History of the *Euclid* Case

KELLINGTON LAW GROUP, PC

Euclid v. Ambler Realty

Village of Euclid v. Ambler Realty Co., 272 US 365 (1926)

- Village of Euclid - suburb adjoining Cleveland Ohio.
- Village was concerned that Ambler Realty would develop 68 acres it owned along Euclid Avenue for industrial and commercial uses.
- Village adopted a zoning ordinance that among other things, prohibited commercial and industrial uses on Euclid Avenue, and allowing only single family zoning.
- Ambler Realty sued the Village first in state court and then in federal court.

The Pre-SCOTUS Dramas

Ambler Realty sued the Village in state court lost.

Then Ambler Realty sued in federal court and won.

Legal backdrop: trio of SCOTUS cases limiting state regulations that were based upon the police power in the public interest:

- *Adkins v. Children's Hosp.*, 261 U.S. 525 (1923) (invalidating Washington, D.C. minimum wage statute);
- *Chas. Wolff Packing Co. v. Court of Indus. Relations*, 262 U.S. 522 (1923) (striking down Kansas compulsory labor arbitration statute);
- *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922) (deciding that Pennsylvania regulation of underground mining was a regulatory taking).

Federal Judge Westenhaver's Decision – *Ambler Realty Co,. v. Village of Euclid*, 297 F. 307 (1924)

- HELD: Village zoning ordinance UNENFORCEABLE under property protections and equal protection clauses of the state and federal constitutions.
- Judge recognized case was headed to SCOTUS.
- Relied upon SCOTUS trio limiting police power use to only if government shows ordinance "has a real and substantial relation to the maintenance and preservation of the public peace, public order, public morals, or public safety" &
- "The courts never hesitate to *look through the false pretense to the substance*. As instances in which false pretenses of exercising police power in the interests of public health, safety, morals, and welfare, were disregarded*" then citing the SCOTUS trio including Pennsylvania Coal Co. v. Mahon*.

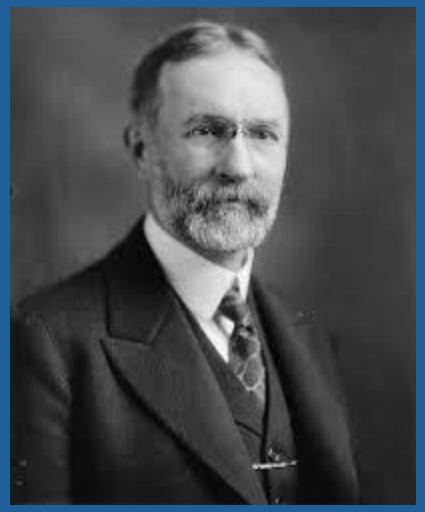
Judge Westenhaver's Decision

- Unimpressed by Village's argument RE inadequate water: "Manifestly, the police power of the village to legislate in the interests of the public health or public safety cannot be enlarged by its failure or refusal to perform its fundamental duty of providing an adequate water supply."
- Village's legal position: "a mistaken view of what is property and of what is police power". Judge summarized the Village's position as: "so long as the owner remains clothed with the legal title thereto and is not ousted from the physical possession thereof, his property is not taken, no matter to what extent his right to use it is invaded or destroyed or its present or prospective value is depreciated."
- Citing SCOTUS precedent: "There can be no conception of property aside from its control and use, and upon its *use depends its value*."

Scathing Rebuke to Village

- Nonstarter: Village's "invoking the average reciprocity of advantage rule." It does not compensate Ambler's "present and obvious loss from being deprived of the normal and legitimate use of its property"; that it provides only "indirect benefits [to Ambler] from the restrictions imposed by the ordinance on other land." Scathingly: it is "futile to suppose that other property in the village will reap the benefit of the damage to plaintiff's property and that of others similarly situated."
- Unlawful taking: "The only reasonable probability is that the property values taken from plaintiff and other owners similarly situated will simply disappear, or at best be transferred to other unrestricted sections of the Cleveland industrial area, or at the worst, to some other and far distant industrial area. So far as plaintiff is concerned, it is a pure loss."

