



Edward J. Bloustein School
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Early Planning and Zoning Law in the U.S.

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Outline

- Covers cases and statutes from 1876 to 1928
- Courts gradually broaden scope of the police power, at the expense of laissez-faire
- Zoning is a response to massive industrialization and population growth, chiefly through immigration and internal migration
- Racism, purposeful economic segregation are also motives

Early Cases

- *Munn v. Illinois*, 94 U.S. 113 (1876)
 - Backed state regulation of maximum charges for storing grain in warehouses
 - “When one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created.”
 - Expansion of police power, crack in the façade of *laissez faire*

Early Cases

- *L'Hote v. New Orleans*, 177 U.S. 587 (1900)
 - Upheld regulations creating red-light district
 - “The management of these vocations . . . affect directly the public health and morals The ordinance is an attempt to protect a part of the citizens from the unpleasant consequences of such neighbors.”

Early Land Use Controls

- 1885—San Francisco bans public laundries in most areas—aimed at Chinese
- 1886—U.S. Supreme Court invalidates S.F. ordinance in *Yick Wo v. Hopkins*, 118 U.S. 356

Early Land Use Controls

- S.F. restricts dance halls, livery stables, slaughterhouses, saloons, pool halls
- 1882—Oak Park, Illinois, adopts subdivision control
- 1885—N.Y. state limits the height of tenements to 1 ½ times the street width



- 1898—Massachusetts restricts buildings around Copley Square (above) in Boston to 90 feet
- 1909—U.S. Supreme Court upholds height restrictions in Boston in *Welch v. Swasey* (more below)
- By 1913, 22 cities had height control

Early Cases

- *Welch v. Swasey*, 214 U.S. 91(1909)
 - Court sustained building height regulations for the City of Boston that differed between two areas, one of which, the business or commercial part, had a limitation of 125 feet, and the other, used for residential purposes, with a permitted height of buildings from 80 to 100 feet

Early Land Use Controls

- 1909-1915—Los Angeles divides city into 27 districts, including one large zone restricted to residences

Racial Zoning Ordinances

- San Francisco (1890—applied to Chinese)
- Baltimore (1910)
- Richmond, Va. (1911)
- Atlanta (1913-24)
- Louisville, Ky. (1914)
- Other eastern and southern cities

Early Cases

- *Reinman v. Little Rock*, 237 U.S. 171(1915)
 - Upheld ordinance banning the operation of livery stables in the central business district of Little Rock
 - “[I]t is clearly within the police power of the state to regulate the business, and to that end to declare that in particular circumstances and in particular localities a livery stable shall be deemed a nuisance in fact and in law, provided this power is not exerted arbitrarily, or with unjust discrimination, so as to infringe upon rights guaranteed by the Fourteenth Amendment.”

Early Cases

- *Hadacheck v. Sebastian*, 239 U.S. 394 (U.S. 1915)
 - Upheld constitutionality of Los Angeles ordinance excluding existing brickyard from a residential area
 - No prohibition on removal of brick clay, only its manufacture into bricks



**Site of Hadacheck's Brickyard Built
for Housing in L.A.**



Early Land Use Controls

- By 1913, there were more than 50 buildings in Manhattan of more than 20 stories and 9 above 30 stories

