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THE SOCIAL PARADOX OF ZONING AND LAND CONTROLS IN AN EXPANDING URBAN ECONOMY

By GEORGE L. CREAMER*

The essential condition of modern life is the city; its heartbeat, the machine; its ultimate characteristic, the population, a vast and interacting reservoir of labor and absorber of product. The population movement toward Megalopolis is tidal. The desiderate of contemporary life cluster there; the once vital function of rural America is readily performable by constantly smaller population segments; and the economic function of the market town, archetype of American living only forty years ago, is disappearing. A basic trend since mid-eighteenth century, such is the thrust and developmental speed of this movement that the United States consists, in posse, and in twenty years will be in esse, thirty megapolitan centers, each vastly emanating from a core city, aggregately encompassing some 90% of the nation's people.

Presupposing such development, obviously the most valued asset in such a civilization is megalopolitan land. Economic power is largely involved in control, use, and dominance of that land. Human comfort and well-being are intimately dependent upon the uses made of that land. Of necessity, most human aspirations and interests in some manner center upon it, and the control and use of that asset or commodity becomes focal, the center on which bear the most vital of economico-political forces.

Mr. Justice Brewer once remarked: "The city is a miniature state, the council is its legislature, the charter is its constitution."[1] Justice Lurton referred to the city as "presumptively the more populous and better organized community."[2] As megalopolitan life develops, each miniature state strives for preeminence with the state itself, with zoning the modal base and field of contest.

"Chalcedon was called the city of the blind, because its founders rejected the nobler site of Byzantium lying at their feet. The need for vision of the future in the governance of cities has not lessened with the years. The dweller within the gates, even more than the stranger from afar, will pay the price of blindness."[3] Thus, even the most conservative of lawyers and jurists have recognized, putting the thesis beyond the area of fruitful argument, the basic necessity for some land use control. "Until recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and continually are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities."[4] Indeed, "regulations, the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half

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1 Paulsen v. Portland, 149 U.S. 30, 38 (1893).
2 Chicago v. Surges, 222 U.S. 313, 324 (1911).
3 Hesse v. Rath, 249 N.Y. 436, 438 (1928).
4 Euclid v. Ambler Realty Co., 272 U.S. 365, 386-7 (1926).

a century ago, probably would have been rejected as arbitrary and oppressive."[5]

Only against a background of this kind of general acceptance of necessity for some land and use controls can we present zoning problems as they have developed and are present among us. This article has little utility as a technical legal exposition and is not proposed as a manual of zoning practice or procedure; technical matters are covered multipally by texts more complex than useful, and a plethora of not necessarily reconcilable cases increases daily at all judicial levels. Rather, it is hoped here to demonstrate the multiple purposiveness of zoning, its complexity as a theater of interaction of vital and diverse interests tending in common with many of our institutions toward the schizophrenic; an area sundered by forces divergently moving and like that fabled messenger, mounting, to ride rapidly off in all directions.

DICTA usefully allows presentation of these problems because it is a Colorado publication and because Denver is a megalopolis in its essentials,—a juvenile megalopolis with those essentials sufficiently at the surface to present symptoms for ready analysis. Megalopolitan growth is a phenomenon of such recency here as to present a most valuable clinical exhibit.

Zoning as a concept finds its sole justification in the exercise of the police power, allowable only as it tends to promote public health, safety, and welfare. As restrictions upon the use of private property, zoning regulations must be strictly construed. Use of property for lawful purposes in the discretion of its owner is a primary constitutional right; restriction is permissible but inhibited, and allowable only as dictated by the public interest under proper procedural safeguards. Restriction is not permissible for private or individual ends, nor in the interest of competing property values. Neither is restriction allowable on grounds of political utility or for political convenience.

From these few premises, with which most will probably agree, germinates and grows the schizophrenic seed. Zoning at base is "policy." "New policies are usually tentative in their beginnings, advance in firmness as they advance in acceptance. . . . Time may be necessary to fashion them to precedent customs and conditions."[6] Advance and pace usually, however, are neither undirectional nor unswerving. If there be uniformity at all, it is the uniformity of a spiral, reversing as it ascends or advances, a tendency causing the appearance, when viewed from a static point of vantage, of movement in directions quite opposite from the utlimate end. Policy is politics, in essence, a variable quantity; "The alternations of our national mood are such that a cycle of liberal government seldom exceeds eight years."[7] Nor does any other angulation of the spiral continue without reverse much longer.

Recent Colorado zoning history demonstrates an apparent contradiction in direction and conflict in purpose, characteristics often besetting the path of precedent-based law. Forty years of zoning in this state, however, rather clearly indicate the basic direction

5 *Id.* at 387.
6 Bunting v. Oregon, 243 U.S. 426, 438 (1917).
7 Jackson, *The Struggle for Judicial Supremacy* 187 (1941).

in which the spiral must proceed, as well as demonstrating the barriers, interferences, and obstructions latent in that course.

Theoretically, the basis of zoning laws upon the police power alerts the public immediately to the dangers implicit within the concept. "The police power . . . is the most absolute of the sovereign powers of the state . . . . It 'extends to so dealing with the conditions which exist in a state as to bring out of them the greatest welfare of its people.' "[8] "In a sense, the police power is but another name for the power of government."[9] According to Holmes, "police power" is used in a broad sense "to cover . . . and . . . to apologize for the general power of the legislature to make a part of the community uncomfortable by a change."[10]

Zoning basically is the instrumentality by which the base power of the state, through the mechanism of the city, is focused upon the use of private property, the Arcanum under traditional Anglo-American legal concepts. "The legal conception of property is of rights;"[11] a conception of use and enjoyment; "whatever a person can possess and enjoy by right."[12] Thus, "all that is beneficial in property arises from its use, and fruits of that use."[13] So conceived, zoning involves a fearful kind of power which must always be held in balance.