SCOTUS



Justice Sutherland

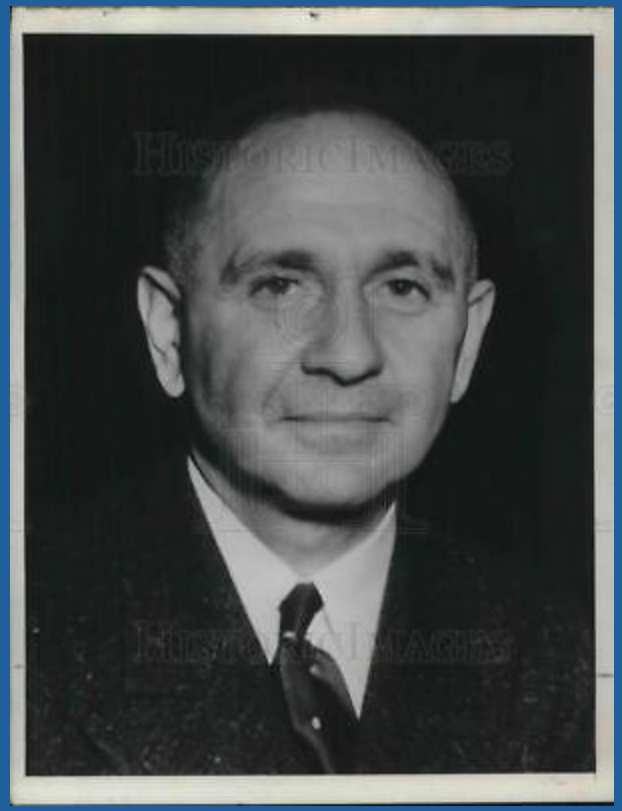
Strict view of state and local legislation

SCOTUS Decision

- Held: zoning not a regulatory taking
- BUT THIS WAS NOT THE OUTCOME UNTIL THE END. Court was going to rule against the Village.
- Case was:
- **Argued January 27, 1926**
- **Reargued October 12, 1926**
- **Decided November 22, 1926**

The lawyers

Prominent Ohio attorney Newton Baker, Jr., who had previously served as Secretary of War under President Wilson and as Mayor of Cleveland, argued for the Ambler Realty Company before the U.S. Supreme Court in the Euclid v. Ambler case.



James Metzenbaum
For the Village of Euclid

The Change Agent

Alfred Bettman

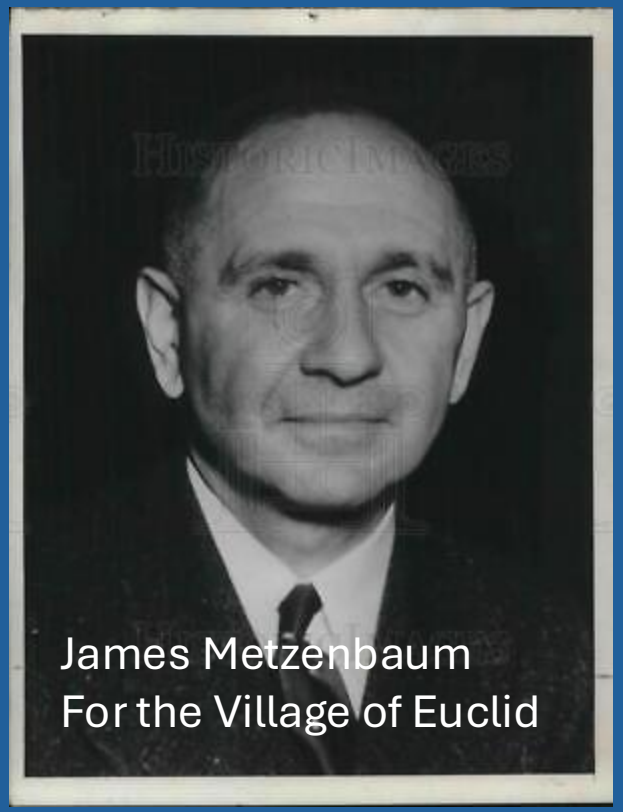
Euclid nearly went the other way…

- Why was the case reargued? Theory is that Justice Sutherland was not there to vote on outcome after first OA and so CJ Taft set for rehearing and granted Bettman's late filed amicus and allowed Bettman to argue the case in 2nd go-round.
- But, widely understood that before second OA, a decision was circulating affirming Judge Westenhaver.
- Makes sense – that would have been consistent with Court's precedents to date.

