VILLAGE OF EUCLID, OHIO v. AMBLER REALTY CO

U.S. Supreme Court
VILLAGE OF EUCLID, OHIO v. AMBLER REALTY CO., 272 U.S. 365 (1926)
272 U.S. 365
VILLAGE OF EUCLID, OHIO, et al.
v.
AMBLER REALTY CO.
No. 31.
Reargued Oct. 12, 1926.
Decided Nov. 22, 1926.

[272 U.S. 365, 367] Mr. James Metzenbaum, of Cleveland, Ohio, for appellants.
[272 U.S. 365, 371] Messrs. Newton D. Baker and Robert M. Morgan, both of Cleveland, Ohio, for appellee.
[272 U.S. 365, 379]
Mr. Justice SUTHERLAND delivered the opinion of the Court.
The village of Euclid is an Ohio municipal corporation. It adjoins and practically is a suburb of the city of Cleveland. Its estimated population is between 5,000 and 10,000, and its area from 12 to 14 square miles, the greater part of which is farm lands or unimproved acreage. It lies, roughly, in the form of a parallelogram measuring approximately 3 1/2 miles each way. East and west it is traversed by three principal highways: Euclid avenue, through the southerly border, St. Clair avenue, through the central portion, and Lake Shore boulevard, through the northerly border, in close proximity to the shore of Lake Erie. The Nickel Plate Railroad lies from 1,500 to 1,800 feet north of Euclid avenue, and the Lake Shore Railroad 1,600 feet farther to the north. The three highways and the two railroads are substantially parallel.
Appellee is the owner of a tract of land containing 68 acres, situated in the westerly end of the village, abutting on Euclid avenue to the south and the Nickel Plate Railroad to the north. Adjoining this tract, both on the east and on the west, there have been laid out restricted residential plats upon which residences have been erected.
On November 13, 1922, an ordinance was adopted by the village council, establishing a comprehensive zoning plan for regulating and restricting the location of trades, [272 U.S. 365, 380] industries, apartment houses, two-family houses, single family houses, etc ., the lot area to be built upon, the size and height of buildings, etc.
The entire area of the village is divided by the ordinance into six classes of use districts, denominated U-1 to U-6, inclusive; three classes of height districts, denominated H-1 to H-3, inclusive; and four classes of area districts, denominated A-1 to A-4, inclusive. The use districts are classified in respect of the buildings which may be erected within their respective limits, as follows: U-1 is restricted to single family dwellings, public parks, water towers and reservoirs, suburban and interurban electric railway passenger stations and rights of way, and farming, non-commercial greenhouse nurseries, and truck gardening; U-2 is extended to include two-family dwellings; U-3 is further extended to include apartment houses, hotels, churches, schools, public libraries, museums, private clubs, community center buildings, hospitals, sanitariums, public playgrounds, and recreation buildings, and a city hall and courthouse; U-4 is further extended to include banks, offices, studios, telephone exchanges, fire and police stations, restaurants, theaters and moving picture shows, retail stores and shops, sales offices,

sample rooms, wholesale stores for hardware, drugs, and groceries, stations for gasoline and oil (not exceeding 1,000 gallons storage) and for ice delivery, skating rinks and dance halls, electric substations, job and newspaper printing, public garages for motor vehicles, stables and wagon sheds (not exceeding five horses, wagons or motor trucks), and distributing stations for central store and commercial enterprises; U-5 is further extended to include billboards and advertising signs (if permitted), warehouses, ice and ice cream manufacturing and cold storage plants, bottling works milk bottling and central distribution stations, laundries, carpet cleaning, dry cleaning, and dyeing establishments, [272 U.S. 365, 381] blacksmith, horseshoeing, wagon and motor vehicle repair shops, freight stations, street car barns, stables and wagon sheds (for more than five horses, wagons or motor trucks), and wholesale produce markets and salesroom; U-6 is further extended to include plants for sewage disposal and for producing gas, garbage and refuse incineration, scrap iron, junk, scrap paper, and rag storage, aviation fields, cemeteries, crematories, penal and correctional institutions, insane and feeble-minded institutions, storage of oil and gasoline (not to exceed 25,000 gallons), and manufacturing and industrial operations of any kind other than, and any public utility not included in, a class U-1, U-2, U-3, U-4, or U-5 use. There is a seventh class of uses which is prohibited altogether.

