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NONCUMULATIVE ZONING IN ILLINOIS

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LOOKING SOUTH from an upper floor of the Main Post Office Building in Chicago, one can plainly see the point on DeKoven Street where, as the story goes, Mrs. O'Leary's cow, Madeline, kicked over a lantern in a back yard shed and began the great Chicago Fire of 1871. DeKoven Street and a large part of Chicago was laid to ruins by the holocaust, but in a short time was rebuilt more solidly than before. DeKoven Street and a surrounding area of almost ninety acres has been leveled again, this time at the instance of The Chicago Land Clearance Commission.[1] The land is being sold to industrial users who have a security against blight unknown to their predecessors in title during the development cycles that twice reduced the area to rubble. That security is the noncumulative aspect of The Chicago Zoning Ordinance.[2]

A noncumulative zoning ordinance is one which excludes higher class uses from lower class districts. The concept can best be clarified by reviewing the cumulative effect of the typical zoning ordinance. The typical zoning ordinance reserves one district exclusively for residences. The second district, zoned for commercial uses, also admits residential uses. Finally, the industrial district admits all uses permitted in the commercial district.[3] Thus, the cumulative effect is that each successive district admits

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1 The Chicago Land Clearance Commission was created under Ill. Rev. Stat. 1959, Vol. 2, Ch. 67½, § 66. §§ 63-91 of that Chapter are known as the "Blighted Areas Redevelopment Act of 1947." Subject to the approval of the State Housing Board, a Land Clearance Commission may designate "Slum and Blighted Area Redevelopment Projects" and may acquire, condemn, improve and sell land.

2 The Chicago Zoning Ordinance was passed by the City Council of Chicago on May 29, 1957, and was published in pamphlet form. Pursuant to special statutory requirements in Illinois governing the enactment and amendment of zoning ordinances, it is not included in the Municipal Code of Chicago.

3 This illustration is greatly oversimplified. Chicago, for example, has seventy different categories of use districts. See, The Chicago Zoning Ordinance, Article 4.

the uses of all the more restricted districts. The industrial district, the lowest class use district, is open to all uses enumerated anywhere in the ordinance. By striking the clauses admitting to each district the uses of more restricted districts, the ordinance would be rendered noncumulative. This would result in commercial and industrial districts enjoying the same exclusiveness accorded only to residences under the cumulative ordinance.

The constitutionality of this new city planning device, the noncumulative zoning ordinance, was recently indicated for the first time in Illinois in the case of *People ex rel. Skokie Town House Builders, Inc.* v. *Village of Morton Grove.*[4] In that case, the plaintiff landowner petitioned for a writ of mandamus to compel village officials to issue the permits necessary for the construction of four town house buildings in a commercial use district. The defendant pleaded a noncumulative zoning ordinance as an affirmative defense and the plaintiff in its reply, contended that the ordinance was void in that it violated the due process clauses of both the State and Federal Constitutions.[5] The plaintiff's motion for a summary judgment was granted by the trial court which concluded that the ordinance was unconstitutional. On appeal, the Supreme Court of Illinois took the position that such an ordinance was within the police power of the state although it ultimately affirmed on other grounds.[6]

HISTORICAL BACKGROUND OF THE NONCUMULATIVE ZONING ORDINANCE

Legislative restriction on the use of private property in the form of zoning ordinances evolved only after centuries of the development of the law of nuisance. Blackstone said a nuisance "is anything done to the hurt of the lands, tenements or hereditaments of another."[7] He further observed that "common or public

[4] 16 Ill. (2d) 183, 157 N. E. (2d) 33 (1959).

[5] Ill. Const. 1870, Art. II, § 2; U. S. Const., Amend. XIV.

[6] The Supreme Court held that the plaintiff had acquired a nonconforming use under an earlier cumulative zoning ordinance before it was amended to make it noncumulative.

