XLIV.
BUILDING ZONES.

The first paragraph in Part the Second, Chapter 1, Section 1, Article IV of the Constitution reads as follows:

ART. IV. And further, full power and authority are hereby given and granted to the said General Court, from time to time to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof [A]; and to name and settle annually, or provide by fixed laws for the naming and settling, all civil officers within the said Commonwealth, the election and constitution of whom are not hereafter in this form of government otherwise provided for; and to set forth the several duties, powers, and limits, of the several civil and military officers of this Commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this Constitution; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said Commonwealth; and also to impose and levy reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities, whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the Governor of this Commonwealth for the time being, with the advice and consent of the Council, for the public service, in the necessary defence and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

Mr. Robert Walcott of Cambridge presented the following resolution (No. 182):

Resolved, That Part the Second, Chapter I, Section I, Article IV, be amended by inserting in the first sentence [at "A"] after the words "as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof", the words "and such good and welfare shall be deemed to include the regulation of smells, sights and sounds and the enactment of regulations limiting buildings according to their use and construction to certain zones or districts of cities and towns.

The committee on Social Welfare reported that the resolution ought NOT to be adopted.

It was taken up for consideration Wednesday, June 26, 1918.

Mr. Robert P. Clapp of Lexington moved that the resolution be amended by substituting the following new draft (No. 386):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have power to enact laws limiting buildings according to their use or construction to specified districts of cities and towns.

This amendment was adopted Wednesday, June 26, and, accordingly, the new draft was substituted and was ordered to a second reading, rejection, as recommended by the committee on Social Welfare, having been negatived.

The new draft (No. 386) was ordered to a third reading without debate Wednesday, July 31, and was passed to be engrossed Tuesday, August 13, in the following form (No. 415):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have power to limit buildings according to their use or construction to specified districts of cities and towns.

The Convention voted, Thursday, August 15, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 161,214 to 83,095.

THE DEBATE.

Mr. WALCOTT of Cambridge: The report of the minority of the committee on this resolution was founded on a resolve introduced by me after consultation with the planning boards of Cambridge and of other cities. However, the amendment moved by Mr. Clapp of Lexington is entirely satisfactory to me; and, also, I have authority from the minority of the committee on Social Welfare to say that it is satisfactory to them, as a briefer and satisfactory phrasing.

The desire for some change in the Constitution on this point comes from the rather narrow construction of the police power that was referred to yesterday in the debate on the bill-board amendment. Since Judge Holmes left the Supreme Judicial Court it seems that the construction of the police power has been narrowed down considerably; and although the decision in Welch *v.* Swasey went to the effect that constitutionally districts might be made in Boston limiting the height of buildings, corresponding with the limits of the fire districts, yet the language in that case, — taken in connection with the Boston Advertising Company language, in the case cited yesterday, — gives a pretty narrow construction to the police power in Massachusetts; narrower than has been given to it in other States, notably in New York and in Illinois.

Now in New York in 1912 this condition arose: The district below Thomas Street of warehouses and commission houses began to invade the retail districts, up Fifth Avenue and Broadway. As a result the savings banks began to suffer because, first, the second mortgages began to be called, and then the first mortgages, and the property depreciated with tremendous rapidity. The merchants on lower Fifth Avenue banded together and tried to stop it by agreement not to trade with these wholesalers, just as Professor Hart referred yesterday to the consumers trying to stop obnoxious bill-board advertising by a restrictive agreement not to buy goods of those persons who used obnoxious bill-board advertising. This failed, however, and they had recourse to legislation.

The legislation that they sought was this: To divide the city into districts, one for manufacturing and wholesaling, another for retail stores, and another for residences. It took a very extensive agitation to get that through in New York. The first step was to get a commission appointed, — a "Commission on the Industrial Districting of New York," — which was authorized by the General Assembly of 1913, and reported at the end of that year, and their report was en-

acted into a statute. The report is a large book, which our State Library has, of 400 or 500 pages, with very elaborate illustrations. A campaign was started in New York, all through the city, to popularize this movement. The Real Estate Exchange, the Chamber of Commerce, took it up, and the result was that the legislation was supported unanimously in the General Assembly and the bill was enacted; and nobody in New York at the present time would wish to repeal that law.

Similar conditions have occurred in Chicago, and as a result, Professor Merriam obtained in 1917 from the aldermen, of whom he was one, their approval of a bill proposing that the State of Illinois should give similar authority to its cities and towns. He published a pamphlet, copies of which I endeavored to secure to distribute to the Convention here, — it is the best short statement on the subject in print, — but the issue was exhausted almost immediately after it was published, in February, 1917, and I regret to say that I was unable to secure the necessary number. In fifty or sixty pages he gives many instances of abuses which commonly result at present from the lack of intelligent zoning. A campaign of education in favor of such legislation is being made now in Illinois.

