

THE IMPACT OF LAND USE LAWS ON AFFORDABLE HOUSING

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During the 20th century, zoning became the most popular form of local government land use regulation. In many communities, particularly the developing suburbs, zoning was designed to protect residential areas containing single family, free-standing houses on relatively large lots. This approach to land use regulation has a significant impact on the cost of housing, which in turn limits housing opportunities for low and moderate income households, particularly in metropolitan areas with multiple zoning jurisdictions.

About half the states have addressed this affordable housing issue by amending their state enabling statutes to clarify that 1) local land use policies are expressed in written land use plans; 2) affordable housing needs of the community and the region must be addressed in those plans;

and 3) zoning ordinances are techniques to implement those plans. Several states have also established appeals systems that include a presumption in favor of affordable housing developments.

Affordable Housing Concerns

Local land use regulations, particularly zoning ordinances, have a major impact of on the availability of decent affordable housing in metropolitan areas throughout the country. Data from the 2000 U.S. census as well as numerous studies show that even while the U. S. housing sector has enjoyed continued strength, working class families—particularly those with incomes below the median for their area—are having an increasingly difficult time locating housing that is both affordable and within a reasonable distance from their places of employments (Fiore & Lipman 2003; Joint Center for Housing Studies 2003; Katz 2002; Lipman, 2002; Pitcoff & Peletiere, 2003).

The Center for Housing Policy reports that in 2001, more than fourteen million American families (almost fifteen percent) had “critical housing needs” because they “paid more than half their household’s income for housing and/or lived in substandard conditions” (Lipman, 2002). Almost five million of those households work the equivalent of a full-time job and have incomes greater than the full-time minimum wage of \$10,712.

In another study, the Center examined mortgage costs and rental charges for five “vital” occupations—janitor, retail salesperson, elementary school teacher, police officer, and licensed practical nurse—in sixty of the nation’s housing markets. Applying generally-accepted affordability standards and income required to qualify for a ninety percent mortgage loan on a median-priced home, the study authors concluded that mortgage costs for median priced homes in sixty of the nation’s largest metropolitan

housing markets are out of reach of janitors and retail salespersons. The same is true for licensed practical nurses in fifty-seven of those markets, for elementary school teachers in thirty-two markets and for police officers in twenty-eight metropolitan markets (Fiore & Lipman, 2003).

Rentals for two-bedroom apartments were equally problematic for janitors and retail salespersons when analyzed in terms of HUD Fair Market Rents (FMR) for one- and two-bedroom apartments. Licensed practical nurses could afford two-bedroom apartments in forty-three of the sixty metropolitan markets, while elementary school teachers and police officers could afford such apartments in all but one of the sixty markets (Fiore & Lipman, 2003).

The National Low Income Housing Coalition study, *Out of Reach 2003*, tracks the difficulty low income households have in affording housing at local Fair Market Rents (FMR). For the fifth year in a row the study calculates the housing wage for each county, state, SMSA and rural area, defined as the income a household must have to be able to afford a rental unit at the local FMR for a particular size unit. The national housing wage for a two- bedroom unit in 2003 was \$15.21/hour. The housing wage for Missouri was \$11.12/hour and for the St. Louis SMSA \$13.37/hour –260 percent of the Missouri minimum wage (Pitcoff & Pelletiere, 2003).

Land Use Regulation and Affordable Housing – A Brief History

Land use regulation has had an important impact on the location of affordable housing from the beginning. Peter Marcuse quotes an ancient Chinese writer, Kuan-tzu, on the importance of what Marcuse calls the “partitioning of urban space” -

The scholar-official, the peasant, the craftsman and the merchant...should not

mix with one another, for it would inevitably lead to conflict and divergence of opinions and thus complicate things unnecessarily...Let the scholar officials reside near school areas, the peasants near fields, the craftsmen in the construction workshops near the officials' palace, and the merchants in the [commercial wards]. (Quoted by Marcuse and Van Kempen 2002: 15,16 from Kostof 1992, p.102)

Lewis Mumford described the ancient city as “an urban pyramid” that was produced by “occupational and caste stratification.”(Marcuse and Van Kempen 2002: 16; Mumford 1961, p. 104). In contrast to the mixed patterns of living in urban areas that were common in the first half of the Twentieth Century, local zoning in American today often produces a similar stratification in living patterns.

Local land use regulation in the United States began in the mid-Nineteenth Century as a reaction to slum conditions in rapidly industrializing cities. The primary focus of early zoning was on health and safety standards. ¹ The City Beautiful movement, which helped stimulate the growth of the city planning profession, followed in the early part of the Twentieth Century (Tustian, R. 2000: 21). The new city plans drafted by the planners required an effective implementation technique. Zoning was imported from German cities as that technique (Tustian, R. 2000: 21; Toll, S. 1969: 123-140).

The Euclid, Ohio Case

The United States Supreme Court, in giving a constitutional stamp of approval in 1926 to Euclid, Ohio's hierarchical form of zoning that put single-family detached residential use at the top of a land use pyramid, added an unfortunate and unnecessary comment about multi-family housing.

With particular reference to apartment houses, it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; that in such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open space and attractive surroundings created by the residential character of the district.²

The Court certainly wasn't the sole cause of today's affordable housing problem, but the attitude reflected in that comment fueled the notion that local governments were free to give preferential treatment to relatively large lot, single-family housing developments, which became the dominant form of housing in suburbia (Salsich & Tryniecki 2003: 378).

