

Striving for Order:
Zoning the City of Elms

Christina G. Forbush

for Professor Robert Ellickson
Urban Legal History
Yale Law School

May 9, 1997

CONTENTS

I. INTRODUCTION	1
II. ZONING AS CONCEPT: NEW HAVEN'S MOTIVATIONS	5
A. Economic Concerns: Property Values	8
1. Controlling Developers and Development	10
2. Nuisance Abatement	12
B. Ideology: the Zoning Movement, Aesthetics, and City Planning	15
III. NEW HAVEN'S ZONING STORY	19
A. History	19
1. Zoning Commission, March 22, 1922 - July 31, 1922	19
2. Creating the First Ordinance, July 31, 1922 - July 2, 1923	25
3. Undoing the First Ordinance, July 2, 1923 - November 30, 1923	27
4. Creating the Second Ordinance, January 1, 1924 - December 31, 1925	31
5. Creating the Final Ordinance, January 12, 1926 - December 4, 1926	36
B. The Final Ordinance	40
C. Flaws in the Political Process	41
1. Secrecy	42
2. Special Interest Groups	50
a. Industry	50
b. Real Estate	58
3. Lack of Consistent Leadership and Direction	67
IV. ZONING AS REALITY: IMPLEMENTATION	71
A. Board of Zoning Appeals	72
B. City Plan Commission and Board of Aldermen	77
V. ZONING IN NEW HAVEN: ENCOUNTERING PITFALLS IN RULEMAKING	82

I. INTRODUCTION

In its historical perspective, zoning may be understood in two different ways: one a concept, the other a reality. Zoning as a concept was the planning ideal by which property and health could be protected, and cost of living could be reduced.¹ The reality of has been a far different institution. Zoning has been criticized as being inefficient, inequitable, chaotic, ineffective, and extraneous.² This paper argues that perhaps the flaw does not lie with zoning as a concept, but with how it was designed and enacted in the 1920s. In attempting to reach the ideal, flawed political processes resulted in a system well-deserving of criticism.

Zoning's failure was not inevitable in the United States. Municipalities could have altered steps along the way to bring reality closer to the concept. New Haven, Connecticut faced three problems in the 1920s that may have been common to many cities: secrecy, influential interest groups, and lack of consistent leadership and focus. A more publicly open process dominated by disinterested planners might have resulted in a more effective and efficient system. Zoning's implementation might have succeeded had the city demonstrated more commitment to its original zoning goals. There is no way to predict whether zoning in New Haven would have succeeded had the city taken the original route designed by planners. It is clear, however, that the zoning process in New Haven was unable to meet the zoning ideal. New Haven presents strong support for the contention that criticisms of zoning should be levelled at the political process and subsequent reality rather than zoning as a concept.

¹ADVISORY COMMITTEE ON ZONING, U. S. DEP'T OF COMMERCE, A ZONING PRIMER (1922) [hereinafter ZONING PRIMER].

²See RICHARD BABCOCK, THE ZONING GAME (1966); BERNARD H. SIEGAN, LAND USE WITHOUT ZONING (1972); Andrew J. Cappel, *A Walk Along Willow: Patterns of Land Use Coordination in Pre-Zoning New Haven (1870-1926)*, 101 YALE L. J. 617 (1991); Robert Ellickson, *Alternatives to Zoning: Covenants, Nuisance, Rules and Fires as Land Use Controls*, 40 U. CHI. L. REV. 681 (1973); Daniel P. McMillen & John F. McDonald, *Could Zoning Have Increased Land Values in Chicago?*, 30 J. URB. ECON. 167 (1993).

New Haven zoning fell victim to a series of three political errors. First, lawmakers attempted to fashion a zoning law in absolute secrecy. Enmeshing zoning in a private web, accessible only to Zoning Commission members and technical experts, made zoning appear cryptic and mysterious to the general public. Zoning's inaccessibility led to a formative process that was long and drawn out. The emphasis on secrecy obviated public participation, and eventually exacerbated the distinction between those forces with political clout and those without. Ultimately, the Zoning Commission's early refusal to involve the general public in its discussions resulted in a zoning map drawn without an understanding of the public's needs.

Second, New Haven's Zoning and City Plan Commissions allowed special interest groups to take over significant elements of the zoning process. In particular, protection of contemporary industrial and real estate interests became a high priority for New Haven's zoning leaders. The concept of zoning changed: rather than focusing on the city's needs, zoning became a means for preserving the status quo. Industrial and residential areas continued to abut one another. Inequities arose as the commission protected certain interests but not others, and as the needs of average private citizens were largely ignored. The result was a zoning map and ordinance that satisfied particular customers only, which would have to be changed soon after its development.

Finally, New Haven's zoning process lacked consistency. Zoning in New Haven required focused supporters who could direct its creation and implementation along a steady course. Instead, each set of new leaders removed the city one step further from the zoning ideal. As those who cared deeply about zoning New Haven left in frustration, expert decision makers became the exception rather than the rule. It grew increasingly difficult for zoning planners to rein in special interest groups. The City Plan Commission flung its doors open to any passing zoning suggestion. The zoning process became haphazard and hurried, which resulted in an ordinance lacking focus and unable to respond to the city's actual needs. This set the stage for zoning's implementation, characterized by inconsistency and inefficiency.

In its complexity and unnecessary length, New Haven's zoning story resembles the city's first proposed zoning ordinance. New Haven's is a story of a city caught up in the municipal storm of change, and of reformist ideology sidetracked by protectionist instincts. New Haven grew interested in zoning for the best of reasons: property values would increase, nuisance would be abated, and the city could be planned in an orderly fashion. Early zoning planners touted just such goals. New York City passed the nation's first comprehensive zoning ordinance in 1916. Interest in zoning swept the nation, and in 1920, the New Haven Chamber of Commerce pursued a brief study of zoning. Encouraged by what they saw, in 1921 the Chamber lobbied the Connecticut state legislature to pass a Zoning Enabling Act for New Haven.

With permission to zone, New Haven's mayor selected the city's first zoning commission in 1922. Following a thorough study undertaken by an outside consultant, the commission put forth a proposed ordinance in 1923. Manufacturing interests scuttled this version on procedural grounds within months of its issuance. Then followed a saga of change upon change: a new zoning commission in 1924, twenty-five private meetings with industrial and real estate interests, and a second proposed ordinance. Ward meetings ensued, and the Zoning Commission held over thirty public hearings. Just as a final proposal came within reach, a 1925 statutory change at the state level required a switch of leadership from the Zoning Commission to the City Plan Commission. City Plan hired a new outside consultant. Following more changes and more meetings, the Board of Aldermen passed New Haven's final ordinance in the last days of 1926. It had taken New Haven eighty-seven meetings over the course of seven years to develop a thirteen-page ordinance. Despite these efforts, weaknesses in the ordinance soon became visible. In 1929, only three years after zoning's enactment, the city passed the first of many substantive amendments to its zoning law.³

³1929 has been selected as the closing year for this study for two reasons. First, New Haven first amended its zoning ordinance in 1929. Second, the Great Depression began in 1929. Building development in New Haven plummeted during this time, making it difficult to evaluate the implementation of zoning. *See*, CITY YEAR BOOK OF THE CITY OF NEW HAVEN 679 (1932) [hereinafter CITY YEAR BOOK], CITY YEAR BOOK 745 (1931); CITY YEAR BOOK 739 (1930).

In 1921, New Haven, Connecticut was poised to create a solid zoning ordinance. New Haven was home to city planners of national renown, and could afford to hire the best outside consultants available. In its early stages, zoning was supported by industrialists, real estate men, architects, and the general public alike. And as it began its zoning process five years after zoning's introduction in the United States, New Haven could learn from other cities' mistakes. That zoning's failure came so early to New Haven indicates that large flaws in the zoning process existed. Zoning in New Haven represents a story of lawmaking gone wrong.

Many scholars have undertaken analyses of the zoning process. Most studies, however, have focused on zoning since the 1960s.⁴ Very few analyses have been made of zoning's 1920s origins, and even fewer have concentrated on zoning in a particular city.⁵ This study approaches zoning from one city's perspective: it explores New Haven, Connecticut from the time zoning was first proposed to its enactment and subsequent implementation. New Haven's initial vision of zoning was a noble one. Zoning in the Elm City began as an attempt to satisfy all citizens.⁶ As a result of a faulty political process, zoning pleased only the powerful few who engineered its passage. After zoning's enactment, public demands lead to variances, map changes, and ultimately to substantive amendments of the ordinance. Had the political process been less beset by secrecy, interest groups

⁴See Robert Kratovil, *Zoning: A New Look*, 11 CREIGHTON L. REV. 433 (1977); Steven M. Maser et al., *The Effects of Zoning and Externalities on the Price of Land: An Empirical Analysis of Monroe County, New York*, 20 J.L. & ECON. 111 (1977); William Stull, *Community Environment, Zoning and the Market Value of Single-Family Homes*, 18 J.L. & ECON. 535 (1975).

⁵ An in-depth study of the origins of zoning in New York is the notable exception. See SEYMOUR TOLL, *ZONED AMERICAN* (1969). The history of zoning's enactment in Baltimore has also been published in a very abbreviated form. See Garrett Power, *The Unwisdom of Allowing City Growth to Work Out Its Own Destiny*, 47 MD. L. REV. 626, 627-633 (1988).

⁶"The whole ordinance has been drafted with the idea constantly in mind of affording to all home owners and others who hold real estate, the greatest possible protection which can be offered under the police power against the improper use by a neighbor of his property so as to be detrimental to any one." Office of the Zoning Commission, *The Zoning of New Haven* (June 2, 1923) (on file at Yale University Manuscripts and Archives, MS 847, Series I, Box 3, Folder 36).

and inconsistent leadership, New Haven's zoning reality might have come closer to achieving the ideal.

II. ZONING AS CONCEPT: NEW HAVEN'S MOTIVATIONS

A zoning movement swept the United States between 1916 and 1925.⁷ Cities in the United States faced extremely rapid growth in the early 1900s. Farmers left rural areas for factories brought to cities by the industrial revolution, and immigrants poured in from Europe. Zoning appeared the perfect antidote to the overcrowding, blight, and mixed use which soon threatened so many cities.⁸ The division of land into distinct use, height, and area districts offered the potential of order to cities floundering in growing urban chaos.

Zoning can be defined simply as the division of land into multiple districts having different regulations.⁹ Zoning in the United States took its origin from nuisance ordinances, building codes, fire zone provisions and height legislation.¹⁰ The groundwork for modern comprehensive zoning was laid in Germany in the late 1800s.¹¹ Comprehensive zoning, the type of zoning with which we are familiar today, consists of dividing an entire municipality into districts, and imposing certain

⁷TOLL, *supra* note 5, at 188. *See also* Philadelphia Zoning Commission, *Diagrammatic Illustrations of Zoning Progress*, 2(4) CITY PLANNING 298, 298 (1926).

⁸1 ROBERT M. ANDERSON, AMERICAN LAW OF ZONING § 1.14 (3d ed. 1986).

⁹EDWARD M. BASSETT, ZONING: THE LAWS, ADMINISTRATION, AND COURT DECISIONS DURING THE FIRST TWENTY YEARS 9 (1940).

¹⁰JAMES METZENBAUM, THE LAW OF ZONING 17 (1930).

¹¹*Id.* at 14-15.

restrictions on those districts.¹² New York's 1916 comprehensive ordinance has long been considered the first modern zoning law in the United States.¹³ Zoning ordinances designate permitted uses for districts, usually dividing the uses into the categories of residence, business and industry.¹⁴ Ordinances of the 1920s generally regulated building bulk and height, lot areas, open space, and the location of structures.¹⁵

Many reasons have been advanced for the early 1920s rise in municipal zoning: minimizing annoyance; preserving property values; minimizing taxes; venting class, ethnic and racial bias; realizing the single-family home ideal; and preserving a home environment that conformed to domesticity, pastoral, and health ideals.¹⁶ Zoning may also be viewed as a means of distributive justice, a process for bringing communities together, and a political procedure allowing certain individuals to protect their own interests. Interests in zoning may thus be broken down along three general lines: economic (property value, taxes, and nuisance abatement), aesthetic (domestic order), and social (segregation and integration). These areas overlap, and have been presented individually only for simplicity of discussion. It is impossible to draw any bright lines separating economic, aesthetic and social interests.

New Haven's early interest in zoning reflects primarily economic concerns. The citizens of New Haven expressed great hope for using zoning to increase property values and decrease

¹²ANDERSON, *supra* note 8, § 1.13.

¹³Martha A. Lees, *Preserving Property Values? Preserving Proper Homes? Preserving Privilege?: The Pre-Euclid Debate Over Zoning for Exclusively Private Residential Areas, 1916-1926*, 56 U. Pitt. L. Rev. 367, 372 (1994).

¹⁴NATIONAL COMMISSION ON URBAN PROBLEMS, *BUILDING THE AMERICAN CITY* 201 (1969).

¹⁵*See* 1921 Conn. Spec. Act 1058, § 1.

¹⁶Lees, *supra* note 13, at 403-415.

nuisance. New Haven had few social goals to achieve through zoning. Theories of distributive justice and community enhancement were almost unknown in 1920s municipalities. While race segregation might provide an explanation for zoning appropriate to the time, New Haven self-segregated well enough that no additional protections were necessary.¹⁷ The city was so dominated by diverse ethnic populations that zoning cannot be seen as an attempt by traditional New Englanders to isolate immigrant groups.¹⁸ Similarly, social and market controls in the city operated strongly, obviating the need for any one individual or class of individuals to create defenses for property.¹⁹ Rather, zoning in New Haven arose from a desire to spur economic growth and regulate the city's character.

Contemporary ideology and aesthetics also played into New Haven's zoning movement. Zoning rose from local to national reputation in the early 1920s under the leadership of Herbert Hoover, Secretary of the United States Department of Commerce.²⁰ The United States in the 1920s was a place of fads, of which New Haven took part eagerly.²¹ The City Plan movement, manifested in

¹⁷The consolidation of blacks into one area of New Haven had been largely completed by 1890. ROBERT AUSTIN WARNER, *NEW HAVEN NEGROES* 196 (1969). Even pro-zoning forces would have had to agree that social forces kept the city along clear race lines. Ward 19 alone contained more than half of the city's blacks. A full 73% of the city's blacks could be found in Ward 19 and adjacent wards, particularly to the southwest. This area, concentrated around lower Whalley and Dixwell Avenues, was known as "Negro Town." *Id.*

¹⁸See ROBERT DAHL, *WHO GOVERNS?* 46 (1961). Immigrants also dominated city government. *Id.* At 42-46. The city was so heavily dominated by immigrants at this time that zoning could not have been used effectively to segregate incoming groups. Even the two ward of Westville--one of the most traditionally Yankee sections of the city--had foreign populations of 40.2% and 61.1% in 1929. ARNOLD GUYOT DANA, *NEW HAVEN'S PROBLEMS: WHITHER THE CITY? ALL CITIES?* 18a (1937).

¹⁹See, e.g., Cappel, *supra* note 2, at 636.

²⁰TOLL, *supra* note 5, at 201.

²¹See ROLLIN G. OSTERWEIS, *THREE CENTURIES OF NEW HAVEN* 414 (1953).

New Haven as a decade of visionary attempts at bringing order to the city, also lent its framework to the drive toward zoning.

Fundamental elements of zoning as a concept may be seen in New Haven's motivations for zoning. Zoning offered an increase in property values, abatement of nuisance, aesthetic order, and an avenue for city planning. New Haven citizens in 1920 felt strongly about civic improvement. New Haven hoped to achieve the zoning ideal.

A. Economic Concerns: Property Values

Those in favor of zoning in New Haven usually spoke first of the "returns that it would bring to the city in increased property values."²² New Haven home owners felt jeopardized by proposed buildings not in keeping with their neighborhoods; retailers were threatened by increased building heights that would create dark and congested streets.²³ Representatives of Yale and various city clubs and organizations, as well as city Aldermen, were advised that apartment buildings next to private dwellings depreciated the value of the dwellings by half, and that a garage costing \$2,000 could result in the loss of \$10,000 to the adjoining property.²⁴ Zoning proposed the protection of property by keeping buildings in their proper places.

New Haven residents felt an acute need for additional housing in the city.²⁵ City planners,

²²*Zoning Plans Approved at Cost Hearing*, NEW HAVEN JOURNAL-COURIER, May 4, 1922, at 8.

²³Letter from George Herbert Gray, Chair, New Haven Zoning Commission, to the New Haven Board of Aldermen (May 3, 1922) (on file with Yale University Manuscripts and Archives, GR 442, Series IV, Box 82G)

²⁴George B. Ford, President, Technical Advisory Corporation of New York, Address at a Public Meeting (April 7, 1922), *in* MINUTES OF THE NEW HAVEN ZONING COMMISSION, at 9 (1925) (on file at the New Haven City Plan Department) [hereinafter ZONING COMMISSION MINUTES].

²⁵NEW HAVEN CHAMBER OF COMMERCE, YEAR BOOK 13 (1920) [hereinafter CHAMBER YEAR BOOK].

who had observed trends around the nation, noted that New Haven was behind other cities in its building program.²⁶ They encouraged New Haven to prepare for growth, putting forth such arguments as the following:

Where the retail business section encroaches on a residential neighborhood, blight sets in and property undergoes a long transitional period of deterioration, of improvised and temporary uses, of ugliness and of poor returns. In like manner when a glue factory or rendering plant comes within a good industrial district, efficiency and values are decreased; when a large apartment house comes into a private residence district, overshadowing adjoining properties, the value of other existing improvements suffer deterioration.²⁷

New Haven's Chamber of Commerce shared this concern, noting that inevitable reductions would result from business changes in the near future.²⁸ Building changes were on their way to New Haven, and the city wanted to plan for the shift.

The validity of this argument was borne out during New Haven's great building boom, which occurred in the early 1920s. In 1921, the city issued 1,675 building permits for a total permit value of \$6,487,808.²⁹ By 1923, the number of building permits had risen to 1,877, with a value of

²⁶George Herbert Gray, Address on "Zoning, Districting, or Sectoring, and its Application to New Haven," as read before the Board of Directors of the Chamber of Commerce (November 30, 1920) (transcript available at Yale University Manuscripts and Archives, GR 442, Series V, Box 97, Folder 1408). The city of New Haven had no official building program. Most likely, Gray was referring to the post-war private building program managed by the Greater New Haven Chamber of Commerce. *See also* 1921 CHAMBER YEAR BOOK, *supra* note 25, at 11.

²⁷George Herbert Gray, Statement to the Board of Directors of the Greater New Haven Chamber of Commerce (November 30, 1920) (on file at Yale University Manuscripts and Archives, GR 442, Series V, Box 97, Folder 1408).

²⁸Minutes of the Executive Committee, Greater New Haven Chamber of Commerce (September 1920) (on file with the New Haven Colony Historical Society) [hereinafter Chamber Executive Minutes].

²⁹NEW HAVEN BUILDING INSPECTOR REP. (1921), *in* CITY YEAR BOOK, *supra* note 3, at 520 (1921).

\$8,934,663.³⁰ A more drastic rise can be seen in mortgages taken out over the span of these years. Mortgages filed on real estate in 1921 totaled \$27,981,000.³¹ This number jumped to a remarkable \$79,758,000 in 1923.³² Citizens of New Haven wanted to encourage and protect this growth. Through zoning, the city could maintain this rapid development along sound lines.³³

Zoning was considered an investment for the city. As zoning was intended to raise property values, its implementation could result in an increase of the grand list.³⁴ The New Haven Zoning Commission observed that its 1911 City Beautiful plan had lost its appeal because it had no economic force, while the benefits of zoning could be seen in actual dollars and cents.³⁵ This argument was sure to sway the Board of Aldermen, which would have the responsibility of legislating zoning. Thus, interest in zoning in New Haven may be seen as having political as well as economic motivations.

1. Controlling Developers and Development

Zoning planners promoted the use of zoning to regulate development. In 1920, real estate

³⁰NEW HAVEN BUILDING INSPECTOR REP. (1923), in CITY YEAR BOOK, *supra* note 3, at 626 (1923).

³¹DANA, *supra* note 18, at 29b.

³²*Id.* This jump in value was typical throughout Connecticut. *Id.*

³³*See* Gray, *supra* note 23. While New Haven was in the midst of a successful building boom, citizens raised concerns that the trend toward increasingly high buildings would soon spoil real estate investments. *Id.*

³⁴*Id.*

³⁵George Herbert Gray, Statements at a Meeting of the Board of Finance (June 6, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 25f.

agents of New Haven voiced concern over the stability of real estate prices. The Real Estate Committee of the Chamber of Commerce reported that landlords had raised rental prices for apartments unreasonably.³⁶ The Executive Committee noted that in addition to price inflation, prices had grown unstable.³⁷ The increase in building permits, which was not accompanied with a significant increase in population,³⁸ indicated that instability might escalate. Zoning was advertised to New Haven as a means of stabilizing values to remove uncertainty from real estate pricing, and as a superior means of property value assessment.³⁹

Zoning would, in part, stabilize real estate values by bringing order to the city. The United States Department of Commerce Advisory Committee on Zoning analogized zoning to the keeping of a house:

We know what to think of a household in which an undisciplined daughter makes fudge in the parlor, in which her sister leaves soiled clothes soaking in the bathtub, while father throws his muddy shoes on the stairs, and little Johnny makes beautiful mud-pies on the front steps. Yet many American cities do the same sort of thing when they allow stores to crowd at random among private dwellings, and factories and public garages to come elbowing in among neat retail stores or well-kept apartment houses. . . . It is this stupid, wasteful jumble which zoning will prevent and gradually correct.⁴⁰

³⁶Chamber Executive Minutes, *supra* note 28 (September 1920).