Now, it is suggested that in the city of Boston no such extreme conditions prevail as prevailed in New York and Chicago, but it is not to meet the extreme conditions only that this amendment is asked for. It is a general condition which exists in every town where residence property is depreciated greatly by the introduction of manufacturing or trade which is out of place in that locality. This intrusion of trade first of all raises the insurance rates, adding to the fire loss, and then the added rate makes the location much less desirable for residences. It also makes a fertile field for the hold-up real estate operator to get in his good work, in this way:

You buy a piece of land in the town, erect a handsome residence, lay out gardens, plant trees or shrubs, spend money to make the home attractive for your wife and children. Pretty soon some real estate speculator comes, and he says: "I thought you would be interested to know that somebody is about to erect a one-story store or a six-flat apartment-house next you; you probably will want to buy that land, won't you?" Very likely you are tempted to try to secure all your neighborhood by purchasing away for a couple of years what ought not to be permitted to go in that neighborhood and what would not be permitted to go in a residence district in France or Spain or Germany.

To a certain extent, of course, there is constitutional power at present to limit offensive trades to particular districts of the city, but the line is a pretty fine one as to what are offensive trades. Slaughterhouses, of course, ordinarily are a public nuisance and an offensive trade. Is the junk business an offensive trade? It may be a danger to property if it consists of inflammable junk. But how about the storage of old iron? Is that a nuisance? Probably not. Certainly you do not want it, however, next your house. It is noisy and it is not decorative. Mr. Simon, in this brief, for building districts and restrictions in Illinois, brings up several hundred actual cases, tabulated from the records of real estate agents in Chicago, and similar statistics were made in New York. You members of the Convention

probably can duplicate such instances from your own experience. You know how a good residence district decays. It does not go to pieces all at once, so that the Land Court can say that the use of the property has changed and all existing private restrictions are off. Not at all. The first thing that happens is that somebody who needs the money sells out a vacant piece of land. People very likely from outside the city come in and put up one-story "tax-carriers," as they are called, — a cheap drug store, a local grocery market. This is followed perhaps by a large apartment-house. That, again, is followed by some noisy trade; and after a while that residence district is decaying, but private restrictions on the property probably prevent many owners from selling it for the only purpose for which it is valuable now, and they have to hold their places to their great detriment.

This system of districting, as used in New York and about to be applied in Chicago, makes effective what private restrictions are unable to effect. It takes off the private restrictions, or what would be the equivalent of private restrictions at one time; or perhaps, to express it better, it puts on for a certain period of years restrictions for a whole district which, if left to private ownership to arrange, could not be distributed satisfactorily throughout such a large district. We all know how some one person is apt to block the imposition of a private restriction. That is, it supports the values of districts, when otherwise, if left to private initiative alone, there would be slow or unequal decay of one part of the district over the other.

A bill was introduced by Representative Blanchard of Cambridge in the last Legislature to accomplish this, with the same wording as the Illinois bill, but it was met with the objection in the committee on Mercantile Affairs, to which it was referred, that it might be unconstitutional, under the language of the decision in Welch *v.* Swasey and the case of the Boston Advertising Company, if not held to be necessary to public health or public safety. Whether or not that objection is well founded, obviously I am not as competent to say as the ex-Justice of the Supreme Judicial Court and the former Attorneys-General in this Convention; but, at any rate, it was a doubt which troubled the legislators and prevented useful legislation from being passed.

It is for that reason, as I understand it, that the minority of the committee on Social Welfare hope that this constitutional amendment, in the form advocated by Mr. Clapp, may be adopted.

Mr. KILBON of Springfield: As one of the minority members of the committee, I may be permitted perhaps to make a very brief statement as to the reasons in my mind for the stand that we took. I may say that the original minority was not merely the gentlemen whose names are printed upon the calendar, but it included also that of the chairman of our committee, the late former Governor Brackett.

The question as it came to us was a question simply of public policy, not a question of legal technicality; a question as to whether it was advisable and proper for the Commonwealth to establish regulations which should make it possible for a community to determine the direction and manner of its own growth. It is to be recognized of course that when a man owns a piece of property he is entitled to do with it what he wishes. He may wish to do something which is offensive, not to the extent of being a positive nuisance but offen-

sive to the extent of being a serious detriment to the attractiveness of the neighborhood, to those who dwell about him; so that the right which he has to do what he wants to with his own property becomes in that case a right to injure the property of other people.