The *Euclid* trial judge was more prescient. He saw the purpose of the challenged zoning ordinance to be the regulation of "the mode of living" of persons who may inhabit undeveloped land in a particular zone. "In the last analysis, the result to be accomplished is to classify the population and segregate them according to their income or situation in life," the trial judge commented.³

In the *Euclid* case, the Court also took a deferential approach to local zoning decisions as legislative in character and thus entitled to a presumption of validity. Because of the separation of powers doctrine, courts do not second guess decisions of legislative bodies unless they are arbitrary and capricious or beyond the constitutional authority of the legislature. The Court, by a narrow 5-4 vote, adopted this approach in giving deference to the Village of *Euclid's* zoning ordinance.

Growth of Zoning

In the suburban developmental years from the 1930s to the 1960s, the Supreme Court declined to review local zoning cases, leaving the judicial supervisory role to state courts. State courts, on their part, generally took a similar deferential posture—so deferential that courts concluded that the common state statutory requirement that zoning be “in accordance with a comprehensive plan” did not require a separate planning document so long as the local zoning ordinance was comprehensive in nature and gave evidence of rational thought (Haar,1955).

As the country grew and metropolitan areas expanded in the second half of the Twentieth Century, the main pattern of growth was based on the belief that homogeneity of use was more desirable than the traditional heterogeneous pattern of development in urban core cities. Zoning became the key regulatory technique to implement this vision, as well as to respond to concerns about health and safety, the environment and open space. Most new communities and developing suburbs used zoning to implement residential development favoring relatively large-lot, single-family detached housing (Frug, 1999). Chicago’s 1957 zoning code became a national model for a zoning strategy that reflected the growing importance of the automobile. Detailed regulations based on density separated homes from jobs and stores (Swope, 2003).

Exclusionary Effect of Zoning

The single family detached housing pattern of development did have an exclusionary effect. Households who could not afford the cost of buying and maintaining a single-family house and yard found few alternatives in new suburban developments. In a famous 1971 study of the zoning practices in northern New Jersey counties, law

professors Norman Williams, Jr. and Thomas Norman identified six popular land use regulatory techniques that had particular impact on housing opportunities for low- and moderate-income persons: 1) minimum-building-size requirements (normally minimum floor space), 2) exclusion of multiple dwellings from single-family zones, 3) restrictions on the number of bedrooms, 4) prohibition of mobile homes, 5) frontage (i.e., lot width) requirements, and 6) lot size requirements.

The exclusionary effect of a minimum building size (floor area) requirement can be illustrated by an example. Assuming average building costs of roughly \$60-\$80 per square foot for tract housing (2003 prices in the St. Louis area), a 1,200 square foot house would cost between approximately \$72,000 and \$95,000 to build. Land acquisition, site development, and builder's profit could add another \$30,000, bring the total cost to between \$100,000 and \$125,000. Construction of an 1,800 square foot house would cost between approximately \$100,000 and \$145,000, with total development costs in the \$145,000 to \$180,000 range. Under conventional standards of affordability, a household with an income of \$30-\$35,000 could afford the 1,200 square foot house, but would need an income of \$60-\$70,000 to afford the 1,800 square foot house. Courts have been reluctant to second-guess local government decisions to establish particular floor area requirements.⁴

Impact of Zoning on Affordable Housing

Numerous studies in recent years have called attention to the deleterious impact that single family zoning can have on housing opportunities for low- and moderate-income households, particularly in metropolitan areas with multiple zoning jurisdictions. For example, Harvard's Joint Center for Housing Studies reported in 2003:

In their efforts to manage residential growth and preserve open space, state and local jurisdictions have passed numerous land use regulations that have made it increasingly difficult to add market-rate units to the affordable supply. Although aimed at achieving several worthy public interests--including environmental quality, housing quality, and safety and health--these restrictions also serve to make all housing more costly.

A research report of the American Planning Association (APA) introduced its theme of regional approaches to affordable housing with the observation that during the 1960s and 1970s “wealthier communities were using their local land-use control authority prerogatives to create levels of economic homogeneity and segregation that had never existed in central cities” (Meck, Retzlaff & Schwab 2003: 2). The authors drew on the findings of several major studies in reaching their conclusion.⁵

A discussion paper prepared for the Brookings Institution Center on Urban and Metropolitan Policy reviewed academic literature on the relationship between local efforts to manage growth through land use regulation and housing affordability. The authors note “housing prices depend more on the relative elasticity of demand, especially within metropolitan regions, than on any other factor,” but also add that

...traditional land use regulation and many forms of growth control can and do raise housing prices.... Exclusive low-density zoning is often motivated by an intent to limit the supply and accessibility of affordable housing, thereby raising home prices by excluding lower-income households. It is also the land-use control that has most consistently been

found to displace growth and exclude low-income people and racial and ethnic minorities.... (Nelson, Pendall, Dawkins & Knaap 2002: 34).

A study of Florida's Growth Management Act found that growth management regulations "reduced housing affordability in a statistically significant character," in part because availability of affordable housing was not one of the concurrency requirements of the statute (Anthony, J. 2003:28).