³⁷*Id.*

³⁸The Federal Census of 1920 put New Haven's population at 162, 537; the Chamber of Commerce estimated that it was 206,921. *Our Population 206,921*, 1(5) NEW HAVEN 14, 14 (October 1922). In 1925, the population of New Haven was 178,9227. *New Haven Is Growing*, 4(6) NEW HAVEN, 14, 14 (December 1925).

³⁹George Herbert Gray, "A Brief Statement in Regard to the Zoning Enabling Act Prepared by a Joint Committee of Representatives of the Various Cities, Towns and Boroughs of the State of Conn." (March 31, 1921) (on file with Yale University Manuscripts and Archives, GR 442, Series V, Box 97, Folder 1408). While zoning may be an extremely indirect means of controlling real estate value, Gray's argument was widely accepted. *See also*, ZONING PRIMER, *supra* note 1.

⁴⁰ZONING PRIMER, *supra* note 1.

New Haven had precisely these concerns in mind when it contemplated its first zoning ordinance. With building permits on the rise, particularly for two-family houses and large apartment buildings and tenements,⁴¹ residents feared that neighborhoods would change shape. George Herbert Gray, a prominent New Haven city planner, warned the Chamber of Commerce that residential neighborhoods should be protected from the encroachment of inappropriate developments.⁴² A group of zoning experts, members of The Technical Advisory Corporation of New York, had been in contact with New Haven politicians and businessmen. This organization offered zoning as a protection against selfish neighbors and as a means by which to keep what was good in its existing condition.⁴³ The leaders of New Haven found this vision of preserving the city's traditional structure persuasive. Zoning planners warned that cities with errors, with industries and businesses in the wrong place, would lead to parks turned into slums and the slaughtering of property values.⁴⁴

2. Nuisance Abatement

By 1920, the New Haven Chamber of Commerce had created a special committee of engineers and manufacturers to investigate possible means of abating smoke nuisance in the city.⁴⁵ Critics of zoning have suggested that nuisance law provides an effective means for monitoring

⁴¹DANA, *supra* note 18, at 31.

⁴²Gray, *supra* note 26.

⁴³*Id.* This protectionist argument would have been attractive to Chamber of Commerce members despite the city's building boom. Gray's warning even attracted industrialists: "when a glue factory or rendering plant comes within a good industrial district, efficiency and values are decreased." *Id.* Businessmen could use zoning to protect their own property while directing increased building in other areas of town.

⁴⁴*Shall New Haven Accept Zoning?*, NEW HAVEN JOURNAL-COURIER, Aug. 27, 1923, at 4.

⁴⁵Chamber Executive Minutes, *supra* note 28 (September 1920).

private land use, and that municipal zoning is thus unnecessary.⁴⁶ Andrew Cappel has observed that Connecticut law was favorable to local residents bringing actions against industries.⁴⁷ Cappel's research, however, focuses on pre-industrial Connecticut.⁴⁸ Connecticut courts in the early 1900s favored industrial defendants in nuisance-related cases.⁴⁹ New Haven residents would have had difficulty, therefore, finding recourse for nuisance concerns in the courts.

Municipal regulations compounded the difficulties confronting private citizens trying to abate nuisance. The city of New Haven regulated little industrial nuisance.⁵⁰ Board of Health regulations required New Haven citizens to take matters of concern to the Board before resorting to the courts.⁵¹ Residents complained that it was difficult to convince the Board of Health that a nuisance odor

⁴⁶See generally, e.g., Ellickson, *supra* note 2.

⁴⁷Cappel, *supra* note 2, at 628-229.

⁴⁸Cappel uses the following cases in support of his contention: *Hurlbut v. McKone*, 10 A. 164, 166-67 (Conn. 1887), *Whitney v. Bartholomew*, 21 Conn. 213, 218-19 (1851), *Nichols v. Pixly*, 1 Root 129 (Conn. 1789). *Id.*

⁴⁹See *Rockville Water and Aqueduct Co. v. Koelsch*, 90 Conn. 171 (1916); *Connecticut v. Woolley*, 88 Conn. 715 (1914); *Goldman v. New York, New Haven and Hartford Railroad Company*, 83 Conn. 59 (1910); *Beckerle v. City of Danbury*, 80 Conn. 124 (1907).

⁵⁰City nuisance ordinances focused on garbage, animal care, manure, sewers and cesspools,. See NEW HAVEN, CONN., ORDINANCES, §§ 414-447, 452-457.

⁵¹George Herbert Gray, Address at the Ward 15 and 16 Zoning Hearing (March 4, 1925), in ZONING COMMISSION MINUTES, *supra* note 24, at 110.

The Board of Health was instructed to "abate nuisances at the expense of the owner whenever their orders are neglected beyond a reasonable time." NEW HAVEN, CONN., CHARTER § 94 (1914). The Board was further charged with "the duty of preventing, examining and abating such of the foregoing nuisances." NEW HAVEN, CONN., ORDINANCES § 449 (1914). The Board of Health was authorized to make any regulations necessary to carry out these responsibilities. NEW HAVEN, CONN., CHARTER § 94 (1914).

existed.⁵² Others protested that even if the Board of Health recognized a nuisance, it did not provide satisfactory help.⁵³ Health officers were accused of side-stepping questions in favor of corporations.⁵⁴

It is not surprising that the Board of Health provided little relief from nuisances to the citizens of New Haven. The Health Department focused on disease, milk pasteurization, and food sanitation, not on the abatement of nuisances.⁵⁵ Department personnel consisted in large part of nurses, physicians, epidemiologists, and food and milk inspectors, which left three sanitary inspectors to carry out sanitary inspections and respond to nuisance claims.⁵⁶ In 1921, the sanitary inspectors faced 526 yearly nuisance complaints, and carried out a total 9,665 inspections.⁵⁷ If each sanitary inspector worked every day of the year but weekends, he would have to inspect approximately twelve locations a day to realize the reported inspections. Even worse for those with nuisance

⁵²See Charles Gay, Gay Brothers & Co., Comment at the Ward 26 Zoning Hearing (March 26, 1925), in ZONING COMMISSION MINUTES, *supra* note 24, at 120.

⁵³See Alderman Clifford E. Minor, Comment at the Ward 31 Zoning Hearing (April 7, 1925), in ZONING COMMISSION MINUTES, *supra* note 24, at 137. Minor observed that there had been no relief offered from the mosquito nuisance in the West River meadows, the Sasso factory on Ellsworth Ave., or the two piggeries in his ward. *Id.*

⁵⁴*Say Fair Haven Air is Saturated with White Dust*, NEW HAVEN JOURNAL-COURIER, July 11, 1923, at 1. In this case, neighbors had raised complaints that the neighborhood was saturated with plaster and dust continually. The Health Board did not move to alleviate the situation. *Id.*

⁵⁵See Department of Health, New Haven, Connecticut, MONTHLY BULLETIN, Vols 44(1)-48(12) (1917-1921). Neither industry nor nuisance abatement is mentioned even once in the relevant five years of this publication. *Id.*

⁵⁶NEW HAVEN HEALTH DEPARTMENT REP. (1921), in CITY YEAR BOOK, *supra* note 3, at 398 (1921).

⁵⁷*Id.* at 427. The inspectors drafted ninety-one written notices and twenty City Attorney notices. *Id.* There is no mention of the city taking action on these notices in the following year. NEW HAVEN CORPORATION COUNSEL REP. (1922), in CITY YEAR BOOK, *supra* note 3, at 496-502 (1922).

complaints, the inspectors concerned themselves primarily with nuisances having immediate sanitary relevance.⁵⁸ This left the people of New Haven with little recourse to the traditional relief offered by nuisance law.

In addition, nuisance law only had the power to regulate existing buildings.⁵⁹ Zoning could regulate whether or not a nuisance-producing industry was erected at all.⁶⁰ The people of New Haven simply wanted to prevent intrusion by stench-producing factories into their neighborhoods.⁶¹ Nuisance industries such as rubber companies, the New Haven Gas Company and Winchester Repeating Arms already bordered residential neighborhoods.⁶² The yearly loss due to waste and damage by smoke in the early 1920s approximated a half a million dollars.⁶³ Zoning could promise and end to this; nuisance law alone could not.

B. Ideology: the Zoning Movement, Aesthetics, and City Planning

Zoning presented New Haven with the opportunity to fit in with the municipal norm of the

⁵⁸Basic nuisances were not a Health Department priority. Dr. Wright, the head of the Board of Health, asked that health inspectors be freed from attending ordinary nuisances. He wanted the "conditions of yards, vacant lots, dumps, etc., to be placed upon the police department." CHARLES-EDWARD AMORY WINSLOW ET AL., HEALTH SURVEY OF NEW HAVEN 57 (1917).

⁵⁹BASSETT, *supra* note 9, at 94.

⁶⁰*See, id.*

⁶¹*See* Breck, Statement to the Ward 31 Hearing on Zoning (April 7, 1925), in ZONING COMMISSION MINUTES, *supra* note 24, at 137.

⁶²GENERAL DATA MAP OF THE CITY OF NEW HAVEN, CONNECTICUT (1923) (on file at the New Haven City Plan Department). Semi-nuisance and other industry infringed on many highly residential areas, including: Wooster Square, Whitney and Audubon, Whitney and Trumbull, Whalley and Blake, James and East Pearl, and Cold Spring and Willow. *Id.*

⁶³Chamber Executive Minutes, *supra* note 28 (December, 1921).

time. In 1920, the social services department of the City Improvement Committee of the New Haven Chamber of Commerce recommended that the Chamber undertake a study of zoning, noting that it had worked successfully in many cities.⁶⁴ New Haven saw a national movement taking shape and did not want to miss its opportunity to join the trend. No other city in Connecticut had proposed zoning; New Haven would be the first to approach the general assembly with a proposal for an enabling act.⁶⁵ As of 1921, seventy-six communities in the United States had been zoned.⁶⁶ Zoning had mass appeal.⁶⁷ By 1922, many cities the size of New Haven had adopted zoning.⁶⁸ To make zoning attractive to the public, the New Haven Zoning Commission explained that “zoning has come to be included among those things necessary for the development of the efficient, growing community.”⁶⁹ The lack of any objections to zoning in the literature of New Haven prior to 1924 indicates that there was little actual discussion of its merits. Zoning simply represented an area in which New Haven felt it ought to meet nationally established standards.

Zoning also appealed to aesthetic expectations of the 1920s. Zoning would protect the vision

⁶⁴Chamber Executive Minutes, *supra* note 28 (September 1920).

⁶⁵*See* Chamber Executive Minutes, *supra* note 28 (November 30, 1920).

⁶⁶THEODORA KIMBALL HUBBARD AND HENRY VINCENT HUBBARD, OUR CITIES TODAY AND TOMORROW 162 (1929).

⁶⁷TOLL, *supra* note 5, at 200.

⁶⁸George B. Ford, Statement in front of the New Haven Zoning Commission (March 22, 1922), in ZONING COMMISSION MINUTES, at 4. Ford presented a list containing the following cities: Newark, Jersey City, Elizabeth, Los Angeles, San Francisco, Buffalo, Springfield, Cleveland, Detroit, Minneapolis, St. Paul, St. Louis, Baltimore, Omaha, Lincoln, Paterson, Passaic, Yonkers, White Plains, Mt. Vernon, Brockton, and Fall River.

⁶⁹Office of the Zoning Commission of New Haven, *supra* note 6. The Commission went on to note that of the thirty-seven cities in the US larger than New Haven, sixteen had passed ordinances and all but four or five of the balance were actively at work preparing them. About 100 cities smaller than New Haven had passed zoning ordinances. *Id.*

of the ideal home: a building set back on an orderly street, surrounded by trees and gardens.⁷⁰

Planners extolled the virtues of “planning for the promotion of beauty,”⁷¹ and promoted zoning as a means of achieving a more attractive environment in residential areas.⁷² Zoning offered New Haven residences a shield from the “blighting encroachment of the store, the commercial garage, the laundry, the undertaking establishment, the large apartment house and other familiar developments.”⁷³ New Haven would become more pleasing to the eye under a zoning plan.

The light of the City Plan and City Beautiful movements had dimmed by 1920. The appeal of these movements in New Haven had reached its apex in 1911, following the publication of Gilbert and Olmsted’s study of the city.⁷⁴ For George Dudley Seymour, however, the light continued to shine. Seymour had long been a force in New Haven politics, and as a member of the newly formed Zoning Commission, he would push for zoning as a means of finally putting City Planning into effect in New Haven.⁷⁵ Seymour had his own agenda. He noted, “I am glad that zoning has got a chance to succeed by building on my . . . City Planning foundation which cost me so much in time

⁷⁰See FRANK B. WILLIAMS, *THE LAW OF CITY PLANNING AND ZONING* 382-384 (reprint 1969) (1922); Lees, *supra* note 13, at 421.

⁷¹See WILLIAMS, *supra* note 70, at 381.

⁷²City of Providence, Joint Standing Committee on Ordinances, “The Providence Zone Plan” (1923) (on file at Yale University Manuscripts and Archives, MS 847 Series I, Box 3, Folder 36).

⁷³Gray, *supra* note 26.

⁷⁴CASS GILBERT AND FREDERICK LAW OLMSTED, *NEW HAVEN: REPORT OF THE CIVIC IMPROVEMENT COMMISSION* (1910).

⁷⁵Note to himself by George Dudley Seymour (March 23, 1922) (on file with Yale University Manuscripts and Archives, GR 442, Series IV, Box 82G).

money and energy.”⁷⁶ Seymour could make zoning attractive to the public because it embodied the streamlining so attractive to the people of New Haven in the 1920s.⁷⁷ City planning had aesthetic appeal; zoning offered an additional efficiency element that made it attractive to a larger audience.

Zoning was considered by experts to be a vital element of city planing.⁷⁸ Seymour had gained great recognition for his city planning efforts, and even national commentators observed that his efforts would be justified if zoning in New Haven went through.⁷⁹ George B. Ford, a consultant from the Technical Advisory Corporation of New York, supported Seymour’s view that zoning could be used as leverage for city planning.⁸⁰ When the New Haven Board of Aldermen passed a zoning law in 1926, one of the city’s largest newspapers heralded the change with the headline, *Making City Planning Vivid*.⁸¹ The ideals of the time – order, consolidation, scientific processes, and following trends – all came together in New Haven’s desire for zoning.

⁷⁶Note to himself by George Dudley Seymour (March 31, 1922) (on file with Yale University Manuscripts and Archives, GR 442, Series IV, Box 82G).

⁷⁷See OSTERWEIS, *supra* note 20, at 418.

⁷⁸ADVISORY COMMITTEE ON ZONING, U.S. DEP’T OF COMMERCE, A CITY PLANNING PRIMER 12-13 (1928). See also Jacob L. Crane, Jr., *Progress in the Science of Zoning*, ANNALS AM. ACAD. OF POL. & SOC. SCI., May 1931, Part II: Zoning in the United States, at 194, 194. Garrett Power has argued that zoning was the antithesis of city planning. *Supra* note 5, at 670. Contemporary commentators, however, felt that zoning was an integral part of city planning. Zoning is mentioned in most city planning publications of the 1920s. See, THE AMERICAN CITY PLANNING INSTITUTE & THE NATIONAL CONFERENCE ON CITY PLANNING, CITY PLANNING, Vols. 1(1)–2(4) (1925-1926); WILLIAMS, *supra* note 70.

⁷⁹Theodora Kimball Hubbard, *Survey of City and Regional Planning in the United States*, CITY PLANNING, April 1926, at 93.

⁸⁰Statement at a Meeting of the New Haven Zoning Commission (March 22, 1922), in ZONING COMMISSION MINUTE, at 4.

⁸¹*Making City Planning Vivid*, NEW HAVEN JOURNAL-COURIER, December 8, 1926, at 8.

III. NEW HAVEN'S ZONING STORY

A. History

1. Zoning Commission, March 22, 1922 - July 31, 1922

The concept of zoning arrived in New Haven amidst little fanfare. It appeared as the brainchild of the City Improvement Committee of the Greater New Haven Chamber of Commerce, which was concerned with smoke nuisance and interested in the zoning system that had worked so well elsewhere.⁸² The City Improvement Committee led the movement to bring about zoning in late 1920 and early 1921, engaging in a study of possible legislation.⁸³ The general membership of the Chamber approved the proposal of an enabling act on December 29, 1920.⁸⁴ While the City Improvements Committee feared that the legislature's recent denial of a request for anti-mosquito regulation might bode ill for zoning,⁸⁵ they need not have worried. The Connecticut State General Assembly approved "An Act Creating Zoning Districts in the City of New Haven" on June 24, 1921.⁸⁶

The passage of a state enabling act was a crucial first step to any early 1920s zoning legislation. Enabling acts were drawn up to ensure constitutional validity; municipalities lobbied for

⁸²Chamber Executive Minutes, *supra* note 28 (September, 1920).

⁸³Chamber Executive Minutes, *supra* note 28 (November 30, 1920), (October 26, 1921). The City Improvements Committee consisted of ten members, most of whom were businessmen. At least one architect, city planner and lawyer also served on the committee. *Id.*

⁸⁴Minutes of the Greater New Haven Chamber of Commerce (December 29, 1920) (on file with the New Haven Colony Historical Society).

⁸⁵Report of the City Improvements Commission (1921), in 1921 CHAMBER YEAR BOOK, *supra* note 25, at 9.

⁸⁶1925 Conn. Spec. Acts 1045.

state legislative support rather than attempt to find zoning power in their own municipal charters.⁸⁷

The enabling act drawn up for New Haven specified what the city could regulate, the creation and powers of a zoning commission, the establishment of zoning districts, amendments to zoning regulation, and the creation and powers of a board of zoning appeals.⁸⁸

On October 31, 1921, Mayor David Fitzgerald of New Haven appointed the following men to form the city's Zoning Commission: George Dudley Seymour, Harry W. Hitchcock, Joseph T. Mulvey, Edward S. Nettleton, Joseph E. Austin, George W. Crawford, David J. McCoy, Jacob B. Goodhart, Edward G. Frederick, Major George Herbert Gray, and Michael Sola.⁸⁹ The Board of Aldermen approved the appointments on March 6, 1922.⁹⁰ With Major Gray serving as chair and Mr. Nettleton as secretary, the commission was to begin the task of creating district boundaries and

⁸⁷See generally, ANDERSON, *supra* note 8, § 3.07.

⁸⁸1921 Conn. Spec. Acts 478. The scope of regulatory power was defined as follows: "The city of New Haven is authorized to regulate and limit the height and bulk of structures to be erected; to regulate and limit the use of lot areas, the minimum areas or dimensions of rear, side and front yards of outer and inner courts and other open space within and surrounding any such structure; to classify, regulate and restrict the location of trades and industries and the location of structures designed for specified uses; to divide the city of New Haven into districts of such number, shape and area as may be deemed best suited to carry out the provisions of this act. Regulations may be imposed in each district specifying the uses that shall be excluded or subjected to reasonable requirements of a special nature and designating the uses for which buildings may not be erected or altered. The regulations shall be uniform for each class of buildings throughout any district. The regulations in one or more districts may differ from those in another district." *Id.*, § 1.

⁸⁹Letter from David E. Fitzgerald, Mayor of New Haven, to the New Haven Board of Aldermen (October 31, 1921), in 1921 JOURNAL OF THE BOARD OF ALDERMEN OF NEW HAVEN 296, 297 [hereinafter B.A. JOURNAL]. The Enabling Act required that the zoning commission include the city engineer (Nettleton), the building inspector (Austin), a member of the board of assessors (Frederick), two members of the city plan commission (Seymour and Nettleton), one member of the municipal art commission (Gray), one member of the park commission (none), a realtor (none), an architect (Gray), and a lawyer (Crawford, McCoy, Goodhart). 1925 Conn. Spec. Act 1045, §2; CITY YEAR BOOK, *supra* note 3, at, 4-31 (1921). In addition to these persons, the mayor nominated the director of the New Haven Health Center (Hitchcock), and a contractor (Sola), NEW HAVEN CITY DIRECTORY (1923).

⁹⁰1922 B.A. JOURNAL, *supra* note 89, at 71-72.

appropriate regulations to accompany them.