[7] 3 Bl. Com. 216.

nuisances are offenses against the public order or economical regimen of the state, being either the doing of a thing to the annoyance of the King's subjects or the neglecting to do a thing the common good requires."[8] The Supreme Court of the United States observed in 1897:

> Ever since Aldred's Case . . . it has been the settled law, both of this country and England, that a man has no right to maintain a structure upon his own land, which, by reason of disgusting smells, loud or unusual noises, thick smoke, noxious vapors, the jarring of machinery or the unwarrantable collection of flies, renders the occupant of adjoining property dangerous, intolerable or even uncomfortable to its tenants. No person maintaining such a nuisance can shelter himself behind the sanctity of private property.[9]

Disaster and the establishment of new cities have long impelled legislative bodies to publish comprehensive urban development plans with ever increasing consequences on private use. In 1666, the Great Fire of London moved Parliament to pass an act for the rebuilding of the City of London. Washington, D. C., seat of our federal government since 1800, is a classic example of planned development. The plan, drawn by L'Enfant, a French engineer, at the request of George Washington, laid out a network of beautiful boulevards and circles as the basis of a military fortress of circle-emplaced cannons covering one another and each commanding fire in six directions. Salt Lake City, which was laid out by newly settled Mormons in 1847, is one of the few American cities with streets adequate to accommodate modern traffic. The elaborate park system of Chicago, laid out in 1860, culminated with the institution of the Burnham Plan in 1909 to complete a system of tree-lined, commerce-free boulevards along the then entire perimeter of the city.

[8] 4 Bl. Com. 166.

[9] Camfield v. United States, 176 U. S. 518, 17 S. Ct. 864, 41 L. Ed. 260 (1897). The Court of the King's Bench held in Aldred's Case in 1612, "An action on the case lies for the erection of a hog stye so near the house of the plaintiff that the air thereof was corrupted." 77 Eng. Rep. 816.

The nineteenth century industrial development in the United States was matched by a population increase to 75 million by 1900. With the great increase in use density, problems developed which required additional restrictions in respect to the use of private lands.[10] By 1925, a veritable flood of zoning legislation had swept the country and the tendency was in the direction of extending the power of restriction in and of city planning.[11] The generally acknowledged principle of these ordinances was that zoning was intended to preserve rather than to restrict dwellings.[12] The zoning ordinance of the Village of Euclid, Ohio, the constitutionality of which was affirmed by the Supreme Court of the United States in 1926,[13] was typical of the earlier ordinances in that it admitted the uses of more restricted districts, to districts of less restricted uses.

The Supreme Court of Illinois said in 1925 that the danger of fire and risk 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.[14] Having thus saved the cottage from the slaughter house, the principle was extended to allow the exclusion of apartment buildings from districts devoted to residences,[15] and finally to keep the toxic fumes of industry out of the market place.[16]

[10] Village of Euclid, Ohio v. Ambler Realty Co., 272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926).

[11] The Supreme Court of California observed: "According to a recent bulletin of the United States Department of Commerce, 35 states and the District of Columbia have adopted (zoning regulations); 221 municipalities have been zoned and over 22,000,000 inhabitants, aggregating over 40 per cent of the urban population of this country, are living in zoned territory." Miller v. Board of Public Works, 195 Cal. 477, 234 P. 381, 384 (1925). With reference to the exercise of the police power in zoning regulations, the same court said: "Every intendment is to be indulged by the courts in favor of the validity of its exercise and, unless the measure is clearly oppressive, it will be deemed within the purview of that power." Id., at 385.

[12] People ex rel. Skokie Town House Builders, Inc. v. Village of Morton Grove, 16 Ill. (2d) 183, 157 N. E. (2d) 33 (1959).

[13] Village of Euclid, Ohio v. Ambler Realty Co., 272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926).

[14] City of Aurora v. Burns, 319 Ill. 84, 149 N. E. 784 (1925).

[15] City of Chicago v. Cohn, 326 Ill. 372, 158 N. E. 118 (1927).

[16] Cleaners Guild of Chicago v. City of Chicago, 312 Ill. App. 102, 37 N. E. (2d) 857 (1941).

