legislation designed to benefit only certain property owners.[6] In this same vein, *The Seattle Times* (1922) article highlighted that the city had spent significant sums on streets, parks, and playground improvements, but, the article contended, a lack of zoning allowed haphazard private development that undermined the public benefits of such investment. An entire section titled "Is Aid to Poor Man" repeated a popular argument at the time that "a zoning bill is a poor man's bill" in that it provided lower-income property owners with protection from nuisances that wealthier individuals could prevent through expensive lawsuits (*The Seattle Times*, 1922).

In a letter to the mayor and city council in January 1923, the Seattle Zoning Commission stressed the public welfare rationale for the exercise of police power, rather than issues of health and safety. The Commission declared that, in its efforts at zoning, it "pursued a policy of liberality respecting the rights of the individual insofar as this was compatible with its duty to the city as a whole and with the welfare of the communities, endeavoring to keep far within the legal limit of the police power to regulate and restrict" (Seattle Zoning Commission, 1923: 8). The Commission acknowledged that how precisely the police power restricted the power to zone remained unclear. Gaines (1925), the Commission's Executive Secretary, wrote that "[z]oning is a recent and most valuable extension of the police power and its practice has not yet become standardized, nor are its logical limits yet clearly defined."

As these statements suggest, the police power loomed in the background amid debates over the legal and practical merits of zoning in Seattle. Advocates of zoning understood that the purposes of zoning must accord with the limitations the police power imposed (and the courts' determinations of the scope of that power). However, they were working amid significant uncertainty regarding the police power's scope and the permissibility of particular aspects of zoning. Consistent with proponents of zoning nationally, and the developing jurisprudence, they increasingly emphasized the advancement of the public or general welfare as the legal basis for zoning and a (rather loose) constraint on its scope.

The Particular Problem of Single-Family Districts

A pastoral ideal of the single-family home as the only fitting place in which to cultivate a healthy family life, away from threats to health and safety, shaped support for single-family residential districts (Hirt, 2018; Lees, 1994). Zoning reformer James Ford declared in 1913 that:

[6] As Howard Gillman (1993: 421) argued, the Supreme Court in the late 19th and early 20th centuries was particularly concerned, as it defined the contours of the police power, with legislation "that promoted only the narrow interests of particular groups or classes rather than the general welfare."

> [e]ven for the childless family, the most expensive apartment house as well as the cheapest tenement may constitute an undesirable environment, because of the facility with which disease may pass from one apartment to its neighbor through the common hall and through the mediation of vermin which pass easily from one suite to another. (Ford, 1913: 476)

The privileging of single-family residences and their isolation in zoning districts designed to protect them from other uses occurred in conjunction with the denigration of apartment housing (Baar, 1992, 1996; Brady, 2021; Chused, 2001). Multifamily housing threatened to drive out single-family homes. In 1916, the New York Commission on Building Districts and Regulations concluded that a few apartment houses destroy a place for single-family home uses and that "in such sections the apartment house is a mere *parasite*" (City of New York, 1916). This language of the apartment as parasite reappeared 10 years later in the Supreme Court's seminal zoning decision, *Euclid* v. *Ambler Realty*.

The embrace of single-family zoning reflected a desire to exclude not only denser housing but also the likely residents of such housing—lower-income households and racial and ethnic minorities (Rothstein, 2017; Silver, 1997). Although single-family zoning often served as an indirect mechanism for racial segregation, zoning proponents were frequently explicit about their racial motivations. Prominent early supporters of zoning contended that establishing race-specific districts "removed one of the most potent causes of race conflict" and were "simply a common sense method of dealing with facts as they are" (Whitten, 1922: 418). Harland Bartholomew, a national voice in the zoning movement, advised on comprehensive plans for more than 500 jurisdictions, including Seattle. Bartholomew's zoning ordinance for St. Louis sought, among other things, "to prevent movement into 'finer residential districts ... by colored people" according to Richard Rothstein (2017: 49). Apparently without irony, one early account of zoning declared in 1931 that "[i]t may sound foreign to our general ideas of the background of zoning, yet racial hatred played no small part in bringing to the front some of the early districting ordinances which were sustained by the United States Supreme Court, thus giving us our first important zoning decisions" (Pollard, 1931: 17). Although racist motivations were implicit (and at times overt) in early zoning efforts, particularly around single-family zoning, this article focuses on the arguments that zoning proponents explicitly made regarding the police power justifications for single-family zoning.

Bartholomew, in advising Seattle on its first zoning ordinance, argued strenuously in favor of including an exclusively single-family district. He confidently declared: "That the one-family dwelling is the desirable unit for happy living in the general concensus [*sic*] of opinion of all authorities" (Bartholomew, 1930: 234). Despite this claimed consensus, a number of zoning supporters expressed hesitancy regarding the wisdom and legality of exclusively single-family districts (Infranca, 2023: 683–684). In many early ordinances, the most restrictive residential district allowed both one- and two-family dwellings (Infranca, 2023: 704–706). Berkeley's 1916 zoning ordinance is frequently cited as the first to establish exclusively single-family districts.[7] However, Berkeley's ordinance did not cover the entire city, and zoning was imposed only in a

[7] City of Berkeley, California, Ordinance No. 452 N.S. (March 10, 1916).

neighborhood upon petition from the residents (Weiss, 1986: 17).[8] Gordon Whitnall (1931: 12), in his history of zoning, identified Los Angeles as the first municipality to establish exclusively single-family districts in a more comprehensive manner through its 1920 zoning ordinance.

The 1916 New York City zoning resolution deliberately did not establish an exclusive single-family district (Bassett, 1916: 161; Williams, 1920: 5). Instead, the ordinance used other mechanisms, such as minimum open space requirements, to discourage apartments and encourage detached residences. Edward Bassett (1922: 323), a chief architect of New York's zoning resolution, who also advised Seattle on its zoning ordinance, acknowledged in 1922 that relying on lot coverage limits, rather than establishing a single-family district, was a preferable approach because it represented "a plain employment of the police power with a recognition of health and safety considerations, and the courts will protect a plan which is based on such a foundation." Although other cities might choose to create single-family residential districts, Bassett (1922: 323–324) considered this course of action more dangerous as "the court is likely to inquire what dangers to health and safety exist in two-family houses, each built on a small fraction of the lot, which do not exist in one-family houses similarly built." Lot coverage limitations, according to Bassett, were consistent with the fire prevention measures already upheld by courts.

Throughout the 1920s, significant uncertainty remained regarding whether courts would uphold or reject single-family districting. The 1926 Standard State Zoning Enabling Act, which informed the drafting of many early zoning ordinances, mentioned the possibility of single-family districts only in a footnote, declaring "[i]t is believed that, with proper restrictions, this provision will make possible the creation of one-family residence districts" (Advisory Committee on Zoning, 1926).[9] This uncertainty was partly attributable to the extent to which use districting, and single-family zoning in particular, departed from earlier forms of land use regulation, which more clearly reflected traditional health and safety concerns. In addition to concerns regarding the relationship of single-family districts to legitimate police power concerns, criticisms arose that single-family zoning problematically favored the interests of certain classes. Critics argued that—if low-density residential patterns were, in fact, necessary to advance health, safety, and general welfare—it was unclear why such benefits should be limited to those wealthy enough to live in a single-family home.

A 1920 critique of single-family zoning in *Survey* magazine asked, "[w]hy, in this country of democracy, is a city government, representative of all classes in the community, taking it upon itself to legislate a majority of citizens—those who cannot afford to occupy a detached house of their own—out of the best located parts of the city area ...?" (Lasker, 1920: 676–677). The same magazine published the contrary view of Charles Cheney, a Portland, Oregon, planning consultant who advised the Seattle Zoning Commission. Cheney argued that planning and zoning sought to:

> remove the social barriers in cities and to give the poor man, and particularly the foreign-born worker an equal opportunity to live and raise his family according to the most

[8] As Hirt (2015: 377) noted, Minneapolis had a form of single-family district, established via resident petition, which predated Berkeley's more formal designation of single-family districts.

[9] By 1932, the President's Conference on Home Building and Home Ownership, which included a number of individuals who were also involved in drafting the Standard State Zoning Enabling Act, firmly declared that zoning regulations "should provide for one-family dwelling districts, two-family dwelling districts, multiple dwelling districts" (Gries and Ford, 1932).

> wholesome American standards, in contentment and safety and in a detached house of his own rather than in a tenement. (Cheney, 1920: 275)

Cheney claimed that although it was too costly for developers to place deed restrictions on lower-cost properties, city governments could "use the police power in favor of the poor man, in order to give him the same kind of protected home districts that the rich man has" (Cheney, 1920: 275).[10] This argument became a frequent talking point for advocates, who would often refer to zoning ordinances as a "poor man's bill." Boston's City Planning Board emphasized how zoning provided those of lower incomes with benefits, such as improved safety and more open space, which were only otherwise available to the wealthy (Lees, 1994: 392–394). This populist and progressive reframing depicted single-family districts of detached residences as a mechanism for transforming "the lower classes into owners" and enabling them to "share in the bourgeois way of life" (Shoked, 2011: 133).

Supporters of single-family zoning also contended, echoing arguments raised in relation to height limits, that although concerns regarding health, safety, and public welfare justified single-family districts, they did not require prohibiting denser districts. Rather, in certain areas, particularly the urban core, reasonableness required balancing health, safety, and welfare against the burdens imposed on private owners and the economic benefits of denser development. New York City's Building Commission relied on University of Chicago Law Professor Ernest Freund's (1904) influential treatise on the police power and its framing of "reasonableness" as a necessary characteristic of a valid exercise of the police power, declaring that districting must reflect "some fair relation between the public good to be secured by the regulation and the private injury suffered" (New York City Board of Estimate and Apportionment, 1913: 25–26). Bassett (1914) relatedly contended that it would be unjust to impose "a low-height limit" on new development in denser areas already populated with taller buildings.