The Zoning Commission called its first “public” meeting for the city’s elite on April 7, 1922, less than one month after the Zoning Commission itself had begun to meet.⁹¹ George Ford was selected as the commission’s spokesperson.⁹² Ford, the head of the Technical Advisory Corporation of New York, had been instrumental in instituting zoning in thirty-three of the 100 cities in which it existed in 1922.⁹³ He was an architect who had served as a consultant to both commissions responsible for bringing about New York’s comprehensive zoning ordinance.⁹⁴ In New Haven, Ford advertised zoning as a concept: a tool for raising property values, a means to keep things in their place, and a protection against nuisance.⁹⁵ Ford suggested that the city make city growth estimates for the next twenty-five years, plan for the growth of the central business district, establish local business centers, and confine industry to sites most accessible to railroads and waterways.⁹⁶

⁹¹ZONING COMMISSION MINUTES, *supra* note 24, at 9-11. Important attendees at the meeting included: Mayor FitzGerald, Director of Public Works John J. Lane, President Edward F. Frederick of the Board of Assessors, Frank L. Schollhorn of the Board of Finance, several Aldermen, Police Chief Philip T. Smith, consulting architect James Gamble Rogers, Yale Treasurer George Parmly Day, and fifty local citizens “prominent in public affairs.” *\$25,000 Initial Cost of Zoning System for City*, NEW HAVEN JOURNAL-COURIER, April 8, 1922, at 1.

⁹²Ford’s visit was seen as a valuable fundraising tool for the commission. George Dudley Seymour recognized that the mayor would not advocate spending money without the support of the Boards of Aldermen and Finance. Seymour noted that City Planning had failed largely because the city had placed no money or responsibility in it, and observed that zoning might have a better chance because the city was likely to contribute. Seymour, *supra* note 76.

⁹³*\$25,000 Initial Cost of Zoning System for City*, *supra* note 91, at 1.

⁹⁴TOLL, *supra* note 5, at 174.

⁹⁵George B. Ford, Statement at a public meeting (April 7, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 9. Ford also praised zoning as something that had worked well in New York and New Jersey. *Id.* at 10.

⁹⁶*\$25,000 Initial Cost of Zoning System for City*, *supra* note 91, at 1.

His audience responded favorably. The only concerns raised were protection of one- and two-family homes, and the fear that someone other than those present might raise opposition to the project.⁹⁷ With the backing of the elite public, the Zoning Commission could feel free to move on to the Boards of Aldermen and Finance.

The question of appropriations loomed large for the Zoning Commission. No research was undertaken to determine the funding needed for zoning studies, but estimates ran high. Major Gray suggested that between \$8,000 and \$10,000 would be adequate, but Goodhart declared that such an amount would not be enough.⁹⁸ ““Don’t ask for charity,”” Goodhart cautioned, ““Why not get it. We are not asking for favors we are getting zoning. [sic]””⁹⁹ George Ford suggested that a total appropriation of \$25,000 would be appropriate, and this figure was agreed upon as that which would be presented to the Board of Aldermen.¹⁰⁰ The Commission need not have worried. On June 5, 1922, the Board of Aldermen quickly approved an appropriation of \$10,000, and included in their recommendation to the Board of Finance that it make a provision in the 1923 budget for an additional \$15,000.¹⁰¹

The Zoning Committee found a much more reticent audience on June 6, 1922, in the

⁹⁷Alderman George Thompson and Lewis Welch of Phoenix Mutual Life Insurance, Statements at a public meeting (April 7, 1922), in *ZONING COMMISSION MINUTES*, *supra* note 24, at 10. It is interesting to note the early emergence of an “us versus them” attitude among the elite in respect to zoning.

⁹⁸George Herbert Gray and Jacob Goodhart, Statements to the New Haven Zoning Commission (April 27, 1922), in *ZONING COMMISSION MINUTES*, *supra* note 24, at 14.

⁹⁹Jacob Goodhart, Statement to the New Haven Zoning Commission (April 27, 1922), in *ZONING COMMISSION MINUTES*, *supra* note 24, at 15.

¹⁰⁰Gray, *supra* note 23.

¹⁰¹ *ZONING COMMISSION MINUTES*, *supra* note 24, at 22.

members of the Board of Finance.¹⁰² The Board suggested that it might be easier if appropriations were made in January of the following year rather than immediately.¹⁰³ Major Gray of the Zoning Committee responded that waiting to fund would be to the advantage of speculative builders.¹⁰⁴ He observed that the survey would be the most expensive part of the work at \$10,000, and the sooner the surveying was complete, the sooner an ordinance would be in place.¹⁰⁵ The Board of Finance appeared to be swayed by this argument, noting that “it doesn’t seem reasonable to wait here and let real estate men go out and make money.”¹⁰⁶ After much discussion and a month-long delay, the Board of Finance approved the request for \$10,000.¹⁰⁷ The three dissenting members of the Board explained that they did not object to zoning *per se*, but that they felt restricted by a limit on New

¹⁰²The citizen members of the Board of Finance were: Albert W. Matoon, a realtor; J. Edmund Miller, an accountant and tax consultant; William R. Pitkin, a lawyer; Frank Schollhorn, secretary and treasurer of the William Schollhorn Co., manufacturers; Roger S. White, a lawyer, and William A. Hendrick, treasurer and publisher of the *New Haven Times-Leader*. CITY YEAR BOOK, *supra* note 3, at 10 (1922), NEW HAVEN CITY DIRECTORY (1923).

Given their occupations, it is likely that these men would have belonged to the elite public rather than the general public, and thus would have carried pro-zoning biases. This predilection would have been countered by a need to work within a rather restrictive budget system.

¹⁰³William Hendrick, Statement at a Meeting of the Board of Finance (June 6, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 25.

¹⁰⁴George Herbert Gray, Statement at a Meeting of the Board of Finance (June 6, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 25-25c.

¹⁰⁵*Id.*, at 25d.

¹⁰⁶J. Edmund Miller, Statement at a Meeting of the Board of Finance (June 6, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 25b.

¹⁰⁷*Money for Zoning Finally Voted by Board of Finance*, JOURNAL COURIER, July 7, 1922, at 1. Prior to this, a subcommittee of the Board of Finance had visited Worcester, Massachusetts to secure firsthand information on how zoning worked. *Finance Board to Make Own Inquiry Into Zoning Plan*, JOURNAL COURIER, June 16, 1922, at 1. While this subcommittee brought back a favorable report, the Board tabled the request pending a second presentation by the Zoning Commission. *Appropriation for Zoning is Not Approved*, JOURNAL COURIER, June 30, 1922, at 2. This caused another week’s delay.

Haven's budgetary system.¹⁰⁸

The members of the Zoning Commission agreed that an outside consultant should be employed to draft maps and an ordinance. One question remained: whether to commission George B. Ford of the Technical Advisory Corporation of New York, who had been addressing New Haven audiences since at least 1921, or someone else?¹⁰⁹ Ford had zoned many cities, had joined the commission for its first meeting, and had spoken at its first public forum.¹¹⁰ The commission clearly favored Ford, opining that he knew his subject matter, was very fair, and would do the work at a reasonable figure.¹¹¹ McCoy and Daly preferred local talent. The Commission rejected this idea on the basis that they were unable to think of a good man for the job and had concerns that the consultant be a disinterested party.¹¹² The commission resolved in late April to write to three outside people to get an idea of expenses: Ford, Whitten and Bartholomew.¹¹³ By mid-June, the

¹⁰⁸*Money for Zoning Finally Voted by Board of Finance, supra* note 107, at 1. More specifically, they were concerned about an opinion by corporation counsel that said that the city is confined to the limit of the budget in all expenditures. *Id.*

¹⁰⁹1921 CHAMBER YEAR BOOK, *supra* note 25, at 10.

¹¹⁰ZONING COMMISSION MINUTES, *supra* note 24, at 4, 9, 11.

¹¹¹Jacob Goodhart and George Crawford, Statements to the New Haven Zoning Commission (April 27, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 15-16.

¹¹²David McCoy, M.A. Daly, George Crawford and Jacob Goodhart, Statements to the New Haven Zoning Commission (April 27, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 16.

¹¹³ ZONING COMMISSION MINUTES, *supra* note 24, at 16. Whitten of Cleveland had zoned Dallas, Memphis, and Cleveland; Bartholomew had zoned Newark. *Id.* at 15.

commission had received financial estimates,¹¹⁴ and by mid-July full proposals were in. With little discussion, the commission unanimously elected Ford's Technical Advisory Corporation to be the zoning consultant to the New Haven Zoning Commission.¹¹⁵ The commission agreed that Frederick Law Olmsted should also be retained in an advisory capacity.¹¹⁶ Four men of the Technical Advisory Corporation began the work of studying the city on July 31, 1922.¹¹⁷

2. Creating the First Ordinance, July 31, 1922 - July 2, 1923

From July 1922 through April 1923, New Haven suspended the promise of zoning while the Technical Advisory Corporation carried out its zoning survey. The Corporation recorded over 200 maps' worth of information, which ranged from social conditions to use of property to streets and street traffic.¹¹⁸ The Technical Advisory Corporation's findings would form the basis of the Zoning

¹¹⁴Whitten returned an estimate of \$10,000 plus an additional \$8,000 for traffic zoning. Knowland of Massachusetts offered \$10,000. Ford's estimate was \$24,500. ZONING COMMISSION MINUTES, *supra* note 24, at 21.

¹¹⁵ ZONING COMMISSION MINUTES, *supra* note 24, at 28. Bartholomew was not selected because he was unavailable due to other commitments in Pittsburgh. Knowland was rejected as not having zoned any large cities. *Id.*

It is unclear why there was so little support for Whitten at the July 14 vote, but it may be due to his insistence on public participation in the zoning process. Robert Whitten, Statement to the New Haven Zoning Commission (1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 23. It is equally plausible that the commission chose Ford because he had been working with the commission since its inception. Ford also held the reputation of being the "foremost engineer in the country." *Engineer Ford and Olmsted to Work on Zoning*, NEW HAVEN JOURNAL-COURIER, July 15, 1922, at 1.

¹¹⁶*Engineer Ford and Olmsted to Work on Zoning*, *supra* note 115, at 1.

¹¹⁷ZONING COMMISSION MINUTES, *supra* note 24, at 32. The work force increased to fifteen men while taking the traffic census.

¹¹⁸Progress Report of the Technical Advisory Corporation (December 1, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 35-38. A complete list of material studied is as follows: natural features, social conditions, accessibility (railroad, waterfront), traffic and pedestrian circulation, use of property, educational facilities, recreational facilities, parks, semi-public property, property used for public services, social life and welfare as affecting growth and changes of the

Commission's proposed regulations. Ford made some interesting observations about New Haven upon the completion of his study:

[T]hat the population is reaching a point of saturation on account of the narrow limits of the city. That for a distance of eight miles around the city the population is growing faster than in any other city in New England. That the influence of the University is decreasing. That from 15 to 20 percent of the industries are outside of the city.¹¹⁹

In his proposal, Ford responded to New Haven's needs by establishing three residential districts, two business districts, and three industrial districts.¹²⁰ A series of meetings between May 14 and June 25, 1923, served as a forum for discussion of Ford's maps and thirty-three page ordinance.

Commission members expressed great satisfaction with the proposed ordinance and maps.¹²¹

There was little reason to doubt the potential success of the result of a thorough city survey by a corporation that had zoned tens of other cities. The Zoning Commission petitioned the Board of Aldermen on July 2, forwarding a proposed ordinance and district map to the Aldermen.¹²² This was, to the commission's surprise, to begin an uproar against zoning that would continue for over

community, economic conditions, laws and ordinances affecting zoning, railroad property, state highways, water transportation, streets and street traffic, land subdivision, building tendencies (including all construction 1914-1922). *Id.*

Unfortunately, all but one of the maps from this study have been lost.

¹¹⁹George B. Ford, Statement to the Zoning Commission (April 27, 1923), in ZONING COMMISSION MINUTES, *supra* note 24, at 43. Ford observed that the city was bounded on the West by cemeteries, water company holdings, and West Rock; on the North by Pine Rock, Mill Rock, Winchester Arms, Springside Farm, and East Rock; and on the East by railroad company holdings, Lake Saltonstall. *Id.* at 44. He referred to Pittsburgh and Cincinnati as the only other cities in the US surrounded by insurmountable barriers. *Id.*

¹²⁰NEW HAVEN, CONN., BUILDING ZONE ORDINANCE § 1 (proposed 1923).

¹²¹Ford's maps were considered so valuable that on April, 1923, the insurance on them was raised to \$17,000. ZONING COMMISSION MINUTES, *supra* note 24, at 43.

¹²²1923 B.A. JOURNAL, *supra* note 89, at 241. The Board of Alderman would postpone comment on the proposed ordinance until Alderman Anthony P. Adinoin, Chair of the Committee on Ordinances, returned from his wedding trip. *Realtors Will Discuss Zoning*, NEW HAVEN JOURNAL-COURIER, August 23, 1923, at 1.

three years and change the face of the proposed ordinance entirely.

3. Undoing the First Ordinance, July 2, 1923 - November 30, 1923

Within a week of proposing Ford's ordinance to the Board of Aldermen, members of the Zoning Commission began to sense that trouble lay ahead. Gray warned Seymour: "I am afraid that there are some in the community who assume that because Zoning is new it cannot be conservative."¹²³ Surprisingly, the editors of one of New Haven's more laissez-faire newspapers, the *New Haven Journal-Courier*, spoke in favor of the ordinance: "the calm fact is the code is a faithful, conscientious piece of work by thirteen citizens, knowing well the city and the problems and taking pride in the important bit of municipal service they were called to render."¹²⁴ The newspaper showed no talent for prophecy, however, in its suggestion that corporations would overcome "prejudice, ignorance and selfishness" in allowing the city to regulate the expansion of factory areas.¹²⁵ At a meeting of the Board of Aldermen and the New Haven Real Estate Board on August 28, 1923, charges by city manufacturers of procedural errors by the Zoning Commission brought a temporary halt to zoning's progress.

The manufacturers, represented by Attorney Matthew A. Reynolds, accused the Zoning Commission of failure to follow Section 3 of the State Enabling Act of 1921.¹²⁶ Section 3 mandated that the commission must hold a public hearing on tentative reports of proposed regulations and

¹²³Letter from George Herbert Gray to George Dudley Seymour (July 10, 1923) (on file with Yale University Manuscripts and Archives, GR 442, Series IV, Box 82G).

¹²⁴*Shall New Haven Accept Zoning?*, NEW HAVEN JOURNAL-COURIER, August 27, 1923, at 4.

¹²⁵*Id.*

¹²⁶*Error in Submitting Zoning Law Disclosed*, NEW HAVEN JOURNAL-COURIER, August 29, 1923, at 1.

restrictions.¹²⁷ The Zoning Commission had not held any meetings to discuss Ford's ordinance. In fact, Goodhart had insisted that most proceedings be kept from the public. The commission had not followed the Act's requirements.

To add force to their arguments, the manufacturers also raised attacks against both the State Enabling Act of 1921 itself and the commission's proposed ordinance. Detractors charged the Act with the following shortcomings: it lacked a definition of purpose; it was too long and obscure; it did not provide for the terms of office of the commission; its provisions for amendments were ambiguous.¹²⁸ Another argument proposed that since the Act did not specify that police power only exists over property when the use of property injures lives, morals or health, the Act permitted zoning solely from an aesthetic viewpoint.¹²⁹ The Chamber of Commerce suggested that the Board of Aldermen prepare a new draft of the Enabling Act, and recommended that the Board look for guidance to the 1923 Enabling Acts for Bridgeport, Norwalk, Waterbury and Stamford as models, as well as to the Standard State Zoning Enabling Act.¹³⁰ Manufacturers also raised objections to the

¹²⁷1921 Conn. Spec. Acts 478, § 3.

¹²⁸Letter from Murray Sargent, Chair, Special Committee on Zoning Ordinances of the Greater New Haven Chamber of Commerce, to the Board of Directors, Greater New Haven Chamber of Commerce (September 8, 1923) (on file at Yale University Manuscripts and Archives, MS 847, Series I, Box 3, Folder 36).

¹²⁹Memorandum on *A Brief Analysis of the Proposed Zoning Ordinance for the City of New Haven and the Special Act Under Which the Same is Proposed* (1923) (on file with Yale University Manuscripts and Archives, MS 847, Series I, Box 3, Folder 36) [hereinafter *A Brief Analysis*]. This piece is unsigned, but its tone and the major concerns raised within indicate that it may have been written by New Haven's Corporation Counsel, Harrison Hewitt.

¹³⁰Sargent, *supra* note 128. Hoover's Advisory Committee on Zoning was best known for its 1924 issuance of a Standard State Zoning Enabling Act, which gave state legislatures a text by which they could grant municipalities the power to zone. TOLL, *supra* note 5, at 201.

ordinance, accusing it of being long, obscure, and difficult to interpret.¹³¹ One alderman, speaking in support of the manufacturers, said, “I have spent two hours studying the damn thing and all I can understand of it is the penalty clause.”¹³² Industrialists raised concerns that the ordinance was overly restrictive, and that it would negatively affect real estate values. This led to the possibility of heavy claims for damages against the city.¹³³ The ordinance and Enabling Act were equally unpopular.

The contention that the Zoning Commission was attempting to proceed illegally elicited quick responses. The Zoning Commission was forced to backtrack. Major Grey responded, “It has always been the intention of the commission to give the ordinance full publicity at the proper time.”¹³⁴ Mayor FitzGerald claimed that he was under the impression that hearings had been held, but he was not prepared to say whether they were regular hearings.¹³⁵ George Ford insisted that he never intended the ordinance to be passed in its proposed shape.¹³⁶ The *Journal-Courier* likewise took a new position, now charging:

The discussion on the measure since its introduction to the aldermen has all been of a negative character, a fact which the zoning commission probably realizes, and since the only possible way that the proposed measure can be made a law is to eliminate its objectionable features, there is no doubt that the objections which will be voiced at the

¹³¹Sargent, *supra* note 128.

¹³²*Error in Submitting Zoning Law Disclosed, supra* note 126, at 1.

¹³³*A Brief Analysis, supra* note 129.

¹³⁴*No Snap Judgment on Zoning Law, Officials Say*, NEW HAVEN JOURNAL-COURIER, August 30, 1923, at 1.

¹³⁵*Id.*

¹³⁶*Error in Submitting Zoning Law Disclosed, supra* note 126, at 1.

hearings will cause some radical changes in the proposed law and the map, which practically means that most of the work accomplished has gone to waste.¹³⁷

With such abrupt turnaround from zoning's supporters, it became clear that the proposed ordinance would have to be revised.

The Chamber of Commerce nominated a special committee to review the proposed zoning ordinance.¹³⁸ In September 1923, the Zoning Commission petitioned that the Aldermen return the zoning ordinance to the commission for review.¹³⁹ The Chamber of Commerce filed a counter-petition, asking that the ordinance not be recommitted to the commission, and that public hearings be held instead.¹⁴⁰ The once potentially bright future of the 1923 proposed zoning ordinance was in sudden, serious doubt.

The manufacturers won this battle. The Board of Aldermen returned the ordinance to a beleaguered Zoning Commission. The President of the Board, John W. Murphy, ruled that insofar as the ordinance had been illegally presented, it had never been officially before the Board.¹⁴¹ In early September, Lewis Welch of Phoenix Mutual Life Insurance Company suggested that the

¹³⁷*Id.*

¹³⁸This committee's membership was as follows: Murray Sargent, Secretary of Sargent & Co., hardware manufacturers; Thomas Hooker, Jr., lawyer; Charles M.A. Costello, President and Treasurer of C Cowles & Co., motor car and carriage hardware lamps; H.M. Kochersperger, Manager of Tobey & Kirk, investment securities; L.J. Carmalt, consulting engineer; and S. Fred Strong, Treasurer of the Connecticut Savings Bank. *Chamber Committee to Consider Zoning Ordinance*, NEW HAVEN, September 1923, at 7; NEW HAVEN CITY DIRECTORY (1923).

¹³⁹1923 B.A. JOURNAL, *supra* note 89, at 241.

¹⁴⁰*Id.* See also, *Leonard S. Tyler is Elected Head of Zoning Board*, NEW HAVEN JOURNAL-COURIER, February 12, 1924, at 3.

¹⁴¹*Leonard S. Tyler is Elected Head of Zoning Board*, *supra* note 140, at 3.

commission was so handicapped by prejudice that it should be retired.¹⁴² Not long thereafter, Major Gray resigned as head of the Zoning Commission. He left claiming personal reasons for his departure, explaining that his professional and private affairs would not permit him the time for public hearings.¹⁴³ Mayor FitzGerald replaced Gray, a city planner and architect, with a manufacturer: Leonard S. Tyler of the Acme Wire Company.

4. Creating the Second Ordinance, January 1, 1924 - December 31, 1925

Mayor FitzGerald evinced disappointment with the apparent fall of zoning.¹⁴⁴ As of 1924, zoning had taken longer in New Haven than in any other city in the United States.¹⁴⁵ The planned revision of the ordinance resulted in a restructuring of the Zoning Commission's membership. Harry W. Hitchcock, David McCoy, and Michael Sola were replaced by George T. Thompson, Alderman; Sylvester Z. Poli, Art Commission Member; Edward Minor, Secretary and Treasurer of the Connecticut Sash and Door Company; Augustine Linahan, Manager at the National Casket

¹⁴²Letter from Lewis S. Welch to George Dudley Seymour (September 13, 1923) (on file with Yale University Manuscripts and Archives, GR 442, Series IV, Box 82G). Welch warned, "The tentative draft for the superstructure of the Ordinance has been thoroughly misunderstood as to purpose. The result is a large amount of criticism of the Commission which will hamper all its further efforts, however wisely administered." *Id.*

¹⁴³*Gray Resigns From Head of Zoning Group*, NEW HAVEN UNION, November 20, 1923, at 2.