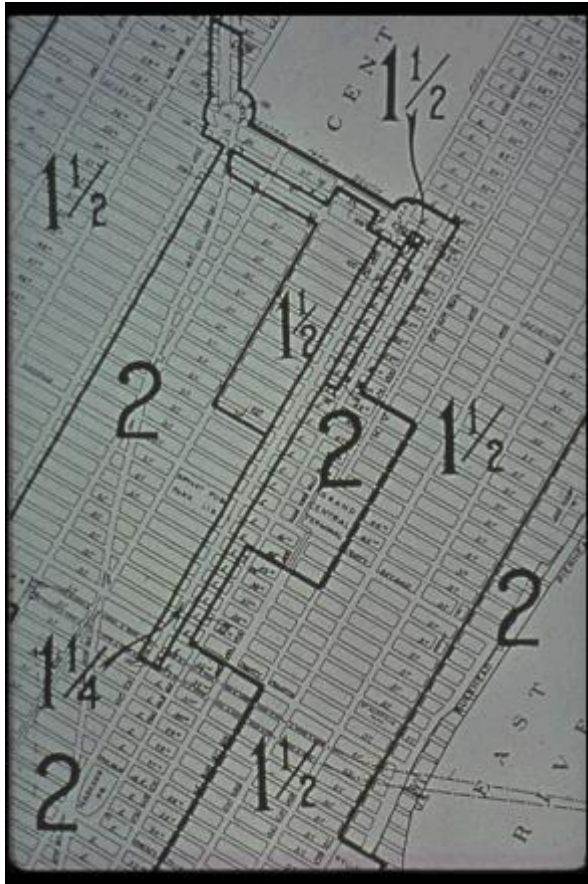
The Equitable Building

- 120 Broadway
- Completed in 1915
- 38 stories
- Cast shadow over seven acres—concerned property owners

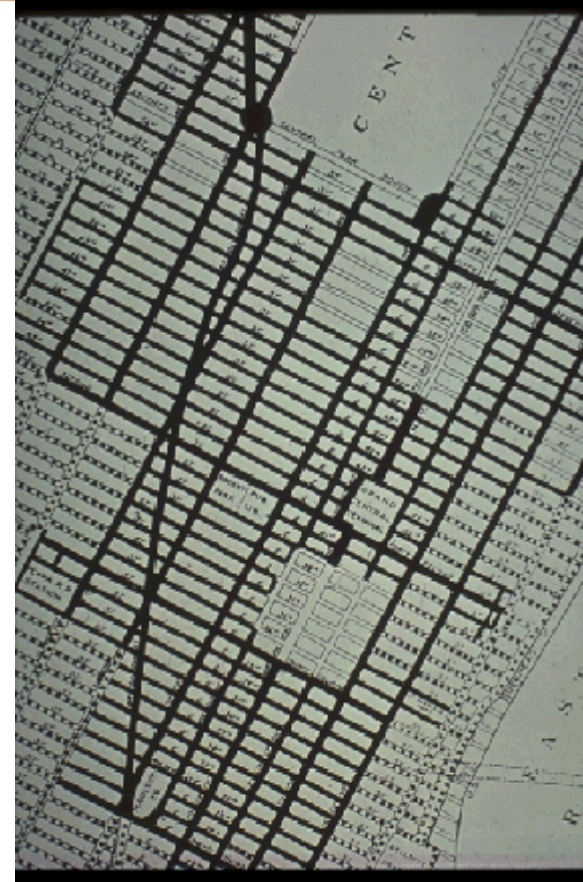


The New York City Zoning Ordinance (1916)