Zoning proponents gradually convinced courts to accept single-family districts by relying on a broad understanding of the general welfare. The most important doctrinal shift in the courts was the gradual acceptance, during the course of two decades, of an argument that emphasized the *comprehensiveness* of zoning ordinances. A comprehensive zoning ordinance, which considered both existing and future needs, "was itself a valid exercise of the police power and, most importantly, rendered valid individual components, including single-family zoning, that may not have independently been justified" (Infranca, 2023: 664–665). Emphasizing the importance of comprehensiveness, the New York Commission on Building Districts and Restrictions declared:

> While a specific regulation taken by itself may not seem to have a very direct relation to the purposes for which the police power may be invoked, yet when taken as a part of a comprehensive plan for the control of building development throughout the entire city, its relation to such purposes may be unmistakable. (City of New York, 1916: 56)

[10] An analogous argument appears in Alfred Bettman's amicus brief on behalf of the National Conference on City Planning in *Euclid* v. *Ambler Realty*, contending that zoning provides individuals with assurances regarding conditions outside their home, protections otherwise available only to "the rarely wealthy individual who can afford to buy large open spaces owned and controlled by himself" (Brief on Behalf of the National Conference, 1926: 30).

The U.S. Department of Commerce's (1922: 3) *Zoning Primer* reinforced the importance of comprehensiveness, declaring that "courts have approved zoning whenever it was done sensibly and comprehensively."

In sum, national zoning advocates developed a series of arguments through the 1910s and 1920s to establish the validity of zoning and respond to criticisms. They contended that rather than advancing the interests of wealthy property owners, zoning provided protection for "the poor man." Although police power concerns with health, safety, and the general welfare justified single-family districts, these benefits had to be balanced against other interests, particularly private property rights, existing uses, and economic efficiency. Finally, the public welfare benefits of zoning, which provided its core justification, had to be assessed by considering a zoning ordinance in its entirety. A comprehensive ordinance, developed by experts following careful study of a city's existing reality and future needs, could save a particular provision that, by itself, might not constitute a valid exercise of the police power.

Local public officials seeking to establish zoning in Boston and Seattle were aware of these debates in scholarly journals and court cases and invoked them in their own efforts to win public support for zoning ordinances. They also enlisted the support of a small group of national experts on planning and zoning. During this period, city planning was developing as a profession, and its practitioners sought to establish their expertise and expand their role within local government. In addition to formal education and annual conferences, city planners of the time frequently toured and drew lessons from practices in European and American cities, including Boston and Seattle.[11]

Single-Family Zoning on the Ground

Early advocates of zoning in Boston and Seattle were aware of and engaged with the broader discussions over use zoning occurring at the national level. Boston was at the forefront of an earlier form of land use regulation, height restrictions. Debates over the merits of such restrictions reveal themes that would reappear amid discussions of single-family zoning. In Seattle, prominent national zoning expert Harland Bartholomew, who pushed it toward embracing single-family districts, significantly affected the city's efforts around zoning. Nonetheless, debate regarding the merits of such districts persisted, with the contours of these debates echoing present-day concerns.

Boston

Nearly two decades prior to the city's first zoning ordinance, Boston's Commission on Heights of Buildings (1917), established in 1904, divided the city into two districts with different maximum allowable building heights. District boundaries were based on the existing building uses in an area, with District A, which allowed taller buildings, encompassing areas where most buildings were used for commercial or business purposes. Dramatic claims were made about the need for height restrictions. In 1916, during discussions around changing the height restrictions in certain

[11] An August 1917 article in *The City Plan* by John Nolen, a Cambridge, Massachusetts city planning consultant, outlined "Opportunities for Professional Training and Experience in City Planning." It noted that "[n]ine educational institutions in the United States are now giving instruction in city planning." It also highlighted the role of the American City Planning Institute's annual conference and "city planning tours and trips" organized by various civic associations (Nolen, 1917). *The City Plan* was the "official organ of the National Conference on City Planning," based in Boston.

areas, the original commission's chairman Nathan Matthews declared that his commission imposed height limits, because "no high building should be permitted in any modern civilized community" (Commission on Height of Buildings, 1916a). The following month, in a separate testimony, Matthews dramatically concluded that "the world was created for light. That was the first purpose that was indicated by the Creator when he made it. Do not abolish it or obscure it in the streets of Boston" (Commission on Height of Buildings, 1916c). Emphasizing the benefits of height limits for lower-income residents, Matthews asked whether the Commission, by changing the restrictions, would "condemn the poor people of this city—the poorer people, those who have to work in offices, to work in darkness, and all for the benefit of the few gentlemen who do not know what they are talking about, or some ultra-selfish capitalists?" (Commission on Height of Buildings, 1916c).

Despite Chairman Matthews' steadfast commitment to the seemingly undeniable health and safety benefits (of biblical proportions) conferred by height restrictions, concessions were made for taller buildings in downtown areas. Matthews suggested that the original commission granted this concession, because prohibiting neighboring properties from erecting tall buildings would be "an act of gross injustice" (Commission on Height of Buildings, 1916a). Consistent with this assessment, the Commission observed in its final report of 1905 that if it were not for "the great number of high buildings already erected in the downtown districts, we should recommend a maximum limit for the entire city of 100 feet" (Boston Commission on Heights of Buildings, 1905).

The Commission contended that its regulations were grounded not in aesthetic considerations, but rather concern for "the life, security, safety and health of the people" (Boston Commission on Heights of Buildings, 1916b). Although building regulations that promoted health and safety did not require the payment of compensation to those affected, the Commission declared it "an unsettled question whether such restrictions can, under the state or federal constitutions, be imposed without compensation for purely aesthetic reasons" (Boston Commission on Heights of Buildings, 1905).

In 1909, the Supreme Court decided a case challenging Boston's height restrictions.[12] The plaintiff in *Welch* v. *Swasey* argued that the 80-foot height limit that applied to their property, which was significantly lower than the 125 feet applicable elsewhere, unreasonably infringed on their property rights, denied their right to equal treatment, and was merely aesthetic in nature and not a valid exercise of the police power.[13] The Massachusetts Supreme Judicial Court's own decision in *Welch*, which was appealed to the Supreme Court, had declared height limits a valid exercise of the police power, emphasizing that tall buildings increased the risk of damage from fire and threatened the public health through the exclusion of light, air, and sunshine.[14]

Beyond the police power justifications for height regulations, the Massachusetts Supreme Judicial Court addressed a separate issue, one that would soon become prominent in debates over single-family districting. Critics argued that height limits unfairly treated properties differently based on the neighborhood in which they were located. In response, the *Welch* court declared that the height regulation's reasonableness had to be judged "not only in reference to the interests of the

[12] *Welch* v. *Swasey*, 214 U.S. 91 (1909).

[13] *Welch* v. *Swasey*, 214 U.S. 91 (1909): 103–104.

[14] *Welch* v. *Swasey*, 79 N.E. 745 (Mass. 1907): 745.

public, but also in reference to the rights of land owners."[15] Foreshadowing an analysis that would be invoked again in defense of single-family districts, the state court concluded that the "value of land and demand for space" in commercial portions of the city called for allowing taller buildings and rendered the higher limit reasonable when these financial considerations were balanced against health and safety.[16]

When the case reached the Supreme Court, the Court approvingly cited the Massachusetts court's reasoning that land values and demand for space in denser, commercial areas justified allowing taller buildings in those locations.[17] Addressing the question of "whether this permitted unsafe conditions to exist in such areas (the same conditions that justified stricter regulations in residential areas), the Court suggested there may be less danger from taller buildings in commercial areas given differences—in construction materials, firefighting resources, and day and evening populations—between commercial and residential districts" (Infranca, 2023: 681).

Even after *Welch*, critics of Boston's height restrictions continued to argue that any height limit should be the same citywide; they asserted that it was not fair to have one's property next to a neighbor with the privilege to build higher. Isaac F. Woodbury, a prominent real estate developer, expressed concern that having different height limits in different districts "may result in favoring certain cliques who may have a good deal of influence in picking out the proper districts, that is not the proper democratic method of conducting the business of this city" (Commission on Height of Buildings, 1916a). At a subsequent meeting, Woodbury, focusing on fire safety, argued that he had not seen any evidence that taller first-class buildings were more of a fire risk than shorter second-class buildings (Commission on Height of Buildings, 1916c).

A similar balancing of health and safety, financial concerns, and property rights, as well as consideration of the fairness of differentiating among properties, would appear again in debates over single-family districting and use districting more generally. As land use regulation moved from height limits to use districting, advocates would also invoke a broader reading of the scope of the police power, emphasizing not just the elimination of harm but also the advancement of the public welfare.

The city's Street Commission developed the initial proposal for a zoning ordinance in Boston. The Boston Planning Board referenced this proposed ordinance, prepared "by the Street Laying-Out Department in consultation with the Building Department and the Law Department," in a recommendation dated June 2, 1921 (City Planning Board, 1922). While commending the earlier effort, the Planning Board contended that "the matter should have still further detailed study and the benefit of expert advice and assistance before being launched as a definite plan" (City Planning Board, 1922: 18). Such an effort was necessary, it suggested, both to achieve the best possible plan and to secure its passage.