¹⁴⁴Mayor David Fitzgerald, First Message for 1924 (January 1, 1924), in 1924 B.A. JOURNAL, *supra* note 89, at 29. Fitzgerald noted, "It was unfortunate that the results of the tremendous task which confronted this Commission and the investigations and research in connection with the acquiring of data, etc., upon which to predicate a report should have met with the criticism it did. The purposes of zoning are, according to most people, meritorious ones." *Id.*

¹⁴⁵George B. Ford, Consultant to the New Haven Zoning Commission, Statement to the Zoning Commission (March 10, 1924), in ZONING COMMISSION MINUTES, *supra* note 24, at 72.

Company; and William H. Allen, architect.¹⁴⁶ The second commission voiced two major concerns. The first, predictably, was that the area set aside in the ordinance for industry was not practicable.¹⁴⁷ The Building Inspector noted that the ordinance tried to push New Haven along the lines of a much larger city, like New York, and that the industrial people in New Haven did not want that.¹⁴⁸ Several members observed that too much area had been set aside for high class development.¹⁴⁹ All appeared to agree with Minor's simple statement that factories should be protected.¹⁵⁰

The second concern of the new commission was selling zoning to the people. The first commission had bred suspicion and resentment through secrecy; this commission was not going to risk the same. If anything, the new commission appeared willing to reach too far in the other direction, opening the process up so far to the public that the commission no longer had responsibility for organizing the project. Seymour insisted that the commission had to go to the people.¹⁵¹ The commission developed an outreach program consisting of joint sessions with various

¹⁴⁶CITY YEAR BOOK, *supra* note 3, at 28 (1923); NEW HAVEN CITY DIRECTORY (1923).

¹⁴⁷ZONING COMMISSION MINUTES, *supra* note 24, at 62 .

¹⁴⁸Joseph Austin, Statement to the Zoning Commission (February 11, 1924), *in* ZONING COMMISSION MINUTES, *supra* note 24, at 62.

¹⁴⁹George W. Crawford and George Dudley Seymour, Statements to the Zoning Commission (February 11, 1924), *in* ZONING COMMISSION MINUTES, *supra* note 24, at 62-63. The reason underlying this objection may have been that the ordinance did not make enough area available for the building of apartments

¹⁵⁰Edward Minor, Statement to the Zoning Commission (February 11, 1924), *in* ZONING COMMISSION MINUTES, *supra* note 24, at 63.

¹⁵¹George Dudley Seymour, Statement to the Zoning Commission (March 10, 1924), *in* ZONING COMMISSION MINUTES, *supra* note 24, at 63.

city committees, public hearings on zoning use restrictions, and hearings in each ward.¹⁵² Ford's Technical Advisory Corporation issued revisions for the ordinance on March 24, 1924.¹⁵³ The public comment stage of the process was about to begin.

Public meetings gave the New Haven press its first opportunity to evaluate zoning closely. The *Journal-Courier*, once in favor of zoning, now voiced a less supportive opinion. First page headlines read, "Factories Rap Zoning at First Hearing," "Resident Zoning Also Objected to, Hearing Shows," and "Over 200 Voice Opposition to Zone Scheme."¹⁵⁴ Still, the press did little to actively discourage zoning. Local papers published articles before and after important hearings, but there neither anti-zoning editorializing nor daily coverage existed. The front page of a newspaper was far more likely to carry interest stories about illegal liquor stockpiles, high society divorces, and European political intrigue. Zoning was not a focal point for the press.

Manufacturing and real estate interests immersed themselves in the zoning process through a series of secret meetings. From June to November 1924, members of the Zoning Commission held twenty private sessions with some of the most powerful men in the city. F.M. Ward of the New Haven Real Estate Board attended ten of the meetings. Other frequent guests included: Abraham Podoloff, realtor and President of the New Haven Real Estate Board; William Hennig, realtor; George Berger, President of Berger Brothers, corset manufacturers; Edward E. Minor, Superintendent of the New Haven Water Company; and Wallace Hotton of the Seamless Rubber

¹⁵²ZONING COMMISSION MINUTES, *supra* note 24, at 67-68.

¹⁵³Memorandum from the Technical Advisory Corporation to the New Haven Zoning Commission (March 24, 1924) (on file with Yale University Manuscripts and Archives, GR 442, Series V, Box 97, Folder 1409).

¹⁵⁴*Factories Rap Zoning Law at First Hearing*, April 22, 1924, at 1; *Resident Zoning Also Objected to, Hearing Shows*, April 29, 1924, at 1; *Over 200 Voice Opposition to Zone Scheme*, April 1, 1925, at 1.

Company.¹⁵⁵ The information discussed at these sessions remains unrecorded. We can only assume that the needs of New Haven's manufacturers and realtors were expressed and met over the course of these six months.

The desires of business having been taken into account, the Zoning Commission could move to discussions with the general public. Commission members and Aldermen held ward-by-ward meetings over a three month period.¹⁵⁶ Aldermen utilized various methods for encouraging participation,¹⁵⁷ and the public responded with great interest.¹⁵⁸ Several hearings drew over fifty attendees; one hearing attracted 228 participants.¹⁵⁹ Zoning received mixed reviews. Out of thirty-three wards in New Haven, only three voiced unanimous support for the plan: 4, 8, and 25.¹⁶⁰

Once finished with the ward hearings, the Zoning Commission returned to contemplate the work ahead. Its most immediate concerns were the lone Industrial C district and the suggestion that a

¹⁵⁵ZONING COMMISSION MINUTES, *supra* note 24, at 91-98. Top ranking executives from the Winchester Repeating Arms Company, Southern New England Telephone Company, and the New Haven Gas Light Companies also attended at least one meeting each. *Id.*

¹⁵⁶The Commission noted, however, that these were not to be considered public meetings. ZONING COMMISSION MINUTES, *supra* note 24, at 117. It should be noted that opposition to or support of zoning at these hearings is somewhat hard to gauge, as the Zoning Commission stopped taking votes after the first five ward meetings.

¹⁵⁷Alderman George E. Thompson sent a postcard to every property owner in his ward. *Hold Joint Zone Hearing Tonight*, NEW HAVEN JOURNAL-COURIER, March 19, 1925, at 1. Alderman Burton Winter requested that the principals of the schools in the ward ask teacher to announce the hearing to school children. *Over 200 Voice Opposition to Zone Scheme*, *supra* note 154, at 1.

¹⁵⁸*Many Attend Zone Hearing*, NEW HAVEN JOURNAL-COURIER, February 12, 1925, at 5.

¹⁵⁹*Over 200 Voice Opposition to Zone Scheme*, *supra* note 154, at 1.

¹⁶⁰*Id.* at 101, 105, 119. It is interesting to note that Yale University played no visible role in the zoning debate. Yale owned substantial property in wards 1, 18, 20, and 30. DANA, *supra* note 18, at 10a. These wards diverged in their support of the zoning plan. Ward 1 was opposed; Ward 18 expressed concern; Wards 20 and 30 voiced little opposition. ZONING COMMISSION MINUTES, *supra* note 24, at 100, 114, 131-133, 134-135.

Residential AA district be created for Whitney Avenue. The commission agreed unanimously to do away with the single Industrial C district, and instead to create small Industrial C districts in areas already containing Industrial C activities.¹⁶¹ An exclusive Residence AA district for high-class apartments was developed with little discussion.¹⁶² A sub-committee held three meetings in July, 1925, at which they made tens of alterations to the already-revised ordinance.¹⁶³ They effected the greatest number of changes in favor of Business A, Industrial B, Industrial C and Residential A districts.¹⁶⁴ The Zoning Commission completed its revisions on July 30, 1925.

New Haven was growing impatient for results. The Aldermen anxiously awaited a final report before the end of the administration, when new and less experienced members would join the Board.¹⁶⁵ They wanted something to come of the \$25,000 spent and the hearings in their wards.¹⁶⁶ In response, the Zoning Commission compiled a final ordinance, which was produced for distribution to the Board of Aldermen in late 1925.¹⁶⁷

¹⁶¹ZONING COMMISSION MINUTES, *supra* note 24, at 143.

¹⁶²*Id.*

¹⁶³ZONING COMMISSION MINUTES, *supra* note 24, at 144-147. The Technical Advisory Corporation was not consulted on these changes. These changes appear to have been made at the whim of the sub-committee rather than on the scientific basis favored by 1920s planners.

¹⁶⁴*Id.*

¹⁶⁵*Requesting Zoning Commission to Submit Report*, 1925 B.A. JOURNAL, *supra* note 89, at 326.

¹⁶⁶*Id.* In all likelihood, the Aldermen also wanted to be able to take credit for passing the ordinance while they were in office.

¹⁶⁷ZONING COMMISSION MINUTES, *supra* note 24, at 148. Unfortunately, no copies of this proposed ordinance have been preserved.

5. Creating the Final Ordinance, January 12, 1926 - December 4, 1926

New Haven might have had its final ordinance by early 1926, but the state legislature intervened. In July 1925, the General Assembly in Hartford amended New Haven's zoning enabling act.¹⁶⁸ Perhaps following a suggestion put forth by the Greater New Haven Chamber of Commerce's, the new enabling act borrowed in small part from the Standard State Zoning Enabling Act published by the United States Department of Commerce.¹⁶⁹ Among other changes, the amended enabling act mandated that the Zoning Commission was to be dissolved and its work assumed by the City Plan Commission.¹⁷⁰ While the Zoning Commission had completed its ordinance by the time the amendment was enacted, the city's Corporation Counsel had not yet reviewed the ordinance. By the time Corporation Counsel had finished its re-drafting in early 1926, the switch to zoning control by the City Plan Commission had taken place.¹⁷¹

After review, the City Plan Commission isolated several concerns with the 1925 ordinance.

¹⁶⁸1925 Conn. Spec. Acts 1006.

¹⁶⁹*Compare A Standard State Zoning Enabling Act* (rev. ed. 1926), § 3 with 1925 Conn. Spec. Acts 1006, § 2.

¹⁷⁰1925 Conn. Spec. Acts 1006, § 3. New Haven requested the codification of this transfer of power in order to prevent the existence of boards with overlapping duties. *General Zone Plan Bill Not Favored Here*, NEW HAVEN JOURNAL-COURIER, March 26, 1925, at 1.

¹⁷¹*See* 1 MINUTES OF THE CITY PLAN COMMISSION 61 (1939) (on file at the New Haven City Plan Department) [hereinafter CITY PLAN MINUTES].

The members of the City Plan Department were as follows: Mayor John B. Tower; Isaac M. Ullman, President of Strouse Adler & Co.; Edward S. Nettleton, City Engineer; Alderman Angus M. Fraser, Supervisor of Lines at Southern New England Telephone Co.; Harry C. Knight, President-General Manager of Southern New England Telephone Co.; Henry E. Parmelee, lawyer; and Frederick A. Davis, Engineer on the City Plan. CITY YEAR BOOK, *supra* note 3, at 19 (1927); NEW HAVEN CITY DIRECTORY (1925).

They began the tedious process of making small changes.¹⁷² The City Plan Commission did not have the patience of its predecessor for reviewing the ordinance, however. City Plan wanted a shorter, simpler ordinance. They recalled George B. Ford as a temporary advisor.¹⁷³ The commission then voted to hire Edward M. Bassett, the father of zoning in New York, to draw up a simplified zoning ordinance for New Haven.¹⁷⁴ The recently elected Mayor Tower, not a supporter of zoning as Mayor FitzGerald had been, agreed with the need for a shorter ordinance.¹⁷⁵ After a brief delay, the Board of Finance agreed to an appropriation of \$2500 for Bassett's services: \$100 a day for 25 days of work.¹⁷⁶

In 1926, Edward Bassett was in the midst of leading a national movement for zoning. Between 1917 and 1927, Bassett traveled throughout the country, presenting talks on zoning, drawing up ordinances and enabling acts, and trying zoning cases before the courts.¹⁷⁷ He

¹⁷²The Commission addressed such issues as the preamble, the validity of the Residence AA district, and definitions of multiple terms ranging from "clergyman" to "noxious odors." CITY PLAN MINUTES, *supra* note 171, at 63-64, 68-69.

¹⁷³CITY PLAN MINUTES, *supra* note 171, at 72.

¹⁷⁴CITY PLAN MINUTES, *supra* note 171, at 82.

¹⁷⁵MAYOR JOHN B. TOWER, STATEMENT TO THE CITY PLAN COMMISSION (MAY 17, 1926), *IN* CITY PLAN MINUTES, *supra* note 171, at 83. As Tower was a manufacturer and garage owner, it is understandable that he would have been antagonistic toward zoning. Tower was the proprietor of the Hickok Co. and Gilbert Manufacturing Co., and president of the Geometric Garage. NEW HAVEN CITY DIRECTORY (1925). As a republican, Tower was also likely to side with Ullman, a leading force in New Haven's Republican Party. *See* DAHL, *supra* note 17, at 14, 39.

¹⁷⁶CITY PLAN MINUTES, *supra* note 171, at 81, 86.

¹⁷⁷EDWARD M. BASSETT, AUTOBIOGRAPHY 121-122 (1939). Bassett had been through Connecticut in 1924 as the keynote speaker at a meeting at which New Haven was represented by Leonard Tyler of the Zoning Commission. *See* Minutes of a Conference Called by the Connecticut Chamber of Commerce Between Representatives of Certain Municipalities in Connecticut Which Now Have Local Zoning Bills Before the General Assembly (March 18, 1924) (on file at Yale University

represented a known commodity, someone upon whom the commission could count to complete a simple ordinance. Bassett focused on real estate values, which was bound to please businessmen in any town.¹⁷⁸ He began his work for New Haven in late June, 1926. Bassett finished his redrafting of the ordinance by August 19, cutting it in length down to thirteen pages.¹⁷⁹ The Zoning Commission had spent three years attempting to re-draft Ford's original ordinance. Bassett accomplished the task in less than two months.¹⁸⁰

The City Plan Commission of New Haven, like the Zoning Commission before, knew that it could not pass the new ordinance without the support of the manufacturers. The commission sent out fifty letters of invitation for a special hearing to discuss the new ordinance and map.¹⁸¹ The invitees raised few objections. Having answered the questions of the manufacturers, the City Plan Commission announced a public hearing, scheduled for September 10, 1926, for discussion of its tentative report on the ordinance.¹⁸² This hearing represented a final victory for zoning in New Haven. Many powerful men voiced support of the ordinance: E.P. Calhoun of American Steel & Wire, Henry Brewer of Winchester Repeating Arms, George Berger of Berger Brothers, Wallace Hutton of the Seamless Rubber Company.¹⁸³ A sense of joining together and closure prevailed.

Manuscripts and Archives, MS 847, Series I, Box 3, Folder 36).

¹⁷⁸TOLL, *supra* note 5, at 197-198.

¹⁷⁹NEW HAVEN, CONN., ZONING ORDINANCE (1926).

¹⁸⁰CITY PLAN MINUTES, *supra* note 171, at 90,

¹⁸¹CITY PLAN MINUTES, *supra* note 171, at 107.

¹⁸²*Legal Notice*, JOURNAL COURIER, September 3, 1926, at 15.

¹⁸³CITY PLAN MINUTES, *supra* note 171, at 110.

The following sentiment captured the general mood: “If this ordinance that has been under consideration for several years isn’t adopted because of a few who may be interested in some particular street or block, it will never get anywhere. . . . I am in favor of its being adopted.”¹⁸⁴

The last step for the City Plan Commission would be attendance at one more public meeting, this time with the Committee on Ordinances on October 20.¹⁸⁵ This final meeting ran along much the same line as the September 10 public hearing. Overall, only three citizens voiced opposition to zoning; ten spoke in favor of zoning, and sixty or more indicated approval.¹⁸⁶ The lack of opposition surprised and pleased the City Plan Commission and the aldermanic committee members.¹⁸⁷

On November 8, 1926, the Committee on Ordinances recommended the enactment of the zoning ordinance to the Board of Aldermen.¹⁸⁸ Less than two weeks later, the United States Supreme Court upheld zoning as a valid exercise of police power in *Village of Euclid v. Ambler Realty Company*.¹⁸⁹ This decision had national repercussions. James Metzenbaum, village counsel, claimed that “It was recognized from coast to coast, that a defeat in this case, would cause all zoning

¹⁸⁴Butler, Statement at a Public Meeting to Discuss the New Zoning Ordinance (September 10, 1926), in CITY PLAN MINUTES, *supra* note 171, at 111.

¹⁸⁵*See* CITY PLAN MINUTES, *supra* note 171, at 127-129.

¹⁸⁶*Three Oppose New Zone Law at Public Meet* [sic], NEW HAVEN JOURNAL-COURIER, October 21, 1926, at 1. Along with Kusterer, Attorney Beers, representing F.C. Bishop, and Frank Kenna spoke in opposition of zoning. *Id.* Bishop was a real estate agent and dealer; Kenna was a lawyer, presumably associated with real estate law. NEW HAVEN CITY DIRECTORY (1925).

¹⁸⁷*Id.*

¹⁸⁸1926 B.A. JOURNAL, *supra* note 89, at 352.

¹⁸⁹272 U.S. 365, 47 S. Ct. 114.

ordinances in successive order throughout the land to fall, like a row of dominoes stood on end.”¹⁹⁰ In New Haven, one newspaper responded, “the old let-alone policy will not do.”¹⁹¹ Planners called the *Euclid* decision a complete victory for reasonable and proper zoning.¹⁹² While it is unclear to what extent questions of the ordinance’s constitutionality mattered to the New Haven Aldermen, the issue had been raised in the city as recently as October 20.¹⁹³ The *Euclid* decision would have settled any doubts remaining in the minds of the Board members. The Board of Aldermen enacted the zoning ordinance by a unanimous vote on December 4, 1926.¹⁹⁴

B. The Final Ordinance

New Haven’s zoning ordinance underwent significant change between its first inception in 1923 and its final version of 1926.¹⁹⁵ As its makers had intended, the 1926 ordinance was far simpler than its predecessor. The ordinance included the following: definitions, one section each on each of the nine use districts, eight supplemental provisions, and ten general provisions.¹⁹⁶ In 1926, the ordinance may have been more notable for what it did not include than for its substantive

¹⁹⁰METZENBAUM, *supra* note 10, at 111.

¹⁹¹*The Constitution and Zoning*, NEW HAVEN JOURNAL-COURIER, November 25, 1926, at 8.

¹⁹²*United States Supreme Court Sustains Zoning*, CITY PLANNING, January 1927, at 73.

¹⁹³See CITY PLAN MINUTES, *supra* note 171, at 129.

¹⁹⁴1926 B.A. JOURNAL, *supra* note 89, at 400.

¹⁹⁵Unfortunately, most of the interim versions have been lost.

¹⁹⁶NEW HAVEN, CONN., ZONING ORDINANCE (1926).

conditions. New Haven's ordinance lacked many elements, such as multiple districting, common to other municipalities' regulations. Cities such as New York and Milwaukee were zoned not only for use districts, but for height and area districts.¹⁹⁷ New Haven may have been so built up as not to need restrictions beyond use districts. Some municipal ordinances allowed for the placement of public and semi-public buildings by special license; New Haven did not provide for any special exceptions.¹⁹⁸ New Haven instituted no restrictions on lot frontage, most likely because of the great variety of shape and size of lots found in New Haven.¹⁹⁹ Compared to many other cities, New Haven boasted a simple, easy-to-follow zoning ordinance.

C. Flaws in the Political Process

The initiators of zoning in New Haven anticipated that zoning would be a quick, simple process. Unfortunately, New Haven's zoning planners had no clear agenda. The Zoning Commission established a policy of secrecy without thinking through the possible consequences. The development of zoning in a communication vacuum led to public dissatisfaction with the ordinance. New Haven's industrialists demonstrated their power by using procedural complaints to scuttle the substance of the ordinance. Real estate men added their voices to the disappointed, while the general public became lost in the shuffle. What followed was a haphazard jumble of decision makers and revision processes. Secrecy, strong interest groups and inconsistency all informed one another in New Haven's zoning story.

¹⁹⁷NEW YORK, N.Y., BUILDING ZONE RESOLUTION §§ 8, 10 (1916), *reprinted in* WILLIAMS, *supra* note 70, at 311, 314; Milwaukee, Wis., Zoning Ordinance, §§ 26.5, 26.6 (1917), *reprinted in* WILLIAMS, *supra* note 70, at 328, 330.

¹⁹⁸*See* FRANK B. WILLIAMS, THE LAW OF CITY PLANNING AND ZONING 278 (reprint 1969) (1922).

¹⁹⁹*See* Office of the Zoning Commission, *supra* note 6.

1. Secrecy

The Zoning Commission began the formative process of zoning with an open mind toward public participation. Within its first few weeks of operation, the Zoning Commission had isolated three publicity issues that needed to be addressed immediately: convincing the public elite of the need for changes, determining what to tell the general public, and persuading the city government of the need for adequate funding. Clinching public support was a necessary first step towards gaining funding and popular support. The Zoning Commission approached the city's elite--the Board of Finance, the Chamber of Commerce, the Real Estate Board, Yale University, the Trades Council, Kiwanis and Rotary clubs--with care.²⁰⁰ Appropriations concerns in particular demanded that the elites be tested for receptiveness to the zoning plan.