Class U-1 is the only district in which buildings are restricted to those enumerated. In the other classes the uses are cumulative-that is to say, uses in class U-2 include those enumerated in the preceding class U-1; class U-3 includes uses enumerated in the preceding classes, U-2, and U-1; and so on. In addition to the enumerated uses, the ordinance provides for accessory uses; that is, for uses customarily incident to the principal use, such as private garages. Many regulations are provided in respect of such accessory uses.

The height districts are classified as follows: In class H-1, buildings are limited to a height of 2 1/2 stories, or 35 feet; in class H- 2, to 4 stories, or 50 feet; in class H-3, to 80 feet. To all of these, certain exceptions are made, as in the case of church spires, water tanks, etc.

The classification of area districts is: In A-1 districts, dwellings or apartment houses to accommodate more than one family must have at least 5,000 square feet for interior lots and at least 4,000 square feet for corner lots; in A-2 districts, the area must be at least 2,500 square feet for interior lots, and 2,000 square feet for corner lots; in A-3 [272 U.S. 365, 382] districts, the limites are 1,250 and 1,000 square feet, respectively; in A- 4 districts, the limits are 900 and 700 square feet, respectively. The ordinance contains, in great variety and detail, provisions in respect of width of lots, front, side, and rear yards, and other matters, including restrictions and regulations as to the use of billboards, signboards, and advertising signs.

A single family dwelling consists of a basement and not less than three rooms and a bathroom. A two-family dwelling consists of a basement and not less than four living rooms and a bathroom for each family, and is further described as a detached dwelling for the occupation of two families, one having its principal living rooms on the first floor and the other on the second floor.

Appellee's tract of land comes under U-2, U-3 and U-6. The first strip of 620 feet immediately north of Euclid avenue falls in class U-2, the next 130 feet to the north, in U-3, and the remainder in U-6. The uses of the first 620 feet, therefore, do not include

apartment houses, hotels, churches, schools, or other public and semipublic buildings, or other uses enumerated in respect of U-3 to U-6, inclusive. The uses of the next 130 feet include all of these, but exclude industries, theaters, banks, shops, and the various other uses set forth in respect of U-4 to U-6, inclusive. 1 [272 U.S. 365, 383] Annexed to the ordinance, and made a part of it, is a zone map, showing the location and limits of the various use, height, and area districts, from which it appears that the three classes overlap one another; that is to say, for example, both U-5 and U-6 use districts are in A-4 area district, but the former is in H-2 and the latter in H-3 height districts. The plan is a complicated one, and can be better understood by an inspection of the map, though it does not seem necessary to reproduce it for present purposes.

The lands lying between the two railroads for the entire length of the village area and extending some distance on either side to the north and south, having an average width of about 1,600 feet, are left open, with slight exceptions, for industrial and all other uses. This includes the larger part of appellee's tract. Approximately one-sixth of the area of the entire village is included in U-5 and U-6 use districts. That part of the village lying south of Euclid avenue is principally in U-1 districts. The lands lying north of Euclid avenue and bordering on the long strip just described are included in U-1, U-2, U-3, and U-4 districts, principally in U-2.

The enforcement of the ordinance is intrusted to the inspector of buildings, under rules and regulations of the board of zoning appeals. Meetings of the board are public, and minutes of its proceedings are kept. It is authorized to adopt rules and regulations to carry into effect provisions of the ordinance. Decisions of the inspector of buildings may be appealed to the board by any person claiming to be adversely affected by any such decision. The board is given power in specific cases of practical difficulty or unnecessary hardship to interpret the ordinance in harmony with its general purpose and intent, so that the public health, safety and general welfare may be secure and substantial justice done. Penalties are prescribed for violations, and it is provided that the various [272 U.S. 365, 384] provisions are to be regarded as independent and the holding of any provision to be unconstitutional, void or ineffective shall not affect any of the others.