"Property like every other social institution has a social function to fulfill;"[14] few will gainsay the hypothesis that "the property rights to the individual we are to respect, yet we are not to press them to the point at which they threaten the welfare of the security of the many."[15]

In the working out of regulation, its direction and modality, calculation of the forces which actuate it cause the difficulty, the paradox of zoning in an expanding economy. Succinctly stated by McKenna: "Depart from the simple requirements of law, that everyone must use his property so as not to injure others, and you pass to refinements and confusing considerations."[16]

Constitutional literature is largely devoted to a search for a basis for protection of property, or a justification for its limitation. That quest epitomizes zoning. Story postulated that "it must always be a question of the highest moment, how the property-holding part of the community may be sustained against the inroads of poverty and vice."[17] That thesis is basic to constitutional law viewed as a system of "constitutional limitations" since the Constitution in large measure is essentially a restriction upon the rapacity of majorities which, absent such legal barriers, could subject all things to their desires by force of number alone. In our society, under the Constitution, differential notions of utility may not be a basis to deprive one of his property: "One does not lose what is one's own

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8 Louisville & N.R.R. v. Central Stock Yard Co., 212 U.S. 132, 150 (1909).
9 Mutual Loan Co. v. Martell, 222 U.S. 225, 233 (1911).
10 Tyson v. Banton, 273 U.S. 418, 446 (1927).
11 LeRoy Fiber Co. v. Chicago, M. & St. Paul Ry., 232 U.S. 340, 350 (1914).
12 Central Pac. R.R. v. Gallatin, 9 Otto (99 U.S.) 700, 738 (1878).
13 Munn v. Illinois, 4 Otto (94 U.S.) 113, 141 (1876).
14 Cardozo, *The Nature of the Judicial Process*, in Selected Writings of Benjamin Nathan Cardozo 141 (Hall ed. 1947).
15 Cardozo, *Paradoxes of Legal Science*, in Selected Writings of Benjamin Nathan Cardozo 254 (Hall ed. 1947).
16 LeRoy Fiber Co. v. Chicago M. & St. Paul Ry., *supra* note 11 at 350.
17 Story, *Miscellaneous Writings* 514 (1835).

because its utility would be greater if it were awarded to someone else."[18]

Neither, however, is the property owner wholly free to ignore basic concepts of utility: "The realization of the benefits of property must always depend in large degree on the ability and sagacity of those who employ it."[19] To maximize the value of property, its private owner must be able to "divine in advance the equilibrium of social desires."[20]

Zoning of Megalopolis treats of the most restricted of commodities, land, possessed of a unique place and valued because of its unique location in one of the 30-odd foci of American civilization. Terrible paradoxes result.

Substantial segments of the community seek to restrict the use of land controlled by other substantial segments who desire to make use of their properties in a lawful and beneficial manner. These purposes may, however, make less comfortable living conditions for others when practiced in a comparatively restricted space. Such desired restrictions involve one of the most legitimate ends of zoning, but severe abuses and extreme emotional pressures are inherent in them.

Competing users of land, for like and similar purposes, seek to impose restrictions upon their competitors through zoning laws legal in form, but tending to the personal benefit and aggrandizement of the movant competitors only. This illustrates an entirely illegitimate subversion of zoning ends and a practice universally present in all theaters of zoning operations.

Further, a tendency develops to aggregate in the hands of the more legislatively favored segment of megalopolitan society the most esteemed and valued land assets of the society, creating by virtue of legislative restriction of use a monopoly of a priceless commodity in the hands of that favored group. This is one of the most insidious of zoning practices, a perpetually crescent threat implicit in zoning as it is now practiced.

Finally, there tends to develop, quite apart from the basic concept of "police power" and legitimate protective ends, a substitution of public officials' notions of land utility value for like notions of private owners. That is to say, there is a crescent tendency to attempt centralization, through zoning, of control of the economic

18 Golde Clothes Shop, Inc. v. Loena's Buffalo Theaters, Inc., 236 N.Y. 465, 470 (1923).
19 Simpson v. Shepard, 230 U.S. 352, 458 (1913).
20 Holmes, Speeches 100 (1934).

activity of the state, represented by the use values of land in Megalopolis, in the hands of a bureaucratic minority which is by no means necessarily capable of wielding that power. Such bureaucratic subjugation at best tends to strangle and distort economic development in an expanding economy; at worst, it threatens extinction of that economy in the form in which we know it. This is the most insidious danger in zoning.

Rights of property are inseparable from rights of personalty, the basis of our constitutional structure. Property merely represents the dominance of individual man over his physical environment. Maximization of Man, as exemplified in the completed individual, must remain the basic end of a free society. Agglomerative principle, destructive of individual man, must begin his ruin by destroying his control over property.

Local zoning history usefully illustrates the collision of forces derivative from the sometimes conflicting, but accepted principles mentioned above, and illuminates the paradoxes. Danger imminent in any situation, if made explicit, perhaps may be rectified or avoided.

The growth pattern of Denver was established basically long prior to the legal concept of zoning. The city is located at the confluence of the Cherry Creek and Platte River, on an alluvial plain extending easterly and southerly, deposited by those streams and their predecessors between highlands which are prehistoric river banks. Early development centered on streets roughly paralleling the River, principally on Larimer Street, and basically in a southerly-northerly direction.

Historically population movement was south and east. The establishment of the Capitol Building on the east highlands, and palatial housing developments in the surrounding areas during the gold and silver booms of the '80's, caused a turning of business development at a 90° angle, and its movement toward the east-centered residence areas, particularly along Fifteenth, Sixteenth, and Seventeenth Streets, and at right angles to the former business centers, up to Broadway, a north-south thoroughfare faced by the new Capitol Building.

Early Denver became dependent on a central transportation system, based on rails, focusing traffic from residential areas into a business center extending approximately from Broadway on its east to the old business sections near the river. Development continued from the north-south artery, Broadway, and its intersection with the east-west artery, Colfax Avenue, at which focus stands the Capitol.

Until the mid-Twenties of this century, no Denver zoning controls existed, and few building restrictions of any kind were in effect. In May, 1923, Denver enacted Section 219A of its Charter, a zoning-enabling act, almost verbatim to that recommended by the Department of Commerce, which act became in almost identical language a state statute, permitting zoning by towns and cities in addition to the City and County of Denver.[21]

Ordinance 14, Series of 1925, was a zoning ordinance, adhering to a plan which recognized then existing patterns, including the

[21] Colo. Rev. Stat. §60-1 *et seq.* (1953).

limited central business district, several classes of business and commercial districts almost identical as to uses by right and only slightly more restricted in building dimensions and bulk than the central area, and extending along principal thoroughfares, certain industrial districts, and the familiar complex of single family, double-family, and multiple-family dwelling areas.