The city's elite gave zoning an excellent reception at the April 7, 1922 meeting. As the commission had garnered powerful support, little incentive remained for open dealings. The commission already had the strong backing of Mayor FitzGerald, an Irish Democrat, who offered to do "whatever he could do in the matter."²⁰¹ While some members of the Zoning Commission felt that the commission could best sway Aldermanic interests by garnering the support of the general public, inclinations toward secrecy prevailed. There was no perceived need to continue with public outreach. Goodhart suggested that the people should not be aroused, and the commission should

²⁰⁰Jacob Goodhart, Statement to the New Haven Zoning Commission (March 22, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 6.

²⁰¹Mayor David Fitzgerald, Statement at a Sub-Committee of the New Haven Zoning Commission (March 27, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 7.

keep quiet until appropriations were made.²⁰² When McCoy asked whether the proceedings would interfere with the people, Goodhart replied, ““take one thing at a time.””²⁰³ Crawford also suggested that information be given to the public, but Goodhart insisted that privacy was imperative.²⁰⁴ As a result of this brief discussion, the general public was to learn little of the Zoning Commission’s plans for the next two and a half years.²⁰⁵

Initially, the inclination toward secrecy did the Commission no harm. The sales pitch to the Board of Aldermen on May 3, 1922 was carefully tailored to the wishes of the elite. George Ford stressed the potential increase in property values and thus in the grand list, and pointed out that zoning would encourage real estate investment.²⁰⁶ As expected,²⁰⁷ the Aldermen were quite receptive. Showing strong support, Alderman Peck queried whether \$25,000 would be preferable to

²⁰²Jacob Goodhart, Statement to the New Haven Zoning Commission (April 27, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 13-14.

²⁰³David McCoy and Jacob Goodhart, Statements to the New Haven Zoning Commission (April 27, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 14.

²⁰⁴George Crawford and Jacob Goodhart, Statements to the New Haven Zoning Commission (April 27, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 14-15. Crawford indicated concern that the public might obtain biased information from the city’s newspapers. *Id.*

²⁰⁵The public’s only means of obtaining information about zoning would be through local newspapers, and reporting during the first years of the commission’s operation was rather cursory. See *New City Zoning Commission Has First Meeting*, JOURNAL COURIER, March 23, 1922, at 2.

²⁰⁶George B. Ford, Statement before the Aldermanic Committee (May 3, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 13-14.

²⁰⁷A full week before meeting with the Aldermanic Committee, George Dudley Seymour observed, “The Aldermen plainly ready to spend money on *zoning*.” Note to himself (April 28 or 29, 1922) (on file with Yale University Manuscripts and Archives, GR 442, Series IV, Box 82G).

\$10,000.²⁰⁸ Those in favor of the plan agreed unanimously that zoning was the “best thing that ever came to New Haven.”²⁰⁹ With appropriations approved by the Aldermen and in the hands of the big business-oriented Board of Finance, the commission saw no need to inform the public of its proceedings.

Secrecy would remain a mark of the Zoning Commission. Following the completion of the Technical Advisory Corporation’s report in 1923, the commission held a series of meetings to discuss Ford’s proposals. On Goodhart’s motion, it was voted that no information discussed at these meetings be made public.²¹⁰ Not until the ward hearings in 1925 would the dangers inherent in Goodhart’s suggestion be made clear. The Zoning Commission’s silence lead to public rejection of significant elements of the ordinance.

A large segment of New Haven’s citizenry turned out at the ward hearings to protest zoning. The general public had not been a part of the decision making process, and felt that the resulting ordinance and map ran counter to their needs. The strongest objections came from residents of the Quinnipiac Wards, 26, 27, 28, and 31, where meetings were especially well attended.²¹¹ The discussion in those wards revolved entirely around the proposal that all Industrial C use be restricted to the Quinnipiac Meadows.²¹² The Meadows had been chosen for Industrial C development

²⁰⁸ Statement before the Aldermanic Committee (May 3, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 19. McCoy’s response to the possibility of obtaining \$25,000 was, “[P]eople are getting educated to large appropriations.”

²⁰⁹*Zoning Plans Approved at Cost Hearing*, *supra* note 22, at 8.

²¹⁰Jacob Goodhart, Statement to the Zoning Commission (April 27, 1923), in ZONING COMMISSION MINUTES, *supra* note 24, at 45.

²¹¹109 citizens attended the Ward 26 meeting; 77 attended Ward 27, and 24 attended Ward 28. ZONING COMMISSION MINUTES, *supra* note 24, at 120, 124, 128.

²¹²ZONING COMMISSION MINUTES, *supra* note 24, at 120-130.

because it was the least developed part of the city, it had the best transportation of any area, and the wind would blow odors over away to the east.²¹³ Ward 31 would be physically affected by this proposal, and Wards 26, 27, and 28 sat directly across the river.²¹⁴ Ward 26 was informed that, within Board of Health regulations, the Meadows would become a dumping ground for the entire city.²¹⁵ This resulted in public outcry.

The Quinnipiac wards voiced three concerns with the proposal. First, there was a concern for general health and public welfare. Residents noted that there were nine schools within a mile of the proposed Industrial C zone, and that mothers were accustomed to taking their children walking along the river parks.²¹⁶ One resident queried, “is protection of homes better than 35 acres of soap factories?”²¹⁷ Second, the wards felt betrayed by the rest of the city. Residents argued that the plan was “thought out from Whitney Avenue and Westville,” and that Quinnipiac residents were just as good as the people on Whitney Ave.²¹⁸ Mr. Tyler’s plea that the commission simply needed an available place for unrestricted industry fell on deaf ears.²¹⁹ The wards felt too strongly about their third concern, lack of attention by the Board of Health and the courts, to open their arms to new

²¹³*Id.* at 124.

²¹⁴*Ward Boundaries*, NEW HAVEN CITY DIRECTORY 1522, 1524 (1925).

²¹⁵ZONING COMMISSION MINUTES, *supra* note 24, at 120.

²¹⁶*Id.* at 127, 129.

²¹⁷*Id.*, at 137.

²¹⁸*Id.* at 129.

²¹⁹Leonard Tyler, Statement to the Ward 28 Hearing on Zoning (March 31, 1925), *in* ZONING COMMISSION MINUTES, *supra* note 24, at 129.

smoke and odor. They noted the failure of the citizens to sue successfully the West Haven fat rendering plant and the inattention of the Board of Health to Ward 31 concerns.²²⁰ The residents of these wards vowed to do battle to prevent the Meadows from becoming an unrestricted Industrial zone.

In addition to the strong opposition to the single Industrial C district, resistance to zoning arose for many other reasons. The public felt uninformed about zoning. The Zoning Commission encountered certain questions repeatedly: are there restrictions on factory growth, how are non-conforming uses treated in case of fire, how is landlord gouging prevented in non-conforming use buildings, why should we have to walk a long distance to get to a decent business area, how will this affect insurance and mortgages?²²¹ Many citizens attended these meetings in hopes of influencing the commission to make the districting of their property less restrictive.²²² Some came simply to express general views of the districting system.²²³

It is clear from comments of attendees that the citizens of New Haven did not feel prepared to participate in the ward meetings. Attendees raised the concern that no provision had been made to acquaint people with the zoning ordinance.²²⁴ Mr. Allen of Wards 23 and 24 expressed the confusion well: “[I] don’t know whether I approve. I have read of it but don’t know enough about

²²⁰ZONING COMMISSION MINUTES, *supra* note 24, at 128, 138.

²²¹*See, id.*, at 102, 109, 110, 131, 140.

²²²*See, id.* at 107 (area for public garages desired on Chestnut St.), 110 (request that the northwest corner of Edwards and Livingston be made Residence B rather than Residence A, 114 (request that Munson street east of Winchester Ave. be made Industrial B rather than Business A).

²²³These people can be broken down generally into three groups: those who wanted less industry, those who wanted less Residence A, and those who wanted a Residence AA district added to the ordinance to exclude the “low type.” *See, id.* at 110, 134-135, 140.

²²⁴*See, id.*, at 117.

it to vote.”²²⁵ It is possible that, had the commission had the backing of the general public from the outset, the list of disagreements with which it found itself faced would have been significantly smaller. As a result of their secret meetings, the Zoning Commission encountered public resentment and the need to rework much of their effort.

To the end, zoning planners in New Haven felt uncomfortable regarding the role of the public. The final zoning meeting in 1926 centered on the question of whether zoning should be implemented immediately, or whether information should be widely disseminated to the public and more time taken for consideration. The sense that zoning must move forward prevailed. Zoning’s supporters silenced dissenters quickly. Suggestions that the public have more time to consider zoning met with contentions that the process had already taken too long.²²⁶ Those favoring zoning also raised the contention of public indifference: ““There are more people on my street than there are here tonight. For three years this thing has been agitated by the press. If after three years we can’t get any larger attendance it seems we ought to put it through whether they want it or not.”²²⁷ Zoning’s detractors might have responded by noting that the hearing had not been well-publicized, and the press had done little if any agitating. No one spoke to this, however. The public would have to make its needs known through less direct and less efficient methods: map changes and variances.

The commission’s resistance to public participation also resulted in backlash from New Haven’s industrial leaders. Realtors, architects and merchants appeared ready to support zoning

²²⁵Allen, Statement at the Ward 23 & 24 Hearing on Zoning (March 19, 1925), in ZONING COMMISSION MINUTES, *supra* note 24, at 117.

²²⁶See CITY PLAN MINUTES, *supra* note 171, at 114-115.

²²⁷Eugene Breck, Statement at a Public Meeting to Discuss the New Zoning Ordinance (September 10, 1926), in CITY PLAN MINUTES, *supra* note 171, at 114.

from the outset,²²⁸ but the position of industrial businessmen was not so clear. The commission initially considered the value of informing industrial interests. At the very first Zoning Commission meeting, Goodhart referred to industrial location as the “life blood of a city.”²²⁹ At the second meeting, Major Gray suggested that the manufacturing interests have a committee appointed to meet with the commission.²³⁰ Leanings toward secrecy, however, prevented Gray’s suggestion from being implemented. The Zoning Commission did not involve industry in the creation of Ford’s proposal.

In reviewing Ford’s first proposed zoning ordinance, the Zoning Commission found itself caught in a conflict between the need for nuisance abatement on the one hand, and desires to placate the industrial community and reap economic benefits on the other. E.P. Goodrich, Ford’s assistant, pointed out that various industrial districts were pointed out as the greatest weak spots in the proposed plan.²³¹ To address this weakness, the commission discussed areas of possible enlargement.²³² Conversations about expanding industrial districts soon became intermingled with discussions of nuisance. The commission felt restricted by the fact that winds came in to New

²²⁸George Herbert Gray, Statement to the New Haven Zoning Commission (April 27, 1922), in *ZONING COMMISSION MINUTES*, *supra* note 24, at 14.

²²⁹Jacob Goodhart, Statement to the New Haven Zoning Commission (March 22, 1922), in *ZONING COMMISSION MINUTES*, *supra* note 24, at 4.

²³⁰George Herbert Gray, Statement to the New Haven Zoning Commission (April 27, 1922), in *ZONING COMMISSION MINUTES*, *supra* note 24, at 14.

²³¹*ZONING COMMISSION MINUTES*, *supra* note 24, at 54.

²³²*Id.*

Haven from the west, which left little room for manufacturing.²³³ Desire to abate smoke and odors overcame the impetus to grant more land to industry, however. The commission reduced the nuisance zone on the Quinnipiac Meadows by removing industrial frontage on Quinnipiac Avenue.²³⁴ It was even suggested that nuisances be kept out of the city, and that industry be removed at least 1000 feet from any highway.²³⁵ And while the proposed ordinance allowed the continuance of existing non-conforming uses, enlargements and alterations of non-conforming uses were tightly restricted.²³⁶ Industrialists responded angrily to these restrictions during their August 1923 uprising against the procedural errors of the commission. Upon reflection, the Zoning Commission later noted with regret that perhaps not enough care had been used in considering industry.²³⁷

As with industry, the Zoning Commission largely ignored the concerns of real estate developers in its earliest years.²³⁸ In reviewing the residential area provided by Ford's 1923

²³³*Id.*, at 52. Odors from West Haven's industrial areas were already bringing complaints from residents and park goers on New Haven's western side. The only space for expansion of industry in the city of New Haven was toward the northeast. *Id.*

²³⁴*Id.*, at 54.

²³⁵*Id.*, at 56.

²³⁶NEW HAVEN, CONN., BUILDING ZONE ORDINANCE § 10(a), (b) (proposed 1923).

²³⁷George Thompson, Statement to the Zoning Commission (April 7, 1924), in ZONING COMMISSION MINUTES, *supra* note 24, at 72; George Dudley Seymour, Statement to the Zoning Commission (February 11, 1924), in ZONING COMMISSION MINUTES, *supra* note 24, at 62. It is surprising that the New Haven planners did not notice the under-zoning of industry in Ford's plan. Overzoning for business and industry was the rule rather than the exception in 1920s zoning. NATIONAL COMMISSION ON URBAN PROBLEMS, *supra* note 14, at 204.

²³⁸This may be due in part to the fact that, despite the Enabling Act's requirement, no realtors served on the Zoning Commission. See 1925 CONN. SPEC. ACT 1045 §2.

proposal, commission members did voice concern over the restrictions on garages in rear lots.²³⁹ Ford persuaded the commission of the necessity of preventing the presence of too many garages with their “objectionable features.”²⁴⁰ The commission also made greater provisions for higher class neighborhoods. The commission voted to increase the proposed width of residential side yards and the proposed distance of private garages from lot lines.²⁴¹ Additions were made to several Residence A areas.²⁴² The commission anticipated few objections to the planned residential districting. Real estate developers, particularly those involved in apartment and garage building, reacted dramatically to their isolation from the zoning process. Their outrage, along with that of the industrialists, resulted in the overhaul of two years’ of the commission’s work. Had the Zoning Commission elicited suggestions from manufacturers and developers from the outset, the zoning process might have been shorter and better focused.

2. Special Interest Groups

a. Industry

The story of industry and New Haven zoning is one of greed and inside deals. The Zoning Commission felt paralyzed by the manufacturer’s objections to the first proposed ordinance. Manufacturers represented the single largest class of revenue makers in the city, and employed the

²³⁹ZONING COMMISSION MINUTES, *supra* note 24, at 46.

²⁴⁰George B. Ford, Statement to the Zoning Commission (May 14, 1923), *in* ZONING COMMISSION MINUTES, *supra* note 24, at 46.

²⁴¹ZONING COMMISSION MINUTES, *supra* note 24, at 51. Residence A side yard areas, which had been 15 feet for one-story buildings, 20 feet for two-story buildings, and 25 feet for three story buildings, were increased to 20 feet, 25 feet and 30 feet respectively. The distance of private garages from lot lines in residential areas was increased from three to four feet. *Id.*

²⁴²*Id.*, at 54. These additions were made to McKinley Ave., Everit St., and Beaver Hills. *Id.* Changes were also made around Livingston St. *Id.* at 55.

largest number of men and women.²⁴³ Despite a waning influence on the Board of Aldermen, large business and manufacturing interests continued to control the Board of Finance in the 1920s.²⁴⁴ The initiators of zoning in New Haven in 1920, Chamber of Commerce industrial leaders would not sit idly by and watch the Zoning Commission create zoning around them.

Industrialists claimed the absence of public hearings as their excuse for scuttling the 1923 ordinance. But their true concerns ran far deeper than their procedural complaints. Underlying the procedural issues, and unquestionably the prime motivator of the revolt against the proposed ordinance, were concerns about how industry was treated under the ordinance. The ordinance was accused of being “obviously designed to drive manufacturing out of the City.”²⁴⁵ Manufacturers indicated the following apprehensions: a large group was classified as nonconforming, the right to expand was largely limited, and the use of certain essential commodities essential to manufacturing was prohibited or restricted.²⁴⁶ The Chamber of Commerce found that the ordinance was filled with clauses hampering industrial expansion.²⁴⁷ For example, non-conforming uses were not permitted to extend beyond 50 per cent of the assessed valuation of existing buildings, and all expansion had to

²⁴³In 1930, industry in New Haven employed 22,863 out of a possible 49, 192 employable men, and 7,064 out of a possible 20,046 employable women. DANA, *supra* note 18, at 71b. In the early 1920s, when industry in New Haven had greater power, these numbers would have been even higher.

²⁴⁴DAHL, *supra* note 17, at 82 . Between 1840 and 1900, industrialists and manufacturers had maintained a stronghold on New Haven’s chief elective offices. *Id.*

²⁴⁵A *Brief Analysis*, *supra* note 129.

²⁴⁶*Id.*

²⁴⁷Sargent, *supra* note 128.

take place within five years of the passage of the ordinance.²⁴⁸ Height restrictions limited most industrial buildings to an approximate maximum height of 80 feet.²⁴⁹

The concerns of the manufacturers would have been motivated as well by the proposed zoning map. First, new districting allowed for the development of many new industries in New Haven. An Industrial B and C district covered all of the Quinnipiac Meadows area, bordered by the Hamden town line, the Quinnipiac River, Middletown Ave., and Quinnipiac Ave.²⁵⁰ Providing a sizeable industrial zone on the map would allow new industries to challenge the status quo. Coming into the 1920s, New Haven industrialists had welcomed new industry as young men in need of jobs returned from the war.²⁵¹ By 1923, however, manufacturers had grown protectionist. Second, some manufacturers felt displaced by the zoning map. For example, the meat packing slaughter house on Long Wharf and the rubber company on Daggett Street suddenly found themselves turned into nonconforming uses.²⁵² Winchester Arms felt limited by its small Industrial B zone, as it was

²⁴⁸NEW HAVEN, CONN., BUILDING ZONE ORDINANCE § 17(h)(1) (proposed 1923).

²⁴⁹ See NEW HAVEN, CONN, BUILDING ZONE ORDINANCE § 11(e) (proposed 1923). Industrial A buildings could reach a maximum height of approximately 120 feet. NEW HAVEN, CONN, BUILDING ZONE ORDINANCE § 11(e) (proposed 1923). Only one building in the entire city, however, was zoned Industrial A in 1923. ZONING MAP OF THE CITY OF NEW HAVEN (proposed 1923) (on file at Yale University Manuscripts and Archives, MS 847, Series I, Box 3, Folder 36). It is probably not coincidence that this least-restricted industrial building was the Strouse -Adler Company, run by the powerful Ullman family.

²⁵⁰ZONING MAP, CITY OF NEW HAVEN (proposed 1923).

²⁵¹“No soldier boy, except by his own volition, should walk the streets of the city a single day without a job and without a hope of getting one. We, who are the representatives of industry in all its branches, should co-operate with the authorities of the city to see to it that this is done.” Col. Isaac M. Ullman, President of the Chamber of Commerce, Annual Address to the Chamber (April 30, 1919), in 1919 CHAMBER YEAR BOOK, *supra* note 25, at 9.

²⁵²GENERAL DATA MAP OF THE CITY OF NEW HAVEN, CONNECTICUT (1923); ZONING MAP, CITY OF NEW HAVEN (proposed 1923).

prepared for growth following the boom provided by World War I.²⁵³ New Haven's manufacturers had lost their post-war reform sentiments. Attacking the Zoning Commission's procedure provided manufacturers with a means by which to scuttle the substantive provisions of the ordinance.

The city's manufacturers had demonstrated their considerable power over the zoning process. The Zoning Commission responded by wooing the manufacturers, opening doors to their suggestions at public and secret meetings. At a public meeting in April 1923, the second Zoning Commission assuaged industrial concerns about restrictions in industrial districts.²⁵⁴ Ford reassured the audience that manufacturing would be encouraged, and that not one percent of the industries were considered harmful.²⁵⁵ The manufacturing community raised concerns about the potential growth of rubber and dye manufactories, about the possibility of permitting manufacturing where more modern methods were to be used, about offensive noises, and about billboards.²⁵⁶ The twenty-eight manufacturers at the meeting had little else to contribute. Their relative silence indicates that as a result of their September 1923 uprising, they knew their interests would be carefully considered.

The Zoning Commission reaped the rewards of acquiescing to the industrialists over the following years. Manufacturers expressed few complaints, and some gave zoning open support. In

²⁵³ZONING MAP, CITY OF NEW HAVEN (proposed 1923). Winchester Arms would soon "fall victim to peacetime expansion." DANA, *supra* note 18, at 26.

²⁵⁴*See*, ZONING COMMISSION MINUTES, *supra* note 24, at 78-82.

²⁵⁵George B. Ford, Statement at a Public Hearing Considering Zoning Restrictions in the Business and Industrial Districts (April 21, 1924), *in* ZONING COMMISSION MINUTES, *supra* note 24, at 79.