The ordinance is assailed on the grounds that it is in derogation of section 1 of the Fourteenth Amendment to the federal Constitution in that it deprives appellee of liberty and property without due process of law and denies it the equal protection of the law, and that it offends against certain provisions of the Constitution of the state of Ohio. The prayer of the bill is for an injunction restraining the enforcement of the ordinance and all attempts to impose or maintain as to appellee's property any of the restrictions, limitations or conditions. The court below held the ordinance to be unconstitutional and void, and enjoined its enforcement, 297 F. 307.

Before proceeding to a consideration of the case, it is necessary to determine the scope of the inquiry. The bill alleges that the tract of land in question is vacant and has been held for years for the purpose of selling and developing it for industrial uses, for which it is especially adapted, being immediately in the path or progressive industrial development; that for such uses it has a market value of about $10,000 per acre, but if the use be limited to residential purposes the market value is not in excess of $2,500 per acre; that the first 200 feet of the parcel back from Euclid avenue, if unrestricted in respect of use, has a value of $ 150 per front foot, but if limited to residential uses, and

ordinary mercantile business be excluded therefrom, its value is not in excess of $ 50 per front foot.

It is specifically averred that the ordinanceattempts to restrict and control the lawful uses of appellee's land, so as to confiscate and destroy a great part of its value; that it is being enforced in accordance with its terms; that propective buyers of land for industrial, commercial, and residential uses in the metropolitan district of Cleveland [272 U.S. 365, 385] are deterred from buying any part of this land because of the existence of the ordinance and the necessity thereby entailed of conducting burdensome and expensive litigation in order to vindicate the right to use the land for lawful and legitimate purposes; that the ordinance constitutes a cloud upon the land, reduces and destroys its value, and has the effect of diverting the normal industrial, commercial, and residential development thereof to other and less favorable locations.

The record goes no farther than to show, as the lower court found, that the normal and reasonably to be expected use and development of that part of appellee's land adjoining Euclid avenue is for general trade and commercial purposes, particularly retail stores and like establishments, and that the normal and reasonably to be expected use and development of the residue of the land is for industrial and trade purposes. Whatever injury is inflicted by the mere existence and threatened enforcement of the ordinance is due to restrictions in respect of these and similar uses, to which perhaps should be added-if not included in the foregoing- restrictions in respect of apartment houses. Specifically there is nothing in the record to suggest that any damage results from the presence in the ordinance of those restrictions relating to churches, schools, libraries, and other public and semipublic buildings. It is neither alleged nor proved that there is or may be a demand for any part of appellee's land for any of the last-named uses, and we cannot assume the existence of facts which would justify an injunction upon this record in respect to this class of restrictions. For present purposes the provisions of the ordinance in respect of these uses may therefore be put aside as unnecessary to be considered. It is also unnecessary to consider the effect of the restrictions in respect of U-1 districts, since none of appellee's land falls within that class. [272 U.S. 365, 386]

We proceed, then, to a consideration of those provisions of the ordinance to which the case as it is made relates, first disposing of a preliminary matter.

A motion was made in the court below to dismiss the bill on the ground that, because complainant (appellee) had made no effort to obtain a building permit or apply to the zoning board of appeals for relief, as it might have done under the terms of the ordinance, the suit was premature. The motion was properly overruled, the effect of the allegations of the bill is that the ordinance of its own force operates greatly to reduce the value of appellee's lands and destroy their marketability for industrial, commercial and residential uses, and the attack is directed, not against any specific provision or provisions, but against the ordinance as an entirety. Assuming the premises, the existence and maintenance of the ordinance in effect constitutes a present invasion of appellee's property rights and a threat to continue it. Under these circumstances, the equitable jurisdiction is clear. See Terrace v. Thompson, 263 U.S. 197, 215 , 44 S. Ct. 15; Pierce v. Society of Sisters, 268 U.S. 510, 535 , 45 S. Ct. 571, 30 A. L. R. 468.

It is not necessary to set forth the provisions of the Ohio Constitution which are thought to be infringed. The question is the same under both Constitutions, namely, as stated by appellee: Is the ordinance invalid, in that it violates the constitutional protection 'to the

right of property in the appellee by attempted regulations under the guise of the police power, which are unreasonable and confiscatory'?

Building zone laws are of modern origin. They began in this country about 25 years ago. Until recent years, urban life was comparatively simple; but, with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in [272 U.S. 365, 387] urban communities. Regulations, the wisdom, necessity, and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for, while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise. But although a degree of elasticity is thus imparted, not to the meaning, but to the application of constitutional principles, statutes and ordinances, which, after giving due weight to the new conditions, are found clearly not to conform to the Constitution, of course, must fall.