The Planning Board urged adoption of a more comprehensive zoning plan, which "would stabilize property values, protect residential districts from the encroachment of business and commercial

[15] *Welch* v. *Swasey*, 79 N.E. 745 (Mass. 1907): 746.

[16] *Welch* v. *Swasey*, 79 N.E. 745 (Mass. 1907): 746.

[17] *Welch* v. *Swasey*, 214 U.S. 91 (1907): 106–107.

interests; relieve industrial districts of hampering residential requirements, and in other ways tend to promote and encourage the development of the city along orderly, progressive lines" (City Planning Board, 1922: 17). The Board referenced the zoning plans in about 30 other cities, emphasizing the important role outside experts played in the development of zoning in each of these places, where an ordinance was proposed only after intensive study. It offered New York as one example, citing the 3½ years of study prior to establishing a zoning ordinance. "The wisdom of this preliminary study," the Board suggested, was shown by the fact that the ordinance's "provisions have been almost uniformly upheld by court decisions" (City Planning Board, 1922: 18). Seattle's effort was similarly lauded, particularly its appropriation of "$10,000 for the preparation of maps and plans under the direction of a zoning commission who are working in consultation with a zoning expert." In sum, the Board concluded, "a zoning commission should be appointed, ... a special appropriation should be made for the employment of expert assistance, [and] a plan and ordinance recognizing not only present conditions and future tendencies, but offering opportunity for development along advantageous lines" should be submitted to Boston's citizens for their acceptance (City Planning Board, 1922: 19–20).

On January 12, 1922, the Board again objected to the Street Department's draft ordinance and urged that it not be submitted to the city council (City Planning Board, 1922: 20). Despite these protestations, the ordinance that the Board of Street Commissioners prepared was presented to the Boston City Council in January 1922 (Peters, 1922). In encouraging the measure's passage, Mayor Andrew J. Peters emphasized how the separation and restriction of residential and business uses ensure stability, protecting private property interests and maintaining real estate values. Although he had eschewed the Planning Board's request for more extensive study and preparation (and funding to support expert assistance), he voiced a progressive vision of zoning's development, emphasizing the role of experts, particularly city planners, engineers, lawyers, and other specialists, whose knowledge and "skilled guidance" had replaced "the days of 'rings' and 'machines, of 'bosses' and 'heelers'" (Peters, 1922: 74). The mayor chose to submit the ordinance the Street Department had already prepared because, according to the Planning Board's account, he believed "the ordinance could be perfected only by having it brought to the attention of the public through City Council hearings" (City Planning Board, 1922: 20).

The Planning Board's battles with the mayor (with whom, it suggested in its annual report, it had tried unsuccessfully to secure a meeting) were, in part, a fight over the importance of expertise, particularly that of individuals with actual experience in developing zoning for other cities. They also reflected the Board's desire for a "comprehensive plan for the City of Boston," one that would consider cohesively not just zoning but also a street plan, downtown parking, the development of public transportation, the location of municipal buildings, and a study of Boston's relation to other municipalities in its region, among other broader concerns (City Planning Board, 1922: 20–23). Planning was a nascent profession, and its practitioners sought to establish their expertise and the rigor of their work while also expanding its scope.

In February 1922, James Michael Curley took office for the first time as Mayor of Boston. In his inaugural address, Curley expressed a desire to enlarge the City Planning Board and increase its funding (City Planning Board, 1923). The Planning Board, following an additional appropriation

from the mayor, reported that it had obtained expert assistance and made considerable progress in developing a zoning ordinance as an alternative to the Street Department's proposal (City Planning Board, 1923: 3). In an appendix to the Board's annual report, Nelson P. Lewis of New York City, who served as a consultant, reiterated his advice that "zoning should be considered as an essential part of any comprehensive plan" and noted that his recommendation "was adopted and very satisfactory progress has been made in the development of a comprehensive plan ... in conformity with the best recent practice in zoning" (City Planning Board, 1923: Appendix II).

From 1923 through 1924, the Planning Board reported a "substantial increase" in its appropriations, which allowed for "a definite program of procedure in the development of a comprehensive plan." The plan considered—in addition to zoning, rail, terminal, and dock facilities—street traffic, parks and playgrounds, municipal buildings, and public markets (City Planning Board, 1924a), which resulted, following "18 months of intensive study" by the Board in consultation with Nelson Lewis and Edward Bassett, in the city's zoning plan and statute. Bassett, who, as noted previously, was cautious regarding the legal status of single-family districts, advised Boston's City Planning Board during "the study of the legal phases of the zoning law and plan" (City Planning Board, 1924b: 24).

In 1924, the Planning Board published *Zoning for Boston: A Survey and a Comprehensive Plan* (City Planning Board, 1924b). The report began with a section titled "Authority for Zoning Boston," which noted that the power to zone "in such manner as will best promoted the *health, safety, convenience* and *welfare* of the inhabitants" of a city and town was "delegated under the 'police power' of the Commonwealth and is the same authority under which fire regulations and building laws operate" (City Planning Board, 1924b: 9). This statement linked zoning to the state's police power and to earlier forms of regulation that had been upheld by the courts as valid exercises of that power. Interestingly, although the authority to zone was, as the report notes, delegated to cities and towns, it would be a vote of the Massachusetts state legislature, rather than Boston's mayor and city council, that established the city's first zoning ordinance. The reason offered for this approach was that "the present Boston building law, which is closely related to zoning, is a state act, and it was held by the best legal opinion that the city government could not modify specific action already taken by a higher authority" (City Planning Board, 1924b: 10).

The 1924 ordinance included both a Single Residence District and a General Residence District.[18] Single Residence Districts were "all located in Jamaica Plain, West Roxbury and Hyde Park" neighborhoods (City Planning Board, 1924c). In addition to these Use Districts, Bulk Districts, which overlay the Use Districts, regulated building height, as well as lot coverage, setbacks, and side and rear yards (City Planning Board, 1924c). The 35-foot districts were "designed chiefly for one-family or two-family houses" (City Planning Board, 1924c). A subsequent amendment clarified the intended interaction of use and height restrictions in the original law. That 1927 amendment "specifically restrict[ed] the occupancy of buildings in the 35-foot residential district to not more than two families" (Boston Board of Zoning Adjustment, 1928). An "S" designation in the zoning code denoted a district restricted to single-family detached dwellings, whereas an "R" (General Residence) district generally permitted multifamily dwellings and hotels. However, the amendment

[18] Zoning Law of the City of Boston. Chapter 488 of the Acts of 1924 (in effect June 5, 1924), Massachusetts.

made clear that R-35 was expressly limited to two-family dwellings (Boston Board of Zoning Adjustment, 1928). Seattle would make a similar effort to accommodate two-family residences in the late 1920s, shortly after the passage of its own zoning code.

Supporters of zoning in Boston, like their counterparts nationally, framed use districting as egalitarian in purpose and effect. A *Boston Globe* (1924) article discussing a public hearing on the proposed zoning code quoted Arthur Comey, Boston's Zoning Director, who declared "[z]oning is protection for the poor man. Zoning gives by law to the citizen of modest means, both in his home and in his business, the protection the citizen of large means is able to secure by litigation or private restriction." The *Zoning for Boston* report echoed this theme. After repeating verbatim the words quoted from Comey, it went on:

> The rich man can often protect himself against various forms of nuisances by legal action. The poor man cannot indulge in the luxury of a lawsuit; he cannot afford to hire a lawyer to prevent a garage being built next door, and he has no recourse when a factory hums about him and reduces the light and air circulation about his home. (City Planning Board, 1924b: 13)

These claims suggest an egalitarian motivation for zoning, including lower-density residential zoning, while linking it directly to traditional nuisance doctrine and concerns regarding health and safety.

A separate 1924 report of the Planning Board suggested that the zoning ordinance's purposes were broader than harm prevention and instead reflected a desire to advance public welfare. According to that report, the statute's general aims included—

> [T]o preserve the benefits, such as they are, of the *status quo* in the parts of the city now built upon; to enhance them by the gradual extrusion of inharmonious types of occupancy; to build up new areas in a manner more wholesome, comfortable and agreeable to the eye; to promote the larger convenience and orderly arrangements which make for economic efficiency, and, while imposing salutary checks, to avoid artificial rigidity by allowing for future shifts of boundary, due to inevitable growth." (City Planning Board, 1924c)

This statement tries, it would seem, to be all things to all people. It suggests preservation of the existing built form but also flexibility and allowance for growth. As such, it highlights tensions in zoning and planning that persist to this day.

The City Planning Board held public hearings on the proposed ordinance but noted that "few appeared" (City Planning Board, 1925). It concluded that this poor attendance was "probably explained by the fact that a very large proportion of the public was represented and already fully informed the eleven co-operating organizations" that helped advise on the ordinance (City Planning Board, 1925: 7). The Board attributed the ordinance's successful passage to the "technical work" and "professional guidance" of the city's planning department, coupled with an "official method for joint public consideration and co-operation" through the work of "a group of private though representative citizens" (City Planning Board, 1925: 7).