Although the courts frown upon the total exclusion of a lawful business from the boundaries of a municipal corporation, they have not objected to zoning ordinances which simply provide for a catch-all district to which industry and other undesired land uses are relegated as zoning stepchildren.[17] While industrial areas continued to be assaulted with construction of all types, some degree of relief has been afforded by districting areas on the basis of performance standards.[18]

ECONOMIC MOTIVATION FOR THE NONCUMULATIVE ZONING ORDINANCE

The economic force bidding for the adoption of noncumulative zoning ordinances may be presented from two basic viewpoints: First, the prevention, rehabilitation and elimination of slum and blight areas; and second, the creation of a favorable environment for commerce and industry.

Age is one of the factors contributing to blight areas, but it is not the principal one. The most charming tourist attractions in a state are often the oldest urban areas. Far more effective as a catalyst of blight is the admixture of incompatible land uses. The mixing of incompatible land uses promotes blight in several ways. A residence owner loses incentive to maintain his property when the smoke and noise of industry is all about. Also, those who build residences in industrial areas tend to build shabbily and use cheap materials. Businessmen in such surroundings budget nothing for beautification and local stores and taverns, at best, match their neighbors in appearance. Blight not only depreciates the assessed valuation of property, but taxes assessed in slum areas are often delinquent. The area cleared by the

[17] For example, one Illinois zoning ordinance provides: "The property contained in District I-1 may be used for any purpose, provided no actionable nuisance is created." Centralia, Illinois Ordinance No. c-604, Art. V.

[18] "A performance standard is a criterion established to control noise, odor, smoke, toxic or noxious matter, vibration, fire and explosive hazards, and glare or heat generated by or inherent in uses of land or buildings." The Chicago Zoning Ordinance, Article 4. By application of these standards, heavy industry, such as that of ore refining, has been excluded from areas open to light manufacturing.

Chicago Land Clearance Commission around Mrs. O'Leary's cow shed is expected to yield over 500 per cent more per year in taxes than the same area steeped in slum.[19]

Until World War II, urban development was in the form of huge "bubble" cities billowing out from sea ports and railroad terminals. Today, under the impetus of modern highways and automobiles, neighboring municipalities are being merged into massive "strip cities." Subdividers and industrial developers leapfrog down the highway. Farm towns along the way blossom into thriving suburbs. Accelerating the trend is the housewife who slips behind the wheel of the family car to do the day's marketing. The territory from Hammond, Indiana, through Chicago to Milwaukee, Wisconsin, will soon be a single integrated metropolitan area—a giant strip city.[20] Out on the highway, the industrial user can find adequate space to build sprawling plants and parking lots. His alternatives back in the city are not attractive. There he is faced with clearing title to a multiplicity of small parcels. He may either have to bear the expense of both buying and razing strategically located residences, or he will have to cope with the erection of his plant on an irregularly shaped plot. If he meets these problems, more remain. Vandalism and pilferage can be a menace. And for accepting these several burdens in a cumulative district, the industrial user must pay for the privilege by bearing the brunt of the taxes ignored by his delinquent residential neighbors.

If municipalities wish to retain their commercial and industrial tax plums they must compete with the advantages to be gained in the wide open spaces where the car-pools flow freely. Commerce and industry must be recognized for what they are, necessary and desirable elements of the community.[21] Although

[19] This estimate is based on figures given to the author orally by an official of The Chicago Land Clearance Commission.

[20] "Cities as Long as Highways; That's America of the Future," 42 U. S. News and World Report (Apr. 11, 1957), pp. 27-31.

[21] People ex rel. Skokie Town House Builders, Inc. v. Village of Morton Grove, 16 Ill. (2d) 183, 157 N. E. (2d) 33 (1959).

the jumble of existing nonconforming uses in industrial areas is another phase of the problem to be solved, much of the exodus of commerce and industry would be checked by reasonable security that an already bad situation would not get worse. The noncumulative zoning ordinance is peculiarly well suited to provide this security.