Pendall's study (2000) of over 1500 municipalities in the 25 largest metropolitan areas in the country led him to conclude that minorities often suffered from what he called a "chain of exclusion." As noted above, traditional land use practices can affect the cost and availability of housing, particularly by reducing the availability of rental housing, and requiring larger single-family units. Pendall's research "confirms the long-known connection between low-density-only zoning and racial exclusion" (Pendall 2000: 135) ⁶

Recent research shows that apartment developments have a positive impact on neighboring property in several different communities (NMHC 2003). In one study researchers at Harvard's Joint Center for Housing Studies (JCS) reviewed U.S. Census data from 1970 through 2000 and found that "working communities (defined as neighborhoods in which residents earn between 60 percent and 100 percent of area-wide median income) with apartments comprising more than 30 percent of their housing units have sustained a 30-year increase in home values in each of the largest 42 metropolitan areas (NMHC 2003:1-4).⁷ Galster (2002) concluded "federally assisted housing has an insignificant—or even a positive—effect on property values", Green, Malpezzi & Seah (2002) found that "contrary to conventional wisdom...low-income housing tax credit

developments often cause surrounding property values to increase.” The Minnesota Family Housing Fund study in 2000 concluded that there are “nearly no negative impacts, and many positives to integrating tax credit rental housing in 12 Twin City neighborhoods.” In a case study in Gwinnett County, Georgia, a suburb of Atlanta, Nelson & Moody (2003) found that positive impacts of apartments outweighed negative impacts. Finally, Belden, Russonello & Stewart (2003) report “surprising public support for affordable housing in Chicago,” but note also that changing local zoning laws to allow apartments in more communities was the “least popular proposal ... tested” in their October 2002 public opinion survey.

Tensions Between Affordable Housing and Other Planning Goals

These reports all speak to the tension that exists among legitimate land use planning goals such as protecting cultural and social values, preserving open space and environmentally-sensitive areas, encouraging but controlling development, including affordable housing, and providing necessary public infrastructure. Sometimes these tensions trigger emotional response, often focused on fears that multifamily housing will threaten other values the community desires to protect. Several examples from the spring and summer of 2003 illustrate the point.

In March 2003, the United States Supreme Court ruled that a decision by the city of Cuyahoga Falls to subject a site plan approval of a federally assisted low-income housing development to a citizen-mandated referendum was not unconstitutional government conduct.⁸ Five years previously the Ohio Supreme Court had invalidated the referendum.⁹

A New Jersey community amended its zoning ordinance to restrict new multifamily units to two bedrooms or less in order to limit the number of children entering the local public school, which was experiencing budgetary constraints and strong growth pressures. The resulting controversy prompted a lawsuit challenging the legality of the restriction and led the mayor of another New Jersey municipality to comment, “You can’t have a town without kids” (New York Times, Aug. 13, 2003, p. A1).

A Letters to the Editor discussion in the *Webster-Kirkwood Times* (2003) about the new comprehensive plan for the city of Des Peres, Missouri, focused on the omission of land designated for multi-family development. The discussion was initiated by a letter from a former mayor who expressed concern that she and other empty nesters who wished to downsize but remain in the community would not be able to do so under the new plan. Over the next few weeks, a number of letters were printed in response, some favoring but most opposing the position that multi-family housing ought to be permitted in Des Peres. One letter suggested that the former mayor should just move out of the community if she was so enamored of multi-family housing.

Officials in the city of Manchester, Missouri announced plans to revise their draft land-use plan to remove references to a recommendation that some areas currently zoned for single-family housing be rezoned to permit higher-density uses. The decision was made after a public meeting in which the majority of over 200 residents attending objected to the recommendation because of the fear the higher-density use would include new multifamily or apartment development along Highway 141, a major thoroughfare in the community. (St. Louis Post-Dispatch, Aug. 18, 2003, at p. W1).

State Responses to Zoning/Affordable Housing Conflicts

While studies calling attention to housing conditions of lower-income persons have been published since the latter days of the nineteenth century and federal policy has included support for affordable housing since the 1930s (Meck, Retzlaff & Schwab 2003: 9-10), state governments largely ignored the relationship between local land use regulation and affordable housing until the 1970s. The Williams and Norman study (1971: 475, 478) of exclusionary zoning in northern New Jersey helped encourage a major legal challenge to such zoning in the township of Mount Laurel, New Jersey.¹⁰

Judicial Responses – The Mount Laurel Litigation and Its Progeny

In *Mount Laurel I*,¹¹ the Supreme Court of New Jersey held that a zoning ordinance that contravened the general welfare violated the state constitutional requirements of substantive due process and equal protection. The court articulated the principle of “fair share” housing and concluded that developing communities could not use their delegated police power to regulate land use in a manner that excluded housing for low-income persons. The constitutional obligation would be satisfied by “affirmatively affording a realistic opportunity” for the construction of a fair share of the present and prospective regional need for low- and moderate-income housing. In *Mount Laurel II*, the court returned to the original case after several intervening cases had fleshed out the law but failed to develop an effective remedy or means of administering the doctrine. In an eloquent opinion designed to “put some steel into that doctrine” and to emphasize that the *Mount Laurel* obligation is to provide a “realistic opportunity for housing, not litigation,” the court reaffirmed the fair-share principle; concluded that it was applicable to all communities, whether developing or not, containing “growth areas” as shown on the concept maps of the New Jersey State Development Guide Plan. The Court held that

municipalities' affirmative governmental obligation to provide a realistic opportunity for the construction of low- and moderate-income housing include the use of inclusionary devices, such as density bonuses and mandatory set-asides, as well as the elimination of unnecessary cost-producing land use requirements and restrictions.