The minority of the committee believe that if it is possible by any wording of the Constitution, by any form of interpretation of the Constitution, by any declaration of the public policy that shall be fair, that it ought to be possible for public policy to be so directed that a man may be restrained in using his property in such ways as would depreciate the value of his neighbor's property, and we have at the back of our thoughts, then, this idea.

We were met with the objection that you might do ever so many things. You might say that on this street people should live who would pay $20 a month rent, on the next street people should live who would pay $40 a month rent, and that the $50,000 houses should be put in another part of the town. They said: "That is class legislation, we don't want anything of that sort." We do not. I do not. I do not believe the members of the Convention do. But that objection illustrates a tendency of the human mind which over and over again has been manifested in this Convention, — the tendency to imagine that, if new powers are granted or old powers enlarged, the most absurd and unreasonable thing of all the things that can be done is likely to be done. We have had suggestions about that this morning in our debate upon antiquarian relics, when a man stands up and seriously supposes that anybody representing the public of Massachusetts would take away from the son of one of her most distinguished citizens his ancestral home. They would not do it, even if they could; and there is not any danger in practice of a very serious abuse, an absurd abuse, of this power. Whether there might be dangers of incidental abuse, of course I should not dare to be quite so sure.

But I do want to say that I am convinced, and the other members of the minority of the committee are convinced, that in the first place it is necessary to make a statement enlarging the powers of the Commonwealth in this regard if anything is to be done with it; that, in the second place, for the sake of the preservation of existing values in real estate in a great many of our cities and towns, some policy of this sort must be adopted and carried through wisely and sanely; and, in the third place, that objections that arise to it are objections that arise on the whole from the class of people who want to use their private rights to the detriment of the common private rights of their neighbors. I sincerely hope that the amendment, in the form suggested by the gentleman from Lexington, if you please, may be adopted. I believe the motion has not yet been made. I should be glad to have the gentleman make the motion, and will not do it myself.

Mr. Clapp of Lexington moved the amendment printed at the beginning of the chapter.

Mr. AYLWARD of Cambridge: I want to say just a word. I am afraid I can say nothing new, except that I am entirely in accord with the remarks of my colleague from Cambridge. I think this resolution is one that might well be adopted to prevent the abuses

that have been pointed out. I have in mind some concrete illustrations of those abuses. I think that if this measure is adopted the General Court will go slowly in any way of abusing it, but it does seem too bad that after a section or tract of land is developed into a reasonable residential district there is not some authority, or that there is not sufficient authority, to prevent some unscrupulous man or men from destroying that locality.

We know that we do admire the splendid residential sections in many towns that we have around Massachusetts. While some of us may not be able to live in those sections, still we would dislike very much to have anybody do anything which would injure them. In the city of Cambridge at present there is a very fair line of demarkation between the manufacturing and residential districts. You might say there are, as in New York at present, three very well-defined districts, — residential, business and manufacturing.

In the development of new land in Cambridge, the land that was developed on the Charles River Parkway, the city of Cambridge was careful, — so careful that it had to undo a little in order to permit the Institute of Technology to come over. Cambridge was careful when that land was filled on the river to restrict it to residential purposes, and contemplated the development which I have no doubt will continue to develop, of a beautiful residential section; but when the city of Cambridge, in common with other municipalities, invited the Institute of Technology to come to Cambridge, on the beautiful shore of the Charles, it was found that the restrictions that had been made, the contract that had been made between the city and the owners of the land, practically prevented the Institute from coming there unless something could be done, because the Institute wanted to close up streets that it was agreed should be developed; and the city, after some little discussion, very gladly waived it and made a new agreement, — that is, the city and the owners, who were anxious to sell the land, and who could not do so unless the restrictions were removed.

I simply refer to that so as to show that the city of Cambridge, as far as it could, has developed along those lines. As a representative here of the city of Cambridge, I believe I speak the sentiments of the city in giving my support to the measure. I believe it is an amendment which should be adopted, and I have the greatest confidence that, if adopted by the people, the General Court will act within the spirit of the amendment.

Mr. AVERY of Holyoke: I want to say just a word in support of the resolution offered by the member from Lexington (Mr. Clapp). I happened to be mayor of our city for six years, and I had a good deal to do during that time with the laying out of the park and playground system of the city. I became greatly interested in the orderly development of the city. We found that after we had gone along in a certain way that some real estate promoter would come in, absolutely with mercenary purposes and motives, and would ruin and spoil a district that had been planned and developed; and the General Court has not been able to give us any legislation that adequately will curb that evil.

Some years ago I had the good fortune to go abroad, and I noticed the wonderful development of the cities of Great Britain and on the

Continent in many cases, and that was because they did not have what we call the private interests, the vested interests; they could develop the city as it ought to be developed, for the beauty of the city and the good and the welfare of the people; and we cannot do that in Massachusetts to-day.