CONSTITUTIONAL AND STATUTORY AUTHORITY FOR THE NONCUMULATIVE ZONING ORDINANCE

It has been shown that the history of zoning is a pattern of increased particularity in the restriction of land uses. Progressively further encroachments of private property rights have been upheld as reasonable exercises of the police power in the name of health, welfare, safety and morals. In the view of the Supreme Court of the United States, this increase in regulation is justified by the increased complexities of modern life. In 1926, they said:

> 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 a half 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 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.[22]

The distinctive new feature of the noncumulative zoning ordinance is the exclusiveness of each district. Exclusiveness *per se* is not new in that the sanctity of the residential area was the central purpose of early ordinances. Safety and health were long ago shown to be substantially promoted by the exclusion of stores and factories from areas devoted to residences. To validate the exclusion of residences from commercial and industrial districts it must likewise be shown that the exclusion bears a substantial relationship to the preservation of the public health, safety, morals or general welfare. Strikingly, the same arguments which support the exclusiveness of residences in cumulative ordinances apply even more vigorously to justify their exclusion in noncumulative ordinances. The Supreme Court of Illinois has noted a few, as follows:

> The dangers of heavy traffic are greater in mixed residential-industrial or residential-commercial districts than in districts devoted to just one purpose. Industrial and commercial districts are not good places to bring up families from a health standpoint; and the presence of children in and about industrial and commercial districts leads to a demand for school, park and play-ground facilities in an area where there is either no land available or the land available is ill suited to such uses.[23]

These familiar arguments were reinforced when the same court noted additional reasons which are peculiar to the philosophy of the noncumulative zoning ordinance. They said:

> The general welfare of the public may be enhanced if industry and commerce are provided with favorable climate. The

22 Village of Euclid, Ohio v. Ambler Realty Co., 272 U. S. 365, 387, 47 S. Ct. 114, 118, 71 L. Ed. 303, 310 (1926).

23 People ex rel. Skokie Town House Builders, Inc. v. Village of Morton Grove, 16 Ill. (2d) 183, 188, 157 N. E. (2d) 33, 36 (1959).

> sale of a few lots at important points in a district may make industrial or commercial expansion impossible or prohibitively expensive. To protect the residents in a district, traffic may be slowed down unduly and thus detract from the efficiency of production and trade. In final analysis, it seems clear that industry and commerce are also necessary and desirable and that a proper environment for them will promote the general welfare of the public. We are of the opinion that the exclusion of residences from a commercial or industrial district is within the police power of the state.[24]

While the proponent of a zoning ordinance points to the police power to justify the regulation, his opponent typically pleads that notwithstanding a substantial relation to the police power, the ordinance is void as a deprivation of property without due process of law. Thus, there are two constitutional hurdles to cross, of which due process is the more difficult.

Though the trend is toward increased restrictions on private property, there are limits the zoning ordinances must not transcend. A zoning ordinance may not so limit the use of private land as to eliminate the only uses for which it is suited.[25] Nor may the use of land be so limited that its value for the permitted use is only a small fraction of what it would be for another purpose. There is no stable formula as to what percentage of loss in value constitutes an unconstitutional taking in Illinois, but an analysis of the cases reviewed by the Supreme Court reveals that a taking of two-thirds of the unrestricted use value has been disallowed,[26] while a taking of less than that proportion has been upheld.[27] Were it not for the due process check on the police

[24] People ex rel. Skokie Town House Builders, Inc. v. Village of Morton Grove, 16 Ill. (2d) 183, 189, 157 N. E. (2d) 33, 36 (1959).

[25] Zoning ordinance arbitrarily classifying as "Class A Residence" property, lots of which were peculiarly unattractive for residential purposes, and best use of which was for business purposes, held void as to such property. People v. City of Rockford, 354 Ill. 377, 188 N. E. 446 (1933).

[26] People ex rel. Kirby v. City of Rockford, 363 Ill. 531, 2 N. E. (2d) 842 (1936).