²⁵⁶*Id.* at 79-82.

wards of more than ten per cent industry,²⁵⁷ the most common concern expressed was restrictions on industrial expansion.²⁵⁸ Industrial leaders also voiced concern with the power of the Board of Zoning Appeals over non-conforming uses.²⁵⁹ Edwin Pugsley of the Winchester Repeating Arms Company said, ““it seems to me that we are going to give up a great deal by placing an industry in use in the hands of the Board of Zoning Appeals.””²⁶⁰ Several largely industrial wards had very few complaints; some even praised zoning. Alderman John Quinn of Ward 25 noted, ““our ward is very well taken care of.””²⁶¹ Overall, while industrial areas grumbled at bit, they voiced no strong opposition to the new ordinance.²⁶² Industrial support grew over time. By 1926, industrial leaders such as George Berger of Berger Brothers corsets and Henry Brewer of Winchester Repeating Arms, once ardent zoning opponents, spoke in zoning’s favor.²⁶³ E.P. Calhoun of American Steel & Wire also voiced support of zoning, having received approval of his request for change at a special

²⁵⁷DANA, *supra* note 18, at 10a (1937). Dana’s table of ward areas is based on a 1931 study, so it can be used only to approximate percentage of industry and business per ward. In 1931, the following wards had over 10% industry: 10, 11, 17, 18, 25, 27, 28, 32. *Id.*

²⁵⁸ZONING COMMISSION MINUTES, *supra* note 24, at 106.

²⁵⁹*Id.* at 111-112.

²⁶⁰Edwin Pugsley, Statement at the Ward 17 Zoning Hearing (March 10, 1925), in ZONING COMMISSION MINUTES, *supra* note 24, at 112.

²⁶¹John Quinn, Statement at the Ward 25 Zoning Hearing (March 24, 1925), in ZONING COMMISSION MINUTES, *supra* note 24, at 119.

²⁶²Wards 27 and 28 are an exception to this statement. Their objection was specifically to the Meadows Industrial C proposal, however, and not to the ordinance in general.

²⁶³CITY PLAN MINUTES, *supra* note 171, at 110.

meeting with the City Plan Commission.²⁶⁴ Business and politics had become inextricably intertwined over the course of zoning development.

Industry benefitted greatly from the final 1926 zoning ordinance. 1923 restrictions on the enlargement and alteration of existing non-conforming uses were lifted.²⁶⁵ Restoration of buildings destroyed by fire or acts of God had to be restored within a year under the 1923 ordinance; the 1926 ordinance provided that restoration could commence at any time.²⁶⁶ The prohibition on residence in Industrial C areas had been removed by 1926.²⁶⁷ The City Plan Commission had added a clause permitting the development of future methods that might be improvements on extant methods, yet would be contrary to the ordinance.²⁶⁸ Many manufacturing items restricted in Industrial A and B districts by the 1923 ordinance, such as carbon, lampblack, graphite, glucose, linoleum, and poison, were permitted in 1926.²⁶⁹ Most significantly, rubber manufacture was removed from the list of

²⁶⁴CITY PLAN MINUTES, *supra* note 171, at 107-108.

²⁶⁵See NEW HAVEN, CONN., ZONING ORDINANCE § 10(a), (b) (proposed 1923).

²⁶⁶NEW HAVEN, CONN., ZONING ORDINANCE § 10(c) (proposed 1923), NEW HAVEN, CONN., ZONING ORDINANCE § 1303 (1926).

²⁶⁷See NEW HAVEN, CONN., ZONING ORDINANCE § 9 (proposed 1923).

²⁶⁸CITY PLAN MINUTES, *supra* note 171, at 107-108 (1933). *See, e.g.*, NEW HAVEN, CONN., ZONING ORDINANCE § 1305(2) (1926).

²⁶⁹NEW HAVEN, CONN., ZONING ORDINANCE § 8(a) (proposed 1923), NEW HAVEN, CONN., ZONING ORDINANCE § 1001 (1926). Other newly permitted uses in 1926 were: bleaching powder or chlorine manufacture or use on a commercial scale, fat rendering, or tallow, grease or lard refining or manufacture of candles from fats, oiled cloth or clothing manufacture or the impregnation of any fabric by oxidizing oils, caoutchouc or gutta percha manufacture from crude or scrap material, turpentine and varnish manufacture. *Id.*

prohibited Industrial A and B uses.²⁷⁰ Powerful New Haven companies such as US Rubber and Seamless Rubber would have demanded such a change.²⁷¹

Industry also gained from changes in building regulations. In 1923, Industrial A district buildings were limited to approximately one and one-half times the street width, with a maximum street width of eighty feet.²⁷² Restrictions were more stringent for Industrial B and C districts: building height could be no more than approximately the width of the street, again with a maximum of eighty feet.²⁷³ The 1926 ordinance permitted any industrial building to reach up to 150 feet in height.²⁷⁴ Industry benefitted as well in the area of accessory buildings. In 1923, accessory buildings could not occupy more than fifty per cent of the land in any industrial district. By 1926, only Industrial A districts were subject to the fifty per cent requirement.²⁷⁵ Rear yards for Industrial A districts shrank over time, from fifteen feet in 1923 to ten feet in 1926.²⁷⁶

²⁷⁰*Compare* NEW HAVEN, CONN., ZONING ORDINANCE § 8(a) (proposed 1923) *with* NEW HAVEN, CONN., ZONING ORDINANCE § 1001 (1926).

²⁷¹At least four large rubber companies existed in New Haven in 1923. Each of these was considered a heavy nuisance industry. GENERAL DATA MAP OF THE CITY OF NEW HAVEN, CONNECTICUT (1923) (on file with the New Haven City Plan Department).

²⁷²NEW HAVEN, CONN., ZONING ORDINANCE § 11(d) (proposed 1923).

²⁷³*Id.* § 11(e).

²⁷⁴NEW HAVEN, CONN., ZONING ORDINANCE § 1206 (1926).

²⁷⁵NEW HAVEN, CONN., ZONING ORDINANCE § 13(f) (proposed 1923); NEW HAVEN, CONN., ZONING ORDINANCE § 1205 (1926). In 1923, the only differences between Industrial A and B districts were height and rear yard requirements. In 1926, the only difference was regulation of accessory buildings.

²⁷⁶NEW HAVEN, CONN., ZONING ORDINANCE § 13(c) (proposed 1923); NEW HAVEN, CONN., ZONING ORDINANCE § 1205 (1926).

Several individual industries made gains through changing the 1923 zoning map. For example, much of the area surrounding Winchester Arms had been zoned Business A and Residence C in 1923.²⁷⁷ Winchester's Industrial B zone was largely expanded under the 1926 ordinance.²⁷⁸ A rubber company on Daggett Street gained Industrial B land in 1926, as did an industry on Cold Spring.²⁷⁹ Industrial land also expanded on the corner of State and Grove streets.²⁸⁰ As might have been expected, industry was largely able to maintain the status quo through the zoning map.

Industry C lost more zoning territory between 1923 and 1926 than any other district. The 1926 map reduced the once-large Industrial C plot proposed in 1923 to almost nothing.²⁸¹ This was of little consequence to any contemporary industries in New Haven. Only eight industries in the city were considered nuisance industry in 1923.²⁸² Four of these were rubber companies, permitted in Industrial A and B zones under the 1926 ordinance. Three others, the New Haven Railroad Gas House, the New Haven Gas Company, and Winchester Arms, had never been restricted to Industrial C. This left the concerns of meat packing slaughter house on Long Wharf. The problem was easily solved: the slaughter house was zoned into one of only two very small Industrial C districts in the

²⁷⁷ZONING MAP, CITY OF NEW HAVEN (proposed 1923).

²⁷⁸ZONING MAP, CITY OF NEW HAVEN (1926).

²⁷⁹*Compare* ZONING MAP, CITY OF NEW HAVEN (proposed 1923) *with* ZONING MAP, CITY OF NEW HAVEN (1926).

²⁸⁰*Id.*

²⁸¹*See* ZONING MAP, CITY OF NEW HAVEN (proposed 1923); ZONING MAP, CITY OF NEW HAVEN (1926).

²⁸²*Id.*

city.²⁸³ Overall, this represented a victory for industry in general. New heavy nuisance industries were prohibited from entering the city, while traditional industries remained protected.

New Haven's Zoning and City Plan Commissions grew so willing to accommodate industrial demands that the city's goals became lost along the way. Industries fought for protection of the status quo, which would not bring order to the city or increase property values. While prospective nuisance might decrease due to the small Industrial C zone, industrial zones still lay embedded in highly residential districts. Allowing industry to make zoning decisions led New Haven far afield of zoning as a concept.

b. Real Estate

Like industrialists, the real estate men of New Haven imposed themselves on the zoning process. Realtors were a wealthy class, whose concerns were intimately tied up with zoning. Real estate developers responded angrily to the proposed 1923 ordinance at public meetings regarding zoning in residential districts and restrictions of building heights. Objections at these meetings were varied and vigorous. Complaints centered on many restrictions, including the following: building heights,²⁸⁴ large signs, rebuilding residences subsequent to fires, and apartment construction.²⁸⁵ Two attendees raised concerns that apartment buildings were not allowed in the Residence A district.²⁸⁶ The Southern New England Telephone Company argued that the ordinance did not take

²⁸³ZONING MAP, CITY OF NEW HAVEN (1926). The other Industrial C zone lay in a small corner between Ferry Street, River Street and the Quinnipiac River. *Id.*

²⁸⁴The proposed ordinance outlined over two pages of building height restrictions. NEW HAVEN, CONN., BUILDING ZONE ORDINANCE § 11 (proposed 1923).

²⁸⁵ZONING COMMISSION MINUTES, *supra* note 24, at 83-90.

²⁸⁶*Id.* at 84.

into account buildings that were designed but not built before the ordinance went into effect.²⁸⁷

Attendees revealed some confusion about the ordinance; as many people were anxious about zoning's effect on extant property as they were about future building. In frustration, Thompson remarked that "people lose sight of the fact that a zoning ordinance protects property."²⁸⁸ Real estate developers, however, felt a need to protect their business.

Ward meetings provided an arena for much-needed discussions of apartment development. While the impacts would be far-ranging, the apartment debate centered narrowly on Whitney Avenue. Ninety-eight citizens attended the Ward 15 and 18 meeting to discuss the fact that Whitney Avenue had been zoned as Residence C.²⁸⁹ Augustine Linahan, a member of the Zoning Commission, had sent letters to Whitney Avenue property holders warning them against class C designations and suggesting that they attend the April 2 hearing.²⁹⁰ Without exception people at the meeting objected to putting apartments up on Whitney Avenue.²⁹¹ High quality apartments were in vogue at the time, however, in large part because of the modern elevator. Real estate men stated that

²⁸⁷Edward Everit, Chief Engineer, Souther New England Telephone Company, Statement at a Public Meeting Considering Zoning Restrictions of Building Height (May 12, 1924), in ZONING COMMISSION MINUTES, *supra* note 24, at 89.

²⁸⁸George E. Thompson, *id.* at 90.

²⁸⁹ZONING COMMISSION MINUTES, *supra* note 24, at 133.

²⁹⁰*Objection to Whitney Ave. Zone Class*, NEW HAVEN JOURNAL-COURIER, March 31, at 1. No comments were raised as to the potential conflict of interest raised by Linahan's sending such a letter.

²⁹¹ZONING COMMISSION MINUTES, *supra* note 24, at 134. *See also, Doubts Zoning Law's Validity, Parmelee Says*, NEW HAVEN JOURNAL-COURIER, April 3, 1925, at 1.

property on Whitney Avenue would bring higher value for apartments than any other district.²⁹²

This began the search for a compromise zone: the Residence AA district for high class apartments.²⁹³

Apartment developers had framed a powerful argument in their demands for a Residence AA district. The City Plan Commission debated hotly the character of apartment buildings on Whitney Avenue. Both George Ford and Leonard Tyler voiced the opinion that a Residence AA district would not pass the courts.²⁹⁴ Still, the developers needed to be placated. As an alternative, one member of the City Plan Commission suggested that an extension of fire limits would prevent the erection of apartments unsuited to the character of the neighborhood.²⁹⁵ In the end, the commission resolved to place an AA district in the ordinance. Apartment buildings were permitted in Residence AA, provided that they not have a gross area of all floors greater than twice the area of the lot.²⁹⁶

Residence AA was a district created almost exclusively for Whitney Avenue; its only other

²⁹²Leonard Tyler, Statement at Ward Hearing 15 & 18 (April 2, 1925), in ZONING COMMISSION MINUTES, *supra* note 24, at 133-134. Tyler admitted that the dollar value--the fact that Whitney Avenue land was worth more for apartments than for one-family houses--prevailed in the commission's decision to zone it Residence C. *Id.* at 135.

²⁹³Residence AA was the only feasible resolution to the Whitney Avenue debate. Real estate men insisted that apartments should be built on Whitney Avenue. Whitney Avenue supported many single-family residences. Whitney residents would not support low-class two-family dwellings into their neighborhood, so Residence B and C classifications were out of the question. Whitney Avenue would have to be A or AA.

²⁹⁴ZONING COMMISSION MINUTES, *supra* note 24, at 63-64.

²⁹⁵*Id.* at 68.

²⁹⁶ZONING ORDINANCE FOR THE CITY OF NEW HAVEN, § 401 (proposed 1926).

application was to Chapel Street.²⁹⁷ The lot area restriction in AA would prevent large apartment houses and undesirable tenement buildings. While the development of a Residence AA district appeared to be a very limited departure from the proposed ordinance, it may have swayed a significant number of apartment developers to support zoning. As the ordinance was cumulative in nature, apartment developers would be allowed to build high-class apartments in Residence B districts as well as in AA.²⁹⁸ This change expanded greatly the number of apartment buildings which would be permitted in the city.

While apartment men of New Haven's real estate sector won the AA district battle, they lost the apartment war in the end. New Haven zoning developers had the interests of apartment builders in mind from the beginning. Apartments represented a significant sector of the real estate industry in the early 1920s. From 1920 to 1924, permits were issued for an average of thirty-four apartment buildings each year.²⁹⁹ These would house a total of 934 families.³⁰⁰ Ford had recognized New Haven as the "apartment or tenement house center for the whole New Haven region."³⁰¹ Under the

²⁹⁷ZONING MAP OF THE CITY OF NEW HAVEN (1926). Residence AA ran along Whitney Avenue from Humphrey Street to the Hamden town line. On Chapel Street it extended from Beers Street to the Boulevard *Id.*

²⁹⁸*See* NEW HAVEN, CONN., ZONING ORDINANCE, § 501(1) (1926).

²⁹⁹*See* BUILDING INSPECTOR REP. (1920), *in* CITY YEAR BOOK, *supra* note 3, at 512 (1920); BUILDING INSPECTOR REP. (1921), *in* CITY YEAR BOOK, *supra* note 3, at 520 (1921); BUILDING INSPECTOR REP. (1922), *in* CITY YEAR BOOK, *supra* note 3, at 568-569 (1922); BUILDING INSPECTOR REP. (1923), *in* CITY YEAR BOOK, *supra* note 3, at 568-569 (1923).

³⁰⁰*Id.*

³⁰¹*Statement of Zoning Committee to Public* (1924) (on file at Yale University Manuscripts and Archives, MS 847, Series I, Box 3, Folder 36).

1923, ordinance, multiple dwellings had been allowed in all residence districts.³⁰² The intention was not to segregate residences, but simply to keep business away from dwelling areas. New Haven's was an unusual proposition; most zoning planners were dedicated to protecting single-family homes from large, unsightly apartment buildings.³⁰³ George Ford praised New Haven's lack of limitations, calling it "outstanding."³⁰⁴ The Zoning Commission changed the broad residential zoning system by 1924, however.³⁰⁵ New York had been criticized for its similarly broad districting.³⁰⁶ New Haven real estate men demanded that Residence A be reserved for single-family houses.³⁰⁷ The commission limited apartments to Residence C districts only, and two-family dwellings to Residence B and C. The 1926 allowance for limited apartments in the newly created Residence AA district, and for all other apartments in Residence C,³⁰⁸ represented a small but significant change.

By 1926, it had grown easy for prominent New Haven builders and real estate men to voice support of zoning. The city's building boom was over. Speculation had run its course, just as

³⁰²NEW HAVEN, CONN., ZONING ORDINANCE § 3(a)(1) (proposed 1923).

³⁰³Joel Kosman, *Toward an Exclusionary Jurisprudence: A Reconceptualization of Zoning*, 43 CATH. U. L. REV. 59, 80 (1993).

³⁰⁴George B. Ford, Statement to the New Haven Zoning Commission, in ZONING COMMISSION MINUTES, *supra* note 24, at 48.

³⁰⁵NEW HAVEN, CONN., BUILDING ZONE ORDINANCE, §§ 3-4 (proposed 1923, revised May 4, 1924) (on file with Yale University Manuscripts and Archives, MS 847, Series I, Box 3, Folder 36).

³⁰⁶FRANK B. WILLIAMS, THE LAW OF CITY PLANNING AND ZONING 273 (reprint 1969) (1922).

³⁰⁷*See* Technical Advisory Corporation, *supra* note 153.

³⁰⁸NEW HAVEN, CONN., ZONING ORDINANCE § 401(2), 601 (1926). Limited high-class apartments would also be allowed in Residence B. *Id.* § 501(1).

planners had warned.³⁰⁹ Developers had adequate time in which to make final permit applications.³¹⁰ By December, building operations in 1926 had surpassed building in other year of New Haven's history.³¹¹ This increase was attributed to "a large number of high valued apartment houses and business buildings."³¹² Realtors' protests had gained them time enough to develop their interests to the fullest.

The City Plan Commission had not protected all real estate interests, however. Divisions among real estate men appeared as the zoning process drew to a close. Real estate agents raised concerns about realtors, their more powerful New Haven Real Estate Board competitors. Albert D. DeBussey of the DeBussey-Kusterer property company opined that a Board of Zoning Appeals was likely to bend to political influences.³¹³ Frederick C. Kusterer observed, "i [sic] noticed one thing that a good many of the gentlemen in favor of this ordinance all of a sudden were big objectors before. Their little sphere has been covered and taken care of and therefore they are in favor."³¹⁴

³⁰⁹Minutes of a Meeting of the Board of Finance, De Zoning Commission (June 6, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 25-25b.

³¹⁰In fact, the day before zoning went into effect was the busiest day ever at the Building Inspector's office. *Building Office has Busiest Day Since Creation*, NEW HAVEN JOURNAL-COURIER, December 15, 1926, at 1. Thirteen of the largest permits issued were for apartment houses. *Id.*

³¹¹*Building Here Sets New Record*, 5(7) NEW HAVEN 5, 5 (1927).

³¹²*Id.*

³¹³Albert D. DeBussey and Isaac M. Ullman, Statements at a Public Meeting to Discuss the New Zoning Ordinance (September 10, 1926), in CITY PLAN MINUTES, *supra* note 171, at 113.

³¹⁴Frederick Kusterer, Statements at a Public Meeting to Discuss the New Zoning Ordinance (September 10, 1926), in CITY PLAN MINUTES, *supra* note 171, at 111-112. Kusterer's complaint was not directed at zoning generally, but at having been left out of the process. The DeBussey-Kusterer Co. had bought futures for certain cites, and they wanted a chance to meet with politicians about the ordinance in order to "get from under." *Id.* at 112-113.

Kusterer spoke accurately. While the interests of the Real Estate Board had been voiced at many private meetings with Zoning Commission members in 1924, Kusterer's and other real estate agents' had not.³¹⁵

Restrictions on building area in Residence A and AA districts remained a concern. DeBussey voiced concern that a 30 or 35% restriction of lot area coverage was a confiscatory restriction of property, which could easily put him out of business.³¹⁶ Bassett responded to this accusation:

The curse of Harlem, and you all know Harlem as well as I do, – the curse of Harlem was that buildings were allowed to go up and cover 80 to 90% of the land. What happened? As soon as the whole district was covered with those dense buildings people that used to live there moved out and a class that was less careful and less wanted lights and air came in and now it has come down until it is a firstclass negro colony. If you stay with 90% building you are going to produce blighted districts.³¹⁷

Bassett's point received tacit agreement. Recognizing defeat, DeBussey and Kusterer offered to accept zoning if building area allowances were increased.³¹⁸ The Commission ignored this; they had no incentive to yield, however, to individuals without powerful backers.

The real estate men of New Haven were rewarded with a simpler ordinance in 1926. Height

³¹⁵ZONING COMMISSION MINUTES, *supra* note 24, at 94-95, There were far more real estate agents in the city of New Haven than there were realtor members of the Real Estate Board. New Haven City Directory 224b, 1500-1502 (1925). Therefore, at the 1924 meetings the Zoning Commission had considered the desires of a select group of city real estate men.

³¹⁶Albert DeBussey, Statements at a Public Meeting to Discuss the New Zoning Ordinance (September 10, 1926), in CITY PLAN MINUTES, *supra* note 171, at 111.

³¹⁷Edward Bassett, Statements at a Public Meeting to Discuss the New Zoning Ordinance (September 10, 1926), in CITY PLAN MINUTES, *supra* note 171, at 118-119. It is worth noting that, in the zoning of New Haven, this the only recorded reference made to race, and it was made by someone not a resident of the city.