Next Door in Brookline and Newton

As Boston deliberated over a new zoning ordinance, its neighbor, Brookline, faced a legal challenge to its single-family residential districts. The petitioners in *Brett* v. *Building Commissioner of Brookline* sought to build two-family houses in a single-family district.[19] They did not accept the claim that such zoning protected the "poor man." Instead, the petitioners contended that the ordinance, by excluding multifamily buildings from single-family districts, fostered class segregation and unfairly "allowed solely the wealthy residents of the town to enjoy the benefits—such as ample light and air—of a neighborhood of single-family homes with large yards."[20]

The court in *Brett* invoked a broad definition of the police power, which "may be put forth in any reasonable way in behalf of the public health, the public morals, the public safety and, when defined with some strictness so as not to include mere expediency, the public welfare."[21] It suggested two ways in which single-family districts were justified under the police power. First, invoking more traditional health and safety concerns, it found that limiting the number "of persons or of stoves or lights under a single roof" reduced the risks of fire.[22] Second, it found that the ordinance promoted "the health and general physical and mental welfare of society."[23] Although it referenced public health and safety, *Brett* embraced a more open-ended public welfare rationale for single-family districts.

The *Brett* court also emphasized that the law, on its face, did not benefit just some subset of the community. In fact, the court observed, albeit without providing specific examples, "[i]t is a matter of common knowledge that there are in numerous districts plans for real estate development involving modest single-family dwellings within the reach as to price of the thrifty and economical of moderate wage earning capacity."[24] For their part, the attorneys representing the Brookline Building Commissioner argued that two-family dwellings were likely to bring with them the same evils long attributed to apartments: "darkened and crowded halls and stairways, increased congestion of traffic, two or three times as many children playing on the streets, a marked diminution in the amount of light and air available in the homes, and twice the quantity of refuse and garbage," creating "a distinct menace to ... safety and health."[25]

The court in *Brett* wholeheartedly embraced the perceived benefits for health, safety, and welfare of single-family dwellings:

[19] *Brett* v. *Building Commissioner of Brookline*, 145 N.E. 269 (Mass. 1924).

[20] Brief for Petitioners. *Brett* v. *Building Commissioner of Brookline*, 145 N.E. 269 (Mass. 1924): 13.

[21] *Brett* v. *Building Commissioner of Brookline*, 145 N.E. 269 (Mass. 1924).

[22] *Brett* v. *Building Commissioner of Brookline*, 145 N.E. 269 (Mass. 1924).

[23] *Brett* v. *Building Commissioner of Brookline*, 145 N.E. 269 (Mass. 1924).

[24] *Brett* v. *Building Commissioner of Brookline*, 145 N.E. 269 (Mass. 1924).

[25] Brief for Respondent. *Brett* v. *Building Commissioner of Brookline*, 145 N.E. 269 (Mass. 1924): 7. Around the same time, according to a *Boston Globe* article, the former president of the Massachusetts Real Estate Exchange, W. Franklin Burnham, at a conference of town and city planners, "read a report of the Lexington town planning board to show that double-decked two-family houses pay less than their share of taxes and are among the least desirable classes of residences to permit in a community." Citing the costs of educating children and of providing utilities it "was urged that no town can afford to permit its most desirable locations to be used for the double-decked type of two-family house" (*The Boston Globe*, 1925d).

> [T]he health and general physical and mental welfare of society would be promoted by each family dwelling in a house by itself. Increase in fresh air, freedom for the play of children and of movement for adults, the opportunity to cultivate a bit of land, and the reduction in the spread of contagious diseases may be thought to be advanced by a general custom that each family live in a house standing by itself with its own curtilage.[26]

The decision in *Brett* led a neighboring jurisdiction—Newton, which also borders Boston—to adopt single-family zoning districts after initially not including such a district in its original ordinance. In 1922, most of the Newton Board of Alderman voted to include a single-family district in the city's first zoning ordinance (*The Boston Globe*, 1925b). However, the mayor vetoed the measure on the grounds that single-family districts were unconstitutional and "feeling it savored of class legislation" (*The Boston Globe*, 1925b). Newton's first ordinance, passed into law in 1922, instead included, as the most restrictive district, one that allowed one and two-family residences (*The Boston Globe*, 1925a). Following the Massachusetts Supreme Judicial Court's decision in *Brett*, residents of districts already dominated by single-family houses urged the adoption of a single-residence district, and a committee was formed that recommended the addition of such a district (*The Boston Globe*, 1925a).

With no votes in dissent, the Newton Board of Alderman soon amended the 1922 zoning ordinance, changing "the greater part of the private-residence districts, which permit the erection of either one or two-family dwellings ... to single-residence districts" (*The Boston Globe*, 1925c). Newton's revised ordinance divided the city's residential districts into a single-family district, a private residence district that also allowed two-family residences, and a general residence district, which permitted "one or more family houses" (*The Boston Globe*, 1925c). Although a *Boston Globe* (1925c) article at the time suggested that most people were pleased with the change, it noted that one resident spoke in opposition, boldly predicting the amendment would prove "quite unnecessary as it would only be a few years when the people who sought such an ordinance would be living 100 miles from Newton, out in the country, commuting by airplane."

Concerns lingered in Newton over whether single-family districting represented "class legislation" that favored the interests of particular individuals over legitimate police power goals. When, in August of 1926, residents petitioned the Board of Alderman to have property changed from a district that allowed two-family residences to one restricted to single-family residences, "[a]n alderman charged that the petition represented 'class legislation'" (*The Boston Globe*, 1926). Another alderman argued that single-family designation was needed to protect homeowners "in preference to real estate promoters" who were erecting two-family residences (*The Boston Globe*, 1926). Those supporting the change in designation argued that it accorded with the zoning's law principles, which sought to designate each section of the city based on the predominant form of existing housing in that section (*The Boston Globe*, 1926). One member of the Board of Alderman contended that the policy of changing districts from two to one family whenever a petition was filed "denies rights to the citizen who is unable to own his own home, and prevents him from making his home in Newton" (*The Boston Globe*, 1926). The rights of those for whom a two-family home might provide a more affordable path to homeownership were, he reasoned, "as imperative as those of people living in

[26] *Brett* v. *Brookline* (1924). The decision in Brett was consistent with that of most courts of the period, which tended to uphold one- and two-family districts that were a component of a comprehensive zoning ordinance (Infranca, 2023: 701–706).

single-family houses" (*The Boston Globe*, 1926). Similar arguments regarding the relative merits of one and two-family homes occurred in Seattle. They echo contemporary debates over allowing denser housing, particularly missing-middle housing in the form of duplexes and triplexes, in existing single-family neighborhoods to provide more accessible homeownership opportunities.

Seattle

Established in February 1920, the Seattle Zoning Commission was tasked with making "a survey of the City of Seattle with a view of dividing the same into zones or districts," drafting a zoning ordinance, and recommending "to the City Council such measures as it may deem advisable for the promotion of the public peace, health, convenience and welfare."[27] An undated document titled "Seattle Zoning Plan," which appears to be from the early 1920s and prepared as part of an early public relations effort, given its location in the archives, states that zoning seeks to prevent uses that are unsuitable and will cause injury to adjacent property. It then remarks, echoing racialized sentiments around multifamily housing and its residents during the period, that—

> [o]ur own city has not yet suffered seriously from overcrowding and its consequent ill effects in the lowering of the standard of racial strength and virility, and in the increase of crime, disease and immorality, but we may learn from the experiences of older cities that these evils have been a direct result of unrestrained city growth. (Seattle Zoning Plan, n.d.b.)[28]

As it began its work, the Seattle Zoning Commission drew on the expertise of prominent national voices in the zoning movement, including Charles Cheney and, most extensively, Harland Bartholomew.[29] Bartholomew visited Seattle in February of 1921 and spent 3 days consulting the commission on a program for its work (Seattle Zoning Commission, 1921b). An untitled memo of February 22, 1921, recounts the substance of the Commission's meeting with Bartholomew and reprints at length his statement (Seattle Zoning Commission, 1921c). Bartholomew provided a rather truncated and questionable history of early planning and zoning, emphasizing efforts to address crime in tenements, transit problems, and the beautifications of cities, which, he contended, reveal "the fact that city zoning must be based entirely upon measures for the health and welfare of the city" (Seattle Zoning Commission, 1921c: 2).

A contemporaneous newspaper article quoted Bartholomew declaring that "Zoning or town planning is purely a matter of business and is not prompted by the spirit of aestheticism. It means growing right instead of growing wrong" (*Seattle Post-Intelligencer*, 1921b). Echoing debates over the source and scope of the power to zone, Bartholomew emphasized "[t]he right to zone is based entirely on the police power and will be upheld by the courts provided it is not retroactive and is comprehensive. That is, that it does not give special privileges to any one district over any other

[27] City of Seattle. An Ordinance Establishing Zoning Commission (Effective Feb. 22, 1920), Ordinance No. 40407, 1920.

[28] This statement is the only explicit reference to race found in the Seattle archival materials reviewed.