The basic validity of that ordinance was early considered in *Colby v. Board of Adjustment*,[22] which held that zoning ordinances act not only negatively but affirmatively for the public welfare, and basically upheld the concept of zoning, warning specifically, however, that general validation of the principle did not mean the court would hesitate to invalidate, on constitutional grounds, particular applications of zoning as adopted.

Much earlier, the Colorado court had laid down basic tenets as to the right to use land, from which it had seldom departed, even when sanctioning zoning regulation. More importantly, the court had held firmly within *judicial control* all exercise of these restrictive powers. In *City and County of Denver v. Rogers*, involving prohibition by Denver, as a nuisance, of any brick yard inside the City and within 1200 feet of any residence, school, or park, the court proclaimed reasonableness the key to regulation, a concept always to be determined by *judicial* standards: "The general grant of authority to the city not being, as we have shown, sufficiently specific and definite to warrant such broad and unrestricted legislation as is contained in this ordinance, its reasonableness, as well as the question of its constitutionality, become proper matters for consideration."[23] The ordinance was voided as "manifestly radical, unjust and oppressive" and as tending to destroy property without due process.

When the Denver City Council, prior to formal zoning ordinances, refused to permit a home for Negro aged and orphans, our court, in *City and County of Denver v. United Negroes Protective Association*, held that such Councils "are not beyond the control of the courts when, as here, by the findings of the trial court, they have grossly abused that discretion or acted arbitrarily."[24]

Though the City had hailed *Colby v. Board*[25] as a charter granting the municipality limitless power to restrict, it became apparent in *Hedgcock v. People*, that such boundless discretion was not intended. The action involved desired business use of property abutting on a street zoned as residential, which growth of the City had made arterial and business in nature. Residential use of the property restricted the land to $350.00 value, while business use permitted realization of some $3,500.00. The court held that a zoning declaration, contrary to the actuality of principal use, was void: "The clear inference from their testimony is that prior to the adoption of the zoning ordinance the block referred to was a business center and was continued so, and that it ought never to have been zoned otherwise."[26] Accordingly, rezoning was a denial of use of the property, unconstitutional and invalid legislation, "because

22 81 Colo. 344, 255 Pac. 443 (1927).
23 46 Colo. 479, 104 Pac. 1042, 25 LRA (NS) 247 (1909).
24 76 Colo. 86, 230 Pac. 598 (1924).
25 *Supra* note 22.
26 98 Colo. 522, 57 P.2d 891 (1936).

the zoning in question was unreasonable and therefore unconstitutional in that it unnecessarily and arbitrarily limited the use of a certain parcel of property for a purpose that was not justified under the admitted and determined facts and circumstances."[27]

Arbitrary regulation in defiance of existing economic facts, is prohibited, as is the continuation of restrictions under circumstances in which economic change has made the restrictions inapplicable. *People ex rel. Friedman v. Weber,* involving the introduction of business on Colorado Boulevard, an arterial street once residential, and wholly changed in character by developing use, states: "It is scarcely disputed that Tract A is practically valueless for residential purposes but of very considerable value for commercial use and this conclusion is inescapable from the admitted facts regardless of expert testimony. . . . Our conclusion is that the zoning of Tract A is contrary to the Charter amendment, confiscatory, and void."[28]

Moreover, restrictions must be interpreted in such manner as to allow projected use, rather than prohibit it. In *People ex rel. Grommon v. Hedgcock,* a building permit was refused a bungalow court in a business district upon the claim that a special section of the then zoning ordinance required special permission for construction of "automobile tourist camps." That phenomenon was not defined in the ordinance, and the court declined permission to limit use of the land:

> Until the legislative agency defines and prohibits such camps, there is, in our opinion, no legal basis—the alleged basis being too doubtful—under which one may be deprived of a legitimate use of property without violating constitutional guarantees in that respect. The police power, which is the legal basis for zoning legislation, must constantly be reconciled with the legitimate use of private property, in harmony with such guaranties.[29]

Despite such declarations, Denver continued to assert, in essence, that the right to use land derived from legislative authority, refusing to recognize that restriction upon use is abnormal, requiring demonstration of right and necessity. That theory was succinctly and unequivocally rejected in *Jones v. Board of Adjustment:*[30]

> We consider briefly some basic fundamentals. The right to the use and enjoyment of property for lawful purposes is the very essence of the incentive to property ownership The right to thus use property is a property right fully protected by the due process clause of the Federal and State constitutions The use to which an owner may put his property is subject to a proper exercise of the police power. The so-called police power is the authority under which zoning ordinances have been universally upheld. In every ordered society the state must act as umpire to the extent of preventing one man from so using his property as to prevent others from making a corresponding full and free use

27 *Id.* at 528.
28 110 Colo. 161, 132 P.2d 183 (1942).
29 106 Colo. 300, 104 P.2d 607 (1940).
30 119 Colo. 420, 204 P.2d 560 (1949).

> of their property. Thus, under the police power, zoning ordinances are upheld imposing limitations upon the use of land, provided, however, that the regulations are reasonable and provided, further, that their restrictions in fact have substantial relation to the public health, safety, or general welfare.[31]

The basic problem involved definitions, specifically the word "office." It was held that interpretation of the ordinance required a meaning favorable to the unrestricted use of property.

It is judicially recognized that as economic growth takes place within a community, restrictions once utile and significant become

31 *Id.* at 427.

inapplicable, and change of use, as from residential to commercial, must be permitted. *Bohn v. Board of Adjustment of Denver* recognizes that "It is a fundamental principle recognized by all the authorities that any regulation or restriction upon that use of property which bears no relation to public safety, health, morals or general welfare, cannot be sustained as a proper exercise of the police power of the municipality."[32] Zoning must change as the character of a neighborhood changes, since status too much prolonged can lead to decay:

> Now that West Colfax Avenue has become a cross-country artery and, as determined by the Board, is lined with business and commercial uses, the character of this territory, where Relator desires to build, has changed with the passage of time, the action of the Board, and the tacit assent of adjacent property owners. What at one time may have been considered residential property now has been devoted to business and commercial uses. It is very apparent from this record that the action of the Board in the instant case was arbitrary and capricious and will not stand the test set forth in *Hedgcock v. People ex rel. . . .*[33]

At the end of World War II, the Denver area greatly increased in population and general economic activity. Pent-up demand caused development of vast housing areas outside the bound of previous urbanization. In parallel with most metropolitan centers, there occurred a shift from a centralized city, dependent on mass transport to a central business district, to widely dispersed living, under semi-suburban conditions, made possible by diffuse automotive transport.