³¹⁸Frederick Kusterer, Statement at a Public Meeting before the Committee on Ordinances (October 20, 1926), in CITY PLAN MINUTES, *supra* note 171, at 129. Kusterer, an apartment house builder, requested that the 30% restriction in Residence A and AA be changed to 40%, 50% or 60%. *Id.* This suggestion would not be heeded. See NEW HAVEN, CONN., ZONING ORDINANCE § 1200 (1926).

restrictions had been shortened to two paragraphs from twelve.³¹⁹ Similar changes were made in regulations of front yards, side yards, and rear yards.³²⁰ Flat limitations on building area replaced complicated limitations on building size and location.³²¹ Lengthy 1923 discussions of the Board of Zoning Appeals, Amendments, Certificates of Occupancy, and Violations and Penalties were removed in full or in part by the 1926 ordinance.³²² In general, the 1926 ordinance compensated builders and property owners with requirements that were less stringent and easier to understand.³²³

Residential areas remained the most heavily regulated under the 1926 ordinance. Supplemental requirements in the Residence A district had grown simpler and less restrictive, however. In 1923, buildings were required to be set back within a building line 30 feet from the

³¹⁹NEW HAVEN, CONN., ZONING ORDINANCE § 11 (proposed 1923); NEW HAVEN, CONN., ZONING ORDINANCE §§ 1204, 1206 (1926).

³²⁰NEW HAVEN, CONN., ZONING ORDINANCE §§ 12-14 (proposed 1923); NEW HAVEN, CONN., ZONING ORDINANCE §§ 1202-1204, 1205 (1926).

³²¹In Residence A and AA Districts, for example, the building area could not exceed 30%. NEW HAVEN, CONN., ZONING ORDINANCE §1200 (1926). Business and Industrial buildings could not exceed 70% of the lot area. NEW HAVEN, CONN., ZONING ORDINANCE §1201 (1926).

³²²See NEW HAVEN, CONN., ZONING ORDINANCE §§ 17, 19, 21-22 (proposed 1923).

³²³The 1923 ordinance had been heavily criticized, and rightly so, for being overly complicated. A sample passage on front yards reads: “in any Residence District, no story of any building shall be nearer to the street lot line of any street on which it faces than the average setback alignment of the corresponding stories of existing buildings within the same district, on the same side of the street, and within 200 feet on each side of the lot in question, and within the same block and including alleys but not beyond any intersecting street; but if there are less than two houses within such distance, the average alignments of corresponding stories of two or more existing buildings within 200 feet on each side of a frontage directly across the street from the lot in question, shall govern; but no story of any building shall under the above provisions be required to set back more than 30 feet from any street lot line.” NEW HAVEN, CONN., ZONING ORDINANCE § 12(a) (proposed 1923).

street lot; this was changed to 25 feet in 1926.³²⁴ While the basic requirements for side yard widths—at least 20 feet total, neither side being less than 8 feet—did not change between 1923 and 1926, the 1926 side yards rule was far less complex than its earlier counterpart.³²⁵ The height limitation, three stories or 40 feet in 1923, had increased to six stories or 75 feet in 1926.³²⁶ Lengthy and complication regulations for courts had been removed entirely by 1926.³²⁷

The zoning map of 1926 continued to favor apartment builders. All of the city outside of the Westville, Beaver Ponds and St. Ronan–Prospect Street areas were zoned Residence AA, B, and C in 1926.³²⁸ Developers continued to have freedom to build in the most desirable parts of town for apartments: Howe Street, Chapel Street, Livingston Street, Whitney Avenue.³²⁹ Newhallville and the Hill areas were classed Residence C and Business A, and were thus open to tenement builders.³³⁰ Through representatives of the New Haven Real Estate Board, realtors had used the zoning process to guarantee protection for their interests.

³²⁴NEW HAVEN, CONN., ZONING ORDINANCE § 12(b) (proposed 1923); NEW HAVEN, CONN., ZONING ORDINANCE § 1202 (1926).

³²⁵NEW HAVEN, CONN., ZONING ORDINANCE § 14(a) (proposed 1923); NEW HAVEN, CONN., ZONING ORDINANCE § 1203 (1926). The 1923 ordinance went on to explain that if a building was two stories high, the side yard width must be 25 feet; for a three-story building, the width was 30 feet. NEW HAVEN, CONN., ZONING ORDINANCE § 14(a) (proposed 1923).

³²⁶NEW HAVEN, CONN., ZONING ORDINANCE § 11(a) (proposed 1923); NEW HAVEN, CONN., ZONING ORDINANCE § 1206 (1926).

³²⁷See NEW HAVEN, CONN., ZONING ORDINANCE § 15 (proposed 1923).

³²⁸ZONING MAP, CITY OF NEW HAVEN (1926).

³²⁹See DANA, *supra* note 18, at 42(f) (1937); ZONING MAP, CITY OF NEW HAVEN (1926).

³³⁰ZONING MAP, CITY OF NEW HAVEN (1926).

Garage developers and builders also benefitted from the 1926 ordinance. Like apartments, garages represented an important business investment for the city. More people had cars than ever before in the 1920s. Between 1920 and 1923, seventy per cent of the residential area buildings erected in New Haven were garages.³³¹ City planners considered garages unsightly and a detriment to property values, however.³³² Private garages were heavily restricted under the 1923 proposal. Garage size was limited to an flexible maximum of two cars in Residence A and B, for example, and no more than one commercial vehicle could be stored on a lot.³³³ The 1926 ordinance lifted restrictions on the size or contents of private garages.³³⁴ This change arose from compromise: while regulations on private garages loosened, limits on community garages increased over time. Community garages, permitted in all residence districts under the 1923 proposed ordinance, were allowed only in Residence C by 1926.³³⁵ The compromise favored wealthier persons, those who could afford space on their land for garages. Real estate men would have willingly agreed to changes biased toward the needs of their more prominent clients. The heavy influence of developers resulted in a less than equitable zoning system.

³³¹See BUILDING INSPECTOR REP. (1920), in CITY YEAR BOOK, *supra* note 3, at 512 (1920); BUILDING INSPECTOR REP. (1921), in CITY YEAR BOOK, *supra* note 3, at 520 (1921); BUILDING INSPECTOR REP. (1922), in CITY YEAR BOOK, *supra* note 3, at 568-569 (1922); BUILDING INSPECTOR REP. (1923), in CITY YEAR BOOK, *supra* note 3, at 568-569 (1923). An average of 522 garage permits were granted each year. *See, id.* While garages were certainly smaller than the residences, dwellings and apartments being built during the same years, they still accounted for a significant amount of the city's building development.

³³²George B. Ford, Statement at a Public Meeting (April 7, 1922), in ZONING COMMISSION MINUTES, *supra* note 24, at 9.

³³³NEW HAVEN, CONN, ZONING ORDINANCE, § 3(a)(9) (proposed 1923).

³³⁴NEW HAVEN, CONN., ZONING ORDINANCE, § 301(5) (1925).

³³⁵NEW HAVEN, CONN., ZONING ORDINANCE, §3(a)(9) (proposed 1923), NEW HAVEN, CONN., ZONING ORDINANCE, §601(3) (1926).

3. Lack of Consistent Leadership and Direction

Zoning encountered the first bump in its once-smooth road during the transition between the 1923 and 1924 Zoning Commissions. A manufacturer took the place of a city planner in the position of chairman.³³⁶ Representation by industrial interests on the Zoning Commission had increased from zero to three.³³⁷ Representation by the architectural, contracting, planning and real estate interests was down by one.³³⁸ The 1924-1925 commission approached zoning from a new perspective. With fewer planning experts, the second commission solicited more outside commentary. Due to the group's membership, industrialists would provide the vast bulk of public contributions to the zoning process.

With a less expert commission came the first use of the soon-familiar phrase, "you would have to direct that question to the Board of Zoning Appeals."³³⁹ Commission members found themselves using this response more and more often as time went on. The first ordinance—the same ordinance that many had complained of as overly restrictive and lengthy—still left countless decisions to the discretion of the appeals board. The Board of Zoning Appeals became the fallback solution to unanswerable questions.

The switch in leadership from the Zoning Commission to the City Plan Commission represented the second significant weakening of the zoning ideal in New Haven. National

³³⁶CITY YEAR BOOK, *supra* note 3, at 28 (1923); NEW HAVEN CITY DIRECTORY (1924, 1925).

³³⁷*Id.*

³³⁸*Id.*

³³⁹*See* Leonard S. Tyler, Statement at a Public Hearing Considering Zoning Restrictions in the Business and Industrial Districts (April 21, 1924), in ZONING COMMISSION MINUTES, *supra* note 24, at 79.

commentators proclaimed the shift from zoning to city plan commission “a precarious condition being said to exist from swapping horses while crossing the stream.”³⁴⁰ Only one member of the City Plan Commission, Edward Nettleton, had background in zoning.³⁴¹ The most vocal members of the commission were Colonel Mr. Henry Parmelee, Isaac M. Ullman, and Harry C. Knight—a lawyer and two industrial leaders.³⁴² The commission had no planners, real estate men, contractors or architects. In addition, City Plan Commission members were not pleased by the prospect of having the enormous project of zoning added to their workload, particularly when the recently developed ordinance was declared “hopelessly unconstitutional” by one of their members.³⁴³

The City Plan Commission had neither patience for nor interest in zoning. At a meeting of the City Plan Commission, Ford, Leonard Tyler and Corporation Counsel Samuel A. Persky on March 22, 1926, Colonel Ullman asked the commission sarcastically, ““What shall we do? Take up this ordinance and read it through?””³⁴⁴ Conversation turned quickly to the possibility of shortening the eighteen-page ordinance. Parmelee suggested that something simpler might replace such a

³⁴⁰Hubbard, *supra* note 70, at 87, 93.

³⁴¹George Dudley Seymour, once a member of both the Zoning and City Plan Commissions, had resigned in frustration that nothing was being accomplished. Isaac M. Ullman would have been familiar with the early history of New Haven zoning from his days as president of the Greater New Haven Chamber of Commerce, but those ended in 1920. Chamber Executive Minutes, *supra* note 28 (November 30, 1920).

³⁴²CITY PLAN MINUTES, *supra* note 171, at 61-90; NEW HAVEN CITY DIRECTORY (1925).

³⁴³Henry Parmelee, Statement to the City Plan Commission (January 12, 1926), in CITY PLAN MINUTES, *supra* note 171, at 61. Parmelee had long questioned the constitutionality of a zoning ordinance. See *Doubts Zoning Law's Validity, Parmelee Says*, *supra* note 291, at 1. It would appear that Parmelee strongest objection was in general to the restrictions a zoning ordinance would put on a man's right to build on his property, and in specific to his right to build apartments. *Id.*

³⁴⁴Isaac M. Ullman, Statement to the City Plan Commission March 22, 1926), in CITY PLAN MINUTES, *supra* note 171, at 72.

complicated ordinance.³⁴⁵ Ford replied that Boston and Springfield did have shorter ordinances that could be used as models, but he cautioned that Springfield's had already been amended several times.³⁴⁶ The City Plan Commission failed to heed this warning.

City Plan tired quickly of the re-drafting process. On May 3, 1926, at a special meeting of the commission, Colonel Ullman "was frank to say that he had not time to go into the zoning business."³⁴⁷ Knight concurred with the view that a complicated report could be hazardous, and a simple ordinance would make a better start.³⁴⁸ The members of the commission declared that Leonard Tyler had been the only man who had ever given zoning much time or consideration.³⁴⁹ As head of the Zoning Commission, Tyler had demonstrated a willingness to work through the tedium of re-drafting the ordinance. The City Plan Commission, on the other hand, complained that it was too much to expect them to put through an ordinance without more knowledge.³⁵⁰ The City Plan Commission hired Edward Bassett, and counted on him to do their work for them.

Arguably, hiring Bassett was a step toward positive, expert leadership. Bassett, however,

³⁴⁵Henry Parmelee, Statement to the City Plan Commission (March 22, 1926), *in* CITY PLAN MINUTES, *supra* note 171, at 72.

³⁴⁶George B. Ford, Statement to the City Plan Commission (March 22, 1926), *in* CITY PLAN MINUTES, *supra* note 171, at 72.

³⁴⁷Isaac M. Ullman, Statement to the City Plan Commission May 3, 1926), *in* CITY PLAN MINUTES, *supra* note 171, at 81.

³⁴⁸Harry Knight, Statement to the City Plan Commission (May 3, 1926), *in* CITY PLAN MINUTES, *supra* note 171, at 82.

³⁴⁹CITY PLAN MINUTES, *supra* note 171, at 83.

³⁵⁰*Id.*

was in the midst of trying to educate the entire country about zoning.³⁵¹ He did not have the time to tailor New Haven's ordinances to its needs, and instead relied a great deal on revisions of Ford's 1923 ordinance. He pointed out that the old ordinance was better adapted to city needs than had been feared.³⁵² Still, Bassett preferred a simpler, shorter ordinance.

Bassett knew that his proposed ordinance could not meet New Haven's needs. He observed that his new ordinance was not one hundred per cent "simon pure," but excused this by pointing out that it could be rolled into adjustment with various city conditions.³⁵³ The commission members were quite satisfied with the new, easily understood ordinance. They appeared glad that zoning was moving along smoothly enough to leave their charge. Bassett had overcome the difficult stage, and would likewise walk with the commission through subsequent hearings.

The City Plan Commission took all available opportunities to rush the zoning process. Colonel Ullman suggested that, in order to hurry the matter, the Board hold a special meeting in November.³⁵⁴ When people voiced concerns that the ordinance had been too hastily prepared, Colonel Ullman responded that four years' preparation had contributed to its making.³⁵⁵ Again, supporters of zoning noted that if the ordinance was not adopted immediately, its progress would be

³⁵¹BASSETT, *supra* note 177, at 121-122.

³⁵²Edward M. Bassett, Statement to the City Plan Commission (August 19, 1926), in CITY PLAN MINUTES, *supra* note 171, at 90, Bassett retained the nine districts of the old ordinance rather than move toward Ullman's suggested four or five. See NEW HAVEN, CONN., ZONING ORDINANCE (1926); CITY PLAN MINUTES, *supra* note 171, at 86, 90.

³⁵³Edward M. Bassett, Statement to the City Plan Commission (August 19, 1926), in CITY PLAN MINUTES, *supra* note 171, at 90,

³⁵⁴Isaac M. Ullman, Statement to the City Plan Commission and Board of Aldermen Committee on Ordinances (October 13, 1926), in CITY PLAN MINUTES, *supra* note 171, at 125.

³⁵⁵CITY PLAN MINUTES, *supra* note 171, at 127. Colonel Ullman did not address the fact that the ordinance had been largely overhauled in the summer of 1926.

put back indefinitely.³⁵⁶

Zoning as a concept requires directed leadership to become reality. While a variety of individuals cared deeply about zoning in New Haven, the city lacked one driving vision of zoning that would serve its needs. Without consistent focus, zoning goals became lost in the minutia of statutory language and map boundaries. In addition, hesitant zoning leaders allowed other, interested parties such as industry and real estate to influence the process. Given the constant shuffle of leaders and experts, New Haven had little chance of reaching its original goals.

IV. ZONING AS REALITY: IMPLEMENTATION

The 1923 proposed ordinance had taken into account “the almost infinite variety” of lot shape and size in New Haven.³⁵⁷ The drafters determined that it was necessary to minimize the number of exceptional cases that would arise, and they had created a complicated ordinance to serve New Haven’s unusual situation.³⁵⁸ The simpler 1926 ordinance did away with this accommodation. Its creators chose to rely on the appeals process to supplement their less specific ordinance.

Zoning planners praised the ease of zoning’s execution. The originators of the zoning movement assumed that its administration would require only the services of one building official.³⁵⁹ Likewise, when the New Haven Zoning Commission was deliberating the long-term effects of its proposed ordinance, its members anticipated that it would be a largely self-regulating system. This vastly underestimated the eventual reality. Zoning planners also failed to demonstrate an

³⁵⁶*Id.* at 127-128.

³⁵⁷Office of the Zoning Commission of New Haven, *supra* note 6.

³⁵⁸*Id.*

³⁵⁹NATIONAL COMMISSION ON URBAN PROBLEMS, *supra* note 14, at 203.

understanding of the demands that would be made on the appeals process. While the interests of industrialists and realtors had been taken into consideration in creating the zoning map and ordinance, less influential real estate men and the citizenry in general had little say in zoning's outcome. To resolve their needs, these groups had no choice but to resort to the Board of Appeals, the City Plan Commission, and the Board of Aldermen.

A. Board of Zoning Appeals

Colonel Ullman observed that the Board of Zoning Appeals would be the “safety valve” of the ordinance, which had been made broad on the understanding that particular cases would be excepted.³⁶⁰ The Board of Zoning Appeals, rarely discussed by the creators of the 1923 proposed ordinance, gained primacy under the 1926 ordinance. The Board of Zoning Appeals became active within two weeks of the passage of the ordinance in December 1926.³⁶¹ The 1927 Board, which met twice a month, consisted of three lawyers, one contractor-builder, and one businessman, all of whom were selected by the mayor.³⁶² The ordinance charged the Board with varying the zoning ordinance if at least four of its members found that unreasonable hardship or difficulty might result in

³⁶⁰Statement at a Public Meeting to Discuss the New Zoning Ordinance and Map (September 10, 1926), in *ZONING COMMISSION MINUTES*, *supra* note 24, at 120.

³⁶¹Minutes of the Board of Zoning Appeals (January 11, 1927), in 1 *MINUTES OF THE NEW HAVEN BOARD OF ZONING APPEALS*, at 151 (1933) (on file with the New Haven Building Inspection and Enforcement Department) [hereinafter *ZONING APPEALS MINUTES*].

³⁶²*CITY YEAR BOOK*, *supra* note 3 (1927). The five members of the board at its inception were: George E. Hall, Louis M. Rosenbluth, William Paterson, Leander L. Higgins, Frederick L. Perry. *Id.* Leander Higgins, the one businessman on the Board, was the Secretary-Treasurer for the L.C. Bates Co., which specialized in wholesale butter, cheese and eggs. *NEW HAVEN DIRECTORY* 284 (1923).

None of the men on the Board of Appeals had real estate practices. It is possible, however, given the mayor's antipathy toward zoning, that the appointees had some real estate interests.

pursuing the strict letter of the ordinance.³⁶³ To their credit, New Haven's Board of Zoning Appeals limited itself to the issuance of area variances.³⁶⁴ Requests for variances came in slowly during the first two months of 1927, and began in earnest in March.³⁶⁵

Not unexpectedly, most requests for variances originated with private citizens. The most common variance requests appear to fall in three broad categories: additions to buildings, construction of dwellings and garages beyond the permitted side and rear lines, and the construction of multi-car garages. The first three years of the New Haven zoning ordinance saw variances granted for the following requests made from January through March:³⁶⁶

Year	Building Additions	Construction Beyond Rear/Side/Front Lines	Multi-Car Garages
1927	6	15	None
1928	13	26	2
1929	6	12	6

³⁶³1925 Conn. Spec. Acts 1006, § 6. The Board of Zoning Appeals was permitted to issue all area and some use variances by; 1) permitting the extension of commercial or industrial establishments; 2) permitting non-conforming uses by industries that are necessary for plant adaptation; 3) permitting the extension of an existing or proposed building into a more restricted district; 4) permitting public utility buildings in any district; 5) granting temporary permits in undeveloped areas; 6) permitting community garages; 7) varying the ordinance in specific cases so that the public health, safety and general welfare are secured. NEW HAVEN, CONN., ZONING ORDINANCE, § 1305 (1926).

³⁶⁴See, ZONING APPEALS MINUTES, *supra* note 361, at 151. While the Board of Zoning Appeals was authorized by statute to permit the extension of a proposed building into a more restricted district, the Board did not exercise this power. See NEW HAVEN, CONN., ZONING ORDINANCE, § 1305(3); ZONING APPEALS MINUTES, *supra* note 361, at 151-348.

³⁶⁵Minutes of the Board of Zoning Appeals (January 11, 1927-March 14, 1927), in ZONING APPEALS MINUTES, *supra* note 361, at 151-160.

³⁶⁶Minutes of the New Haven Board of Zoning Appeals (January 17, 1927; January 24, 1927; February 14, 1927; February 28, 1927; March 14, 1927; March 28, 1927; January 9, 1928; January 23, 1928; February 15, 1928; February 27, 1928; March 12, 1928; March 28, 1928; January 2, 1929; January 14, 1929; January 28, 1929; February 1, 1929; March 11, 1929; March 25, 1929), in ZONING APPEALS MINUTES, *supra* note 361, at 152-162, 209-223, 275-284.

For comparison, during the same years and months, the Board of Zoning Appeals denied variances for the following requests made from January through March:³⁶⁷

Year	Building Additions	Construction Beyond Rear/Side/Front Lines	Multi-Car Garages
1927	2	1	1
1928	15	7	6
1929	6	4	3

For the 131 variance permit applications addressed in the above tables, the New Haven Board of Zoning Appeals granted 86 and denied 45. Variance applicants faced favorable odds of receiving positive responses to their petitions.