The *Mount Laurel* cases have contributed two main points to housing and land use control jurisprudence. First, there is a clear recognition that the concept of general welfare, on which zoning as well as all other exercises of the police power ultimately rest, includes "proper provision for adequate housing of all categories of people." *Mount Laurel I* contained extensive discussion of the importance of housing to individuals and the rationale for concluding that the term "general welfare" is broad enough in today's society to embrace notions of adequate housing. In *Mount Laurel II*, the court restated the constitutional principle as follows:

[T]he State controls the use of land, *all* of the land. In exercising that control it cannot favor rich over poor. It cannot legislatively set aside dilapidated housing in urban ghettos for the poor and decent housing elsewhere for everyone else. The government that controls this land represents everyone. While the State may not have the ability to eliminate poverty, it cannot use that condition as the basis for imposing further disadvantages. And the same applies to the municipality, to which this control over land has been constitutionally delegated (456 A.2d at 415).

Second, *Mount Laurel I* also recognized that certain planning and regulatory decisions will have an impact beyond the boundaries of the particular decision-maker's sphere of direct control. When the police power is delegated to local government, as in zoning, tax abatement, and eminent domain, the sphere of direct control and interest of

the entity exercising the power is narrower than the sphere of control and interest of the delegating entity. Justification for the ultimate use of the police power, however, must relate to the general welfare of the people who are within the sphere of influence of the delegating agency. Thus, when the use of the police power will have an impact beyond the boundaries of the entity exercising the power, “the welfare of the state’s citizens beyond the borders of the particular municipality cannot be disregarded and must be recognized and served.”

Mount Laurel II acknowledges this point by reviewing the relationship of suburban exclusionary zoning to the continuing disintegration of cities and concluding that “[z]oning ordinances that either encourage this process or ratify its results are not promoting our general welfare, they are destroying it.”

Courts in a number of other states have expressed disapproval of exclusionary zoning, but generally have declined to adopt the mathematical approach to determining appropriate remedies of the *Mount Laurel* cases. The Supreme Court of New Hampshire embraced the fair-share principle of *Mount Laurel* that requires all communities in a region to participate in efforts to accommodate affordable housing.¹² Because the court’s rationale was based on the state zoning enabling act, the decision has national significance.

Statutory Responses

The *Mount Laurel* litigation has provided encouragement and support for efforts in other states to confront the affordable housing dilemma. While no other state has followed the constitutional theories embraced by the *Mount Laurel* court, several have adopted modified versions of the fair-share concept and many have revised local planning

and zoning enabling legislation to incorporate concern for affordable housing. Twenty-four states now have legislation requiring or authorizing local governments to incorporate affordable housing concerns into land use plans and regulations (Meck, Retzlaff & Schwab 2003: 229-230). The most active inclusionary zoning programs are in California, Massachusetts, the New York metropolitan area, including Connecticut and New Jersey, and the Washington, D.C. area (Montgomery County, Maryland and Fairfax County, Virginia). Other states with active programs include Florida, Oregon, Rhode Island and Washington (Burchell, R. & Galley, C. 2000: 3-5).

The American Planning Association's (APA) *Growing Smartsm Legislative Guidebook* contains model state statutes establishing Fair-Share Housing Planning programs and/or Housing Appeals Boards. The Fair-Share program statute is based on New Jersey and California statutes; the Housing Appeals Boards statute is drawn from legislation in Massachusetts, Connecticut and Rhode Island (Meck, S. 2002: 241-267).

Illinois enacted a statute in 2002, the Local Planning Technical Assistance Act (P.A. 92-0768, eff. Aug. 6, 2002; 20 I.L.C.S. 662/1-45), which authorizes the Illinois Department of Commerce and Community Affairs to make technical assistance grants to local government units to "promote and encourage the principles of comprehensive planning." Comprehensive plans so funded must address nine statutorily enumerated elements, including housing. According to the statute, the housing element is designed to "document the present and future needs for housing within the jurisdiction of the local government, including affordable housing and special needs housing; take into account the housing needs of a larger region; identify barriers to the production of housing, including affordable housing; access [sic] the condition of the local housing stock; and

develop strategies, programs, and other actions to address the needs for a range of housing options” (20 I.L.C.S. 662/15, 25).

Missouri has no similar provision. It is not included in the twenty-four states profiled by Meck et al. Missouri’s zoning and planning enabling statutes track the original state enabling acts drafted in the 1920s. These acts make no direct reference to affordable housing, except for a provision defining single-family dwellings or residences to include group homes for eight or fewer unrelated mentally or physically handicapped persons.¹³

Inclusionary Zoning¹⁴

In the 1960s certain forms of flexible zoning began to be used in a positive way to encourage the inclusion of desirable items such as open space, amenities, and public areas for artistic and cultural activities. In the 1970s and 1980s, communities began to add affordable housing to the list of activities supported by inclusionary zoning.

Two techniques have most commonly been utilized: 1) the set-aside program, in which an allocation is made of a specified percentage of units in a residential development as “below market price” (BMP) units or “moderately priced dwelling units” (MPDU); and 2) the density bonus program, which awards an increase in allowable densities when BMP or MPDU housing is included in residential developments.

Set-asides

Set-aside programs may be either voluntary or mandatory, although studies have found that developers generally have been reluctant to participate in voluntary set-aside programs, leading advocates to press for mandatory programs. Mandatory set-aside programs typically require a relatively small percentage, usually ranging from 5 to 25

percent, of developments in certain zones or in certain configurations, such as PUDs, to be comprised of low- or moderate-cost housing. They are typically imposed as conditions to rezoning or site plan approval.

