# This Land is Your Land

According to law professor Elie Mystal, to begin with, "all land is 'public'. All land is just there, owned by whoever or whatever happens to be standing on it, and can physically defend it, at a particular time. It's all God's land, if you're into that sort of thing. Or the king's land, if you lived in pretty much any pre-Enlightenment society."

Certainly "private" property has existed in some form since the first cave dwellers marked off their territory. But as civilization evolved, concepts of ownership became more and more complex. Although indigenous tribes here on this continent may have had some concept of property rights, including the right of excluding other tribes, no doubt there was plenty of room for misunderstanding when the Europeans started settling down in greater numbers.

Modern day would-be homeowners accept that in seeking to buy a home that the acquisition is actually a purchase of rights, though it is the dwelling and earth under it that is tangible. Real estate 101 classes will describe a "bundle of rights"; these are simply: the right of possession; the right of control; the right of exclusion; the right of enjoyment; and the right of disposition.

Despite the privileges that ownership bestows, the private property owner in newly hatched America needed some assurance that this new government wouldn't snatch the fruits of his hard earned labors, at least not without some payment. Thus was born the Fifth Amendment to our U. S. Constitution, which states, in part, that: "No person shall be deprived of property…taken for public use, without just compensation." Which means, if the government needs to take your land for something the government can show it needs for the greater good, it must, nevertheless, pay you for it. Got it? Remember that. Because one of the authors of our beloved U.S. Constitution, James Madison, also wrote, "I believe there are more instances of the abridgement of the rights of the people by the gradual and silent encroachments of those in power than by violent and sudden usurpations." There is a less dignified version of that expression; it is, "death by a thousand cuts". And it is how we arrived at today's discussion: zoning.

Zoning. That dirty knife that cuts both ways. Remember that bundle of yours? It's about to get smaller. With the creation of America, people from distant lands started coming from Europe and elsewhere and the place

soon started getting crowded. So when we, as a society, began to live closer and closer together, our individual property rights started rubbing up against each other, and in order to keep domestic tranquility, but also to sustain and promote economic prosperity and property values, we established some rules for getting along. And over time, often through court decisions, we agreed—sometimes reluctantly—to give up some of our rights in exchange for certain comforts, the result of which were zoning regulations. Remember those Madisonian "gradual and silent encroachments and usurpations?"

Well, one hundred years ago, in June of 1923, Connecticut enacted zoning laws. There were, no doubt, heated debates; there were persons concerned that the government would limit what they might do with their lawfully owned property. As I mentioned, such rights of use are somewhat protected under the Fifth Amendment to the U.S. Constitution. The government cannot take private property without good reason, called "eminent domain", which some may recall from the infamous *Kelo vs. City of New London*, Supreme Court decision, and must compensate you. Technically, any time a municipal commission tries to limit what you might do with your property, it is taking a small part of your rights to do whatever you want with your property. Many a property owner has winced and grumbled when he discovered that his property rights are limited because he can't build his car garage where he wants, because it is too close to his neighbor's yard. What he feels is that his rights have been abridged. The courts have accepted these incremental little "takings" over the years. Aggrieved property owners have recourse if they feel the regulations are onerous; there are local avenues of appeal against the authority—as well as lawsuit—to seek remedy or compensation.

Sprague zoning laws took effect in 1947, but not as the result of carved stone tablets being brought down from the summit of Pautipaug Hill or School Hill by the Board of Selectmen. They were created through town ordinance, and presumably with the input and approval of the majority of the townspeople, by elected officials, people whose descendants probably live in this town. The process of enacting new regulations remains pretty much the same today.

The current zoning regulations, which are available for anyone to read online, allow for a diverse number of uses. Some uses, such as cell towers, did not even exist when the regulations were first written. Wine has been around forever, but farm wineries are a relatively new addition to the regulations. You are well aware that these regulations were not added by fiat of the Planning and Zoning Commission; they were prepared and debated in full view of the townspeople, who were allowed to—indeed, encouraged to—participate in their implementation or rejection.

There are a diverse number of allowed uses of private property in Sprague. These uses are sometimes dependent upon their proposed location; the regulations attempt to plan for such uses. The Planning and Zoning Commission can receive and review proposed regulations for a use that a property owner may wish added to the regulations; the Commission can also add regulations under its own authority—again, and always, with the input of the public. The regulations are intended to be consistent with the Town's Plan of Conservation and Development, which itself is revised with the input of the public as well as other agencies of the town.

Zoning regulations exist to help us live in harmony with one another. But it is important to remember that it is the public that allows for and controls zoning regulations, which through representative government are thus enforced. We want to be able to possess, control, exclude, enjoy, and dispose of our property; zoning exists to ensure that your investment in those rights retain their value.

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*If you found this essay interesting and if you have an interest in real property and zoning regulations, you may want to consider becoming a member of the Planning and Zoning Commission, or the Inland Wetlands and Watercourses Commission, or the Conservation and Agriculture Commission, or the Zoning Board of Appeals.*

*For more information, please contact the Sprague Democratic Town Committee.*