Episode 31:
The Case for Zoning

And welcome to the 31st episode of the VERY UNofficial AICP Study Guide Podcast. I'm Jonathan Miller, and thank you so much for joining.

So, big announcement: We have officially hit over 10,000 downloads! I am seriously just amazed. Sincerely, I can't say it enough. Thank you to everyone who tunes in.

So, as a thank you, I want to buy someone the 'Test Yourself' Bundle from Planning Certification AICP Exam Prep. That's 4 e-books, 2 practice tests, and 5 practice quizzes to make sure you pass the exam. If you want more details on what it is, you can go to their website at aicpexam.com.

I wasn't sure how exactly to figure out who, so if you go the podcast website - that's theveryunofficialaicpstudyguidepodcast.com - there'll be a link to a little form. It's really just name and email - so I can make sure you get it obviously - and a section for a short response to the question, "What does an AICP certification mean to you?"

Filling it out does not, I repeat, does not sign you up for any emails or anything, and I don't need a super long response either. Just a sentence or two on what it would mean to you: the opportunity to make more money, legitimizing your role in the profession, boosting stature to more directly impact the direction of the profession, shits and giggles, whatever.

I will leave it open though until the end of July to make sure everyone has time to fill it out if they want.

Anyways, for your friendly deadline reminder, you still have about 82 days - or until October 4th - for the application for the exam part. So, you have time, but seriously, just get it out of the way now and be done with it.

Last week, we talked about the standard acts: The Standard State Enabling Act in 1924 and the Standard City Planning Enabling Act in 1928.

Those two acts really set up states and cities with the power to engage in zoning and planning, but there were definitely some court cases along the way to set the stage too; and that's where we're headed today.

We're going to cover three court cases that kicked off the rulings on zoning, and what it can and can't do. This is just the beginning of course, but let's see how it goes.

(03:00)

To start, we head out west to the City of Angels - and Brickyards - for the 1915 case: Hadacheck v. Sebastian.

So, here's the setup for the case. In a tale as old as time there was a Councilman named Josias (Jerry) Andrews who had real estate interests, of course.

His real estate interests were in a tract of land that would become a neighborhood known as Victoria

Park, and this neighborhood was just a couple blocks east of a district that contained brickyards; one of which owned by a guy named Hadacheck.

Now, the process of brick making is, well, not very environmentally friendly. You have to fire clay (that's shaped into bricks, obviously) in a kiln, and these kilns were fueled by coal. So yeah, not fun for potential residents nearby.

Anyways, in a display of very poor optics, Councilman Jerry Andrews proposed an ordinance that would prohibit the manufacture of bricks within an area that contained this brickyard that was near his properties in Victoria Park.

The poor optics didn't go unnoticed. The L.A. Times even commented that the brickyard "happens to be in a district where Andrews now has large real estate investments."

Regardless, the Los Angeles City Council passed the ordinance, but the Mayor at the time vetoed it, of course. The City Council then said, 'touche,' and got together and passed the measure over the veto; making it a legit ordinance anyways.

(04:47)

Now Mr. Hadacheck, being the staunch businessman that he was, said, 'I'm going to live by the businessman code of dealing with government: It's better to ask for forgiveness than ask for permission. He didn't really say that, but he did continue to operate his brickyard even though the ordinance prohibited it.

Subsequently, Mr. Hadacheck here was charged with violating a City Ordinance - the one prohibiting operating a brick yard - and was arrested by Los Angeles Chief of Police, Charles Sebastian. That's where the Sebastian comes from.

Hadacheck initially filed for habeas corpus, AKA unlawful detainment, with the California Supreme Court. And what was his basis for this claim? Well, Hadacheck claimed a few things.

One, he owned and operated this property which contained lots of valuable clay ripe for brick making; the whole reason he bought the property before the land was even annexed into Los Angeles. Two, this ordinance would prevent the use of the property for the reason he bought it, and of course, he'd have to close his business. Three, his brickmaking business was as environmentally-friendly as he could make it, so it couldn't be considered a nuisance. And four, it was a taking by violating the 14th amendment and California Constitution, of course.

(06:16)

The result? Well, the California Supreme Court called bullshit, and ruled in favor of Los Angeles (read as Sebastian), and said that Hadacheck's business was one that could be regulated.

They also said that acquiring the property and opening the business before the ordinance was irrelevant, and they also considered the numerous affidavits talking about his business was polluting to show that it was a nuisance. So, Hadacheck did what any reasonable person who loses a court case does and appealed it to the U.S. Supreme Court, and that didn't help.

The U.S. Supreme Court ruled unanimously that the ordinance prohibiting brickyards was a legit use of police powers, and that since Hadacheck could still take clay from the property to a brickyard in a different location, the ordinance did not deny him the use of the property.