[29] Cheney addressed the Zoning Commission on March 6, 1920, on the topic of "Zoning of the City of Portland" (Seattle Zoning Commission, 1921a).

district" (Seattle Zoning Commission, 1921c: 3).[30] Bartholomew praised cities, such as Boston, that were imposing height limits and noted that zoning districts were determined "with mathematical precision and in accordance with prevailing conditions" (*Seattle Post-Intelligencer*, 1921b). Given his role as the nation's first full-time city planner, it is not surprising that Bartholomew emphasized the burgeoning profession's expertise and scientific rigor. He would, as he did in other cities, recommend the careful preparation of "about fourteen maps" so as to assist in defending the ordinance in the courts by showing that the Commission "studied and considered all aspects of the case and have the documents to prove your point" (Seattle Zoning Commission, 1921c: 4).[31]

Bartholomew's "A Zoning Program for Seattle" again emphasized the need for preliminary maps and studies (documenting in detail the studies needed and the time and personnel they would require) before declaring—

> [a] plan hastily or arbitrarily arrived at will prove an aggravation rather than a benefit and when it comes to the justification of the plan in the courts only an overwhelming preponderance of studies pointing conclusively to thorough comprehensive study in the preparation of the plan will convince the court of its reasonableness and necessity. (Bartholomew, 1921)

Bartholomew's assessment of the importance of careful study and ample documentation would prove accurate. Five years later, in *Euclid* v. *Ambler Realty*, the Supreme Court would emphasize, in upholding *Euclid's* ordinance, that "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."[32] Those comprehensive reports, "which bear every evidence of painstaking consideration," were in agreement that the segregation of uses would improve access for fire apparatus and "increase the safety and security of home life ... decrease noise and other conditions which produce or intensify nervous disorders; preserve a more favorable environment in which to rear children, etc."[33] The Court would accept, without significant analysis, the expert consensus that districting of uses advanced health and safety. Subsequent courts would prove similarly deferential, invoking both traditional deference to legislative determinations and a parallel acceptance of the expertise of zoning's architects (Infranca, 2023).

Bartholomew's recommendation to the Seattle Zoning Commission of five districts, including two residential districts—one limited to single-family residences and the other allowing all other residential uses—would be adopted in the city's first zoning ordinance. An undated article in the same folder reveals that the Commission initially considered establishing only one residential

[30] A February 16, 1921, newspaper article, without an identifiable place of publication, previewed Bartholomew's remarks and extolled the benefits of zoning, concluding that "Zoning is brought about through the police power vested in the city authorities and it is a measure recommended solely for the welfare of the public" (Seattle Municipal Archives, 1921). These articles suggest a concerted public campaign to establish the legality of zoning and emphasize its benefits for the public at large.

[31] An accompanying list of the maps to be made included a "Residential Use Map" that "segregates [residences] into those for single families, more residences over stores, and so on. This is to be used for display purposes and more particularly to determine whether or not it would be desirable to have two classes of residence districts or one" (Seattle Municipal Archives, n.d.a.). In a subsequent January 9, 1922, letter, the Commission's Engineer and Executive Secretary detailed to the Zoning Commission that an extensive set of maps of existing conditions had been prepared (Seattle Municipal Archives, 1922).

[32] *Euclid* v. *Ambler Realty*, (1926).

[33] *Euclid* v. *Ambler Realty*, (1926).

district, which would "include single dwellings, apartment houses, churches, hospitals, schools, and other educational institutions" (Seattle Municipal Archives, n.d.c.). This plan would have included three other districts for commercial, industrial, and unrestricted uses.

The Seattle Zoning Commission, as its efforts to draft an ordinance continued, launched a public relations campaign to build support for zoning. An 11-page document titled "Zoning: Article Suggested for Publication in the Press to Initiate the Zoning Problems," signed by the Superintendent of Buildings, an Ex Officio Member of the Zoning Commission, with the handwritten date of April 28, 1922, described the tentative zoning code and discussed its rationale (Blackwell, 1922). The proposed article emphasized the fire safety rationale for height and area restrictions (Blackwell, 1922: 6–7). With regard to buildings used for "homes, apartments and places where people have to sleep" a larger open area around the building was recommended on the grounds that greater protection should be afforded in places where a person sleeps "as to the securing of fresh air, avoiding obnoxious gases which may be created by manufactories or by accident, and to avoid hazard from fire" (Blackwell, 1922: 7).

The article referenced arguments in support of zoning that experts advanced, including Bartholomew, Bassett, and others. After noting the perceived benefits of zoning for stabilizing property values and providing security from future changes, it invoked the talking point, popular among zoning's proponents, that zoning conferred broad and egalitarian benefits:

> It is worthwhile to remember that a zoning bill is a poor man's bill. The rich man can often protect himself against various forms of nuisances by legal action. But the poor man cannot indulge in the luxury of a lawsuit; he cannot afford to pay a lawyer to prevent a garage being built next to him, and he has no recourse when a factory hums about him and reduces the light and air circulation about his home. (Blackwell, 1922: 8)

The article briefly observed that zoning must relate "to the health, safety, morals, order and general welfare of the community" before acknowledging that whereas zoning, by limiting building heights and uses, "enhances the value of buildings and tends to promote an aesthetic standard ... the courts have not yet recognized this aesthetic standard" (Blackwell, 1922: 9). Zoning's supporters in Seattle sought to highlights its potential benefits in relation to aesthetics and property values but, cautious regarding the scope of the police power, were careful to emphasize more traditional rationales for its exercise.

Newspaper clippings from the same year reveal a broader set of considerations that the zoning commission acknowledged informed its work, including particular attention to protecting residences and maintaining present uses. A clipping titled "Zoning Plan Explained" summarized a Zoning Commission statement that the purposes of the zoning plan included the protection of homes, the encouragement of investment through stabilizing property values, and the development of business "where it logically belongs" (Seattle Municipal Archives, n.d.d.). An October 1922 article in the *Seattle Post-Intelligencer*, which noted that the zoning commission's work was almost complete, reported that the—

> factors which entered into the preparation of the zoning plans were: Present uses of property; density of population; heights of buildings; customs of the people, and trend of affairs. The topography of the city was a very special factor. A survey to develop this information was the first work of the commission." (*Seattle Post-Intelligencer*, 1922)

Although the Commission's careful and laborious work of documenting existing conditions, drawing on the expertise of outside experts, and seeking to shape public opinion may have been designed to partly ensure that zoning complied with the police power, it drew the ire of Seattle's mayor, who in a letter requested the commission speed up its work. Mayor Caldwell tersely wrote in July 1922:

> Referring to the Zoning Commission, of which you are Executive Secretary, will it not be possible to speed up the work on this Commission, so as to get its work finished and stop the expense caused thereby?
>
> Members of the City Council believe that this work should have been finished months ago, and unless the work is completed, I fear that interest will be lost in the enterprise; so let us speed up and get the work finished. (Caldwell, 1922)

The Commission staff and the Commission wrote back within a week via two separate letters explaining their process (Seattle Zoning Commission, 1922a, 1922b). The Commission's letter noted that most cities hired, albeit at great expense, an expert in zoning, but that Seattle had not done so, merely having Bartholomew consult for a short period. It emphasized the need to build public support and the financial benefits that accrue from zoning, suggesting that builders in cities without zoning now sought to implement it.

The preliminary copy of the proposed zoning ordinance of 1923 would, consistent with Bartholomew's recommendations, include a First Residence District restricted to single-family dwellings, as well as schools, churches, and other listed units.[34] A separate Second Residence District also allowed "[a]ll dwellings, flats, apartment houses and boarding or lodging houses without stores," as well as hotels. If a lot in a First Residence District was adjacent to the boundary of a Business District, then a multiple family dwelling "such as a flat or an apartment house" was permitted on said lot within 60 feet of the district boundary. Certain area districts were, as a general matter, applied to specific use districts, with First Residence districts typically designated as Area District "A." These area districts imposed dimensional requirements, such as lot coverage maximums and open space and side yard minimums.

Newspaper clippings from 1923 reveal significant public debate over the proposed ordinance. Some suggested that districting as a general matter was popular, but that arguments remained regarding where lines should be drawn (*The Town Crier*, 1923a). The concern was that delaying the enactment of the zoning ordinance, "which has been scientifically and carefully worked out by experts," would lead people to place industrial uses in residential zones, where once located, they would be much more difficult to eliminate (*The Seattle Times*, 1923; *The Town Crier*, 1923b).

[34] Proposed Zoning Ordinance (Preliminary Copy). Box 1, Folder 11, Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives, 1923.

A neighborhood newspaper, contending that the plan was too proscriptive, stated derisively that "the Zoning Commission is active throughout the city holding meetings in an effort to popularize the [zoning] idea in order that the same will become part of the plan of compulsory building and districting" (*Wallingford News*, 1923). The *North Seattle Reporter* (1923a) issued an editorial arguing that the city council should either vote the ordinance down or put it to a public vote. Among other arguments, the neighborhood paper's editorial argued that a zoning ordinance exceeded the proper bounds of the police power. It contended that "The Zoning Ordinance can only be put in effect through the Police Power granted cities, which can only be invoked in times of war or great emergency as it practically takes from every citizen part of his inalienable rights guaranteed under the Constitution of the United States" (*North Seattle Reporter*, 1923a). Critics also contended that Seattle needed more business and manufacturing, rather than "more exclusive residential districts" (*North Seattle Reporter*, 1923a, 1923b).

Seattle's zoning ordinance became law on July 27, 1923. Debate continued over where district lines should be placed. On August 7, 1924, Seattle Mayor Brown vetoed Council Bill 37301, which would have rezoned certain property from Second Residence District, which allowed multifamily housing, to First Residence District, which allowed only single-family homes.[35] The reasons given for the veto emphasized that a single-family designation could significantly constrain property rights and reduce a parcel's value:

> [c]ertain portions of this property as 1st Residence District property has but one value, and that is to make the owner there-of pay taxes without getting anything in return, and forever depriving him of selling it or putting it to any use whatsoever. In effect it is confiscatory and deprives a man of his property without due process of law.

This veto foreshadowed a debate that would soon ensue in Seattle regarding the merits of two-family homes, particularly as suitable places for raising a family.