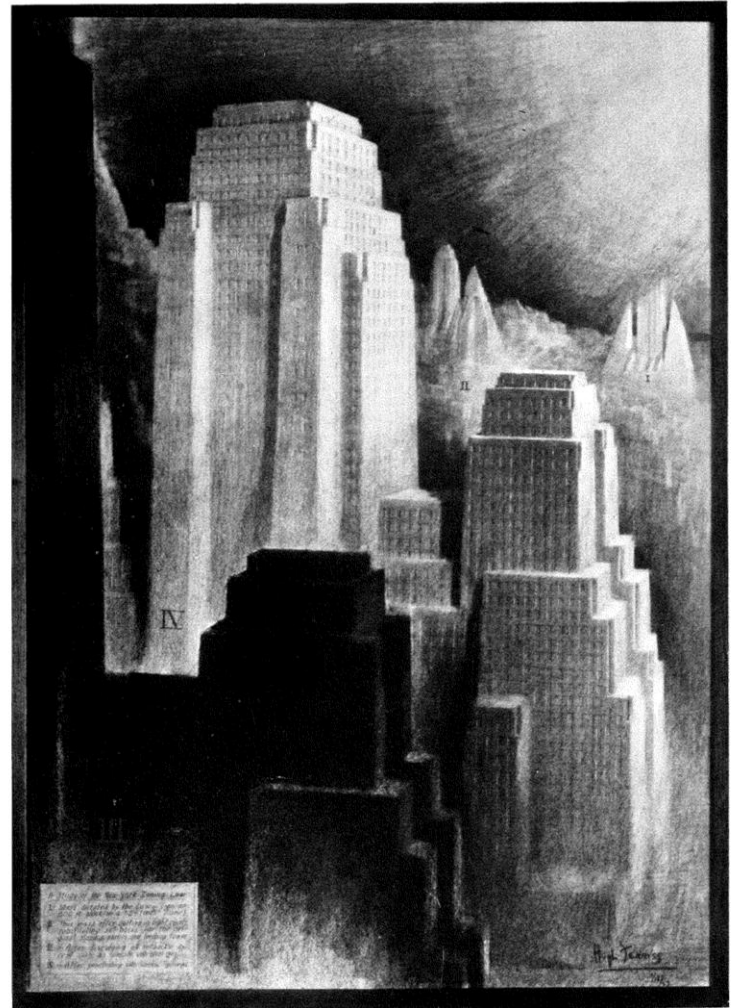
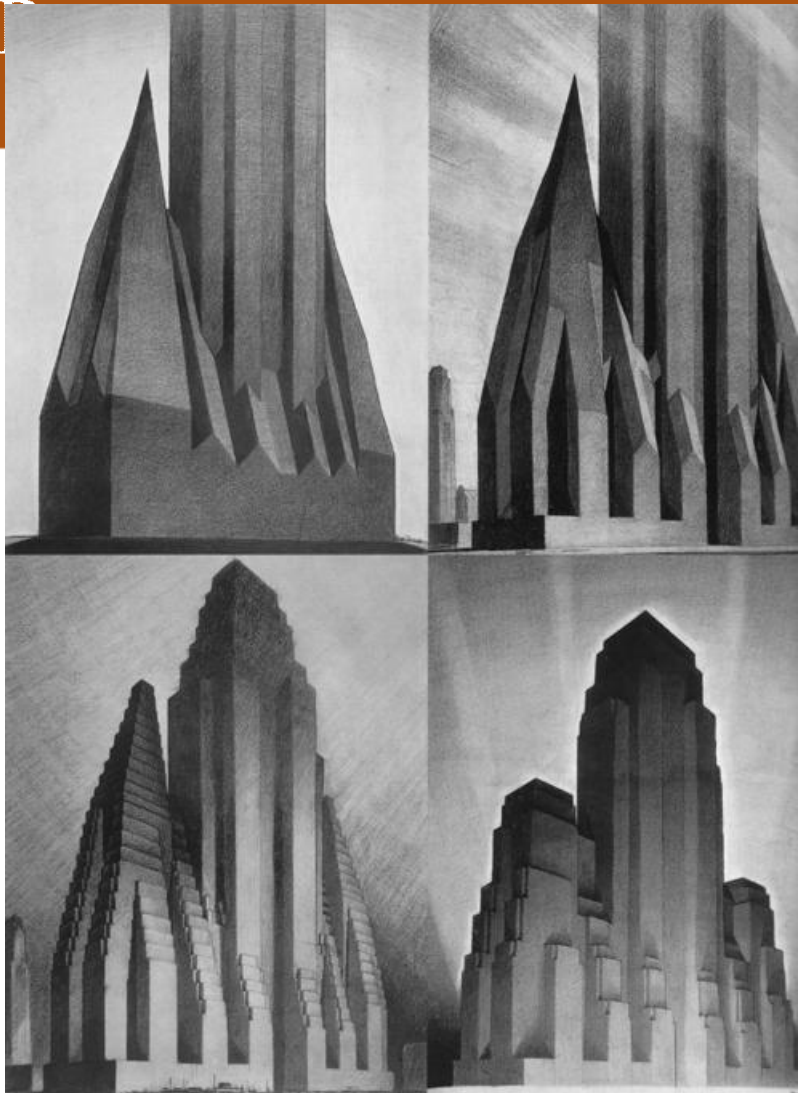
- New York legislature authorized zoning in 1913
- Study prepared, effort overseen by Edward Murray Bassett
- Prompted by expansion of garment district & example of Equitable Building
- Simple districting plan, regulating height, bulk, and use
- First comprehensive zoning ordinance



NYC 1916 Building Height
Map



NYC 1916 Land
Use Map



A Forecast of the City of the Future
 Rendering by Hugh Ferriss.

Hugh Ferriss, "Study for the
 Maximum Mass Permitted by the
 1916 NYC Zoning Law," 1922



Berenice Abbott, "Wall Street
District," 1938

Early Cases

- *Buchanan v. Warley* 245 U.S. 60 (1917)
 - Unanimous decision striking down racial zoning in Louisville, Ky.