In Megalopolis, the "core city" must diminish in relative economic importance. In Denver that happened. Historic population movement south and east was accelerated over the plains by reason of building convenience and ease of utilities installation. Population moved so rapidly and so far south and east that the epi-center of the metropolitan area no longer occurred in the "Down Town" central business district centering at Colfax and Broadway, but lay three miles east and two and one-half miles south, near the intersection of Colorado Boulevard with Cherry Creek.

Highways were now the important links, not railway lines. However, though the "Down Town" area was no longer central in economic fact, it remained so in politico-economic influence. The concept of a centralized business district, based on heavy foot traffic and moved by street railway into the central area, was no longer valid. Strong impetus existed for the development for commercial purposes of the "shopping center," the dispersed commercial area, varying in size from the purely local store cluster centering in a housing development to the "regional shopping center" aggregating scores of stores and serving vast population segments.

Intense economic rivalry developed between interests primarily centered upon outlying and rapidly developing regions, and those centered in the established, but relatively static central area. Com-

32 129 Colo. 539, 271 P.2d 1051 (1954).
33 *Id.* at 544.

mercial and industrial activities followed retail trade toward decentralization, as new techniques made necessary vastly increased single-floor areas for warehousing of goods, rendering obsolete entire sections of warehouse facilities downtown; as manufacturing occupied new and enormous sites on the periphery of the city; and as subsidiary processing followed major facilities to the city's edge.

By Ordinance 16, Series of 1955, the City embarked on dangerous zoning expedients. Developed for thirty-one years on the 1925 pattern, recognizing the structural economics of the city as of its adoption, Denver had followed some uniform pattern of growth. The 1955 ordinance essayed a kind of zoning revolution, arbitrarily and radically reducing the amount of land available for non-residential purposes, placing capricious restrictions upon lands permitted business and commercial use outside the central business district, and imposing ruthless restrictions upon the size and bulk of buildings outside the central area. Regulation was attempted in the sole interest of the Central Business District, attempting to render competing activities subservient by providing for vast land requirements for "off street parking," sometimes equivalent to four time utilizable area, but not required at all in the Central Business District.

Peripheral business districts were recognized as to use, but specifically declared to be servient areas, tributary to the Central District, restricted as to parking requirements, building bulk, and the like in order to render competition with the Central Business District impotent.

Most immediately the impact of the ordinance was felt by the Broadway area, adjacent to the Central Business District, an area severely affected by the newly established differentiation and by provisions purporting to declare improper many traditional and established uses in the area, seeking to root them out by a system of proclaimed non-conformity and required registration of use. The result was the first of the so-called *Denver Buick* cases, instituted as No. B-8071 in the Denver District Court, in which, upon procedural due process grounds, the 1955 ordinance was wholly voided. The supreme court affirmed that voidance.[34]

Dramatically paralleling the court actions to void the ordinance, the Denver Council engaged in passage, under different notice forms and more careful adherence to charter procedures, the identical ordinance the court was voiding. As the court sat upon the 1955 ordinance there was introduced Councilman's Bill 403, Series of 1956, enacted on November 5, 1956, as Ordinance 392, Series of 1956.

Immediate court action followed in the Denver District Court[35] assailing the re-passed ordinance on varied procedural and substantive grounds. The ordinance was invalidated upon the finding that it ignored substantially all economic reality and was violently discriminatory.

Seldom has legislation been so clearly motivated by the desire of an entrenched economic interest and its supporters to thwart

34 136 Colo. 482, 319 P.2d 490 (1957).
35 Denver Buick, Inc. v. City and County of Denver, Dist. Ct. Denver County, Civil Action No. B13644.

economic competition by preventing land uses by others. It is indeed a curious phenomenon of modern economics, in land use and otherwise, that the course of those most violently opposed to private rights in property and the course of the most vociferous advocates of laissez-faire run directly parallel. The land monopolist buttresses his depredations with cries of "economic freedom," while those who advocate unrestricted public control tend to support that course, since aggregation in limited hands, monopoly and oligopoly, make eventually easier the task of monopoly in the state or total confiscation of that property. The more limitedly property is held in control, the more readily that control will pass from private hands into the state. Modern zoning, thus subject to abuse, leads unquestionably to the monopoly state, and if protracted must lead to total public control of the megalopolitan land resource.

Curiously, no one appeared, as shown by council and court records, to support the zoning measure in council. Substantial objections were made, but the measure unanimously passed, even though the courts were voiding its earlier version, and despite the monitions available in extensive precedent litigation.

After a trial of weeks' duration, the District Court rendered an extensive written opinion. It discussed attempted differentiation between the Central Business District and the peripheral, Broadway-centered, business district, referred to in the ordinance as the B-6 District: "[T]his so-called description of the Business 6 District so far as it relates to the district itself and the purpose it serves is totally in error and without foundation of fact."[36] The court pointed out that "both business districts contain businesses and buildings devoted to the same use of right and business as the other."[37] The ordinance, motivated by desire to protect economic interests in the Central Business District, attempted to render the peripheral district subservient, declaring "this district, *at present,* is a large area located immediately adjacent to the B-5 District [Central Business District] *for which it acts as a service area, . . .*"[38] Of this assertion, the trial court said: "This is totally without any foundation in fact."[39]

The court held that differential parking requirements made imperative devotion of private property to public service and purpose without compensation, in all districts except the favored Central Business District. Those requirements were therefore stricken in totality, the court finding that the regulation "divides the requirements into a maze of rules and laws which, in reality, make the owners of the real property therein the pawns and victims of the Department of Zoning Administration, with oppressive requirements, as the court will point out."[40]

This ordinance, designed to advance private interests, was condemned in language perhaps as strong as any ever judicially used in Colorado:

> The ordinance as to the description and motive for the zoning and off-street parking regulations is the most un-

36 *Id.* at 17.
37 *Id.* at 18.
38 *Id.* at 19.
39 *Ibid.*
40 *Id.* at 20.