[27] For a survey of cases involving the validity of zoning restrictions limiting property values, see Midland Electric Coal Corp. v. County of Knox, 1 Ill. (2d) 200, 214, 115 N. E. (2d) 275, 283 (1953).

power, a taking of over 100 per cent would be possible by an ordinance rendering land useless for any private purpose while other laws continued to impose land taxes on the owner.[28]

Statutory authority for the exclusion of residences from commercial and industrial districts is found in the Illinois Revised Cities and Villages Act.[29] Therein is a delegation to municipalities of the power to classify, regulate and restrict the location of buildings designed for special industrial, business, residential and other uses. Municipalities are also delegated the power to prohibit uses, buildings, or structures incompatible with the character of such districts.[30] Thus, as in the case of constitutionality, we find the statutory authority for the cumulative and the noncumulative ordinances emanating from the same source.

POLITICAL OBSTACLES TO THE NONCUMULATIVE ZONING ORDINANCE

While it has been established that there are adequate constitutional and statutory bases for a valid noncumulative zoning ordinance in Illinois, there remain considerations of a political nature which may slow its general acceptance. Denying a landowner the right to build a home for his family is a matter intensely more sensitive than forbidding another the right to operate a foundry in his back yard. The noncumulative ordinance is also more vulnerable to the charge of "economic segregation"[31] than conventional forms of zoning. The fact that both these objections will be overruled by the courts, as ineffective attempts to impute civil rights characteristics to property rights, does not remove the political delicateness born of the fact that residents and not businesses hold sway at the polls.

[28] This anomaly was pointed out by the Court of Appeals of New York when it said, "The only substantial difference, in such case, between restriction and actual taking, is that the restriction leaves the owner subject to the burden of taxation, while outright confiscation would relieve him of that burden." Averne Bay Construction Co. v. Thatcher, 278 N. Y. 222, 15 N. E. (2d) 587 (1938).

[29] Ill. Rev. Stat. 1959, Vol. 1, Ch. 24, §§ 73-1, et seq.

[30] Id., § 73-1.

[31] See 1954, U. Ill. Law Forum 186 at 201.

Noncumulative zoning represents an abrupt extension of the zoning concept which has heretofore been cautiously liberalized, inch by inch, as it yielded to set-back provisions,[32] minimum height requirements,[33] density limitations,[34] and minimum construction standards.[35] These developments progressively qualified the rights of the residential land user. The noncumulative ordinance represents not another restriction on the residential user, but a complete elimination of his use from designated districts.

The most serious stumbling block to the application of the noncumulative zoning ordinance is the enormous increase in nonconforming uses that will result when existing residences in commercial and industrial districts, previously immune from classification as nonconforming uses, will be swept into that stigmatized category which is so often a prelude to amortization provisions. Even if an amortization schedule is constitutional,[36] it may be of

[32] A setback restriction in a county zoning ordinance required plaintiff's land to have a building line 97 feet from existing 66 foot right of way on highway. This was held unconstitutional and void as applied to plaintiff's property, where county board of commissioners had found that a setback of 30 feet from a 200 foot superhighway right of way was reasonably adequate to promote and safeguard public welfare, and the record showed that the primary purpose of the special setback restriction as applied to plaintiff's property was to hold down the cost of acquiring additional land for widening of the highway. Galt v. Cook County, 405 Ill. 396, 91 N. E. (2d) 395 (1950).

[33] An ordinance fixing a minimum height for buildings within a particular area was held unauthorized. Brown v. Board of Appeals of City of Springfield, 327 Ill. 644, 159 N. E. 225 (1927).

[34] An application for a permit to build an apartment building in a residence district adjacent to Lake Michigan was refused. Minkus v. Pond, 326 Ill. 467, 158 N. E. 121 (1927).

[35] For a detailed discussion of constitutional attacks on minimum floor area ordinances, see McClory, "The Undersized House: A Municipal Problem," 27 CHICAGO-KENT LAW REVIEW 142.