In August 1925, the *Washington State Architect* published an article titled "Can a Family Live in a Duplex Home?" The article recounted a story (whether real or fictitious is unclear) of a "clergyman missionary" who sought to build a two-family home but was prevented by zoning, despite the fact that the "present ruling President of the United States raised his family in a two-family house" (*Washington State Architect*, 1925a). It lamented that the clergyman when traveling away from home, "must place his family in a lonely house or in an apartment." The same publication, the following month, reported that "[t]here seems to be growing in the minds of all, even the ardent advocates of the zoning in Seattle as is, the idea that there should be permitted something between the single residence and multiple residence" (*Washington State Architect*, 1925b). The duplex was recommended as a more affordable option for a smaller family or an older couple looking to downsize in place. The article suggested that the duplex might democratize homeownership as "many a man can build a home, if he can but share the expense with another." The example was offered again of "the traveling man who is away so much that he likes his wife to be in the house with another family; yet neither of them wish to live in apartments." Finally, the experience of President Coolidge, who "raised a rather satisfactory family in a two-family house," was invoked

[35] Mayor's Veto. Seattle City Clerk's Office Comptroller File No. 95934, Mayor's Veto of Council Bill No. 37301, amending Ord. #45382 (zoning), filed August 7, 1924.

again as support of the duplex. Nearly a century before the concept of "gentle density" and "missing middle" housing would become popular among a significant subset of urban planners, architects in Seattle made the case for legal changes to pave the way for such housing.

The City Planning Commission soon encountered multiple petitions to extend Second Residence districts and allow two-family homes in the First Residence District (Seattle Planning Commission, 1926a). In July 1926, the Zoning Committee of the Planning Commission "recommended for consideration by the Commission as a Whole that the First Residence District be subdivided into 'A' and 'B' Districts," with "B" Districts allowing two-family residences (Seattle Planning Commission, 1926b). At the same meeting, the commission's president E.S. Goodwin recommended consideration of a proposal allowing apartments on all property within 120 feet of a business, commercial, or industrial district and to then allow, in the next 120 feet, two-family houses. At the next meeting, in August, the committee considered both proposals but ultimately postponed a decision (Seattle Planning Commission, 1926c). The minutes from October reveal that a report from the zoning committee on the Goodwin proposal recommended that the amendment not be adopted and that, instead, such changes be considered on a case-by-case basis (Seattle Planning Commission, 1926d). The Commission adopted that report with no dissenting votes.

The following year, the Commission considered a proposal to allow two-family dwellings in First Residence Districts "upon written consent of two-thirds of the property abutting the same street and within one hundred feet" (Seattle Planning Commission, 1927). The proposed amendment did not pass, nor did an amendment requiring unanimous (rather than two-thirds) consent of neighbors. Efforts to expand opportunities for the development of two-family residences in the years immediately following the passage of Seattle's zoning ordinance appear to have died at this point. As the decade ended, the Seattle Planning Commission continued to call, in its 1929 and 1930 annual reports, for more comprehensive planning to address future needs and for the preparation and adoption of a new Master Plan (Seattle Planning Commission, 1929, 1930). In the latter, Commission President Goodwin recommended public education regarding "the necessity and economic value of a Master Plan," so as to build public confidence in its importance.

The development of Seattle's first zoning ordinance suggests that Bartholomew played a significant role in the decision to include a single-family zoning district. The original proposal did not include such a district, and significant questions regarding the location of such districts and the possibility of allowing two-family residences in part of them lingered in the years following the ordinance's passage. Although speculating is dangerous, the significant support in Seattle for allowing two-family dwellings may have resulted—absent Bartholomew's efforts—in the most restrictive districts allowing both one- and two-family residences.

Proponents of zoning in Seattle sought to cultivate public support for the zoning ordinance through the popular press, emphasizing talking points regarding zoning's relation to public health, safety, and welfare and suggesting it particularly benefited the less wealthy. Finally, those tasked with crafting the zoning ordinance, informed by Bartholomew's recommendations, approached their work methodically, in part with an eye to insulating it from legal challenge. In addition to documenting the careful studies and preparation behind the ordinance, they emphasized the comprehensiveness

of their effort. In the aftermath of the ordinances passage, they would continue to push for a larger role, beyond zoning, in comprehensively planning the Emerald City's future development.

Conclusion: The Police Power as Necessary Fiction

Officials on the ground in Boston and Seattle were sensitive to the possibility that elements of their early zoning ordinances, particularly single-family districts, might be susceptible to legal challenge. They sought to link use districting to police power considerations for health, safety, and a broad conception of public welfare. Their connection to these traditional concerns had led courts to accept earlier forms of land use regulation, including height restrictions and open space minimums. Zoning proponents also saw how courts accepted *comprehensive* zoning ordinances, deferring to expertise and legislative determinations so long as they appeared to reflect careful deliberation over existing needs and future planning in furtherance of the general welfare and not of narrow private interests.

Writing in the *American Bar Association Journal* in 1931, Edward Landels, the co-author of California's California Planning Act of 1929, declared the invocations of traditional police power concerns in support of zoning a necessary fiction. He forthrightly conceded:

> In recent years, the constitutionality of stringent zoning ordinances has been sustained repeatedly on grounds that bear but little genuine relation to, or are but incidental to, the real purpose of such ordinances. Zoning ordinances have been paraded under the guise of measures designed to effect purposes usually unthought of by the city councils enacting them. In this way, what is really a very radical though necessary extension of the states' police power has become established. (Landels, 1931)

Landels observed that, although health, safety, and morals were invoked, courts, to his mind "very properly," generally "do not inquire as to just how the public health, safety or morals are protected, but are satisfied with a finding that general, although perhaps indefinite, considerations of that character moved the legislative bodies." Landels concluded that it was deference to the legislature that did much of the real work for courts in finding zoning ordinances valid (Landels, 1931).

Reflecting contemporary worries over impermissible "class legislation," Landels argued that reliance on the police power was problematic given that "[t]he state can scarcely be more solicitous of the health or the safety or the morals or the 'welfare' of people who live on one side rather than the other of a more or less arbitrarily drawn line." As Landels remarked, excluding duplexes from single-family districts "on the grounds of health and safety" rendered it "embarrassing to try and justify ten story apartments in another." Instead of advancing health and safety, Landels contended that zoning's primary purpose was the "protection of the value and usefulness of urban land, and the assurance of such orderliness in municipal growth as will facilitate the execution of the city plan and the economical provision of public services" (Landels, 1931). As the previous materials discussed, supporters of zoning in Boston and Seattle were explicit about their own concerns with property values and with shaping the direction of urban growth, both through zoning generally and single-family zoning specifically. However, they were careful to tether zoning to traditional police power concerns.

As noted, American courts today embrace a broader scope for the police power, accepting aesthetic motivations for its use. Nonetheless, examining the early debates around single-family zoning is valuable. If nothing else, they reveal that many of the issues implicated by today's efforts to reform single-family zoning were also matters of concern at the advent of zoning. Zoning's early proponents were aware of the shaky legal foundations on which single-family districts were built. They confronted the critique that such zoning, rather than serving the public welfare, advanced the interests of a particular class. Their responses proved sufficient to secure the passage of zoning ordinances and their acceptance by courts. A century later, however, the questionable premises on which they relied only serve to strengthen the case for reform.

This history suggests a few avenues for legislative reform. First, debate during the early period of zoning was vigorous about the merits of exclusively single-family districts and of allowing what today is termed "gentle density" or "missing middle housing," particularly duplexes. For advocates of duplexes, this housing expanded access to the perceived benefits of homeownership. Individuals like Edward Bassett recognized that police power concerns with health and safety were likely to be threatened no more by a two-family house that covers the same fraction of a lot as a larger single-family residence. Although lot coverage limitations can be invoked to stifle density and increases in housing supply, shifting to a focus on such dimensional restrictions, rather than use restrictions, would allow for two- and three-family housing to be built in the same footprint as a single-family residence.

Second, early champions of zoning emphasized a comprehensive approach to their task, placing single-family zoning within the context of careful study of a jurisdiction's existing needs and future growth. Although, in many cases, they may have done so simply to fortify their work against legal challenge, highlighting these arguments suggests that low-density zoning, to the extent it is accepted as a valid exercise of the police power in furtherance of the general welfare, must occur in conjunction with zoning that will allow the development of sufficient housing to meet existing and future housing needs for the broader population. As one prominent expert declared: "Comprehensive zoning, when developed to its fullest extent, will so district a city that each use of land incident to the needs of that city will find an area set aside for its occupancy" (Pollard, 1931: 15).

Third, looking back at this early history of zoning reveals significant reliance on two claims that, in hindsight, were unmerited. The first was that restrictive zoning advanced the interests of low-income people (or of the community broadly, rather than of a particular privileged class). Admittedly, many at the time questioned these claims, as debates in Newton reveal. The legacy of exclusionary zoning in suburbs and high housing prices in communities with the most restrictive zoning reveals little benefit for lower-income households. Although many early supporters of zoning may have been driven by unsafe housing conditions in urban areas, changes in building technology and codes undermine any health and safety rationale for low-density zoning. Second, zoning proponents believed that through comprehensive planning, sufficient space would be made available to meet future housing needs and that zoning would prove sufficiently flexible to address changes in demand. As scholars have noted, however, zoning too often freezes uses in place for generations, stifling needed development (Ellickson, 2022).