Score one for legit police powers and ordinances that are not takings.

(07:25)

Next, let's travel east to Appalachia; specifically, coal country in Pennsylvania (yes, coal exists outside of West Virginia) to talk about what happened in the 1922 case, Pennsylvania Coal Company v. Mahon.

So, what's the background here.

Well, once upon a time, a coal company - let's call them Pennsylvania Coal Company - owned a bunch of land. But they're a mining company obviously, so they don't really have a lot of use for the surface parts of the land they own.

Being resourceful, this company - in 1878 - decides to sell the surface rights to their property to someone. Let's call them, Mahon. Now keep in mind, this is just the surface rights. The Pennsylvania Coal Company kept all of the subterranean rights to the property so that they could keep mining it.

Now, Mr. Mahon here didn't think this through very well, because when he bought the surface rights, he also agreed to assume all of the liabilities that came with living on top of land that was being mined.

As you might assume, living on top of a mine had - you know - some drawbacks. But, in 1921, potential relief appeared when Pennsylvania passed the Kohler Act.

And the Kohler Act said you're not allowed to mine coal if it will affect a structure used for human habitation.

(08:56)

So, when Pennsylvania Coal Company went to Mahon and said, 'Hey buddy, we're going to mine directly underneath you now.' Mahon said, 'Oh no you wont!' and then went off and sued them in the Court of Common Pleas for an injunction.

Now, this is a good time to explain where Pennsylvania Coal was coming from, since mining under the residence - on its face - is pretty clearly a violation of the Kohler Act.

You see, previously to the Kohler Act - and this case of course - the State of Pennsylvania had viewed supports being left behind as - let's call it – non-mineable.

Basically, let's say there's a large coal deposit under a house. Logically, if you remove all of the coal, the surface ground and subsequent home will cave in, but if you leave some pillars of coal in place to support the surface land, the land won't cave in and all will be well.

So, what Pennsylvania's previous practice was, was to permit mining under residences because to avoid a nuisance, the mining companies would leave behind pillars so that the surface wouldn't be affected.

Now, you can see where the disagreement comes from. Mahon says that the mining will disturb his residence thus violating the Kohler Act, and Pennsylvania Coal says if the Kohler Act is applied in that manner than you've rendered our mining rights useless. And you can't do that, and that's a taking.

(10:24)

So, how did it pan out? Well, the initial court - the Court of Common Pleas – said, 'Bullshit Mr. Mahon, applying the Kohler Act here is not a legitimate use of the police power, and is unconstitutional.

Mahon appealed (obviously, they always do) and the Pennsylvania Supreme Court said, 'Oh no Court of Common Pleas, the Kohler Act here is in fact legit. This is totally okay as a police power," and of course, granted an injunction again Pennsylvania Coal.

Pennsylvania Coal then said, "Oh hell no," and appealed to the U.S. Supreme Court who said, "Pennsylvania Supreme Court, you better check yourself because this is, in fact, not a legit use of police power." And here's why. It basically boils down to this.

Prohibiting the mining under the house only serves – like - a little bit of a public purpose, but mostly, it's really a private purpose. Saving the house from the impacts only really helps that one house. Albeit, it may happen in several places, but it's still really an isolated kind of thing. On the other hand, the extent of prohibiting the mining altogether is huge.

On top of all of that, surface rights owners agreed to the liabilities of being on top of a mine, and if we prevent the coal company from mining where they had both agreed they would mine; we're basically stripping rights from the mining rights owner because the value in coal only exists in the ability to mine it. And, we're giving more rights to the surface rights owner even though they didn't actually pay for those rights.

The main takeaway here is that the Kohler Act went too far.

Yes, you can regulate uses as it pertains a public purpose, but a kind-of-public-purpose does not justify the blanket prohibition of a use. Especially when all of the value of the property is in that use.

So, when a regulation goes too far, it can constitute a taking.

(12:34)

Now, on to the big daddy of them all. The mother of zoning cases: The Village of Euclid v. Ambler Realty Co.

For this, we're headed to the metro area of my native city of Cleveland. Though I grew up on the west side - not the east side where Euclid is. And yes, east side and west side is very much a thing in Cleveland.

Anyways, let's cover why it was a big one. I mean, we just talked about two cases that happened before Euclid. So, why.

Well, Euclid deals with zoning; in general. Hadacheck dealt with a one-off ordinance and Pennsylvania dealt with a legislative Act. And while both of these dealt with regulating uses, they didn't really touch on zoning regulations like we know them today. And with that, let's set the stage.

In another tale as old as time, the Village of Euclid, Ohio - an early suburb of Cleveland - wasn't unlike other early suburbs of cities in the early 1900's, or really even later suburbs: It was filled with the NIMBY's.