Density Bonuses

Density bonus programs are voluntary programs that offer developers an increase in the permitted density of residential projects either by a sliding scale that increases the permitted density as the number of low- or moderate-cost units increases, or by a fixed amount for participation in an affordable housing program. For example, a 1990 amendment to the Virginia zoning enabling statute authorizes cities and counties of certain populations to enact density bonus programs for projects of fifty or more units in which densities may be increased by 20 percent of the applicable density range for single-family housing, detached or attached, and 10 percent for multiple-family housing, in return for allocations of at least 12.5 percent of the total number of units to affordable single-family housing and at least 12.25 percent to affordable multiple-family housing, (Taub, T. 1990: 666).

Set-aside and density bonus programs may be operated separately from each other and may be voluntary or mandatory, but most observers believe their potential is most likely to be realized when they are combined in a mandatory set-aside program that grants density bonuses as a form of “compensation” to participating developers. Mandatory set-asides must overcome several problems, including constitutional questions, political objections, the long term affordability of the set-aside units, and the possibility of developer evasion of set-aside requirements by building conventional units first and then not completing the project.

The basic constitutional questions are the familiar ones of taking, substantive due process, and equal protection. In *Mount Laurel II*, the Supreme Court of New Jersey confronted the substantive due process question, posed in the guise of an attack on inclusionary zoning techniques as “impermissible socio-economic use[s] of the zoning power, . . . not substantially related to the use of land.” The court upheld the use of density bonuses and mandatory set-asides for construction of affordable housing when a showing is made that the *Mount Laurel* obligation to provide “a realistic opportunity for the construction of [a] fair share of the lower income housing allocation” cannot be satisfied “simply by removal of restrictive barriers.” Citing its earlier decision rejecting due process and equal protection challenges to a zoning ordinance that permitted mobile homes in a zone restricted to elderly persons or families, the Court declared that:

[T]he . . . special need of lower income families for housing, and its impact on the general welfare, could justify a district limited to such use and certainly one of lesser restriction that requires only that multi-family housing within a district *include* such use (the equivalent of a mandatory set aside) (456 A.2d at 448).

The Court attacked the socio-economic argument against inclusionary zoning head-on, saying it was “nonsense” to single out inclusionary zoning because “practically any significant kind of zoning now used has a substantial socio-economic impact and, in some cases, a socio-economic motivation.” On the question of authority to engage in inclusionary zoning, the Court stated that prohibiting affirmative devices “seems unfair” in view of the long-standing approval of large-lot single-family residence districts, which the court noted was “keyed, in effect,” to income levels (456 A.2d at 449).

As might be expected, the *Mount Laurel* approach advocating mandatory set-asides as part of an affirmative effort to provide affordable housing can cause intense political problems. Aside from the serious question of the proper role of the judiciary in resolving social problems, opposition may be expected from neighboring residents to proposals to increase allowable density through density bonuses, and from developers fearing loss of profit potential if mandatory set-asides are implemented.

New Jersey's experience in the late 1980s, the first five years after *Mount Laurel II*, points up two profit-related problems with mandatory set-asides: 1) the difficulty in producing a profitable multi-family development when a percentage of the rents must be set at a below-market rate, and 2) the clear preference of developers for ownership units, single-family or condominium, over apartments. Absent substantial federal or state housing subsidies, set-aside programs are not likely to produce housing for the low-income persons of society, although they have been shown to be effective in producing affordable housing for moderate-income families.

One of the best known examples of inclusionary zoning is the Moderately-Priced Dwelling Unit (MPDU) ordinance of Montgomery County, Maryland (Montgomery County Code, ch. 25A). Enacted in 1974 and amended several times since then, the ordinance requires that all residential developments of 35 units (originally 50) or more dedicate at least 12.5 percent (originally 15 percent) of the units for low and moderate income households. In the thirty-plus years the MPDU ordinance has been in effect, more than 10,000 affordable housing units have been produced (Brown, K. 2001: 5).

Under the ordinance, the Housing Opportunities Commission (HOC) (the County's public housing agency) and qualified non-profits may purchase up to 40 percent

of affordable housing units from for-profit developers. Funds for such purchases are provided by a county Housing Initiative Fund (HIF), which is seeded by a percentage of the profits from resale of units whose price and rent controls have expired and by developers choosing to contribute to the HIF in lieu of building affordable units, a buy-out option added to the ordinance in 1989.

Because of length of time the MPDU ordinance has been in effect, the rental and resale price restrictions have expired on an increasing number of units. As of 1999, less than 4,000 of the more than 10,000 units created under the program remained as affordable housing. Of those, approximately 1,600 units had been purchased by the HOC and another 50 by three nonprofit organizations (Brown, K. 2001: 5-7). The buy-out option has become so popular that supporters of affordable housing have expressed concern about a growing shortage of moderately priced units (Mosk, M. 2003).

A 1994 study of inclusionary housing programs in California found that at least sixty-four local jurisdictions in California had implemented such programs. Approximately 25,000 affordable units had been produced or were in the pipeline by November 1994. In addition, over \$24 million had been collected in fees that developers were permitted to pay in lieu of actually constructing affordable units. Inclusionary requirements ranged from 5 to 66 percent of the units in a particular development, with the most popular percentage being 10 percent. Required terms of affordability ranged from ten years to perpetuity. Two-thirds of the programs were mandatory, and mandatory programs had produced the most very-low- and low-income affordable units compared to units produced under voluntary programs (Zatz, S. (1994: 1-2). A report issued in 2003 by the California Institute for Local Self Government predicts that by the end of 2003

twenty-five percent of California cities will have adopted inclusionary housing policies (Allen, M. 2/2003).

Zoning Override (“Anti-Snob”) Legislation¹⁵

Some states have responded legislatively to affordable housing issues by modifying the local zoning procedures for reviewing affordable housing development applications. These modifications may include changes in the zoning appeals procedures and standards of review.