Finally, much can be gained from more careful attention to the relationship between the police power and a state's grant of zoning authority to local governments. States, as they seek to retake authority over zoning or displace local zoning, should link their efforts to traditional concerns with health, safety, and the general welfare at the regional and state levels. In a period of climate change, rising housing costs, and significant inequality in access to quality schools, a strong case is to be made that constraining or eliminating single-family zoning advances these concerns. Conversely, states should more explicitly circumscribe local zoning power, particularly in relation to single-family districts. As some states have already done, state governments should displace overly restrictive zoning, including single-family zoning districts, especially those with large minimum lot sizes. To the extent that local concerns might justify lower-density zoning, perhaps for environmental or other reasons, state law should specify the concerns a local government might invoke to justify such zoning. They should also require local governments to substantiate how lower-density zoning addresses those concerns, consistent with traditional police power limitations and perhaps allow for review of such zoning by a state administrative agency (Infranca, 2019: 885–886).

Early debates over single-family zoning in Boston, Seattle, and other cities reveal concerns with many of the issues central to contemporary reform efforts. They also suggest the contingent nature of single-family districting, which many questioned the wisdom and legality of including in the earliest zoning ordinances. Renewed attention to the dubious legal basis for this zoning suggests the need for a recalibration of zoning power and a consideration of the broader range of welfare interests zoning implicates.

Acknowledgments

The author thanks Jeanie Fisher, Reference Archivist at Seattle Municipal Archives, and Meghan Capone, Assistant Archivist at City of Boston Archives, for help with obtaining archival material and Ronnie Farr, Suffolk University Law School Class of 2023, for excellent research assistance.

Author

John Infranca is a professor of law at Suffolk University Law School.

References

Advisory Committee on Zoning. 1926. *Standard State Zoning Enabling Act Under Which Municipalities May Adopt Zoning Regulations*. Washington, DC: U.S. Department of Commerce. https://www.govinfo.gov/content/pkg/GOVPUB-C13-18b3b6e632119b6d94779f558b9d3873/pdf/GOVPUB-C13-18b3b6e632119b6d94779f558b9d3873.pdf.

Baar, Kenneth. 1992. "The National Movement to Halt the Spread of Multifamily Housing, 1890–1926," *Journal of the American Planning Association* 58 (1): 39–48.

Baar, Kenneth K. 1996. "The Anti-Apartment Movement in the U.S. and the Role of Land Use Regulations in Creating Housing Segregation," *Netherlands Journal of Housing and the Built Environment* 11: 359–379.

Babcock, Richard F. 1983. "The Egregious Invalidity of the Exclusive Single-Family Zone," *Land Use Law and Zoning Digest* 35 (7): 4–8.

Bartholomew, Harland. 1921. "A Zoning Program for Seattle." Box 1, Folder 1, Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

———. 1930. *A Plan for the City of Vancouver British Columbia*. Vancouver City Council.

Bassett, Edward M. 1914. "Value of Zone Plan," *Journal of the American Institute of Architects* reprinted in "The Regulation of Building Heights," *The New York Times*, May 10. https://www.nytimes.com/1914/05/10/archives/the-regulation-of-building-heights-recent-report-of-heights-of.html.

———. 1916. "Comments in Discussion Led by Edward M. Bassett and George B. Ford." In *Proceedings of the Eighth National Conference on City Planning*. New York: 158–163. https://www.google.com/books/edition/Proceedings_of_the_National_Conference_o/je1mAAAAMAAJ?hl=en&gbpv=1&dq=Proceedings+of+the+Eighth+National+Conference+on+City+Planning&pg=PP7&printsec=frontcover.

———. 1922. *Zoning*. New York: National Municipal League.

Blackwell, J. D. E. 1922. "Zoning: Article Suggested for Publication in the Press to Initiate the Zoning Problems," April 28. Box 1, Folder 12 (Public Relations, 1920–1922), Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

Boston Board of Zoning Adjustment. 1928. *Fourth Annual Report for the Year Ending December 31, 1927*. Board of Zoning Adjustment Annual Reports, 5460.004, Box 1. City of Boston Archives. https://archives.boston.gov/repositories/2/resources/531.

Boston Commission on Heights of Buildings. 1905. "Final Report of the Commission on Height of Buildings in the City of Boston, December 22." Document 133-1905.

———. 1916a. "Hearing of March 23, 1916 Meeting Minutes."

———. 1916b. "Letter Dated Friday, February 11, 1916 Regarding Meeting of the Commission on Heights of Buildings."

———. 1916c. "Hearing of April 26, 1916 Meeting Minutes."

———. 1917. "November 2, 1917 Letter to Honorable James M. Curley, Mayor of the City of Boston."

The Boston Globe. 1924. "Comey Illustrates Boston Zoning Plan," February 20. https://bostonglobe.newspapers.com/image/430266556/?terms=Comey%20Illustrates%20Boston%20Zoning%20Plan%22&match=1.

———. 1925a. "Renewal of Newton Zoning Fight Looms," March 18: 4.

———. 1925b. "Change in Newton Zoning Ordinance," April 7: 25.

———. 1925c. "Vote for Single Residence Zones," May 5: 16.

———. 1925d. "Urges Legislators Cut Hub Traffic Congestion," October 6: 21.

———. 1926. "Hot Debate Under Newton Zoning Law," August 10: 22.

Brady, Maureen E. 2021 "Turning Neighbors into Nuisances," *Harvard Law Review* 134 (5): 1609–1682. https://harvardlawreview.org/print/vol-134/turning-neighbors-into-nuisances/.

Caldwell, Hugh M. 1922. "Letter to Mr. E.L. Gaines, Executive Secretary Zoning Commission From Hugh M. Caldwell, Mayor, City of Seattle (July 5)." Box 1, Folder 4 (Correspondence, 1920–1924), Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

Cheney, Charles H. 1920. "Removing Social Barriers by Zoning," *Survey* 44 (11): 275–278.

Chused, Richard H. 2001. "Euclid's Historical Imagery," *Case Western Reserve Law Review* 51 (4): 597–616.

City of New York. 1916. *Commission on Building Districts and Restrictions: Final Report*. New York: Board of Estimate and Apportionment, Committee on the City Plan.

City Planning Board. 1922. *Eighth Annual Report of the City Planning Board for the Year Ending January 31, 1922*. City Document No. 8-1922. Boston: Commonwealth of Massachusetts.

———. 1923. *Ninth Annual Report of the City Planning Board for the Year Ending January 31, 1923*. City Document No. 8-1923. Boston: Commonwealth of Massachusetts.

———. 1924a. *Tenth Annual Report of the City Planning Board for the Year Ending January 31, 1924*. City Document No. 8-1924. Boston: Commonwealth of Massachusetts.

———. 1924b. *Zoning for Boston: A Survey and a Comprehensive Plan, Report of the City Planning Board, Boston, Massachusetts*. Boston: Commonwealth of Massachusetts. https://archive.org/details/zoningforbostons00bost.

———. 1924c. *A Compendium of Reports and Studies Relating to the Commerce and Industries of Boston*. Document 81-1924. Boston: Commonwealth of Massachusetts. https://archive.org/details/compendiumofrepo00bost.

———. 1925. *Eleventh Annual Report of the City Planning Board for the Year Ending January 31, 1925*. City Document No. 8-1925. Boston: Commonwealth of Massachusetts.

U.S. Department of Commerce. 1922. *A Zoning Primer by the Advisory Committee on Zoning Appointed by Secretary Hoover*. Washington, DC: Government Printing Office. https://nvlpubs.nist.gov/nistpubs/Legacy/BH/nbsbuildinghousing3.pdf.

Ellickson, Robert C. 2022. *America's Frozen Neighborhoods: The Abuse of Zoning*. New Haven, CT: Yale University Press.

Ford, James. 1913. "Some Fundamentals of Housing Reform," *The American City* 8: 473–480.

Freund, Ernst. 1904. *The Police Power, Public Policy and Constitutional Rights*. Chicago: Callaghan and Company.

Gaines, E.L. 1925. "Special Memorandum on 'Zoning,'" April 11. Box 1, Folder 4 (Correspondence, 1920–1924), Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

Gillman, Howard. 1993. *The Constitution Besieged: The Rise and Demise of Lochner Era Police Powers Jurisprudence*. Durham: Duke University Press.

Gries, John M., and James Ford, eds. 1932. "President's Conference on Home Building and Home Ownership." In Planning for Residential Districts: Reports of the Committees on City Planning and Zoning. San Francisco, CA: Prelinger: 1–46.

Hirt, Sonia. 2013. "Home, Sweet Home: American Residential Zoning in Comparative Perspective," *Journal of Planning Education and Research* 33 (3): 292–309.

———. 2015. "The Rules of Residential Segregation: U.S. Housing Taxonomies and Their Precedents," *Planning Perspectives* 30 (3): 367–395.

Hirt, Sonia A. 2014. *Zoned in the USA: The Origins and Implications of American Land-Use Regulation*. New York: Cornell University Press.

———. 2018. "Privileging the Private Home: A Case of Persuasive Storytelling in Early Twentieth-Century Professional Discourses," *Journal of Urbanism* 11 (3): 277–302.

Hockheimer, Lewis. 1897. "The Police Power," *The Central Law Journal* 44: 158–162.

Infranca, John. 2019. "The New State Zoning: Land Use Preemption Amid a Housing Crisis," *Boston College Law Review* 60: 823–887.

———. 2023. "Singling Out Single-Family Zoning," *Georgetown University Law Journal* 111: 659–722.

Landels, Edward D. 1931. "Zoning: An Analysis of Its Purposes and Its Legal Sanctions," *American Bar Association Journal* 17 (3): 163–167.

Lasker, Bruno. 1920. "Unwalled Towns," *Survey* 44: 675–718.

Lees, Martha A. 1994. "Preserving Property Values? Preserving Proper Homes? Preserving Privilege? The Pre-Euclid Debate Over Zoning for Exclusively Private Residential Areas, 1916–1926," *University of Pittsburgh Law Review* 56: 367–439.