The Board of Zoning Appeals was more willing to allow variances for excesses of lot area requirements than for building additions and garages. The Board may well have been more concerned with the appearance or presence of structures that with the size of lots as prescribed by the ordinance. This is surprising considering that New Haven had a history of regulated building lines,³⁶⁸ but had no tradition of regulating the creation of new structures. It is quite possible that the first Board of Zoning Appeals in New Haven found the aesthetic potential of the zoning ordinance more persuasive than issues of light and air raised by area limitations.³⁶⁹

Institutional interests had few needs for variances, but when they did apply, they usually met

³⁶⁷*Id.* The Board of Zoning Appeals recorded no reasons for either denying or approving variances, so it is impossible to know on what basis these decisions were made.

³⁶⁸NEW HAVEN, CONN., ORDINANCES § 254 (1914). The Connecticut courts had also found setback provisions to be constitutional. *Whitney v. Town of Windsor*, 95 Conn. 357, 111 A. 354 (1920).

³⁶⁹Aesthetic considerations were not among the purposes of zoning enumerated in New Haven's Zoning Enabling Act, 1925 Conn. Spec. Acts 1006, § 2, and many courts of the early 1920s found zoning enacted purely on aesthetic grounds to be invalid. *See Whitney v. Town of Windsor*, 95 Conn. 357, 111 A. 354 (1920). Growing concern about "urban ugliness" caused many to make decisions based on aesthetic considerations despite legislation and court rulings, however. *See generally*, ANDERSON, *supra* note 8, §7.24.

with a favorable response. Of approximately 138 variances requests between January and March, 1927 through 1929, only twenty came from businesses and other organizations.³⁷⁰ Fifteen of these requests were granted, giving institutional applicants an extremely high variance success rate.³⁷¹

The Board of Zoning Appeals permitted several large changes, including the establishment of a Sausage manufacturer on State Street, the construction of a one-story building by Horowitz Brothers on Grand Avenue, and the erection of a laboratory building by Yale on Oak and Broad Streets.³⁷²

The willingness of government to yield to special interests continued into zoning's implementation.

The membership of New Haven's Board of Zoning Appeals over these years reflects a continued lack of attention to strong, expert leadership. In the late 1920s, zoning appeals boards were encouraged not to follow a system of precedents, and to treat every case as a distinct entity.³⁷³

Zoning planners suggested that appeals boards be staffed by experts, and that they view premises in order to make their decisions.³⁷⁴ Given these expectations, the members of the New Haven Board of Appeals found themselves in an awkward position. They were mostly lawyers, not zoning or planning experts. They would not have had the time to investigate the premises of every applicant,

³⁷⁰Minutes of the New Haven Board of Zoning Appeals (January 17, 1927; January 24, 1927; February 14, 1927; February 28, 1927; March 14, 1927; March 28, 1927; January 9, 1928; January 23, 1928; February 15, 1928; February 27, 1928; March 12, 1928; March 28, 1928; January 2, 1929; January 14, 1929; January 28, 1929; February 1, 1929; March 11, 1929; March 25, 1929), in ZONING APPEALS MINUTES, *supra* note 361, at 152-162, 209-223, 275-284.

³⁷¹Minutes of the New Haven Board of Zoning Appeals (February 28, 1927; February 15, 1928; February 27, 1928; March 12, 1928; January 2, 1929), in ZONING APPEALS MINUTES, *supra* note 361, at 158, 215, 217 219, 275.

³⁷²ZONING APPEALS MINUTES, *supra* note 361, at 276, 279.

³⁷³BASSETT, *supra* note 9, at 127.

³⁷⁴*Id.*

which could total twenty per week.³⁷⁵ It would have been difficult for them to prove or disprove an applicant's claim of undue hardship. The Board could not assess needs adequately, which may explain why it granted almost twice the number of variances that it denied. This would begin a pattern of exceptions to the zoning ordinance that continues to the present.

The Board of Zoning Appeals granted hundreds of variances during the first three years of its existence.³⁷⁶ While industrial and retail needs had been satisfied, the concerns of private citizens had not. The political process resulted in an inefficient system whereby variances became the rule rather than the exception. The Board set no standards on which to base the approval of variances, so they could not be distributed equitably. The over-issuance of variances resulted in an institution that was more chaotic than orderly.³⁷⁷ More careful attention to the creation of the zoning map, combined with a more expert Board of Appeals, might have led to a zoning reality less inefficient and inequitable.

B. City Plan Commission and Board of Aldermen

Property holders had to undergo a more lengthy, complicated process to obtain map amendments. In order to alter regulations imposed and districts created by the Zoning Ordinance, a citizen first submitted the proposed change to the City Plan Commission.³⁷⁸ After reviewing the proposal and holding a public hearing, the City Plan Commission made its recommendation to the

³⁷⁵See Minutes of the Board of Zoning Appeals, February 15, 1928, in 1 MINUTES OF THE NEW HAVEN BOARD OF ZONING APPEALS at 213-215 (1933) (on file at the New Haven Building Inspection Department).

³⁷⁶See MINUTES OF THE NEW HAVEN BOARD OF ZONING APPEALS 151-340 (1933) (on file at the New Haven Building Inspection Department).

³⁷⁷See SIEGAN, *supra* note 2, at 16 (1972).

³⁷⁸1925 Conn. Spec. Acts 1006, § 5.

Board of Aldermen.³⁷⁹ Once the recommendation had reached the Aldermen, the Committee on Ordinances reviewed the City Plan Commission's decision and presented its resolution to the general Board.³⁸⁰ The Board of Aldermen would then make a final decision as to whether to accept or reject the proposal. A property holder could spend months waiting for a decision.³⁸¹ The process could be made longer if, as often happened, a property holder mistakenly took a proposal for a map change to the Board of Zoning Appeals.³⁸² Suggestions that the application process be shortened never made it out of executive session.³⁸³ While time-consuming, the process for the review of petitions for map changes was far more thorough than that taken by the Board of Zoning Appeals.

The members of the City Plan Commission were, arguably, better suited to the task of reviewing petitions than the members of the Board of Zoning Appeals. City Plan Commission members had the advantage of a year's study of zoning, as well as a general knowledge of the city. Still, none of the members of the commission were city planners by trade. They had distanced themselves from zoning during its creation, and petitions for map changes grew as tiresome as ordinance revisions had been several years before. Like the Board of Zoning Appeals, the

³⁷⁹*Id.*

³⁸⁰The committee usually accepted the recommendations forwarded by the City Plan Commission. *See* 1928 JOURNAL OF THE NEW HAVEN BOARD OF ALDERMEN 52, 253; 346, 452.

³⁸¹*See* 1929 JOURNAL OF THE NEW HAVEN BOARD OF ALDERMEN 110, 256.

³⁸²*See* 1 MINUTES OF THE NEW HAVEN BOARD OF ZONING APPEALS 158.

³⁸³CITY PLAN MINUTES, *supra* note 171, at 192. Dr. Clarence Rungee, Chairman of the Committee on Ordinances, proposed that petitions for zoning revisions be turned over to the City Plan Commission and the Committee on Ordinances at the same time, thus saving a month of review. *Id.*

commission took very occasional inspection trips to look over petitioners' neighborhoods.³⁸⁴ Again like the Board of Zoning Appeals, however, the field trip system did not last beyond 1927.³⁸⁵

The City Plan Commission relied a great deal in its decision making upon the opinions of petitioners' neighbors. According to state statute, the Commission could not propose amendments unless at least fifty percent of the owners of property fronting the district to be changed had given their approval.³⁸⁶ The Commission enforced a stricter interpretation of the statute, however. They determined that they would not consider petitions unless all adjacent property holders were in favor.³⁸⁷ In addition to petitions signed by neighbors, the Commission relied on public hearings. If citizens appeared to protest the proposed change, the City Plan Commission often denied petitioners' requests.³⁸⁸ The zoning ordinance thus became subject to change according to popular choice. This was not in accord with early zoning planners' emphases on efficiency.³⁸⁹ While a system of zoning by popular demand might have satisfied efficiency concerns, it did not coincide with the zoning theory that the city's needs were paramount.³⁹⁰ The theory that zoning could create a scientific,

³⁸⁴*Id.* at 166, 182.

³⁸⁵*Id.* at 183-242. The last inspection trip was made on January 31, 1928. *Id.*

³⁸⁶1925 Conn. Spec. Acts 1006, § 5.

³⁸⁷Colonel Isaac Ullman, Statement to the City Plan Commission (September 26, 1927), in CITY PLAN MINUTES, *supra* note 171, at 167.

³⁸⁸*See* CITY PLAN MINUTES, *supra* note 171, at 172, 180, 203.

³⁸⁹*See* Gray, *supra* note 26.

³⁹⁰*See* William R. Munro, *A Danger Spot in the Zoning Movement*, ANNALS AM. ACAD. OF POL. & SOC. SCI., May 1931, Part II: Zoning in the United States, at 202, 203.

systematic means for raising property values and abating nuisance was threatened by non-expert decision making.

As with variances, industry had almost no need for map changes. The City Plan Commission received only two requests for change to an industrial zone between 1927 and 1929.³⁹¹ The decisions to grant the variances were easy ones. For example, the State Street land needed for a bakery abutted an industrial district. The request for the bakery on State Street had two powerful backers: Alderman Rabinowitz and Paul Barnett of the New York, New Haven and Hartford Railroad Company.³⁹² Beyond this, the desires of industry had been satisfied during the zoning process.

Some private citizens demonstrated protectionist instincts in requests for map changes. The Board of Aldermen granted the following map changes allowing for more restrictive zoning.³⁹³

Year	Residence to more exclusive Residence	Business to Residence
1927	none	1
1928	2	3
1929	none	none

Traditionally wealthier neighborhoods worked to ensure that their districts remained high class. For example, Adolph Perlroth proposed the following for an apartment in the Linden and Livingston Street areas: it would cover 50% of the lot area and be three and one-half stories high, rather than following the ordinance by covering 35% of the lot and being six stories high.³⁹⁴ Neighbors

³⁹¹CITY PLAN MINUTES, *supra* note 171, at 157, 191.

³⁹²*Id.* at 157.

³⁹³JOURNAL OF THE NEW HAVEN BOARD OF ALDERMEN, 1927, 1928, 1929.

³⁹⁴CITY PLAN MINUTES, *supra* note 171, at 172.

protested: “I would prefer a first class six story building to a third class three story building,” and “I should regret very much to see any change in the zoning arrangements in that part of the City [sic].”³⁹⁵ Due to neighbor dissatisfaction, the commission denied Perlroth’s request. The most significant protectionist alteration to the zoning map occurred on upper Orange Street, which the Board of Aldermen amended from Business B to Residence B.³⁹⁶ For those in upper class areas, zoning provided a means to continue the desired status quo.

Accommodation of the 1926 status quo resulted in a lack of awareness of public concerns. Many New Haven residents expressed interest in opening new businesses. The majority of map change proposals were for changes from residence to business districting. At least thirty-six petitions were brought before the City Plan Commission between 1927 and 1929.³⁹⁷ Relief for less restrictive zoning was granted as follows.³⁹⁸

Year	Residence to Business	Residence to Industry	Extension of Business District
1927	4	1	2
1928	2	none	1
1929	6	1	1

While private citizens had a significant number of requests for map changes granted, the City Plan Commission was less inclined to take their petitions seriously. The commission showed reluctance

³⁹⁵Woolsey Carmalt & George Martin, Statements to the City Plan Commission (November 28, 1927), in CITY PLAN MINUTES, *supra* note 171 at 172.

³⁹⁶ZONING MAP, CITY OF NEW HAVEN (1926); ZONING MAP, CITY OF NEW HAVEN (1928).

³⁹⁷*Id.* at 143-242.

³⁹⁸JOURNAL OF THE NEW HAVEN BOARD OF ALDERMEN, 1927, 1928, 1929. It is difficult to enumerate rejections of proposals for map changes. Because of the length of this process, property holders withdrew their proposals at many stages along the way, so few were addressed by the Board.

to allow additions of such businesses as barber shops and variety stores.³⁹⁹ Like the Board of Appeals, City Plan lacked standards by which to grant map changes equitably.

In general, it appears that the City Plan Commission and Board of Aldermen tended over time towards granting more plentiful and less restrictive map changes.⁴⁰⁰ Map amendments remained hard to come by, however, and most were fairly nominal. Still, the map change process revealed problems within the system. The process was lengthy and complex, and the City Plan Commission had no firm basis for making its decisions beyond neighbor participation. The numbers of petitions for change by private individuals indicated public dissatisfaction with the zoning map. Had the zoning map been stronger from the start, and the City Plan Commission determined a clear decision making protocol, individuals would not have had to undergo such a lengthy and unpredictable process.

V. ZONING IN NEW HAVEN: ENCOUNTERING PITFALLS IN RULEMAKING

The 1926 zoning ordinance was unable to last out the decade. In May 1929, Nettleton raised the concern that the zoning law favored the rich man, whereas at the original hearings it had been declared that the poor man would also benefit from zoning.⁴⁰¹ Bassett agreed that the New Haven

³⁹⁹See CITY PLAN MINUTES, *supra* note 171, at 157, 218.

⁴⁰⁰Unfortunately, due to the length of the amendment process, it is difficult to pinpoint the ratio of number of petitions filed to number granted in any given year. For example, it was common for a property holder to apply for a change in mid-1927 and not have it granted until late 1928. That the Commission grew more lenient over time is therefore an estimate rather than a matter of empirical proof.

⁴⁰¹CITY PLAN MINUTES, *supra* note 171, at 226. Nettleton's objected to the situation of garages and side line restrictions. Nettleton argued that the side line restriction gives a man with a 100 foot lot permission to put his garage near the rear fence, where a man with a 40 foot lot must keep his garage nearer the house. Therefore, the man with the small yard is discriminated against for having less property. *Id.*

laws were drastic in some respects and should be amended.⁴⁰² On November 13, 1929, the Board of Aldermen amended three substantive sections of the zoning ordinance.⁴⁰³ Two-story open porches were excluded from the definition of “building area” and the definition of “front yard” in Residence B and C districts.⁴⁰⁴ A section on rear yards was also added, providing that if significant unoccupied open space existed between the main building and the rear line, a larger percentage of the rear yard than prescribed by the ordinance could be occupied by accessory buildings.⁴⁰⁵ While it may be argued that these amendments were minor, that amendments arose so soon after the passage of zoning indicated weakness in the ordinance. Bassett himself admitted that the ordinance was flawed. A product of seven years of writing and re-writing, New Haven’s zoning ordinance was unlikely to achieve what its originators had hoped.

New Haven chose to zone in hopes of increasing property values, abating nuisance, ordering the city, and furthering the goals of the planning movement. Instead, New Haven’s zoning ordinance protected the interests of manufacturers and ignored the concerns of the general public. Zoning simply served to perpetuate the status quo. The city’s needs were forgotten in a morass of individual demands.

At the start, New Haven carefully approached zoning from the perspective proposed by national experts. Edward Bassett explained that every city was unique, and therefore should fashion

⁴⁰²*Id.*

⁴⁰³1929 JOURNAL OF THE NEW HAVEN BOARD OF ALDERMEN 395-396.

⁴⁰⁴*Id.* at 395.

⁴⁰⁵*Id.* at 395-396. The unoccupied open space required was: 75% in Residence A, AA and B districts; 60% in Residence C districts, and 50% in Business A and B and Industrial A districts. *Id.* at 396.

its own zoning plan.⁴⁰⁶ Following this line of reasoning, New Haven hired a disinterested consultant to study the city scientifically and apply zoning to the city's needs. The Technical Advisory Corporation of New York carried out this mandate. From there, however, zoning in New Haven devolved. As a result largely of city government decisions to over-involve business and under-involve the general public in decision making, combined with a lack of guiding authority with expert knowledge, zoning in New Haven did not follow the path visualized by zoning's creators. From the perspective of the zoning ideals set out by planners in the early 1920s,⁴⁰⁷ New Haven's attempt to create order resulted in failure.⁴⁰⁸

First the Zoning Commission, and later the City Plan Commission, allowed business interests to interfere with Ford's zoning ordinance. While the commissions may have taken this approach for pragmatic reasons, hypothesizing that the Board of Aldermen was unlikely to pass an ordinance opposed by some of the most powerful men in the city, the decision to work so closely with business undermined zoning ideals of health and welfare purposes. Residences were allowed in Industrial C areas, and existing non-conforming uses had few restrictions placed on their potential expansion.⁴⁰⁹ Secret meetings with manufacturers and realtors resulted in mapping changes which

⁴⁰⁶TOLL, *supra* note 5, at 196.

⁴⁰⁷See CAMPBELL SCOTT, TECHNICAL ADVISORY CORPORATION, SOME FACTS REGARDING ZONING (September 1924) (on file at Yale University Manuscripts and Archives, MS 847, Series I, Box 3, Folder 36).

⁴⁰⁸With variances, map changes and ordinance amendments, it would be impossible for New Haven to achieve Bassett's ideal of promoting health and safety through a complete separation of business and residences. See EDWARD M. BASSETT, THE MASTER PLAN 29 (1938).

It is difficult to assess the immediate effects of zoning on property values in New Haven without a yearly publication of land value estimates, such as that used in McMillen and McDonald's study of Chicago. See McMillen & McDonald, *supra* note 2, at 168.

⁴⁰⁹NEW HAVEN, CONN, ZONING ORDINANCE §§ 1100-1101, 1302 (1926). Ford's 1923 ordinance had forbidden residences in Industrial C districts, and had placed severe restrictions on the expansion of non-conforming uses. NEW HAVEN, CONN, BUILDING ZONE ORDINANCE §§ 9, 10 (proposed 1923).

served the desires of interested parties. Mayor Fitzgerald, noting that New Haven should have adopted an ordinance much earlier, complained: “New Haven, as other cities, is a little slow to do things which may affect or which people think may affect the interests of individuals.”⁴¹⁰

Government willingness to bow to manufacturing interests slowed the zoning process and violated the theory that zoning should serve the entire citizenry.

Resistance to public involvement—in fact, insistence on total secrecy—also contributed to misdirected zoning in New Haven. Rather than solicit public comment from the start in 1921, the Zoning Commission waited until 1924 to meet with ward residents. The Technical Advisory Corporation compiled pages of data and over two hundred maps without initiating any public interest surveys. Public reaction in 1924 was so vigorous that the commission was forced to retreat, faced with hundreds of requests for change. Had the commission looked for suggestions from the public from the beginning, there might have been less opposition once the proposed ordinance was drafted. This would have saved the re-drafting and eventual overhaul of the ordinance that followed the 1924 hearings.

Perhaps the greatest damage to the zoning ideal in New Haven was the lack of consistent, confident leadership of the program. The reins were handed over not once but twice, first within the Zoning Commission from Gray to Tyler, and then from the Zoning Commission to the City Plan Commission. The first switch resulted in an ordinance re-drafted haphazardly, filled with changes based almost entirely on the instincts of the commission members. The second switch led to a broad ordinance that its own designer claimed was not 100% authentic. The City Plan Commission also lacked the Zoning Commission’s enthusiasm and dedication. Overall, even when city zoning leaders were zealous about the project, they were at the same time overly cautious and tentative. The Zoning

⁴¹⁰Mayor David Fitzgerald, Mayor’s First Message for 1924 (January 1, 1924), in 1924 B.A. JOURNAL, *supra* note 89, at 29. The mayor continued, “The new Commission will begin to function and manufacturers and property owners in general are invited to cooperate.” *Id.*

Commission in particular, and City Plan to a lesser extent, wanted to please every important New Haven resident. Without someone to give the program strength and direction, zoning could not match the objectives of its originators.

Finally, New Haven implemented zoning without experts or standards. Board of Zoning Appeals and City Plan Commission members were not planners, ready to make weekly excursions to view the premises for which requests were made. These review boards consisted of working men, mostly lawyers, who allowed variances in a somewhat haphazard fashion. New Haven chose to ignore the plea of national planners to “remove [the Board’s] action as far as possible from petty politics and place it on a basis of community welfare.”⁴¹¹ It may be argued that the creation of disinterested and knowledgeable review boards was a zoning ideal that could not become reality anywhere. New Haven made took few strides at all, however, toward the ideal.

New Haven had the opportunity to make a national name for itself in zoning. The Elm City took all of the necessary first steps, but stumbled and eventually fell in its faulty attempts to achieve perfection. New Haven residents began applying for variances and map changes less than a month after the 1926 ordinance was passed. The mapping scheme did not last intact even through the decade; it was amended in 1929. New Haven demonstrated long-term vision in the early 1920s. The city simply lacked short-term resources to realize its dream. As the following 1930s comment suggests:

It can be safely stated that a little more study of the human element at the time of the original zoning survey, and a more careful analysis of existing uses, would result in the adoption of a zoning ordinance that, while it might not be so ideal in many ways, would obviate the continual changes that are present in most cities.”⁴¹²

Post-zoning failures did not have to be so glaringly obvious. In New Haven, hesitant leaders shied

⁴¹¹Theodora Kimball Hubbard, *Annual Survey of City and Regional Planning in the United States, 1927*, CITY PLANNING, April 1928 at 124.

⁴¹² C.J.S. Williamson, *Mechanics of Zoning Adjustments*, ANNALS AM. ACAD. OF POL. & SOC. SCI., May 1931, Part II: Zoning in the United States, at 108, 109-110.

away from public participation and fell prey to self-interested manufacturers. Shifting, often under-informed authority further confused matters. Despite one of the lengthiest attempts in zoning history, New Haven was unable to realize the 1920s zoning ideal.