Metzenbaum (for Village) argued essentially that Court's prior decisions were wrong and that courts must give legislative bodies latitude to use the police power to regulate and must presume legislative enactments are valid

Argued zoning promotes the general welfare and that promotion of the general welfare ought to be a part of the police power.

Not a winning strategy given SCOTUS string of cases limiting the police power


James Metzenbaum
For the Village of Euclid

It got out that zoning was in trouble

Alfred Bettman (a friend of SCOTUS Chief Justice Taft (former president of United States) filed a late amicus curiae brief National Conference of City Planning, asked for the case to be reargued and to be allowed to argue. Taft allowed Bettman's requests.

- BETTMAN:

Radically different approach:

- Did not ask Court to abandon precedent.
- Zoning not a promoter of the general welfare but rather a way to avoid nuisances.
- Euclid's lawyer Metzenbaum strongly disagreed with this approach and filed a reply to the amicus brief so stating.

Bettman's Nuisance Theory Carried the Day

Zoning ordinance "which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities. In solving doubts, the maxim *sic utere tuo ut alienum non laedas,* which lies at the foundation of so much of the common law of nuisances, ordinarily will furnish a fairly helpful clew. And *the law of nuisances likewise may be consulted not for the purpose of controlling*, but for the helpful *aid of its analogies in the process of ascertaining the scope of, the power"*.

Nuisance is the winning formula

"Thus, the question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, *like the question whether a particular thing is a nuisance*, is to be determined not by an abstract consideration of the building or of the thing considered apart, but by considering *it in connection with the circumstances and the locality*. *** A nuisance may be merely a right thing in the wrong place -- like a *pig in the parlor instead of the barnyard*. *If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control*."

“There is no serious difference of opinion in respect of the validity of laws and regulations fixing the height of buildings within reasonable limits, the character of materials and methods of construction, and the adjoining area which must be left open, in order to minimize the danger of fire or collapse, the evils of over-crowding, and the like, and *excluding from residential sections offensive trades*, industries and structures *likely to create nuisances*."

SCOTUS Reversed Judge Westenhaver: Protection of Residential Use, Adding General Welfare to the PP Calculus & not Overturning Cts Precedents

- "This question involves the validity of what is really the crux of the more recent zoning legislation, namely, *the creation and maintenance of residential districts, from which business and trade of every sort, including hotels and apartment houses, are excluded. Upon that question, this Court has not thus far spoken.*"

- Held: “the reasons [for the ordinance] are sufficiently cogent to preclude us from saying, *as it must be said before the ordinance can be declared unconstitutional*, that such provisions are *clearly arbitrary and unreasonable*, having no substantial relation to the public health, safety, morals, or ***general welfare***.”
- “the ordinance, in its general scope and dominant features *** is a valid exercise of authority ***”
- Court declined to set specific rules: “In the realm of constitutional law especially, this Court has perceived the embarrassment which is likely to result from an attempt to formulate rules or decide questions beyond the necessities of the immediate issue. It has preferred to follow the method of a gradual approach to the general by a systematically guarded application and extension of constitutional principles to particular cases as they arise, rather than by out of hand attempts to establish general rules to which future cases must be fitted. This process applies with peculiar force to the solution of questions arising under the due process clause of the Constitution as applied to the exercise of the flexible powers of police, with which we are here concerned.”

Bettman's Cringy Nuisance Theory

"With particular reference to apartment houses, *** the development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; that, in such sections, very often the apartment house *is a mere parasite*, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district. Moreover, the coming of one apartment house is followed by others, *interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes*, and bringing, as their necessary *accompaniments, the disturbing noises incident to increased traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play*, enjoyed by those in more favored localities -- until, finally, the residential character of the neighborhood and its desirability as a *place of detached residences are utterly destroyed*. Under these circumstances, apartment houses, which in a different environment would be not only entirely unobjectionable but highly desirable, come very near to being nuisances."

Case ended with a fizzle; property ended up being used for industrial uses and is now a park