

AICP STUDY GUIDE

Episode 23: Early Zoning's New Heights

And welcome to the twenty-third episode of the Very UNofficial AICP Study Guide Podcast. I'm Jonathan Miller and thank you so much for joining.

I hope everyone's week has been going ok. We did get out to Chicago this weekend - visited Shedd Aquarium - but did not end up getting to the spot where the world's fair was. So, boo. Anyways, for your friendly, anxiety-inducing countdown reminder: April 30th - the deadline for registering for the exam and subsequent exam window opening - is about 30 days away.

Last episode we went back to school and covered the first college course in planning (taught by James Sturgis Pray at Harvard in 1909), the first chair of civic design (Charles Mulford Robinson at the University of Illinois 4 years later in 1913), and the first textbook dedicated to planning (*Carrying Out the City Plan*, written in 1914 by Flavel Shurtleff).

This week though, we're stepping back a bit as we're moving forward we'll be hitting the topic of zoning a bit more. So let's take a quick rewind and see how the concept of zoning has sort of evolved. But if we're gonna dive into the world of the evolution of zoning, it would help to have a little primer on the relationship between zoning and nuisances.

(1:35)

So, the way I like to look it in a nutshell - and I don't know if legal scholars would put it this way (and I'm positive it's more nuanced) - but for our purposes as planners, it helps to think of the relationship between zoning and nuisances like this: Zoning exists - and was initiated - as a way to prevent nuisances from occurring in the first place. Nuisance Law in-and-of-itself can branch off into mainly two subcategories: private nuisances and public nuisances.

As you can imagine, private nuisances means your neighbor is doing something which extends past their property and is adversely affecting yours, and a public nuisance is someone's conduct - in general - is adversely affecting the public's health, safety, yadda yadda yadda. Regardless, nuisances have existed for centuries and our new nation roots of the damn-the-man mentality kept these kinds of laws at bay for a while.

Slowly but surely, we started accepting that maybe some government intervention would be okay to prevent people from you know, running amuck. One of the first nuisance cases I could find - which I don't believe is part of the exam, but provides some good context - is a case called *Sturgis V Bridgman*.

In this case, Sturgis, a doctor, moved to a house near a confectionary. Sturgis built a shed in the back for his private practice where - who only knows what he was planning on doing back there; blood-letting or whatever other weird mid-1800's doctor practices were going on. Anyways, the confectionary nearby had been in operation for over 20 years and - as a byproduct of the industry - made a lot of noise from the equipment. And our good doctor here filed for an injunction based on the disruption from the noise: a nuisance.

Long story short, the doctor lost the case because he had "come to the nuisance." This landmark ruling sort of set the standard of taking into account which came first. It can't be a nuisance if you chose to

be near it.

Now, how does this play into the evolution of zoning.

(4:00)

Well, San Francisco in the mid-1800's was booming. If you weren't aware of a thing in American History called The Gold Rush, you do now. Basically - in a nutshell - they found gold in the Sierras in 1848 and so in 1849, masses of people came to California in the hopes of discovering their riches. Basically between 1848 when the US took control of that area and 1852, San Francisco grew from a measly 400 people to 35,000. And in the 1860's, the city added another 90,000. That's a pretty substantial change. And for the city to accommodate these new residences? Well, they did something not uncommon today: they built outward.

The problem was, "outward" meant increasing the population densities around the slaughterhouses and butcher shops. You see, these were located along Mission Creek - a creek which had served well to carry off that nasty-ass blood and unwanted body parts (fancily called offal) into San Francisco Bay. But as demand - and subsequently production and the number of slaughterhouses and butcher shops increased - the capacity of the creek dwindled until it just couldn't keep up. And so in 1866, when the city Health Officer looked at the situation, expressed his concern over how close these slaughterhouses were to the city and that they were "a great nuisance so long as they remain in the present locality."

Well if that just isn't foreshadowing.