[36] Although the Supreme Court of Illinois has not had occasion to test the validity of amortization provisions in zoning ordinances, it did acknowledge the existence of such a provision without negative comment in dictum when it said, "The city argues that by enjoining the enforcement of the comprehensive amendment of 1942, as applied to plaintiff's property, the court has interfered with the power of the city to regulate and eventually eliminate nonconforming uses. . . . In view of our holding that the rezoning was invalid insofar as the plaintiff's property is concerned, the nonconforming section of the amending ordinance is no longer involved." Building Corp. v. City of Chicago, 395 Ill. 138, 153, 69 N. E. (2d) 827, 834 (1947). Illinois courts have consistently designated nonconforming uses as "property rights," Brown v. Gerhardt, 5 Ill. (2d) 106, 125 N. E. (2d) 53 (1955); Village of Skokie v. Almendinger, 5 Ill. App. (2d) 522, 126 N. E. (2d) 421 (1955); Douglas v. Village of Melrose Park, 389 Ill. 98, 58 N. E. (2d) 864 (1945); Western Theological Seminary v. City of Evanston, 325 Ill. 511, 156 N. E. 788 (1927), and the Supreme Court of Illinois has called the use acquired by

questionable merit economically and in those areas where there is an extensive admixture of land uses coupled with blight there will be great pressure to rehabilitate the area by eminent domain proceedings rather than by leaving the burden of amortization of nonconforming uses to private owners.

CITY PLANNING AND THE NONCUMULATIVE ZONING ORDINANCE

City planning does not involve the adoption of an inflexible zoning ordinance. Planning and zoning are dynamic institutions which, when properly administrated, are frequently subject to modification to meet the changing demands of the area.[37] When the plan and the needs of the community are in conflict, the latter should prevail. Where the needs of the community are accurately anticipated a city plan might involve a succession of specifications in a single district to, for instance, smooth the evolution from a blighted mixture of uses to a designed industrial district, always keeping within the bounds of reasonable encroachment or property rights. Such a transition could well be initiated by the application of a noncumulative ordinance which would tolerate all existing nonconforming uses, but which would prevent further mixture. Subsequent amendments could phase out the uses incidental to the residences in the area and encourage the development of uses which would support its industrial character. After a number of years, with the grocery stores and laundries replaced by lunch counters and currency exchanges, the then older residences could more readily be amortized. This procedure could accomplish, over a period of years, substantially the same result

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a landowner under an existing zoning ordinance a "vested right," Skokie Town House Builders, Inc. v. Village of Morton Grove, 16 Ill. (2d) 183, 157 N. E. (2d) 33 (1959). This attitude would seem to indicate that a case involving a dispute over an amortization provision would undergo much closer scrutiny in Illinois than in other jurisdictions where amortization provisions of as short a time as one year have been upheld, Dema Realty v. Jacoby, 168 La. 752, 123 So. 314 (1929).

[37] A municipal corporation has authority to amend its zoning ordinance, Ill. Rev. Stat. 1959, Vol. 1, Ch. 24, § 73-8. However, a property owner has a right to rely upon the rule that the classification of his property for zoning purposes will not be changed unless the change is required for the public good. Northern Trust Co. v. City of Chicago, 4 Ill. (2d) 432, 123 N. E. (2d) 330 (1954).

as condemnation under eminent domain, land clearance and resale to private industrial users which is a prohibitively expensive solution on a city wide basis.

The reader must not fall into the easy trap of assuming that a noncumulative zoning district is limited to a single land use. On the contrary, this is never the case although there is typically a major use to which the other uses permitted are incident. Even the typical cumulative ordinance permits the erection of schools, churches, parks and playgrounds in single family residence districts. Similarly, The Chicago Zoning Ordinance permits the erection of drug stores, currency exchanges, filling stations and restaurants in light industrial districts.[38] The fact that the enumeration of permitted uses in a noncumulative zone may be of considerable length does not contravene its restrictive effect, for, as in all documents of enumerated powers, the effect is much more restrictive than would be a grant of general powers subject to listed exceptions. Further, the non-industrial uses permitted in the light industrial districts are harmonious to and in support of the major use assigned to the district.

The noncumulative ordinance is not a cure-all. It may occur that a noncumulative ordinance, valid when enacted, will become undesirable as the character of the community changes. Such a situation may be developing in Chicago today. The Chicago Zoning Ordinance provides that in certain business districts dwelling uses are not permitted below the second floor.[39] Thus, this section of the ordinance is noncumulative as to the first level. Since the enactment of this provision in 1953, the erection of super markets and shopping centers has so changed the flow of trade that hundreds of small "store front" shops now stand empty, wanting for tenants. Owners of these buildings, prohibited from making residential use of the first level, are limited to the income they can derive from the second and higher floors. With their revenue thus limited the owners are often unable or unwilling to properly

[38] The Chicago Zoning Ordinance, Article 10.3-1.