Lens, Michael C., and Paavo Monkkonen. 2016. "Do Strict Land Use Regulations Make Metropolitan Areas More Segregated by Income?" *Journal of the American Planning Association* 82 (1): 6–21.

Loudenback, Tanza. 2017. "America's Future Depends on the Death of the Single-Family Home," *Business Insider*, December 4. https://www.businessinsider.com/us-housing-crisis-homeownership-single-family-home-2017-12.

Manville, Michael, Paavo Monkkonen, and Michael Lens. 2020. "It's Time to End Single-Family Zoning," *Journal of the American Planning Association* 86 (1): 106–112.

Marohn, Charles. 2020. "It's Time to Abolish Single-Family Zoning: Suburbia Is Built on Federal Subsidies. Is That Conservative?" *The American Conservative*, July 3. https://www.theamericanconservative.com/urbs/its-time-to-abolish-single-family-zoning/.

New York City Board of Estimate and Apportionment. 1913. *Report of the Heights of Buildings Commission to the Committee on the Height, Size and Arrangement of Buildings*. Ann Arbor: University of Michigan.

Nolen, John. 1917. "Opportunities for Professional Training and Experience in City Planning," *The City Plan* 3 (2): 4–6. https://ia800304.us.archive.org/1/items/city00planbostvol2rich/city00planbostvol2rich.pdf.

Novak, William J. 1996. *The People's Welfare: Law and Regulation in Nineteenth-Century America*. Chapel Hill: The University of North Carolina Press.

North Seattle Reporter. 1923a. "Editorial Comment," January 26. Box 1, Folder 10, Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

———. 1923b. "Green Lake Commercial Club Fights to Save Light Manufacturing and Furnish Labor for Its People," January 26. Box 1, Folder 10, Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

Peters, Andrew James. 1922. *Valedictory Address of Andrew J. Peters, Mayor of Boston, to the City Council, Delivered in the Council Chamber, February 1, 1922*. Charleston, SC: Nabu Press.

Pollard, W. L. 1931. "Outline of the Law of Zoning in the United States," *Annals of the American Academy of Political and Social Science* 155 (2): 15–33.

Rothstein, Richard. 2017. *The Color of Law: A Forgotten History of How Our Government Segregated America*. New York: Norton.

Rothwell, Jonathan T. 2011. "Racial Enclaves and Density Zoning: The Institutionalized Segregation of Racial Minorities in the United States," *American Law and Economics Review* 13 (1): 290–358.

Seattle Municipal Archives. n.d.a. "List of Maps to Be Made – Information Which Is to Be Shown on Maps – Purpose for Which Maps Are to Be Used." Box 1, Folder 4 (Correspondence, 1920–1924), Zoning Commission Subject Files, Record Series 1651-02.

———. n.d.b. "Seattle Zoning Plan." Box 1, Folder 12 (Public Relations, 1920–1922), Zoning Commission Subject Files, Record Series 1651-02.

———. n.d.c. “Four Zones Are Proposed by Commission, Ready to Take up Apportioning of Seattle.” Box 1, Folder 8, Zoning Commission Subject Files, Record Series 1651-02.

———. n.d.d. “Zoning Plan Explained.” Box 1, Folder 9, Zoning Commission Subject Files, Record Series 1651-02.

———. 1921. “Benefits of Zoning Will Be Told.” Box 1, Folder 8, Zoning Commission Subject Files, Record Series 1651-02.

———. 1922. “Letter to the (Seattle) City Zoning Commission From (unnamed) Engineer and Executive Secretary,” January 9. Box 1, Folder 4 (Correspondence, 1920–1924), Zoning Commission Subject Files, Record Series 1651-02.

Seattle Planning Commission. 1926a. “Minutes of Meeting, May 11, 1926.” Box 1, Folder 1, Planning Commission Minutes, Record Series 1650-01, Seattle Municipal Archives.

———. 1926b. “Minutes of Meeting, July 1926.” Box 1, Folder 1, Planning Commission Minutes, Record Series 1650-01, Seattle Municipal Archives.

———. 1926c. “Minutes of the Regular August Meeting of City Planning Commission August 10, 1926.” Box 1, Folder 1, Planning Commission Minutes, Record Series 1650-01, Seattle Municipal Archives.

———. 1926d. “Minutes, October 27, 1926.” Box 1, Folder 1, Planning Commission Minutes, Record Series 1650-01, Seattle Municipal Archives.

———. 1927. “Minutes of the Meeting of City Planning Commission June 14, 1927.” Box 1, Folder 1, Planning Commission Minutes, Record Series 1650-01, Seattle Municipal Archives.

———. 1929. “City Planning Commission President’s Annual Report January 8, 1929.” Box 1, Folder 1, Planning Commission Annual Reports, Record Series 1802-H7, Seattle Municipal Archives.

———. 1930. *Annual Report Seattle City Planning Commission, January 1, 1930 by E.S. Goodwin, President*. Box 1, Folder 1, Planning Commission Annual Reports, Record Series 1802-H7, Seattle Municipal Archives.

Seattle Post-Intelligencer. 1921a. “Engineer Explains City Zone System,” February 6. Box 1, Folder 7, Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

———. 1921b. “Planning Expert Favors Five Zones for Seattle in Districting Property,” February 23. Box 1, Folder 7, Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

———. 1922. “Decision on Zoning Will be Made Soon,” October 15.

Seattle Zoning Commission. 1921a. “Letter to City Council in Re: Annual Report of City Zoning Commission, March 29, 1921.” Box 1, Folder 18, Miscellaneous Annual Reports, Record Series 1802-A2, Seattle Municipal Archives.

———. 1921b. "Second Annual Report of Zoning Commission." Box 1, Folder 18, Miscellaneous Annual Reports, Record Series 1802-A2, Seattle Municipal Archives.

———. 1921c. "Untitled Memorandum Dated February 22, 1921, Recounting Special Session With Mr. Harland Bartholomew, Zoning Expert From St. Louis." Box 1, Folder 4 (Correspondence, 1920–1924), Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

———. 1922a. "Letter to Honorable Edwin J. Brown, Mayor, From Engineer and Executive Secretary, City Zoning Commission, July 10, 1922." Box 1, Folder 4 (Correspondence, 1920–1924), Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

———. 1922b. "Letter to Honorable Edwin J. Brown, Mayor, From President, City Zoning Commission, July 12, 1922." Box 1, Folder 4 (Correspondence, 1920–1924), Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

———. 1923. "Letter of January 12, 1923, to the Honorable Mayor and City Council of the City of Seattle." Box 1, Folder 18, Miscellaneous Annual Reports, Record Series 1802-A2, Seattle Municipal Archives.

Shoked, Nadav. 2011. "The Reinvention of Ownership: The Embrace of Residential Zoning and the Modern Populist Reading of Property," *Yale Journal on Regulation* 28: 91–149.

Silver, Christopher. 1997. "The Racial Origins of Zoning in American Cities." In *Urban Planning and the African American Community: In the Shadows*, edited by June Manning Thomas and Marsha Ritzdorf: 23–35.

The Seattle Times. 1922. "Zoning Plan Ready," April 23. Box 1, Folder 9, Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

———. 1923. "Zoning Ordinance Given to Council," January 14. Box 1, Folder 10, Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

The Town Crier. 1923a. "The Zoning Plan," January 27. Box 1, Folder 10, Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

———. 1923b. "What People are Doing," January 27. Box 1, Folder 10, Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

Trounstine, Jessica. 2020. "The Geography of Inequality: How Land Use Regulation Produces Segregation," *American Political Science Review* 114 (2): 443–455.

Veiller, Lawrence. 1916. "Districting by Municipal Regulation." In *Proceedings of the Eighth National Conference on City Planning, Cleveland June 5-7, 1916*. Chicago, IL: National Conference on City Planning: 147.

Wallingford News. 1923. "The Zoning Plan and What it Means," June 10. Box 1, Folder 10, Zoning Commission Subject Files, Record Series 1651-02, Seattle Municipal Archives.

Washington State Architect. 1925a. "Can a Family Live in a Duplex Home?" August. Box 4, Folder 15, Planning Administration Records, Record Series 1650-04, Seattle Municipal Archives.

———. 1925b. "City Planning and Zoning," September. Box 4, Folder 15, Planning Administration Records, Record Series 1650-04, Seattle Municipal Archives.

Wegmann, Jake. 2020. "Viewpoint: Death to Single-Family Zoning...and New Life to the Missing Middle," *Journal of the American Planning Association* 86 (1): 113–119.

Weiss, Marc A. 1986. "Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley," *Berkeley Planning Journal* 3 (1): 7–25.

Whitnall, Gordon. 1931. "History of Zoning," *Annals of the American Academy of Political and Social Science* 155: 1.

Whitten, Robert. 1922. "Social Aspect of Zoning," *The Survey* 48: 418.

Williams, Frank B. 1920. "Zoning and the Law of the One-Family House District," *Community Leadership*, December 16.

Williams, Frank Backus. 1914. *Building Regulation by Districts: The Lesson of Berlin*. New York: National Housing Association.

The Yale Law Journal. 1923. "The Constitutionality of Zoning." 32: 833–838.

Yerena, Anaid. 2020. "Not a Matter of Choice: Eliminating Single-Family Zoning," *Journal of the American Planning Association* 86 (1): 122–122.

Additional Reading

Revell, Keith D. 1999. "The Road to Euclid v. Ambler: City Planning, State-Building, and the Changing Scope of the Police Power," *Studies in American Political Development* 13: 50–145.