So, two years later our Nostradamus Health Officer, he went back, looked at it again, and talked about how the creek was doing with cleaning out the garbage. He said it took "two or three tides to carry the offal to the Bay where a great portion of it drifts in on our irregular water front, putrefying in the sun, and sending up its pestilential gases, poisoning the atmosphere of our city and causing disease wherever it abounds." Side note, kudos to this guy for mentioning the "poisoning of the atmosphere" have to admit, didn't see that one coming.

Well, in 1867, San Francisco did their part to try to fix the problem. We had population increasing rapidly, growing closer to the slaughterhouses, and we had the slaughterhouses outgrowing their location along Mission Creek since the Creek couldn't keep up. So San Francisco came out and said, "alright now, enough is enough. Slaughterhouses, keep your asses between Kentucky Avenue, First Street, I Street, and Railroad Avenue, and if you don't, we're gonna fine you somewhere between 20 and 500 bucks and send you to jail for 25 days to 6 months. Eventually the slaughterhouses moved over to what then became known as Butchertown.

Except for 1 guy who decided to challenge it and that was resolved in *Ex Parte Shrader*.

(7:23)

Ex Parte Shrader was the court case which upheld San Francisco's 1867 Zoning Ordinance which stipulated, "No person shall establish or maintain any slaughter house; keep herds of more than five swine; cure or keep hides, skins or peltry; slaughter cattle, swine, sheep or any other kind of animal; pursue or maintain, or carry on any other business or occupation offensive to the senses or prejudicial to the public health or comfort, in any part of this city and county, after the 1st day of August, 1866, west of San Bruno turnpike road and north of Islais Creek, except as otherwise provided by law." Ultimately, the case went all the way up to the California Supreme Court who said, "Yes, this ordinance is legit."

And with that, we now have our basis for how the avoidance of nuisances is a legitimate reason to prohibit uses. Keep in mind, however, this does not mean zoning is just the avoidance of nuisances by prohibiting certain obnoxious uses. Over on the east coast though, we had a different issue brewing; one that took regulations to new heights.

(8:48)

Fast Forward to about 1898 in Boston where the state legislature - presumably to protect the patrons of

Copley Park - passed a piece of legislation aptly named, "An Act relative to the height of buildings on and near Copley Square in the city of Boston."

The issue with this piece of legislation passed by the state legislature was that it required compensation to anyone who had an interest in an uncompleted building or persons sustaining damages to their property by reason of the limitation of height of buildings, which obviously puts the Park Commissioners in an awkward position since it's the city that would have to pay the compensation for any denial. So, when the Park Commissioners approved some fancy ornamentation on the top of two of the walls of one of the buildings on the basis that it was a sculpture the Massachusetts Attorney General took issue.

Enter the case, Attorney General v. Henry B. Williams & Others.

The whole compensation bit basically meant that the courts saw the statute in general as a type of eminent domain since it did prescribe compensation. But the courts also agreed that this was completely within the police powers of the legislature since it provided for the safety, comfort, and convenience of the people; i.e. Copley Park visitors.

The real issue was whether the ornamentation actually amounted to a true sculpture or whether it was basically a lame ass excuse to permit the extra height without being forced to provide compensation, at least that was the insinuation. Ultimately, in 1899, the courts found that the sculpted ornamentation didn't fulfill the requirements for the exceptions, and that it did not relieve the building from the prohibition of the statute: meaning that the courts did support the legislature's height restrictions.

At the same time, a few hundred miles south, Washington D.C. and Congress was trying to do the same thing.

(11:08)

Down in D.C. in the same years, Congress was also trying to put together some height restrictions for - well - the City of D.C. But seriously, what the hell, why all the height restrictions all of a sudden?

Remember, this is the late 1800's - the early days of the skyscraper. The first one was built in 1885 in Chicago - the Home Insurance Building - at a gigantic, massive 10 stories (138 feet), and after that the popularity of skyscrapers were in full swing by the time the late 1890's rolled around. And with the skyscrapers came the very real fear that these buildings were going to topple over and collapse.