Massachusetts

One of the first states to respond legislatively to the exclusionary zoning phenomenon was Massachusetts when it enacted its celebrated “anti-snob” law in 1969 (Mass. Gen. Laws Ann. ch. 40B, §§ 20-23). Rather than mandate affordable housing set-asides or authorize density bonuses, the anti-snob law established a housing appeals committee in the state Department of Community Affairs with authority to override local zoning decisions blocking low-or moderate-income housing developments, defined as housing subsidized by any federal or state housing production program.

Under the Massachusetts statute, public agencies and private organizations proposing to build low and moderate-income housing may bypass local regulatory agencies by submitting a single application to the local zoning board of appeals, which is responsible for coordinating an analysis of the application by interested regulatory agencies, conducting a public hearing, and making a decision regarding the application. Comprehensive permits or approvals may be issued by the board of appeals, which must act within forty days of the public hearing.

If the application is denied or approved with conditions that make the project “uneconomic,” the developer may appeal to the state housing appeals committee, with the issue being whether the decision is “reasonable and consistent with local needs.” The statute provides that requirements or regulations are “consistent with local needs” if they are imposed after a comprehensive hearing in one of the following two situations:

1) more than 10 percent of the housing units, or at least 1.5 percent of the total land area zoned for residential, commercial, or industrial use in the municipality is low or moderate-income housing; or 2) the proposal would result in low or moderate-income housing construction starts on more than three tenths of one percent of the land area, or ten acres, whichever is larger, in a calendar year (Mass Gen. Laws Ann. ch. 40B, § 20).

If the state housing appeals committee concludes that the local zoning decision is not consistent with local needs, it vacates the decision and orders a comprehensive permit or approval to be issued provided that the proposed housing would not violate safety standards contained in federal or state building and site-plan requirements.

Housing advocates report that the state housing appeals committee has been aggressive in enforcing the spirit as well as the text of the law. Mediation services offered by the Massachusetts Mediation Service, a state agency, have been instrumental in resolving about 25 percent of cases appealed to the state housing appeals committee.

The Massachusetts statute, known as Chapter 40B, has strong supporters and critics. About 25,000 affordable housing units have been produced since its enactment in 1969, but during that time less than 30 percent of the state’s 351 municipalities have attained the statute’s minimum goal of 10 percent of their housing stock being affordable.

Massachusetts Governor Mitt Romney has appointed a task force to review the statute (Allen, M. 2003).

Connecticut

Twenty years after the Massachusetts statute was enacted, Connecticut followed suit with a similar zoning override procedure, the Connecticut Affordable Housing Appeals Act (“Appeals Act”), although the override power was delegated to the judiciary rather than to a state administrative agency (Conn. Gen. Stat. Ann. § 8-30(g)). Developers of affordable housing may appeal adverse land use regulatory decisions to the superior court of Hartford-New Britain. Affordable housing is defined as assisted housing or housing in which at least 20 percent of the dwelling units will be conveyed by deeds containing covenants or restrictions limiting sale prices or rents to levels enabling persons and families with median income or less to pay no more than 30 percent of their annual income for housing.

Upon appeal, the burden shifts to the local agency to prove, based on the evidence in the record, that: (1) the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record; (2) the decision is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider; (3) such public interests clearly outweigh the need for affordable housing; and (4) such public interests cannot be protected by reasonable changes to the affordable housing development (§ 8-30 g(c)).

If the burden is not met, the court is directed to “revise, modify, remand, or reverse” the decision consistent with the evidence presented. Communities are exempt from the affordable housing override provisions if at least 10 percent of the existing

housing units are affordable, or they have received a certificate of affordable housing project completion from the Connecticut commissioner of finance, which carries with it a one-year exemption.

The Appeals Act has been controversial. Municipalities have objected that the statute abrogates their home rule authority. Planners have feared that builders could blackmail communities into accepting development proposals despite planning objections by threatening to file an affordable housing proposal if the first proposal were rejected. Amendments in 2000 increased the percentage of required affordable housing units to 30% and the required length of affordability to 40 years. Developers seeking affordable housing approval must file two new documents, an “Affordability Plan” and a “Conceptual Site Plan.” The Affordability Plan must include “draft zoning regulations, conditions of approvals, deeds, restrictive covenants or lease provisions that will govern affordable dwelling units.”

Connecticut Law Professor Terry Tondro, a co-chair of the Blue Ribbon Commission on Housing that proposed the Appeals Act, gives mixed reviews to the first ten years of experience with the Act. On the one hand, local planning and zoning bodies now must state the reasons for their decisions regarding affordable housing proposals. On the other hand, the Connecticut Supreme Court has accepted the use of “unsupported assertions” as reasons and has limited the area of need determinations to the municipality in which the site in question is located. In addition, the 2000 amendments have, in his opinion, “increased the complexity of the reviews required for affordable housing projects, so that instead of simplifying these applications we have burdened them even more than before” (Tondro, T. (2001: 128-164).

California

California has enacted a series of provisions designed to improve the procedural posture of affordable housing development proposals, including limitations to adverse design criteria, requiring specific public health or safety reasons for disapproving or reducing densities of housing developments that are consistent with local zoning and general plans, and imposing the burden of proof on local government when a developer or other person appeals a permit denial or density reduction (Stone, K & Seymour, P. (1993: 203).