> realistic document ever enacted by a law-making body, as relates to the B-5 and B-6 Districts. And thereby a segment of the business property in the City and County of Denver is strangled with a phony description of the district which could never have been written nor authorized by a person living in Denver, let alone by any member of the City Council who can or might look out of the Council Chamber windows.[41]

Attempted discrimination was total: strangulation by misdefinition; attempted imposition of subservient status; differential parking treatment of areas directly and prospectively competitive; and finally an attempt to require registration of land use, ultimately to exclude as non-conforming thousands of individual uses, retroactively to the date of the voided Ordinance 16, Series of 1955. Those attempts at regimentation and retroactivity the court also voided, it being held that "the power to prohibit lawful enterprise, and the use of one's property was never the intent of the people in adopting the zoning amendment to the Charter, nor will it permit uncontrolled regulations and dictatorial powers of commercial and industrial enterprise, such as set forth . . ."[42] in the registration and non-conforming use sections of the enactment.

The supreme court affirmed that opinion, and extensively quoted from it in the second *Denver Buick* case.[43] District differentials were entirely put down; off-street parking provisions were wholly voided; and the court found that under applicable Charter provisions, the Council could not require landowners who had theretofore used property for permitted purposes to register the same as non-conforming, to submit reports thereon, to encumber their titles, or to run the risk of loss of right to the use of their properties. Extension of uses, change in rental patterns, and repair, extension, and alteration of structure could not be prohibited. The court later adhered to its opinion in *Denver v. Redding-Miller, Inc.*[44]

The *Denver Buick* cases illustrate two of the most violent of the paradoxes of modern zoning. First, zoning is susceptible of terrible politico-economic destortion, the result of conscious effort, as specifically held in the cases, to favor one segment of the community over another and to vest in that favored segment the power potent

41 *Id.* at 24.
42 *Id.* at 33.
43 City and County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).
44 141 Colo. 269, 347 P.2d 954 (1959).

in monopolies, control over business-commercial land uses in Megalopolis. Second, the cases demonstrate the danger of legislation, fostered by bureaucracy in the city, the little state, which "divides the requirements into a maze of rules and laws which, in reality, make the owner of real property therein the pawns and victims of" the administrative bodies involved. These abuses never end, but have found protraction even in privately and bureaucratically inspired attempts directly to legislate against judicially determined fact.

It is constitutionally clear in Colorado that no one holds or uses his property at the sufferance of his neighbor and that legislation tending to restrict use of property solely for the advantage of a neighbor or competitor is void.

These principles were early set forth in *Curran v. Denver,* voiding an ordinance which made use of one person's property dependent upon consent of his neighbor, because "it commits, in some instances, the exercise of the municipality's legislative discretion to property owners and residents, and in others, entrusts such power to the caprice of certain of its officers, and vests in them an absolute or despotic power to grant, refuse or revoke the right to carry on an ordinary, legitimate business."[45]

The *Curran* case was followed by *Willison v. Cooke,* in which it was held that:

> [I]t is a fundamental law, that a municipality under our system of government may, by ordinance, require the owner of a lot to so use it that the public health and safety will be best conserved, and to this end its police power may be exercised; but it is also fundamental, that such owner has the right to erect such buildings covering such portions thereof as he chooses, and put his property, as thus improved, to any legitimate use which suits his pleasure, provided that in so doing he does not imperil or threaten harm to others.[46]

In that same *Willison* case it is further said:

> Legislative restrictions upon the use of property can only be imposed upon the assumption that they are necessary for the health, comfort or general welfare of the public; and any law abridging rights to use of property which does not infringe the right of others, or which limits the use of property beyond what is necessary to provide for the welfare and general security of the public cannot be included in the police power of a municipal government.[47]

Fortunately, rights of property owners are not fundamentally subject to the legislative body, but are specifically a matter *for the courts:*

> Police regulations, in order to be valid, must tend to accomplish a legitimate public purpose; that is, such regulations must have a substantial relation to the public objects which government may legally accomplish; and while it is for the legislative department of a municipality to deter-

45 47 Colo. 221, 107 Pac. 261 (1910).
46 54 Colo. 320, 326, 130 Pac. 828 (1913).
47 *Id.* at 326-27.

> mine the occasion for the exercise of its police power, it is clearly within the jurisdiction of the courts to determine the reasonableness of that exercise, when, as in the case at bar, it assumes that power by virtue of its incidental or a general grant of authority.[48]

Accordingly, the consent of adjacent property owners to the construction of a store building was unnecessary:

> These regulations do not, in the slightest degree, have any relation whatever to the health, safety, or general welfare of the public, nor do they tend, in any sense, to accomplish anything for the benefit of the public in this respect, but merely attempt to limit the petitioner in a use of his property, which does not infringe upon the rights of others. This deprives him of the fundamental right to erect a store building upon his lots covering such portions thereof as he chooses, although, by so doing, he does not imperil or threaten injury to others of which they can lawfully complain. [49]

The *Curran* and *Willison* cases, old though they are, and antecedent to zoning though they may be, find specific approval of the court in the recent *Denver Buick* decisions.

That court, moreover, has made crystal clear its disapproval of the attempts of economic competitors to limit by zoning the uses of land. *Westwood Meat Markets, Inc. v. McLucas*,[50] involving an injunction by a competing market sought against zoning allowing construction of shopping center facilities, stated that zoning can be justfied only as a proper exercise of the police power, and that owners and lessees of commercial property distant from the subject property and of the same type as zoning authorized upon the subject, were not, as competitors, "aggrieved persons" entitled to attack or question zoning. Nothing, indeed, is more pernicious than the notion that a competitor may frustrate, by frustrating zoning, the development of economic competition.

Modern zoning is pregnant with and implicitly contains monopoly. So-called governmental "planning" accepts as a basic hypothesis that commercial and business land must exist in large, dense aggregates, and in limited locations. That planning accepts as an article of faith the concentrated "shopping center," the "industrial park," and the particular concentration of all retail, commercial, and business activity within ever narrower bounds. Such centers are, as land investments, in point of building capital required to institute and operate them, complex economic enterprises.

Small, local, and independent retail merchants cannot hope to possess their own land or building resources, for zoning limits available lands, and drives toward tenant status the local proprietor. The "center," however, rejects that tendency because, by reason of the vast sums necessarily invested in it, it is itself dependent for financing upon exterior means, institutional sources interested in "quality of tenancy," the certainty of rent collection. It is hypothe-

48 *Id.* at 327-28.
49 *Id.* at 328-29.
50 146 Colo. 435, 361 P.2d 776 (1961).

sized that any national operation, any substantial commercial chain, any potential or actual monopoly or oligopoly, is preferable in essence as a commercial risk to any individual or local merchant. Prime space in prime and scarce commercial land facilities, then, must be given to non-local operations, tending to the monopolization of commercial and economic activity generally in fewer and ever fewer hands.