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

- Euclid ordinance had six zones, U-1 to U-6
- Village was located along Lake Erie to east of Cleveland
- Decision upheld constitutionality of zoning on substantive due process grounds



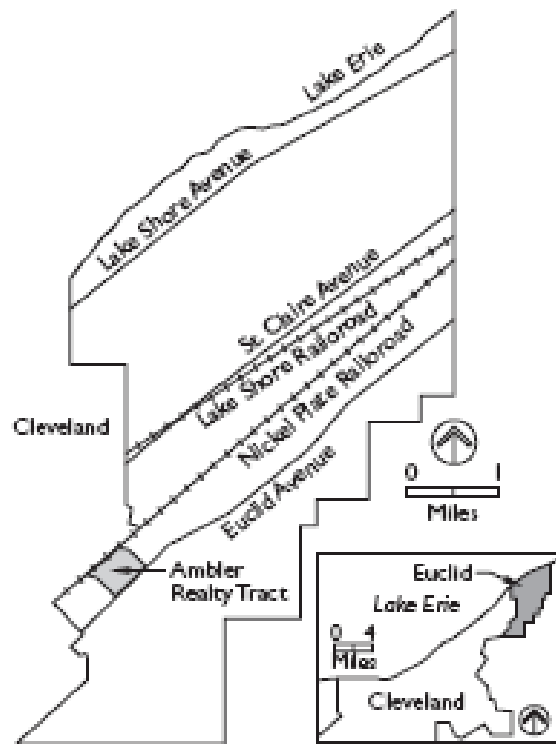
**Newton D. Baker
represented
Ambler Realty
Co.**



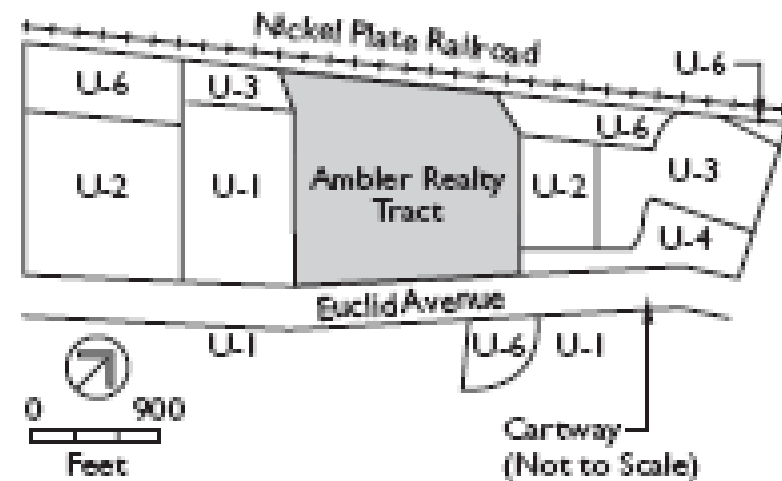
**U.S. Supreme
Court Justice
George
Sutherland wrote
Euclid decision**

Village of Euclid v. Ambler Realty Co. (U.S. 1926)

- “[T]he coming of one apartment house, if followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun . . . and bringing . . . the disturbing noises incident to increased traffic . . . and the occupation, by means of moving and parked automobiles, of larger portions of the street, thus detracting from their safety . . . until, finally, the residential character of the neighborhood and its desirability . . . are utterly destroyed. . . the reasons are sufficiently cogent to *preclude* us from saying . . . that such provisions are clearly *arbitrary* and *unreasonable*, having no substantial relation to the public health, safety, morals or general welfare.”



THE VILLAGE OF EUCLID, OHIO, SHOWING
LOCATION OF THE AMBLER TRACT



ZONING OF PROPERTIES NEAR THE
AMBLER REALTY TRACT

1926—*Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, upholds constitutionality of zoning



