

**Zoning Rules! The Economics of Land Use Regulation**, by William A. Fischel. 2015. Cambridge, Massachusetts: Lincoln Institute of Land Policy. 416+xiv. ISBN: 9781558442887. \$30.00.

William Fischel has written a comprehensive, often entertaining, history and analysis of the origin and effects of public land use planning and its implementation by zoning in the United States. The title, *Zoning Rules!*, is a double entendre as Fischel explains how and why zoning rules govern the uses of urban land and trump the rules set out in state and federal constitutions. He details and comments on the good and bad results of zoning on the urban America where most of us live, and which produces more than 80 percent of the nation's gross domestic product. This capstone to the author's rich series of scholarly books and articles also considers possible cures to the ills that zoning and associated land use regulations transmit to housing markets and the economy. This reviewer found the postulated cures to be inadequate, counter-productive, or both.

Early on, Fischel states: "The fundamental premise of this book is that land use controls are best analyzed as collective property rights under the control of economically rational voters" (p. 1). He portrays urban land as a scarce resource that, if scaled and densely developed, catalyzes the creation of the agglomerations that are the engines of local and, thereby, national productivity. He introduces his history and analysis with a barrage of data proving the very small amount of the nation's space that is occupied by urban places—"3 to 4 percent of the non-Alaska U.S." (p. 3)—and proceeds to systematically obliterate the validity of the claim by the American Farmlands Trust and their ilk that urban development threatens America's ability to feed itself and to export an agricultural surplus. The canard that urban development threatens necessary farmland continues to be used to justify disallowing development on land needed to maintain the competitive housing markets that support the sustainability and vigor of urban agglomerations.

The major theme played throughout the economic lessons and history taught by the author is that zoning is a political animal. I strongly concur. Fischel explains that fiscal zoning is neither ineffective nor inappropriate. Despite many claims by other economists and planners to the contrary, he makes it very clear that zoning was not created to guide the efficient use of land (p. 66), but rather to enforce the allowable land uses laid out on urban planning maps. Zoning ordinances were given birth by homeowners who sought protection for their turf when the advent of trucks and jitney buses freed industry and business from having to locate near ports, railroads, and streetcar lines.

Zoning in New York and some other places preceded the pivotal judicial protection that the U.S. Supreme Court gave zoning in 1926 when it reversed a district court decision that struck down the Village of Euclid, Ohio's zoning ordinance (*Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365). The many courtroom victories for zoning recounted by Fischel are backstopped by more than the legal shield handed down in *Ambler v. Euclid*. The writer nails an important truth when explaining that judges tend to avoid denying things voters hold dear, and this clearly includes protecting the value of their homes. Further, many judges agree with the quasisanctity of the values extolled by Supreme Court Justice William O. Douglas when, in the 1974 *Belle Terre v. Boraas* case, he wrote in

support of “zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people” (416 U.S. 1) (p. 102). I cannot refrain from mentioning to the reader that I was told a group of college students had moved into the house next to where the Justice was living at that time, which, if true, suggests nothing more sinister than that judges are often homeowners and always human.

In describing how zoning works and how controversies about its delineations are settled at City Hall, Fischel draws interestingly from his 10 years on the Hanover, New Hampshire, Zoning Board; for five years, he sat as its Chair. In describing the “bargaining between developers and municipal officials who control zoning” (p. 130), he presents a very useful analytical model drawn from the theorem of Nobel Laureate R.H. Coase. Fischel’s years on the Zoning Board lead him to opine that disputes about the effects of land use options can best be understood and judged at hearings before local zoning or planning boards rather than in state or federal courtrooms.

But does the economic rationality and community-wide perspective he observed as chair of the Hanover Zoning Board apply with equal vigor to boards in larger communities such as New York and San Francisco? Hanover has 10,000 residents living on 48 square miles of land; that is, less than 2 percent of San Francisco’s resident population, but 98 percent of its land area (p. 30). The differences in scale between Hanover and the metropolitan communities where most economic activities take place, as well as my own experience in testifying before boards in San Francisco, make me hesitate to give an affirmative answer to that question.

Like most observers of the urban scene, Fischel’s optimism about the net benefits of zoning diminished mightily after the empowerment of the antidevelopment activists flying the NIMBY (Not In My Backyard) flag. On the West Coast and in the Northeast, NIMBY activists, who trained initially in the boot camp of the successful “freeway revolts” of the 1970s and were unintentionally granted veto power over development approvals by the ensuing environmental legislation, have cartelized the home building industry. Fischel reviews many possible cures to this destruction of housing market competition. The perhaps unintended consequence of success for the NIMBY activists grants monopoly pricing powers to the owners of existing houses, as well as to developers with the capital and staying power to successfully fight and pay their way to municipal approvals. He points to problems with some of the suggested cures but recommends a few, including the elimination of the deduction for mortgage interest allowed by our current tax laws. While I agree that such a change in our tax laws will lower the value of homes, I doubt that the fighters for the *status quo* who have won so many zoning battles on both coasts will be deterred by such a rather unlikely lowering of the boom on tax laws that support home values.

Fischel’s highly readable review of how zoning became such a powerful governor of urban development and his identification of the effects of its ordinances provides the information base for dealing with one of urban America’s most important problems. For me personally, it has been a déjà vu moment. In 1974, I testified before the Honorable Lloyd H. Burke of the United States District Court, Northern California District, on the unconstitutional and price raising effect that would result if urban growth limits such as the one proposed by the City of Petaluma were allowed (*Construction Industry Association of Sonoma County, a California nonprofit corporation et al., v. The City of Petaluma*). Judge Burke agreed with me, but his decision was overturned by the Ninth Circuit Court of Appeals on the grounds that “the plaintiff lacked standing.” I attended the arguments presented in the appeal. What I heard made me believe that the Appeals Judge’s decision was motivated by the reasons set out by Fischel in *Zoning Rules!* Federal judges are not elected. The best cure for zoning cartelization is that a federal judge and/or the Supreme Court disable the ability of zoning to establish the growth limits and development quotas that box in urban development.

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