As noted earlier, many California cities and towns have enacted inclusionary housing programs. Such ordinances tend to be controversial because developers and land owners may perceive them to be uncompensated transfers of property. Most state courts that have confronted inclusionary housing ordinances have upheld them, although a Colorado ski community's ordinance was held to violate the state's anti-rent control ordinance (Curtin, D., Talbert, C. & Costa, N. (2002: 3).

In addition, a California statute establishes a state pilot project in conjunction with an "Inter-Regional Partnership "(IRP)" in the San Francisco Bay area to provide incentives "to improve the balance of jobs and housing." Incentives include tax credit priority, return of property taxes, pooling of redevelopment funds, and tax-increment financing. Eligible projects are affordable housing developments "in areas with job surpluses" and "job generating projects in areas with housing surpluses (Cal. Gov't Code § 65891.1 *et seq.* (West 2002))."

Planning for Affordable Housing

An increasing number of states require municipalities to engage in comprehensive planning or specify the subjects that must be included in local comprehensive plans.

Housing is a major element that must be covered under these planning statutes.

As an example of the specific detail mandated by such statutes, California requires housing elements to include a seven-point assessment of housing needs and inventory of relevant resources and constraints. Analyses must be made of population and employment trends, household characteristics, and inventory of available land; potential government constraints on development of housing for all income levels such as land use controls, site improvement requirements, fees, and exactions; nongovernmental constraints such as availability of financing, price of land, and cost of construction; special housing needs of groups such as handicapped, elderly, large families, farm workers, families with female heads of households, and persons needing emergency shelter; and opportunities for energy conservation. In addition, a statement of community housing goals, qualified objectives and policies, and a five-year schedule of proposed actions to be taken by the local government to implement the housing policies and achieve the housing goals and objectives must be included (Cal. Gov't Code § 65583).

The Florida statute requires local comprehensive plans to include standards, plans, and principles addressing: 1) the housing needs of all current residents and anticipated future residents of the jurisdiction; 2) elimination of substandard dwelling conditions; 3) structural and aesthetic improvement of existing housing; 4) provision of adequate sites for future housing, including housing for low-income and moderate-income families, mobile homes, and group home facilities and foster care facilities, with supporting

infrastructure and public facilities; 5) provision for relocation housing and identification of historically significant and other housing for purposes of conservation, rehabilitation, or replacement; 6) formulation of housing implementation programs, and 7) creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction (Fla. Stat. Ann. § 163.3177 (6)(1)(a)-(g)).

A State and Regional Approach

As noted above, states are increasingly recognizing the significant impact that land use regulation can have on the availability of housing affordable by low-and moderate-income households. While no single approach has emerged as “the answer” to affordable housing land use conflicts, a growing number of analysts believe that state land use policies that combine three elements – 1) regional affordable housing allocations, such as the *Mount Laurel* “fair share” program in New Jersey, 2) dispute resolution mechanisms contained in the California, Connecticut and Massachusetts presumption-shifting legislation, and 3) a metropolitan entity capable of making land use and taxation decisions that have regional impact – offer the best hope for overcoming land use regulatory limitations on affordable housing (Frug, G. 2002; Iglesias, T. 2002; Lorenz, R. 2001; Meck, S. 2002; Orfield, M. 2002, 1997; Salsich, P. 1999, 1994).

In particular, the APA’s *Growing Smartsm Legislative Guidebook* (Meck, S. 2002) contains alternative draft state affordable housing statutes that feature a “hybrid ‘bottom-up/top-down’ approach.” The draft statutes include a strong role for regional planning agencies, a regional fair-share allocation plan, a “regional contribution agreement”

among localities within a region, and a dispute resolution/appeals process (Meck, S. 2002: 4-67 to 4-416).

One of the key goals of the APA's *Growing Smartsm* program is the modernization of state planning and zoning enabling legislation. The Legislative Guidebook contains suggested language for comprehensive revision of state statutes. Suggested definitions of affordable housing are included, as well as an administrative structure at the state level for establishing state land use plans and policies to be coordinated with and implemented by regional and local land use plans. Zoning is clearly linked to adopted written land use plans which must include close examination and evaluation of present and future housing needs, not only of the particular municipality but also the housing market region in which the municipality is located.

Inclusionary techniques such as mandatory set asides and density bonuses are provided for, along with an appeals process through a regional and state administrative structure. An appeals process is a critical part of any legislative reform effort. The most significant aspects of the Massachusetts and Connecticut statutes are the reversal of the presumption of validity and corresponding shift in the burden of proof. Instead of an affordable housing developer being required to prove that zoning which prohibits affordable housing is irrational or unconstitutional, the Massachusetts and Connecticut statutes require opponents of affordable housing to prove project approval violates some aspect of local or state policy.

Conclusion

As Meck, Retzlaff & Schwab (2003) note, about half the states have enacted legislation that recognizes the significant impact local land use regulation can have on the

availability of affordable housing. Uncritical retention of the Euclid, Ohio style of local zoning, with its emphasis on protecting single family detached housing, can make it extremely difficult for low and moderate income households to find affordable housing within reasonable distance of available jobs. Numerous studies have documented this problem. Other studies have disproved the notion that multi-family development has a negative impact on single family housing. The Supreme Court's unfortunate dictum in *Euclid* that "apartments are parasites" has no foundation in fact today.

Modern state land use legislation shows the link between planning and zoning. These laws clarify that local land use policies are set forth in written land use plans, and that zoning ordinances are techniques to implement those plans. Such legislation also requires local communities to include affordable housing needs of the community and the region in any land use regulatory system they establish, and to adopt an appeals process based on a presumption that proposed affordable housing developments which are consistent with local plans are entitled to be approved by local regulatory bodies. Affordable housing is one of the most important issues Missouri will need to confront as it considers revisions to state planning and zoning legislation.