Ambler Realty Site, Euclid, Ohio

Significance of *Euclid v. Ambler*

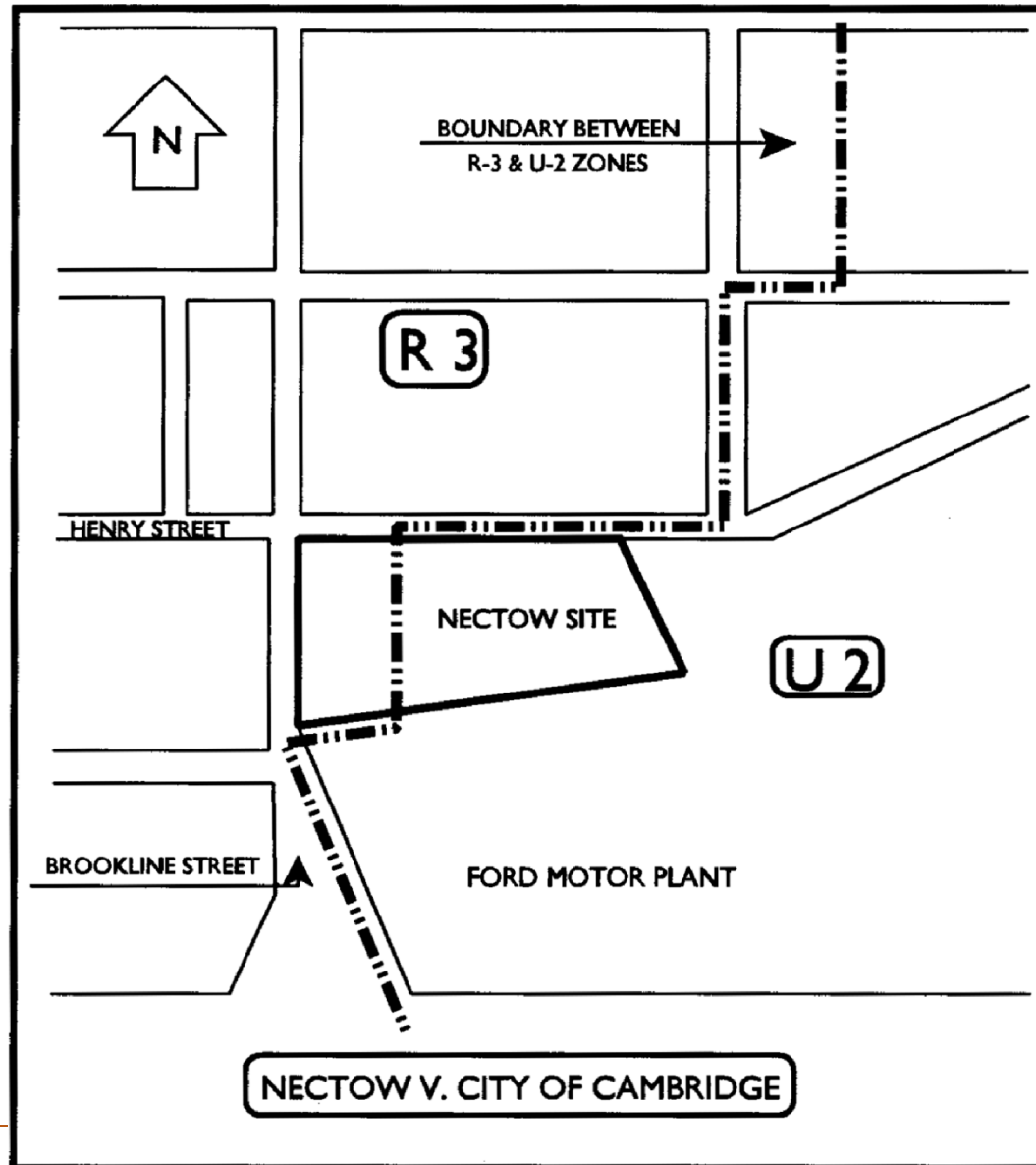
- Pretty much gave carte blanche approval to zoning—deferential to local government
- Recognized the parochial dimension of zoning, but still allowed the exclusion of undesirable uses (and people)
- Nuisance a guide, but not a litmus for legality
- “A nuisance may merely be a right thing in the wrong place—like a pig in the parlor instead of the barnyard”

Significance of *Euclid v. Ambler*

- The “fairly debatable” rule:
“If the validity of a legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control.”

Nectow v. City of Cambridge, 277 U.S. 183 (U.S. 1928)

- Court invalidated a zoning restriction that applied to Nectow's property, a portion of which was zoned for residential purposes and the remainder unrestricted
- Nectow attacked the ordinance as depriving him of property without due process of law
- "(A zoning restriction) . . . cannot be imposed if it does not bear a substantial relation to the public health, safety, morals or general welfare"
- Decision established limitations on zoning as applied





Nectow Site, Cambridge, Mass.