The ordinance now under review, and all similar laws and regulations, must find their justification in some aspect of the police power, asserted for the public welfare. The line which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions. A regulatory zoning ordinance, which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities. In solving doubts, the maxim 'sic utere tuo ut alienum non laedas,' which lies at the foundation of so much of the common low of nuisances, ordinarily will furnish a fairly helpful clew. And the law of nuisances, likewise, may be consulted, not for the purpose of controlling, but for the helpful aid of its analogies in the process of ascertaining [272 U.S. 365, 388] the scope of, the power. Thus the question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality. Sturgis v. Bridgeman, L. R. 11 Ch. 852, 865. A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard. If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control. Radice v. New York, 264 U.S. 292, 294 , 44 S. Ct. 325.

There is no serious difference of opinion in respect of the validity of laws and regulations fixing the height of buildings within reasonable limits, the character of materials and methods of construction, and the adjoining area which must be left open, in order to minimize the danger of fire or collapse, the evils of overcrowding and the like, and excluding from residential sections offensive trades, industries and structures likely to create nuisances. See Welch v. Swasey, 214 U.S. 91 , 29 S. Ct. 567; Hadacheck v.

Los Angeles, 239 U.S. 394 , 36 S. Ct. 143, Ann. Cas. 1917B, 927; Reinman v. Little Rock, 237 U.S. 171 , 35 S. Ct. 511; Cusack Co. v. City of Chicago, 242 U.S. 526, 529 , 530 S., 37 S. Ct. 190, L. R. A. 1918A, 136, App. Cas. 1917C, 594.

Here, however, the exclusion is in general terms of all industrial establishments, and it may thereby happen that not only offensive or dangerous industries will be excluded, but those which are neither offensive nor dangerous will share the same fate. But this is no more than happens in respect of many practice-forbidding laws which this court has upheld, although drawn in general terms so as to include individual cases that may turn out to be innocuous in themselves. Hebe Co. v. Shaw, 248 U.S. 297, 303 , 39 S. Ct. 125; Pierce Oil Corp. v. City of Hope, 248 U.S. 498, 500 , 39 S. Ct. 172. The inclusion of a reasonable margin, to insure effective enforcement, will not put upon a law, otherwise [272 U.S. 365, 389] valid, the stamp of invalidity. Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation. In the light of these considerations, we are not prepared to say that the end in view was not sufficient to justify the general rule of the ordinance, although some industries of an innocent character might fall within the proscribed class. It cannot be said that the ordinance in this respect 'passes the bounds of reason and assumes the character of a merely arbitrary fiat.' Purity Extract Co. v. Lynch, 226 U.S. 192, 204 , 33 S. Ct. 44, 47 (57 L. Ed. 184). Moreover, the restrictive provisions of the ordinance in this particular may be sustained upon the principles applicable to the broader exclusion from residential districts of all business and trade structures, presently to be discussed.

It is said that the village of Euclid is a mere suburb of the city of Cleveland; that the industrial development of that city has now reached and in some degree extended into the village, and in the obvious course of things will soon absorb the entire area for industrial enterprises; that the effect of the ordinance is to divert this natural development elsewhere, with the consequent loss of increased values to the owners of the lands within the village borders. But the village, though physically a suburb of Cleveland, is politically a separate municipality, with powers of its own and authority to govern itself as it sees fit, within the limits of the organic law of its creation and the state and federal Constitutions. Its governing authorities, presumably representing a majority of its inhabitants and voicing their will, have determined, not that industrial development shall cease at its boundaries, but that the course of such development shall proceed within definitely fixed lines. If it be a proper exercise of the police power to relegate industrial establishments to local- [272 U.S. 365, 390] ities separated from residential sections, it is not easy to find a sufficient reason for denying the power because the effect of its exercise is to divert an industrial flow from the course which it would follow, to the injury of the residential public, if left alone, to another course where such injury will be obviated. It is not meant by this, however, to exclude the possibility of cases where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way.