And these NIMBY's, fearing the industrial expansion from Cleveland and wanting to - you know - preserve the character of the Village, decided that coating the entire village in amber wasn't very plausible. So, they crafted up a zoning ordinance to determine what uses would and wouldn't be permitted, and where these uses would and wouldn't be permitted. The amber thing was fake by the way; just in case that wasn't clear.

This early zoning ordinance was really pretty simple though. It carved up the village and contained only six zoning classifications, three height classifications, and four area classifications …

This case however, was really concerned with the Use districts.

Now, the Use districts were cumulative. For example, U-1 delineated every permitted use, U-2 said 'Everything in U-1 plus…,' U-3 said 'Everything in U-2 plus…,' etc. etc. etc.

No biggie, right?

(15:06)

Wrong. Ambler, who owned 68 acres between a railroad to the north and Euclid Avenue to the south, said 'This is garbage.' You see, their property ended up falling within three different classifications: U-2, U-3, and U-6.

With U-2 - the most restrictive - being along Euclid Avenue, U-3 right behind that, and U-6 being everything else being closest to the Railroad, makes sense.

Anyways, Ambler wasn't very fond of the restrictive nature of the U-2 and U-3 districts. Subsequently, they sued the Village of Euclid on the basis that because of the zoning code, because of the restrictive nature

of the U-2 and U-3 districts, their property value was substantially reduced, and that that deprived them of the use of their property without due process. It's always due process and takings.

Regardless, the lower courts ruled that Ambler was correct. They said that since multiple districts crossed over their property, they were restricted in what could be built there and thus, no reason for Ambler to obey the ordinance.

The Village of Euclid appealed, and the U.S. Supreme Court? They had a different opinion.

They ruled that even though the Village of Euclid was a part of metro Cleveland, it was it's own jurisdiction with its own autonomy, and that zoning was within the police powers because the zoning related to the public welfare.

It also said that there was no violation of the 14th Amendment - read as Due Process - because Ambler never proved that there was a reduction in property value. They only assumed that there was a reduction in property value, and Ambler failed to show that the zoning ordinance did not relate to the public welfare.

Basically, they ruled that Zoning Regulations are constitutional on the basis that they provide for the public welfare, and that for a zoning to violate due process, it would have to be discriminatory and have no rational basis.

(17:20)

Well, holy moly. Three major court cases about the extent of police powers in regulations.

For a quick recap:

Hadacheck v. Sebastian in 1915 ruled that Regulations can regulate where land uses go, so long as the property retains some value for use.

Then, in 1922, in Pennsylvania Coal Co. v. Mahon, the courts ruled that yes, uses can be regulated. But, if those regulations go too far - as in the reduction in value drastically exceeds the public benefit - then the regulation does constitute a taking.

Then, in 1926, in the Village of Euclid v. Ambler Realty Co., the courts said that zoning regulations do fall under the police powers of a government, and that for a zoning to violate due process it would have be discriminatory and have no rational basis.

And with that, case closed. Court is adjourned.

(18:29)

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.

This week we did probably way too much in these three cases, but they're super important. So, yeah.

For those who tuned in last week, our question was, "In what year were the Standard State Enabling Act and Standard City Planning Enabling Act passed?" The answer there would be 1924 for the Standard State Enabling Act, and 1928 - 4 years later - for the Standard City Planning Enabling Act.

If you want to play along this week, our question is, "Which of the three cases that we talked about today, did the land owner claim a taking?"

As always, 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.

And remember to go to the podcast website and do the quick form to enter for the 'Test Yourself' Bundle from Planning Certification. Don't overthink it. Just, "What does AICP Certification mean to you?" To me, in short, it means advancing our profession to new levels.

Tune in again next week, as we go mobile. Auto mobile. Cars. We're getting into cars.

Thanks again everyone, 'till next time.

Links:

Hadacheck v. Sebastian:
https://en.wikipedia.org/wiki/Hadacheck_v._Sebastian
https://www.lexisnexis.com/community/casebrief/p/casebrief-hadacheck-v-sebastian
https://www.law.cornell.edu/supremecourt/text/239/394

Pennsylvania Coal Co. v. Mahon:
https://en.wikipedia.org/wiki/Pennsylvania_Coal_Co._v._Mahon
https://www.lexisnexis.com/community/casebrief/p/casebrief-pennsylvania-coal-co-v-mahon
https://www.law.cornell.edu/supremecourt/text/260/393

Village of Euclid v. Ambler Realty Co.:
https://en.wikipedia.org/wiki/Village_of_Euclid_v._Ambler_Realty_Co.
https://www.lexisnexis.com/community/casebrief/p/casebrief-euclid-v-ambler-realty-co-1043783755
https://www.law.cornell.edu/supremecourt/text/272/365