For better or worse, the thought was that the steel frames would corrode from steam pipes and electricity (also new at the time). The funny thing is apparently Senator Warren Curtis in 1899 said that "the life of these structures might not be more than 75 years" Shit, we'll be lucky if anything we build today lasts 75 years.

Anyways, on a more realistic note, they did also worry about the fire fighting capabilities on the upper floors - or anything above 85 feet really. So congress did what congress does and passed the Height of Buildings Act of 1899.

The act itself wasn't as straight forward as the one in Massachusetts though. There wasn't a blanket, X number of feet; that would actually be kind of stupid considering the act itself covered all of D.C. Ultimately, the act broke buildings into categories and had heights and calculations and references for each. For example, residential buildings that were not fireproof couldn't exceed 60 feet above the sidewalk while businesses that were not fireproof could be up to 75 feet above the sidewalk (actually, all of the height references are 'above the sidewalk').

Any Building above 75 feet had to be fireproof and no building could exceed the width of the street it was on, and never to exceed 90 feet for residential streets or 110 feet on business streets.

The 130 feet maximum was reserved specifically for buildings on business streets that were 160 feet wide, and wooden buildings could never exceed three stories (40 feet).

This Act was updated in 1910 though to make a maximum of 160 feet for buildings on the north side of Pennsylvania Avenue - between 1st and 15th only. It was altered a handful of other times, but only for specific buildings.

And now you know why D.C. doesn't really have any skyscrapers. But, In 1909 though, height regulations gets its Supreme Court test.

(14:23)

And we're back to Massachusetts with the case Welch V Swasey. The defendant here wanted to build a 125 foot-ish tall bulding in District B of Boston. At that time, District B covered most of the City and particularly not the commercial areas.

Now at this time, Massachusetts had a blanket height restriction of 125 feet that the defendant did not object to. They really just objected to the statute that limited the height of buildings in district B to 80 feet (and sometime 100 feet, but that's largely irrelevant here).

In short, and not to bore anyone too much with details, the court said, 'height limitations are completely reasonable and well within the police powers and that the defendant even acknowledges this'. So what's the problem? The permitted differing heights between districts - or essentially the differential treatment that permitted higher buildings in the commercial areas.

So what did the courts say about this?

Well, they said it makes sense. Commercial buildings are typically of a different construction, are less prone to fire, and generally have less people involved who might be in danger. The important thing here is that not only did the courts uphold the use of height limitations for aesthetic reasons, it also supported the idea that differing factors can result in differing legislation. For example, fireproof buildings can reasonably be permitted to be built taller. On to the contrary fire-prone buildings can be more restricted than fire-proof buildings. And this basically gave way to the concept of regulating through construction standards.

Over on the west coast though, they were approaching regulations with a more comprehensive mindset.

(16:15)

Los Angeles in 1908 passed what was the very first zoning ordinance in the US. I should mention though , its not like Los Angeles didn't have any regulations before this. They previously had banned some industrial uses from residential areas like we saw in San Fransisco. And they didn't divvy up the whole city either.

What this zoning ordinance did do though was create three distinct residential areas where industrial uses were prohibited; like lumber yards, slaughterhouses, tanneries, anything with a motor really, oh, and laundries (but that was also kind of racially motivated) And, the ordinance also created 8 industrial districts. These were created where most industrial uses already were, and also along railroad corridors and the LA River.

Over time, they kept creating exceptions of districts within districts, but the main idea here is, this is the first example of a zoning district in the US, and the ball definitely got rolling from there.

(17:27)

So Los Angeles started it, but New York said, 'hold my beer'.

In 1916, New York created the first zoning regulations that covered the entire city. And what prompted this?

Well, the Equitable Building - still standing at 120 Broadway by the way - was built in 1915 after the original burned down a few years earlier. Wanting to outdo some of the other buildings in the city at the time, they decided to construct a 38 story skyscraper.

This obviously dwarfed everything around it; blocking views, covering everything in shadows. There were no setbacks obviously and this was before any of the building step-backs that followed. So New York said, 'oh no no no no no' and got to work immediately on a zoning ordinance.