Early planning enabling legislation

- 1907—Hartford, CT, becomes the first U.S. city with a permanent planning commission
 - Result of special state legislation and charter amendment

Early planning enabling legislation

- 1909—Wisconsin—first true general purpose planning enabling legislation for cities
 - Authorized creation of “commission on city plan”
 - Specified membership
 - Required referral to commission for certain public works for “consideration and report”
 - Required referral of plats and replats, both inside and within one mile of city before council approval
 - Authorized preparation of “maps” (really plans) for city for new public works, building lines, and use of “expert advice”

The Standard Acts

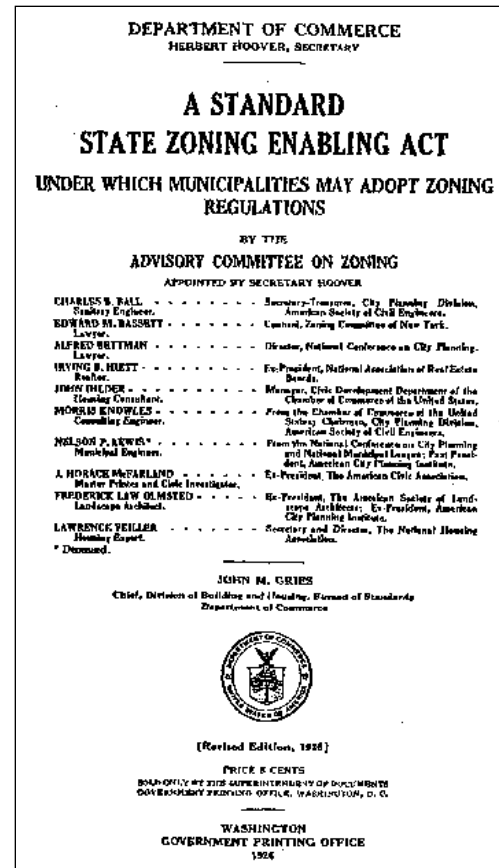
- Commerce Secretary Herbert Hoover creates advisory committee in 1921 to draft model state zoning, planning enabling acts



Origins: The Standard Acts



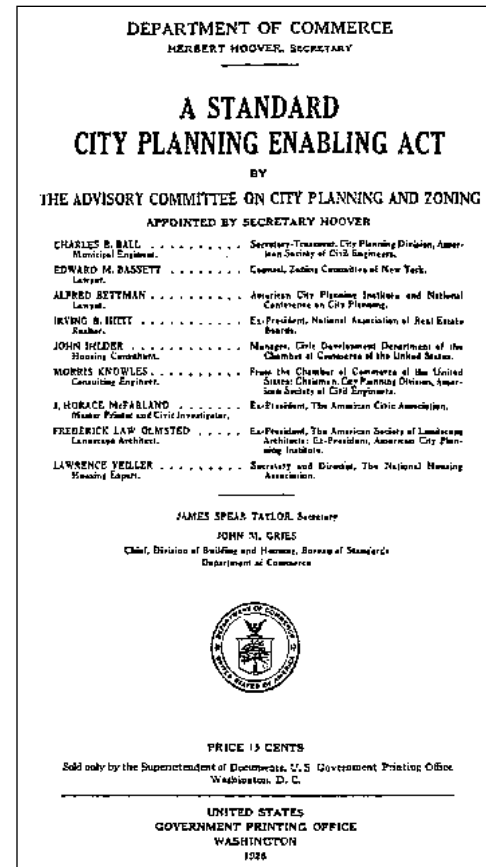
Edward M. Bassett



Origins: The Standard Acts



Alfred
Bettman



The Standard Acts

- The Standard State Zoning Enabling Act (1922-1926)
 - Delegated power to zone
 - Established procedures for amendments, special exceptions, variances
 - Created the board of zoning appeals
 - Enigmatic language “in accordance with a comprehensive plan”

The Standard Acts

- Standard City Planning Enabling Act (1928)
 - Established municipal planning commission
 - Authorized preparation of master plan
 - Required review of proposed public improvements by planning commission
 - Authorized subdivision regulation
 - Authorized the preparation of the “official map” showing precise location of proposed improvements
 - Created regional planning commissions

The Standard Acts

- Motivations

- Response to post-WWI growth
- Protection of value of land as a commodity
- Delegation of authority to avoid invalidation
- Authority to exclude, backdrop of immigration, racism, especially in the South

The Standard Acts

- Assumptions
 - Built on nuisance concept
 - Concern about congestion
 - Land use was local issue →
 - Not environmental

