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Symposium on the Seventy-Fifth Anniversary of *Village of Euclid v. Ambler Realty Co.* Introduction

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SYMPOSIUM ON THE SEVENTY-FIFTH ANNIVERSARY OF *VILLAGE OF EUCLID V. AMBLER REALTY CO.*

INTRODUCTION

Seventy-five years ago, in the landmark case of *Village of Euclid v. Ambler Realty Co.*,[1] the Supreme Court rejected Ambler Realty's due process challenge to Euclid's zoning ordinance. In doing so, the Court recognized the constitutionality of zoning, as a general matter, and set the stage for decades of land use policy. This Symposium, recognizing *Euclid*'s seventy-fifth anniversary, attempts to place *Euclid* in historical and legal context and to address the current state of the law of zoning and land use.

The contributions to this Symposium cover the past, present, and future of land use law in the United States. The first two contributions speak especially to the past of land use but, it must be added, always with something important to say to the present and future, as well. In the first contribution, Euclid*'s Historical Imagery*, Professor Richard H. Chused of the Georgetown University Law Center presents a "revisionist" account of the historical meaning and importance of *Euclid.* By placing *Euclid* in the context of its time, Professor Chused argues that the ugly images of racism and xenophobia lie behind what he calls the "rosy imagery" of *Euclid.* In bringing this ugly imagery to light, Professor Chused provides new insight into how the Supreme Court in 1926 upheld zoning despite the objections of many of its members to economic regulation. He concludes by asking whether we are prepared to face the balkanization and pathologies caused by Euclidean zoning and to replace with it with a better approach.

In the second contribution, *The Emergence of Private Land Use Controls in Large-Scale Subdivisions: The Companion Story to* Village of Euclid v. Ambler Realty Co., Dean Gerald Korngold of Case Western Reserve University School of Law presents a detailed history of private land use controls in the Van Sweringen developments in

[1] 272 U.S. 365 (1926).

Shaker Heights, Beachwood, and Pepper Pike, Ohio. Dean Korngold shows how the drafters of the Van Sweringen covenants addressed the anti-covenant concerns of courts and how many of the provisions in the Van Sweringen covenants achieved a balance respecting both the interests of the development as a whole and the personal autonomy of individual property owners. From this historical account, Dean Korngold draws a number of important lessons for the increasingly prevalent practice of suburban developments governed by underlying servitude regimes.

The third and fourth contributions to the Symposium primarily address the present state of land use law in the United States. In the third contribution, Village of Euclid v. Ambler Realty Co., *Seventy-Five Years Later: This Is Not Your Father's Zoning Ordinance*, Professor Melvyn R. Durchslag of Case Western Reserve University School of Law updates the preceding discussion of *Euclid* by pointing to the changing nature of both the concerns addressed by land use regulations and the legal challenges to such regulations. Professor Durchslag discusses the rise of what he calls "environmental zoning ordinances" and the changed view of land as a scarce resource that underlies them. Given this changed view of land as a scarce resource, even privately owned property takes on a public character, he argues. But attempts to regulate private property as though it is public has led to successful Takings Clause challenges to such regulations. Professor Durchslag critiques the public choice model underlying the current constitutional doctrine, arguing that the empirical evidence supporting this model is insufficient to support a less deferential judicial approach to such regulations.

In the fourth contribution, *Unconstitutional Land Development Conditions and the Development Agreement Solution: Bargaining for Public Facilities After* Nollan *and* Dolan, Professor David L. Callies of the William S. Richardson School of Law at the University of Hawaii at Manoa and Julie A. Tappendorf, an associate at the law firm of Holland & Knight, LLP, provide a comprehensive overview of the genesis and use of development agreements between local governments and property owners. Such bilateral agreements address the needs of both property owners and local governments while at the same time avoiding the problems raised by other types of covenants and controls. Significantly, development agreements make it possible for local governments to impose conditions on development without running afoul of recent Supreme Court precedents.

Finally, the fifth contribution to the Symposium addresses the future of zoning and urban planning in the United States. In *"Trading Places": The Role of Zoning in Promoting and Discouraging Intrametropolitan Trade*, Professor William T. Bogart, an associate professor of Economics at Case Western Reserve University, challenges

the conventional wisdom on urban sprawl and other related issues. Professor Bogart argues that we must rethink urban planning based on a more realistic assessment of metropolitan areas. Today's cities are "polycentric," he argues, with multiple centers of economic activity, rather than "monocentric," with the downtown area the only center of economic activity. Once we come to this realization, we can conceptualize these different economic centers as "trading places" doing business with one another. The question then becomes whether zoning or other land use controls permit this trading in an efficient manner. Professor Bogart also argues that *Euclid* may not have had as great an impact as is often thought—had the Supreme Court struck down Euclid's zoning ordinance, he suggests, alternative land use controls could have been (and would have been) devised.

The *Case Western Reserve Law Review* is a particularly appropriate outlet for this Symposium—after all, Case Western Reserve University, like the property at issue in *Euclid*, is located on Euclid Avenue. The property at issue in *Euclid* was located on the north side of Euclid Avenue, between East 196th and East 204th Streets; the university campus straddles Euclid Avenue, with its easternmost boundary at East 118th Street. Thus, *Euclid* is more than an important land use case—it is also an important part of the constitutional history of the greater Cleveland area, which includes *Mapp v. Ohio*,[2] *Terry v. Ohio*,[3] and a number of other prominent cases. A companion symposium, recognizing the fortieth anniversary of *Mapp v. Ohio*, will appear in an upcoming issue of Volume 52.

The Editors would like to thank Dean Korngold and Associate Dean Morriss for their assistance in putting this Symposium together. Finally, we would like to thank Professor Jonathan Entin, our Law Review Adviser, for all of his hard work this year. The original idea for this Symposium was his, arising out of his interest in the constitutional history of the greater Cleveland area.

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[2] 367 U.S. 643 (1961).
[3] 392 U.S. 1 (1968).