The commission that was put together to write it was headed up by none other than George McAneny and Edward Bassett - AKA the Father of Zoning (and we'll end up visiting him again later). Ultimately, this ordinance established a zoning map with height restrictions covering the entire city. Like our previous examples, the restrictions were written as a function of the width of the street and related to the uses of the area; Residential was shorter.

The ordinance also incorporated the segmentation of uses like the ordinance in Los Angeles. Basically, New York's 1916 zoning ordinance brought all of the previous pieces of regulation into one. Like Marvel's infinity stones, only with regulations.

(19:07)

Well, shit. There is a lot that we covered here in a summary.

First, we covered a brief relationship between nuisances and zoning - which really started as a way to prevent nuisances. Then we covered San Francisco and their prohibition of slaughterhouses in an increasingly residential area.

Then we pivoted to the development of height regulations which started as aesthetics in Massachusetts (and then began a fear of tall buildings collapsing and not being able to fight fires in D.C.) before both of those aspects got tested at the Supreme Court level in Welch V Swasey in 1909.

After that, we turned to Los Angeles and their evolution to creating full zones, and finally, we ended in New York in 1916 which brought segmenting land uses into zones and height restrictions all into one giant Zoning Ordinance to rule them all.

(20:08)

Well, thanks again for joining me! If you have any questions, feel free to reach out to me at theveryunofficialAICPGUIDE@gmail.com and I'll do my best to help out if I can.

For those who tuned in last week, our question was "In what year did James Sturgis Pray initiate the first course on City Planning?" And that, would be 1909.

If you want to play along this week, our question is "Who wrote the 1916 New York Zoning Ordinance"

Also, announcement time. I've been trying to think of a way to provide a little more encouragement to everyone. It's a lot going into the exam and some can get pretty stressed and there's no reason we can't have a little fun with it.

So, if you want, feel free to email me a voice recording with a friendly word of encouragement. It can be general, it can even be to someone specific, just remember to include your name, where you're from, and of course, what you want to say.

I'll include some each week as best as I can, but most importantly though, just make sure it's positive encouragement. Anyways, don't forget to subscribe to this podcast on whatever platform you use for podcasts, and feel free to sign up on the show's website so you can follow along with future episodes, help prepare for the exam and supplement all of your other study regimens. And, share this out with any planners you know, and don't forget to leave a review either.

Next week, we're going to try and cover some of the beginning of regional planning. We'll cover the book 'Cities in Evolution', the first sort of District Commission, the first Regional Planning Commission, and a contribution from Lewis Mumford.

Thanks again everyone, 'till next time.

Links:

Nuisance Law:

https://en.wikipedia.org/wiki/Sturges_v_Bridgman

https://en.wikipedia.org/wiki/Nuisance#History_and_legal_development

1867 San Francisco Zoning Ordinance:

<https://www.planning.org/awards/landmarks/#California>

https://default.sfplanning.org/plans-and-programs/housing/affordability-strategy/HAS_Regulation_of_Housing_Development_in_SF_Final.pdf

<https://web.stanford.edu/group/spatialhistory/cgi-bin/site/pub.php?id=31#:~:text=By%201867%2C%20slaughter%20in%20San,of%20prison%20for%20every%20infraction.>

Attorney General v. Henry B. Williams & others (Massachusetts):

<http://masscases.com/cases/sjc/174/174mass476.html>

Height Regulations:

https://en.wikipedia.org/wiki/Height_of_Buildings_Act_of_1899

https://en.wikipedia.org/wiki/Height_of_Buildings_Act_of_1910

Welch V Swasey:

<https://casetext.com/case/francis-welch-v-george-swasey>

First Municipal Zoning Ordinance:

https://en.wikipedia.org/wiki/Zoning_in_the_United_States

<https://usp100la.weebly.com/industrialism-internationalism-and-land-use.html>

[https://en.wikipedia.org/wiki/Equitable_Building_\(Manhattan\)#History](https://en.wikipedia.org/wiki/Equitable_Building_(Manhattan)#History)