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Editorial

Not much remains

NOT THAT long ago, the owner of a piece of property could build on it whatever he wanted.

These days, it need hardly be said, we live in the era of hyper-regulation, and many people believe the opposite is true: namely, that you can't do anything with your land — not even rent out your house — unless the government says it's OK. They don't have that quite right, but almost.

How did we get from the "anything goes" era, which was still around as late as 1926, to the suffocatingly restrictive one we have today? How, in only 90 short years, were property rights transformed from everything, to almost nothing?

The story begins in the small town of Euclid, Ohio, in the early 1920s, when the city council came up with idea of dividing the town into six districts, including commercial and residential zones, and with different sizes of lots and building heights allowed in each. A property owner challenged this zoning scheme as a violation of his constitutional rights to liberty and property, fighting it all the way to the Supreme Court. The High Court, though, agreed with the town that the increasing complexity of urban life, even in a small town, created problems necessitating land-use regulation, and that mitigating those problems through zoning was simply a new expression of a local government's "police power" — basically, the power to protect the general health and safety of the public by prohibiting criminal or antisocial behavior, prohibiting nuisances, and protecting public resources.

Once the "police power" barn door had opened with respect to zoning, it wasn't long before all sorts of permits and permit requirements were being invented, and before you could say, "Environmental Impact Report," the government had starting telling you not only what use could be made of your land, but what architectural style you had to employ, the sort of materials you had to build from and how many bedrooms and bathrooms you could have, and even things as minute as what color your shutters could be and whether you were required to have a carbon monoxide detector outside your bedroom door.

In fact, as the years have gone by, the rules have become more and more ubiquitous, to the extent that nowadays, if the government thinks it, it regulates it, with very few exceptions. And, boy, do some people love seeing the government tell people what they can do.

According to fairly recent Supreme Court decisions — which were themselves bitterly contested by the regulation-first crowd — the only things the government can't do when it comes to land uses are prevent you from using your property at all, impose regulations which have no legitimate purpose, or force you to do something for an arbitrary or discriminatory reason.

Enter the owner of one of Monterey County's most exclusive homes, overlooking the 14th Hole of the Pebble Beach golf course. For years, the owners of this fabulous estate have rented it out on a short-term basis, only recently being told by Monterey County that they had to stop.

Their answer was to file a lawsuit against the prohibition of the short-term rental of their house, but not by claiming that the government doesn't have the power to ban short-term rentals. Clearly, the government does, under a long chain of court decisions stretching all the way from Euclid, Ohio, to right here in Carmel.

Instead, these homeowners claim the prohibition of short-term rentals in their neighborhood is discriminatory, because such rentals are allowed in other parts of the county.

If their lawsuit succeeds, the county could eliminate the discrimination by letting them rent, which is what the owners of the Pebble Beach home presumably want.

On the other hand, the discrimination could also be eliminated by banning short-term rentals throughout the unincorporated parts of the county.

Considering the recent history of ever-increasing regulation, especially when it comes to using your property, our money is on the latter.