We find no difficulty in sustaining restrictions of the kind thus far reviewed. The serious question in the case arises over the provisions of the ordinance excluding from residential districts apartment houses, business houses, retail stores and shops, and other like establishments. This question involves the validity of what is really the crux of

the more recent zoning legislation, namely, the creation and maintenance of residential districts, from which business and trade of every sort, including hotels and apartment houses, are excluded. Upon that question this court has not thus far spoken. The decisions of the state courts are numerous and conflicting; but those which broadly sustain the power greatly outnumber those which deny it altogether or narrowly limit it, and it is very apparent that there is a constantly increasing tendency in the direction of the broader view. We shall not attempt to review these decisions at length, but content ourselves with citing a few as illustrative of all.

As sustaining a broader view, see Opinion of the Justices, 234 Mass. 597, 607, 127 N. E. 525; Inspector of Buildings of Lowell v. Stoklosa, 250 Mass. 52, 145 N. E. 262; Spector v. Building Inspector of Milton, 250 Mass. 63, 145 N. E. 265; Brett v. Building Commissioner of Brookline, 250 Mass. 73, 145 N. E. 269; State v. City of New Orleans, 154 La. 271, 282, 97 So. 440, 33 A. L. R. 260; Lincoln Trust Co. v. Williams Bldg. Corp., 229 N. Y. 313, 128 N. E. 209; City of Aurora v. Burns, 319 Ill. 84, 93, 149 N. E. 784; Deynzer v. City of Evanston, 319 Ill. 226, 149 N E. 790; [272 U.S. 365, 391] State ex rel. v. Houghton, 164 Minn. 146, 204 N. W. 569; State ex rel. Carter v. Harper, 182 Wis. 148, 157-161, 196 N. W. 451, 33 A. L. R. 269; Ware v. City of Wichita, 113 Kan. 153, 214 P. 99; Miller v. Board of Public Works, 195 Cal. 477, 486-495, 234 P. 381, 38 A. L. R. 1479; City of Providence v. Stephens (R. I.) 133 A. 614.

For the contrary view, see Goldman v. Crowther, 147 Md. 282, 128 A. 50, 38 A. L. R. 1455; Ignaciunas v. Risley, 98 N. J. Law. 712, 121 A. 783; Spann v. City of Dallas, 111 Tex. 350, 238 S. W. 513, 19 A. L. R. 1387

As evidence of the decided trend toward the broader view, it is significant that in sime instances the state courts in later decisions have reversed their former decisions holding the other way. For example, compare State ex rel. v. Houghton, supra, sustaining the power, with State ex rel. Lachtman v. Houghton, 134 Minn. 226, 158 N. W. 1917, L. R. A. 1917F, 1050, State ex rel. Roerig v. City of Minneapolis, 136 Minn. 479, 162 N. W. 477, and Vorlander v. Hokenson, 145 Minn. 484, 175 N. W. 995, denying it, all of which are disapproved in the Houghton Case (page 151 (204 N. W. 569)) last decided.

The decisions enumerated in the first group cited above agree that the exclusion of buildings devoted to business, trade, etc., from residential districts, bears a rational relation to the health and safety of the community. Some of the grounds for this conclusion are promotion of the health and security from injury of children and others by separating dwelling houses from territory devoted to trade and industry; suppression and prevention of disorder; facilitating the extinguishment of fires, and the enforcement of street traffic regulations and other general welfare ordinances; aiding the health and safety of the community, by excluding from residential areas the confusion and danger of fire, contagion, and disorder, which in greater or less degree attach to the location of stores, shops, and factories. Another ground is that the construction and repair of streets may be rendered easier and less expensive, by confining the greater part of the heavy traffic to the streets where business is carried on. [272 U.S. 365, 392] The Supreme Court of Illinois, in City of Aurora v. Burns, supra, pages 93-95 (149 N. E. 788), in sustaining a comprehensive building zone ordinance dividing the city into eight districts, including exclusive residential districts for one and two family dwellings, churches, educational institutions, and schools, said:

'The constantly increasing density of our urban populations, the multiplying forms of industry and the growing complexity of our civilization make it necessary for the state, either directly or through some public agency by its sanction, to limit individual activities to a greater extent than formerly. With the growth and development of the state the police power necessarily develops, within reasonable bounds, to meet the changing conditions. ...

