

“Zoning” Is Unconstitutional When Applied To Private Property!

By William Taylor Reil

Pennsylvania was one of the original 13 States that signed the “Declaration of Independence” in 1776. The text of that document starts by stating:

“The unanimous Declaration of the thirteen united States of America

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. --That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, ...”

The phrase: “... and the pursuit of Happiness” in this founding document is said to have been a change by Thomas Jefferson from John Locke’s writings, “... **and Property**” to make it more inclusive.

The first Constitution for the Commonwealth of Pennsylvania, signed into law on September 28, 1776, addressed the issue of property by stating the following in the “Eighth” section in the “Declaration of the Rights of the Inhabitants of the Commonwealth, or State, of Pennsylvania”:

“That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion towards the expenses of that protection, and yield his personal service when necessary, or an equivalent thereto: But no part of a man’s property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representative: Nor can any man who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent, nor are the people bound by any laws, but such as they have in like manner assented to, for their common good.”

Article I, Section 1 – “**Inherent Rights of Mankind**”, of the current Constitution of the Commonwealth of Pennsylvania, states:

“All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, **of acquiring, possessing and protecting property** and reputation, and of pursuing their own happiness.”

The meanings of the words “acquiring” and “protecting” are self-evident. The word “possessing” in this constitutional provision means: “to use and dispose of property in such manner or way as the owner alone decides.” The government has no lawful authority, at a minimum, to tell a private owner of property what to do on, or with his or her private property, private business or private contracts.

Zoning and Planning is an early twentieth century creation, which finds its roots in the progressive socialist reform agenda that is in direct violation of both State and federal Constitutions. Consider the following from the “Introduction” to 83 Am Jur 2d (American Jurisprudence Second) on ZONING AND PLANNING, Sections 1 and 2:

“Section 1. Generally

The law of zoning and planning is a combination of statutory, municipal and administration land-use law.* Comprehensive zoning laws are of relatively modern origin.* **In fact, the first comprehensive zoning ordinance was adopted by New York City in 1916, and signaled the beginning of an era of vigorous municipal regulation of land use.*** Despite its twentieth century start, the benefits of zoning are now widely recognized.*

While the law of zoning is related to the common law of nuisance in that both pertain to the use of property, the concepts are also distinct inasmuch as nuisance has been defined with regard to the protection of the rights to the possession, use, and enjoyment of property,* whereas zoning ordinances have been enacted for the purpose of promoting the health, safety, morals or general welfare of the community.* Similarly, covenants in deeds or leases which restrict the use of property are to be distinguished from zoning ordinances in that such covenants are a matter of contract creating rights in the nature of easements or servitudes,* whereas zoning regulations constitute an exercise of police power and must bear a substantial relation to the public health, safety, morals, or general welfare.*

Zoning is not the only method by which a municipality may try to regulate the use or development of land. For example, a municipality may undertake to remove existing buildings and redevelop an area under urban renewal and urban redevelopment programs underwritten by federal and state governments.* A municipality may also impose certain measures intended to control growth,* such as placing a limit on the population of the municipality.*

Section 2. Zoning defined.

“Zoning” may be defined as the division of a municipality or other local community into districts, and the regulation of buildings and structures according to their construction and the nature and extent of their use, or the regulation of land according to its nature and uses.* It is a legislative act representing a legislative judgment as to how the land within the community should be utilized and where the lines of demarcation between the several use zones should be drawn,* which is very precise and legally restricts present or immediate land use.* The very essence of zoning is the territorial division of land into use districts according to the character of the land and buildings, the suitability of land and buildings for particular uses, and uniformity of use.* Underlying the entire concept of zoning is the assumption that zoning can be a vital tool for maintaining a civilized form of existence only if the insights and the learning of the philosopher, the city planner, the economist, the sociologist, the public health experts, and all the other professionals concerned with urban problems are employed.*”

* - Footnote eliminated from the original text by this author in the interest of space.

Notice that “Zoning” has nothing to do with property rights, but rather social programs. Further, only “professional concerns”, not the State Constitution and the property owner’s rights, will be considered. “Zoning can be a vital tool for maintaining a civilized form of existence...” What untrue arrogance!

Clearly, zoning deprives private individuals of their constitutionally protected, secured and guaranteed rights. Neither the State nor the municipality has any lawful constitutional authority to compel a private individual to comply with any zoning ordinance that applies to private property. If they had such authority, the property owner would not be required to obtain a “permit” or a “license”. It is this fraudulent action and instrument by those in government that tricks a private individual into converting a constitutionally protected right into a privilege regulated by those in government. The very act of requiring a private property owner to apply for a “permit” concerning a constitutionally protected right is a violation of the “oath of office” of those requiring the permit. To issue a permit and then prosecute and fine a private individual for allegedly violating a “zoning ordinance” is equally a very serious crime.

Zoning can be used to regulate “public property”, but not private property. Zoning, when allegedly applied to private individuals, private property, private businesses and private contracts, is a socialistic means of control and revenue collection. It has nothing to do with a constitutional republican form of government required by both the Constitution of Pennsylvania and the Constitution for the United States of America. **We must always demand that all those in government strictly follow their constitutional “oath of office” according to the original intent of our founding documents!**