Justice Story said the "monopoly" as understood in law, "is an exclusive right granted to a few of something which was before of common right."[51] It follows necessarily that "the granting of monopolies, or exclusive privileges to individuals or corporations, is an invasion of the right of others to choose a lawful calling, and an infringement of personal liberty."[52]

"Nor is it for the substantial interests of the country that any one commodity should be within the sole power and subject to the sole will of one powerful combination of capital,"[53] for the simple reason that, as observed by Justice Brandeis, "human nature is such that monopolies, however well intentioned, and however well regulated, inevitably become, in the course of time, oppressive, arbitrary, unprogressive, and inefficient,"[54] which is but another mode of phrasing Lord Acton's maxim that power corrupts, and absolute power corrupts absolutely.

Megalopolitan land is limited. Zoning limits still further the highly productive part thereof, commercial and business land. Economics of building finance restrict holdings of land and its use still further. Zoning is thus potentially capable of terrible abuse, and Denver has seen in the last six years that abuse in potent action. Zoning in this community has been made the prime instrument in advancement of selfish personal interests of a limited community segment. Our courts have wisely thwarted that attempt. The attempt, however, will continue unabated.

It is one of the paradoxes of zoning, also, that the emotional overtones raised by the word in the public mind are such that the residential landowner, interested in limiting incursions against his own uses, forgets that all coins have a reverse, and that the restrictions for which he sometimes clamours may tend toward monopoly and the eventual strangulation and death of Megalopolis itself. The "Great City," the metropolitan area, can develop only if development is reasonably free. If trammelled unduly, then surely the community, like a body without circulation, will die. It is healthful, therefore, that recent Colorado decisions limit the direct right of a competitor to use zoning objections as a device to thwart and stifle competition.

There is, however, and courts recognize, a rightful area within which property owners may be heard to protest. This area involves primarily protection of developed private residential property against unwarranted commercial intrusion. *Westwood Markets*[55] specifically recognizes the right of residential property owners,

51 Charles River Bridge v. Warren Bridge, 36 U.S. (11 Pet.) 420 (1837).
52 Slaughter House Cases, 83 U.S. (16 Wall) 36 (1872).
53 U.S. v. Trans-Missouri F. Association, 166 U.S. 290, 324 (1896).
54 Brandeis, *A Free Man's Life* 181 (1946).
55 *Supra* note 40.

which is explored at considerable length by the court in *Holly Development, Inc. v. Board of County Commissioners.*[56] The Colorado court has indicated that it will protect established residential districts against business incursion, commercial or other use, absent the strongest showing of changed circumstances, which is essentially as it should be.

Clark v. City of Boulder[57] points out that residential property owners may rely on existing zoning conditions, where there has been no material change in the character of the neighborhood requiring re-zoning in the public interest. Specifically, the court refused re-zoning of a service station site proximate to a residential area. In such limited circumstances, property so proximate to a residential zone, though more profitably usable for commercial than residential purposes, may not be accorded special treatment by re-zoning. In the circumstances of the case, the rule appears reasonable, but it does constitute a repudiation of the basic constitutional principle that change of condition such as to make property limitedly usable for the purpose originally zoned, and much more suitable for another purpose, may compel re-zoning as an alternative to confiscation.

Those who consider zoning a panacea for all ills look for radical departures in each new zoning case. Colorado does not tend toward radical departures in zoning. Zoning is a permitted area of legislation, the weaknesses, dangers and paradoxes implicit in which, our court has clearly recognized, comprehended, and delineated. As in other areas of law, zoning decisions are made upon the circumstances of a case. Trends and tendencies in this state remain clear, and the court has been chary of approval of radical zoning changes if the fact of excess has been made clear.

Clark v. Boulder demonstrates that the allowance of commercial zoning in an area theretofore residential is based on the furtherance of some comprehensive scheme or plan designed in accordance with the public policy bases which underlie zoning. If so predicated, the change is allowable, and if made simply to relieve a particular tract from restriction, it is not permissible. Forwarding of a rational design is favored, but aggrandizement of an individual plot, to the detriment of its surroundings, is improper. A rather similar rule is announced in *Frankel v. Denver.*[58]

56 140 Colo. 95, 342 P.2d 1032 (1959).
57 146 Colo. 526, 362 P.2d 160 (1961).
58 363 P.2d 1063 (Colo. 1961).

Baum v. Denver,[59] like the *Frankel* case, holds that disparity in values for one use as against another does not control in the determination of the validity of zoning ordinances. So stated, the principle may not be the ground for quarrel. The *Baum* case, however, on its facts appears well outside the current of Colorado authority, and in its fact setting probably represents a situation ideally illustrative of one of the paradoxes we here study.

That case involves the re-zoning of a substantial tract of land, fronting on Sheridan Boulevard, an arterial highway which is also the county lines separating Denver and Jefferson Counties. Denver attempted residential zoning on segments of land along the thoroughfare; Jefferson County zoning is primarily business and commercial, abutting across the street. Traffic is very high, the Boulevard being one of the half dozen most travelled streets in Megalopolis.

The automobile is a great maker of zoning and the prime former of land values in Megalopolis. Where automobiles travel, commercial uses follow. Commercial value inheres in land primarily because of the habit of persons to foregather there, or because of the number of persons, capable of entry, who pass the particular location. Exterior effects of the automobile and of much-travelled streets are such as limit use of property on those streets for residence purposes.

Such a main travelled street, given proper multi-directional approaches and debouchements, will become in time commercial or business in nature, once any business incursion is allowed. This is manifest in Denver. Though zoning restrictions were imposed to prevent it, East Colfax Avenue, West Colfax Avenue, and Colorado Boulevard have successively become entirely commercial thoroughfares, becoming so in a short period after entry of the first commercial uses, and transformed from areas once almost wholly residential in character. City planners deplore those developments. Finding catch-all phrases useful, they stigmatize the development as "strip zoning." They stigmatize, in essence, a development inevitable in the automotive age, the commercialization of the heavily-travelled area, the foregathering of business where the people are. The solution of the planner is "development in depth," that is, zoning of large tracts, at scattered intervals, for commercial purposes, while attempting to maintain the arterial frontages for residential or multi-family uses.