[39] The Chicago Zoning Ordinance, Article 8.3-2, Clause A (1).

maintain the properties which are rapidly falling into disrepair. The effect of this well intended noncumulative zoning ordinance is to line secondary business streets in many areas of Chicago with fringes of blight, which like rotten ropes are starting to strangle what remains of neighborhood integrity in the areas they surround.[40]

CONCLUSION

Noncumulative zoning is a logical projection of the historical trend in zoning, which is a record of ever increasing particularity in legislative use restriction on private land. The noncumulative zoning ordinance is at the same time a radical departure from the thinking and opinions of the past which sought to preserve rather than to restrict residential construction. A number of such ordinances have been adopted in Illinois,[41] and only one challenge against them has reached the Supreme Court of Illinois.[42]

Social forces recognize the noncumulative zoning ordinance as a weapon against slum and blight. Economic forces demand

[40] In a press release dated January 7, 1960, The Chicago Plan Commission included the following recommendation of amendment to The Chicago Zoning Ordinance: "Amend Article 8, Section 8.4-1, to allow as a Special Use, dwelling units on the ground floor of existing buildings located in all Business (B) Districts. The current trend of construction of new shopping centers based on the modern concept of clustering stores and providing a large common parking area to serve them, has left many vacant stores along the business streets in the older portions of the city. Many of these vacant stores have apartments above and the buildings themselves are too substantial to wreck. The suggested change in the B Districts to allow as a Special Use (where considered appropriate) a residential use on the ground floor of existing buildings would be beneficial in conserving the older areas of the city, by making the conversion of vacant stores to apartments possible."

[41] On April 22, 1958, The Village of Morton Grove amended its zoning ordinance so as to prohibit the future construction of dwelling units in districts other than those designated as dwelling districts. The Village of Morton Grove, Illinois, Zoning Ordinance. On May 29, 1957, The Chicago City Council adopted a comprehensive amendment to The Chicago Zoning Ordinance which included in its purposes, "To prohibit uses, buildings or structures which are incompatible with the character of development or the permitted uses within specified zoning districts." The Chicago Zoning Ordinance, Article 2, Section (8). On July 20, 1953, Chicago Heights adopted a zoning ordinance which operates in most instances on the principle of the exclusiveness of each zone. This ordinance also reversed the accepted practice by setting out the industrial districts first, then the commercial districts, and finally the residential districts. The Chicago Heights, Illinois, Zoning Ordinance.

[42] People ex rel. Skokie Town House Builders, Inc. v. Village of Morton Grove, 16 Ill. (2d) 183, 157 N. E. (2d) 33 (1959).

the type of protection afforded by noncumulative zoning for local industry, which will otherwise abandon the city for rural sites. Land values and taxes are at stake. These forces are being applied to a legislative concept that is constitutionally sound and statutorily authorized.

Notwithstanding political obstacles, it appears the forces favorable to the noncumulative zoning ordinance will prevail. The implementation of their purpose will be deceptively simple. In most cases an amendment striking short clauses will suffice. Even the classic zoning ordinance of the Village of Euclid, Ohio, as it stood in 1926, could have been rendered totally noncumulative by an amendment striking five words, ten commas and fourteen symbols.[43]

[43] The zoning ordinance of the Village of Euclid, Ohio, which was endorsed by the Supreme Court of the United States in 1926, see note 13, *ante*, set the pattern for hundreds of cumulative zoning ordinances enacted thereafter. Nonetheless, that cumulative ordinance could have been rendered noncumulative by deleting from the following sections the material set out parenthetically. Delete from Section 5, (U1 or); from Section 6, (U1, U2 or); from Section 8, (U1, U2, U3 or); from Section 9, (U1, U2, U3, U4 or); and from Section 10, (U1, U2, U3, U4, U5 or).