'... The harmless may sometimes be brought within the regulation or prohibition in order to abate or destroy the harmful. The segregation of industries, commercial pursuits, and dwellings to particular districts in a city, when exercised reasonably, may bear a rational relation to the health, morals, safety, and general welfare of the community. The establishment of such districts or zones may, among other things, prevent congestion of population, secure quiet residence districts, expedite local transportation, and facilitate the suppression of disorder, the extinguishment of fires, and the enforcement of traffic and sanitary regulations. The danger of fire and the of contagion are often lessened by the exclusion of stores and factories from areas devoted to residences, and, in consequence, the safety and health of the community may be promoted. ...

'... The exclusion of places of business from residential districts is not a declaration that such places are nuisances or that they are to be suppressed as such, but it is a part of the general plan by which the city's territory is allotted to different uses, in order to prevent, or at least to reduce, the congestion, disorder, and dangers [272 U.S. 365, 393] which often inhere in unregulated municipal development.'

The Supreme Court of Louisiana, in State v. City of New Orleans, supra, pages 282, 283 (97 So. 444), said:

'In the first place, the exclusion of business establishments from residence districts might enable the municipal government to give better police protection. Patrolmen's beats are larger, and therefore fewer, in residence neighborhoods than in business neighborhoods. A place of business in a residence neighborhood furnishes an excuse for any criminal to go into the neighborhood, where, otherwise, a stranger would be under the ban of suspicion. Besides, open shops invite loiterers and idlers to congregate; and the places of such congregations need police protection. In the second place, the zoning of a city into residence districts and commercial districts is a matter of economy is street paving. Heavy trucks, hauling freight to and from places of business in residence districts, require the city to maintain the same costly pavement in such districts that is required for business districts; whereas, in the residence districts, where business establishments are excluded, a cheaper pavement serves the purpose. ...

'Aside from considerations of economic administration, in the matter of police and fire protection, street paving, etc., any business establishment is likely to be a genuine nuisance in a neighborhood of residences. Places of business are noisy; they are apt to be disturbing at night; some of them are malodorous; some are unsightly; some are apt to breed rats, mice, roaches, flies, ants, etc. ...

'If the municipal council deemed any of the reasons which have been suggested, or any other substantial reason, a sufficient reason for adopting the ordinance in question, it is not the province of the courts to take issue with the council. We have nothing to do with the question of the wisdom or good policy of municipal ordinances. If they are not satisfying to a majority of the citizens, their recourse is to the ballot-not the courts.' [272 U.S. 365, 394] The matter of zoning has received much attention at the hands of

commissions and experts, and the results of their investigations have been set forth in comprehensive reports. These reports which bear every evidence of painstaking consideration, concur in the view that the segregation of residential, business and industrial buildings will make it easier to provide fire apparatus suitable for the character and intensity of the development in each section; that it will increase the safety and security of home life, greatly tend to prevent street accidents, especially to children, by reducing the traffic and resulting confusion in residential sections, decrease noise and other conditions which produce or intensify nervous disorders, preserve a more favorable environment in which to rear children, etc. With particular reference to apartment houses, it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; that in such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district. Moreover, the coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes, and bringing, as their necessary accompaniments, the disturbing noises incident to increased traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities-until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed. Under these circum- [272 U.S. 365, 395] stances, apartment houses, which in a different environment would be not only entirely unobjectionable but highly desirable, come very near to being nuisances.

If these reasons, thus summarized, do not demonstrate the wisdom or sound policy in all respects of those restrictions which we have indicated as pertinent to the inquiry, at least, the reasons are sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare. Cusack Co. v. City of Chicago, supra, pages 530-531 (37 S. Ct. 190); Jacobson v. Massachusetts, 197 U.S. 11 , 30-31, 25 S. Ct. 358, 3 Ann. Cas. 765.