"Development in depth" is a necessary prelude to land monopoly, as discussed above, and the arterial frontage is inutile for housing in most cases.

If large tracts bound a highway, residential uses are possible. Otherwise, retention of arterial strips, bounding main-travelled roads, for single-family residence use is visionary. No one who can remove himself from the influence of really concentrated automotive traffic, will voluntarily remain in residence proximate to it, unless in tracts of such size as to permit effective depth screening. The almost universally posited suggestion of the planner that multiple dwellings replace the single-family unit foolishly ignores the fact that the same objections which make the area noxious to an in-

[59] 363 P.2d 688 (Colo. 1961).

dividual house-holder will be no more palatable to an apartment dweller, particularly because only seldom does development make possible siting on lots sufficiently deep to offset the traffic effect.

Resultantly, arterial streets open to business, usually by court action, and once opened become commercial in time. Colorado Boulevard admirably demonstrates the point. In a procedurally intricate litigation, called the *Davidson Chevrolet* cases,[60] the Boulevard was commercially opened, an inevitable result upon the failure of Denver to eliminate the heavy commercial concentrations permitted in the freely zoned Town of Glendale. Contrary to the desires of the planners, and certainly in violent opposition to the wishes of the central land monopolists, South Colorado Boulevard has developed, on a periphery, as the primarily growing commercial area of Denver, inevitable because it is the geographic center of Megalopolis, and one free from artificial zoning restraints.

Prolongation of severely restrictive zoning, indeed, may seriously imperil all zoning in an area. If deterioration of a residential area begins, residence in the area becomes undesirable. If the land is not freed immediately for higher use, and made salable at reasonable prices for that use, there is an open invitation sent forth to urban blight. Immediate recognition of the problem, and limited relaxation of zoning, as occurred in Denver on South Colorado Boulevard and in parts of the Cherry Creek area, make possible permanent retention of high-grade residence areas, screened and protected by walls of high-grade commercial use fronting arterial thoroughfares. Failure of timely relaxation, or total abdication of control, cause those blight conditions manifest in the north part of Colorado Boulevard, still rigidly controlled, and such blight spreads.

Urban blight is most effectively combatted by early zoning for uses sufficiently productive in nature to permit destruction of blightable improvements before the disease occurs or spreads. The principle is simple. It is almost never recognized, and even less often implemented—another zoning paradox.

Preservation of the residential community is the great strength and the principal justification of zoning. The residential community and the single residential proprietor, however, often essay more than may be permissibly accomplished in the name of zoning. Such excesses are not judicially allowed. *Nelson v. Farr*,[61] a Greeley case, is illustrative. Land was annexed to Greeley under a plat showing blanket residential restrictions on lots in the annexed area. The owner retained undeveloped tracts for business and commercial purposes. The retained tract, when subsequently annexed to Greeley, was zoned for commercial uses. A trial court, persuaded by the residents to enjoin zoning, attempted to impose on the lands the burdens of the restrictive covenants limiting previously annexed lands to residential use. The Colorado Supreme Court rejected the limitation and held that a restrictive covenant could not extend by judicial action to lands not covered by covenant or contract, that there was no right to impose such a covenant not referential to specific lands, by requiring zoning limitations parallel to the cove-

60 137 Colo. 575, 328 P.2d 377 (1958); 138 Colo. 171, 330 P.2d 1116 (1958).
61 143 Colo. 423, 354 P.2d 163 (1960).

nant. The case appears proper on its facts, recognizing upon annexation that the land annexed was as free for development as prior to annexation.

Annexation itself, however, presents severe zoning paradoxes. Zoning power inheres both in County Commissioners, who often exercise it county-wide, and have done so in Megalopolis, in the Tri-Counties surrounding Denver, and a like power is granted municipal authorities, who have exercised that power within their corporate limits. It is often sought to alter established County zoning, and to alter established County plans, by annexing land to a municipality. Practically no change of circumstances is accomplished by translation of municipal boundaries across a street, particularly in Megalopolis, where city lines often afford no real differentiation even in degree of urbanization, and annexation is most often only a pretext for zoning, political and developmental gerrymanders.

These attempts to break established zoning by the juggling of municipal boundaries are of common occurrence in Megalopolitan areas. Colorado has not yet appellately decided the cases involving such problems, though one such case has been much litigated and determined at *nisi prius*.[62] An attempt to alter county-imposed residential zoning, on property in a substantially developed residential area, to permit commercial zoning by the annexing City of Englewood, was, in that case, disallowed.

The Colorado court has been willing to protect established residential uses. It has not, however, been willing to allow militant use of zoning by residents against other uses. The City of Englewood by ordinance barred churches of all kinds from single and double family residence areas, except as an act of grace, through its Board of Adjustment. "[R]eligious and educational institutions," including churches and places of worship, were permitted as "conditional uses, provided the public interest is fully protected and . . . uses are approved by the board."[63]

Land in a residential district was given the Apostolic Christian Church by a parishioner for the purpose of construction of a church building. Plans were presented to the Board of Adjustment showing conformance to building regulations and demonstrating adequate parking. Numerous objections were filed by residents, protesting that occupancy of their homes would be disturbed by traffic engendered by the church, sound originating during services, and the like.

The Board of Adjustment refused permission to build and action was commenced to compel issuance of permits. The District Court voided the ordinance as contrary to due process requirements, holding that vestiture of discretion in the Board, without standards, was void, and ordered permits granted. The supreme court[64] unanimously affirmed the lower court, the majority doing so on the basis that a church might not upon constitutional principle be excluded from any zone district, existing as a use by right in any district. Blanket exclusion, the court ruled, did not further the health, safety, morals, or general welfare of the community. A zoning ordinance providing

62 Deuth v. City of Englewood, Dist. Ct. Arapahoe County, Civil Action No. 16736.
63 See note 64 *infra* at 375.
64 City of Englewood v. Apostolic Christian Church, 146 Colo. 374, 362 P.2d 172 (1961).

such exclusion was invalid under due process provisions both of Article 2, Section 25, of the Colorado Constitution, and the fourteenth amendment to the Constitution of the United States.

In a specially concurring view, a minority of the court limited concurrence to impropriety of delegation of discretion, substantially without standards, and to the fact that abuse of discretion had occurred.