At this very moment I am interested in a proceeding in court where the town of South Hadley is trying to preserve some of the beauty of that town adjacent to Mt. Holyoke College, trying to do it under boards of survey and that sort of business, and its rights are all too feeble and they are all too limited.

Massachusetts needs something of this kind if we are going to have a development of the cities and towns of Massachusetts in the future in consonance with the marvellous beauty which nature itself has given to us. I hope that this resolution, or something like it, will be adopted.

Mr. PILLSBURY of Wellesley: I am sorry to break my record by addressing the Convention, even briefly, for a third time on the same day, but I see a feature of each of these proposals which undoubtedly escaped the notice of the minority of the committee and of the gentleman from Lexington (Mr. Clapp), to which attention ought to be called.

One of the burning issues throughout the south for many years past, as we all know, has been the segregation of the Negro in particular quarters of a city or town, and several southern cities have made the attempt, which has always, so far as I know, been held unconstitutional, even by the courts of the southern States. To my mind this resolution, while undoubtedly such a thing has never occurred to anybody who is interested in it, plainly would authorize the segregation of the Negro, for it authorizes the limitation of buildings according to their use to certain zones or districts.

I do not apprehend that the power, if conferred, is likely to be put to that use in Massachusetts, but I should dislike to see it go out to the world that Massachusetts has written into its Constitution a clause which would authorize the segregation of a race, the Negro race or any other. I will not undertake at this moment to suggest a proper amendment, but if either resolution should be substituted it clearly calls for correction in this particular.

Mr. SAWYER of Ware: I should like to ask the gentleman who has just taken his seat (Mr. Pillsbury) if it would not be possible also, under this amendment, if adopted, to carry out the policy which Tom Johnson inaugurated in Cleveland, and which some foreign cities have done, of segregating houses of prostitution and such places?

Mr. PILLSBURY: I see at present no reason to doubt that it would.

Mr. WALCOTT of Cambridge: I should like to say that the point raised by the gentleman from Wellesley in the first division (Mr. Pillsbury) was taken up by the corporation counsel of New York, and he gave it as his opinion that what he fears could not be effected, — no segregation of people by race or color. Moreover, it would violate the Federal Amendment. See Buchanan *v.* Warley, decided November 5, 1917, by the United States Supreme Court. As to the second question, that also was put up to the corporation counsel of New York, and he said the use of buildings as whorehouses would be something that could be segregated; it could be covered by the word "use" in this language.

XLV.

POWER TO IMPOSE AND LEVY TAXES.

Messrs. Roland D. Sawyer of Ware, David I. Walsh of Fitchburg and Walter H. Creamer of Lynn presented resolutions numbered, respectively, 15, 43, 60 and 131. The committee on Taxation reported the following new draft July 18, 1917 (No. 332) (Messrs. Guy W. Cox of Boston and Charles Francis Adams of Concord, dissenting):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Full power and authority are hereby given and granted to the General Court to impose and levy all manner of reasonable taxes, assessments, rates, duties, imposts and excises within the jurisdiction of the Commonwealth: *provided, however*, that in the taxation of property, all property of the same class, subjected to taxation, shall be assessed at the same rate or rates throughout the Commonwealth or the division thereof by or for which the tax is imposed, and that all excises shall be uniform throughout the Commonwealth.

The resolution was read a second time Wednesday, June 26, 1918.

Mr. William S. Kinney of Boston moved that the resolution be amended by striking out lines 3 to 12, inclusive, and inserting in place thereof the following: —

Full power and authority are hereby given and granted to the General Court to impose and levy proportional and reasonable assessments, rates and taxes upon all the inhabitants of, and persons resident and real estate lying within, the said Commonwealth; and to impose and levy reasonable taxes upon personal property or upon the income derived therefrom as well as upon incomes derived from professions, trades and employments, which shall be proportional upon property or incomes of the same class, provided that personal property the income from which is taxed may be exempt from other taxes, as well as from duties and excises other than those imposed on licenses, transfers, legacies and successions; and in taxing personal property or incomes the General Court may grant reasonable exemptions and abatements, may classify personal property and incomes in a reasonable manner, may classify machinery as personal property, and may tax the interest of both owner and mortgagee in mortgaged real estate as real estate either separately or to the owner.

This amendment was withdrawn.

The resolution was ordered to a third reading Thursday, June 27, 1918, by a call of the yeas and nays, by a vote of 129 to 87.

The resolution was read a third time Wednesday, July 31, in the following form, as changed by the committee on Form and Phraseology (No. 396):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have power to impose and levy all manner of reasonable taxes and excises, but all property of the same class subjected to taxation shall be