It is true that when, if ever, the provisions set forth in the ordinance in tedious and minute detail, come to be concretely applied to particular premises, including those of the appellee, or to particular conditions, or to be considered in connection with specific complaints, some of them, or even many of them, may be found to be clearly arbitrary and unreasonable. But where the equitable remedy of injunction is sought, as it is here, not upon the ground of a present infringement or denial of a specific right, or of a particular injury in process of actual execution, but upon the broad ground that the mere existence and threatened enforcement of the ordinance, by materially and adversely affecting values and curtailing the opportunities of the market, constitute a present and irreparable injury, the court will not scrutinize its provisions, sentence by sentence, to ascertain by a process of piecemeal dissection whether there may be, here and there, provisions of a minor character, or relating to matters of administration, or not shown to contribute to the injury complained of, which, if attacked separately, might not withstand

the test of constitutionality. In respect of such provisions, of which specific complaint is not [272 U.S. 365, 396] made, it cannot be said that the landowner has suffered or is threatened with an injury which entitles him to challenge their constitutionality. Turpin v. Lemon, 187 U.S. 51, 60 , 23 S. Ct. 20. In Railroad Commission Cases, 116 U.S. 307 , 335-337, 6 S. Ct. 334, 388, 1191, this court dealt with an analogous situation. There an act of the Mississippi Legislature, regulating freight and passenger rates on intrastate railroads and creating a supervisory commission, was attacked as unconstitutional. The suit was brought to enjoin the commission from enforcing against the plaintiff railroad company any of its provisions. In an opinion delivered by Chief Justice Waite, this court held that the chief purpose of the statute was to fix a maximum of charges and to regulate in some matters of a police nature the use of railroads in the state. After sustaining the constitutionality of the statute 'in its general scope' this court said:
'Whether in some of its details the statute may be defective or invalid we do not deem it necessary to inquire, for this suit is brought to prevent the commissioners from giving it any effect whatever as against this company.'
Quoting with approval from the opinion of the Supreme Court of Mississppi, it was further said:
'Many questions may arise under it not necessary to be disposed of now, and we leave them for consideration when presented.'
And finally:
'When the commission has acted and proceedings are had to enforce what it has done, questions may arise as to the validity of some of the various provisions which will be worthy of consideration, but we are unable to say that, as a whole, the statute is invalid.'
The relief sought here is of the same character, namely, an injunction against the enforcement of any of the restrictions, limitations, or conditions of the ordinance. And the gravamen of the complaint is that a portion of the land of the appellee cannot be sold for certain enumer- [272 U.S. 365, 397] ated uses because of the general and broad restraints of the ordinance. What would be the effect of a restraint imposed by one or more or the innumerable provisions of the ordinance, considered apart, upon the value or marketability of the lands, is neither disclosed by the bill nor by the evidence, and we are afforded no basis, apart from mere speculation, upon which to rest a conclusion that it or they would have any appreciable effect upon those matters. Under these circumstances, therefore, it is enough for us to determine, as we do, that the ordinance in its general scope and dominant features, so far as its provisions are here involved, is a valid exercise of authority, leaving other provisions to be dealt with as cases arise directly involving them.
And this is in accordance with the traditional policy of this court. In the realm of constitutional law, especially, this court has perceived the embarrassment which is likely to result from an attempt to formulate rules or decide questions beyond the necessities of the immediate issue. It has preferred to follow the method of a gradual approach to the general by a systematically guarded application and extension of constitutional principles to particular cases as they arise, rather than by out of hand attempts to establish general rules to which future cases must be fitted. This process applies with peculiar force to the solution of questions arising under the due process clause of the Constitution as applied to the exercise of the flexible powers of police, with which we are here concerned.

Decree reversed.

Mr. Justice VAN DEVANTER, Mr. Justice McREYNOLDS, and Mr. Justice BUTLER dissent.

Footnotes

[Footnote 1] The court below seemed to think that the frontage of this property on Euclid avenue to a depth of 150 feet came under U-1 district and was available only for single family dwellings. An examination of the ordinance and subsequent amendments, and a comparison of their terms with the maps, shows very clearly, however, that this view was incorrect. Appellee's brief correctly interpreted the ordinance: 'The northerly 500 feet thereof immediately adjacent to the right of way of the New York, Chicago & St. Louis Railroad Company under the original ordinance was classed as U-6 territory and the rest thereof as U-2 territory. By amendments to the ordinance a strip 630(620) feet wide north of Euclid avenue is classed as U-2 territory, a strip 130 feet wide next north as U- 3 territory and the rest of the parcel to the Nickel Plate right of way as U-6 territory.'