The majority rule is consonant with that generally adopted in the United States: "Churches and accessory uses are generally permitted in districts zoned for residential use. In districts where churches are permitted, a parish house, school, or convent used in connection therewith is allowed as an accessory or appurtenant thereto."[65] The author quotes *Basset on Zoning*, page 200, to like effect:

> Practically all zoning ordinances allow churches in *all* residence districts . . . . It would be unreasonable to force them into business districts where there is noise and where land values are high, or into dense residence districts (in cities which have established several kinds of such districts.) Some people claim that numerous churchgoers crowd the street, that their automobiles line the curbs, and that music and preaching disturb the neighbors. Communities that are too sensitive to welcome churches should protect themselves by private restrictions.

Substantially all states, except California, which adopts a most eccentric and unjustifiable rule,[66] follow the quoted doctrine.

Clearly, the attempted exclusions have nothing to do with public health, safety, and welfare in the zoning sense. Manifestly churches, schools, and similar institutions are essentials of residential communities in a civilization like ours. Such functions, modal to the life of the community, must occur where the community lives. Worship and education cannot be excluded from a residence district, no matter how sensitive.

The majority opinion in the *Apostolic Christian Church* case reiterates strongly the basic precepts of the ownership right to determine uses of property and emphasizes as well that zoning is based wholly on public health, safety, and welfare and the restric-

65 Rathkopf, *Zoning* 259 (1956).
66 Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. City of Portersville, 90 Cal. App. 656, 203 P.2d 823 (1949).

tions necessary to the preservation thereof, but it is not based on aesthetic considerations.

The tendency is to develop around Megalopolis a closed community, using municipal authority to buttress its own limited opinions, and to exclude agencies of expression of opinion by others. Zoning has no such purpose. There is no basis for such exclusion of ideas upon the predicate of law. Communities so sensitive must look not to zoning but to private covenant.

Several such isolationist communities have sought to exclude not only churches, but even schools,[67] an essay apparently well outside the zoning powers, not only by reason of *Apostolic Christian Church,* but also under the doctrine announced in *Reber v. South Lakewood Sanitation Dist.*,[68] where the court held that the Sanitation District, in location of its facilities, was neither governed nor governable by a county zoning resolution. That decision indicates that governmental authority may not be amenable at all to zoning regulations in the location and construction of public facilities, a rule broadly adopted in many jurisdictions.

Balance appears manifest in these decisions. Pressure of residential groups may not overwhelm judicial judgment as to the propriety of zoning restrictions. "Judicial judgment" must underlie and be the predicate of all zoning. Here lies another paradox. Under all applicable zoning statutes, before zoning may be instituted or, after institution, before it may be varied or changed there must be public hearings. Decisions such as the *Holly Development* case,[69] earlier discussed, require a judicial standard of conduct by the legislative body, making its decisions in zoning matters reviewable by certiorari. From an early date the court has held that propriety of zoning restrictions presented essentially judicial questions, to be judicially reviewed. The courts, however, declare further that they must refrain from "zoning," and that the legislative determination, in areas definable as discretionary, must not be readily impeded.

Here a great weakness exists. Few who have observed zoning hearings before legislative bodies or planning commissions can but have noticed a fearful sameness in those hearings, a discussion either perfunctory or essentially emotional, in an atmosphere pressed and stressed and not conducive to the deriving of information from the hearing process. Legislative bodies by their very nature are not constructed to hear and determine cases. Hearings must be either idle gestures, or since witnesses cannot properly testify or be examined, become a catch-as-catch-can debate, upon a predicate of emotion—all useless as a determinant of land use problems.

The volume of such work makes its legislative handling impracticable. In Denver alone, 300-odd ordinances annually deal with zoning or map changes, which necessitates the requisite amount of time in council procedures.

The legislature thus usually attempts to exclude the peteitioner from the council by a cumbersome process of administrative regulation, as in Denver, coupled with an almost Elizabethan secrecy of administrative procedure, or by a too rapid processing of vital matters by council or commission, as in other parts of Megalopolis.

67 Town of Greenwood Village, Colorado, Ordinances.
68 362 P.2d 877 (Colo. 1961).
69 *Supra* note 45.

Necessary development clearly requires special tribunals to hear zoning questions, and an orderly procedure and genuine record, reviewable and required to be reviewed by a court of law. Zoning should certainly not be handled in a manner less formal than public utilities or those cases within cognizance of an Industrial Commission. Neither the bureaucratic approach nor the log-jammed legislative one is basically workable.

Multiplicity of agencies often clouds administration of zoning matters. By statute, zoning power is fundamentally vested in legislative bodies, councils in the municipalities, and County Commissioners in the counties, with compulsory reference to planning commissions for advisory opinions. Those planning commissions exist at the local municipal level, at the county level, at interregional levels, and, in certain aspects, at the state level. Each body deems dear its prerogative of hearing and consultation, and these often quadrupled procedures delay the whole process, to the economic detriment of the community.

For the most part appointive and non-salaried, these bodies, though often composed of persons devoted to performance of difficult duties, allow undesirable local politico-economic influences to be exerted upon private matters of business and property management. In their interactions and confluence, the multiple agencies probably tend to confuse and impede, another paradox of zoning in Megalopolis.

In conclusion, it may be posited that zoning is and will remain with us as a possible method of protection of the public interest, whatever that may be, in property use in the metropolitan area; that the mechanism of zoning is one which has implicit within it considerable utility as a limited protective device, and substantial possibility and likelihood of abuse, both at the hands of the land monopolist, and municipal bureaucrat, and the over-protective; that the mechanism must always be subject to rigid control in the courts, and that so controlled, it may perhaps serve as a braking mechanism against too precipitate a change in land use. It is unlikely, however, as a practical matter, that zoning legislation will ever primarily determine land use, direct it, or form a fundamental basis for it. The dynamics of a community, so long as that community remains economically free, dictate the uses to which land will inevitably gravitate, whatever expedient of zoning be employed.

Zoning otherwise employed than as a braking mechanism is probably misapplied, and, historically, is probably futile. Zoning, misapplied, as is obviously possible, and in this community actual, can be deadly to the growth of the community, whose courts must be ever vigilant against the dangers implicit in this mechanism.

Such abused zoning results in an atmosphere making possible such dread distortions as the forced seizure of private lands implicit in Urban Renewal, and the gravitation of basic economic power into public hands, totally unacceptable as deviant from the basic postulates of our constitutional scheme.

Like most attempted regulations, introductions of rigidity into a professedly free society, zoning and land controls in Megalopolis are in their essence paradoxical.