APPENDIX

List of State Statutes on Local Housing Planning¹⁶

This digest of state statutes on local housing planning was prepared by John Bredin, Esq., a former Research Fellow with APA for its Growing SmartSM planning statute reform project, and a Chicago area attorney specializing in planning and land-use controls.

Arizona: Housing element required for cities over 50,000 and authorized for all other

cities. Must be based on analysis of existing and projected housing needs. (Section 9-461.05) No provision for a housing element for counties, only housing as one land use to be apportioned out in a land-use plan (Arizona Revised Statutes, Section 11-821).

California: Detailed multi-section provision on housing element, with specific reference to regional aspects (California Government Code, Sections 65580 et seq.). Detailed analysis of housing needs of region as well as locality; requirement that zoning provide sufficient land for housing of varied size (houses, multifamily) and type of occupancy (owner-occupied and rental); provision of assistance to affordable housing, and other provisions. Incorporates requirement for review by regional agencies and state department of housing and community development.

Connecticut: State housing plan and coordination with regions and municipalities to implement it (Connecticut General Statutes, Sections 8-37t, 8-37u). Regional plan authorizing section (Connecticut General Statutes, Section 8-35a) does not specifically mention housing. Municipal plans have to make specific provision for housing that considers regional needs, and are specifically required to be coordinated with the aforementioned state housing plan (Connecticut General Statutes, Section 8-23).

Delaware: County comprehensive plans must include a housing element that requires the county to consider “housing for existing residents and the anticipated growth of the area.” The plan as a whole is to be coordinated with municipal plans and the plans of adjacent counties (Delaware Code Annotated, Title 9, Section 2656).

Florida: Strategic regional policy plans must address affordable housing—no detailed [sic] provided in Section (Florida Statutes, Section 186.507). Local comprehensive plans must include a housing element, described in some detail, under which the state land

planning agency performs an “affordable housing needs assessment” for the local government and the local government must employ that assessment (Florida Statutes, Section 163.3177).

Illinois: Local comprehensive plan funded under Local Planning Technical Assistance Act of 2002 must include a housing element. The purpose of this element is to “document the present and future needs for housing within the jurisdiction of the local government, including affordable housing and special needs housing; take into account the housing needs of a larger region; identify barriers to the production of housing, including affordable housing; assess [sic] the condition of the local housing stock; and develop strategies, programs, and other actions to address the needs for a range of housing options” (Illinois Public Act 92-0768, eff. Aug. 6, 2002); 20 I.L.C.S. 622/1-45).

Idaho: Comprehensive plan must include a housing element, described in some detail, “unless the plan specifies reasons why a particular component is unneeded” (Idaho Code, Section 67-6508).

Kansas: No specific reference to housing, except that municipal comprehensive plans must address the “extent and relationship of the use of land” for, among other uses, “residence” (Kansas Statutes Annotated, Section 12-747).

Kentucky: Comprehensive plans may include a housing element. No detail provided (Kentucky Revised Statutes, Section 100.187).

Maine: Local comprehensive plans must include an inventory and analysis of “residential housing stock, including affordable housing” and “ensure that its land use policies and ordinances encourage the siting and construction of affordable housing within the community,” among other detailed provisions. Regional coordination with other municipi-

palties is required for “shared resources and facilities” (Maine Revised Statutes, Title 30A, Section 4326).

Massachusetts: Master plans must include a housing element that analyzes housing needs and provides objectives and programs to preserve and develop housing with a goal of providing “a balance of local housing opportunities for all citizens” (Massachusetts General Laws, Chapter 41, Section 81D).

Minnesota: The metropolitan government must adopt a development guide—a comprehensive plan—that has as one of its express goals the provision of adequate housing (Minnesota Statutes, Sections 4A.08, 473.145, 473.1455). Within the metropolitan area, local comprehensive plans must be consistent with the development guide (Minnesota Statutes, Section 473.175) and must include housing elements in their land-use plan that provide for “existing and projected local and regional housing needs” (Minnesota Statutes, Section 473.859). All municipalities are authorized and encouraged to adopt “community-based” comprehensive municipal plans that include an express goal of providing adequate housing (Minnesota Statutes, Sections 4A.08, 462.3535).

Mississippi: No specific reference to housing in the comprehensive plan (Mississippi Code Annotated, Sections 17-1-1, 17-1-11) or regional planning, though regional planning commissions are required to advise local governments on the planning of land use among other matters (Mississippi Code Annotated, Sections 17-1-33, 17-1-35).

Nevada: Master plans for municipalities, counties, and regions are authorized to include a housing element which must be based on and include an analysis of the existing housing stock, of the need for housing, and of the barriers to affordable housing (Nevada Revised Statutes, Section 278.160) The housing element is mandatory for counties with a

population over 100,000 and municipalities in such counties (Nevada Revised Statutes, Section 278.150).

New Hampshire: Regional planning commissions are required to produce a regional housing needs assessment (New Hampshire Revised Statutes, Section 36:47), which a municipality is required to consider in adopting the (“shall include, if it is appropriate”) housing element of their [sic] comprehensive plan (New Hampshire Revised Statutes, Section 674:2).

New Jersey: Local comprehensive plans must include a housing plan (New Jersey Statutes, Section 40:55D-28) that includes an inventory of existing housing, an analysis of existing and projected housing demand, an analysis of the community’s fair share of affordable housing, and a designation of the land most appropriate for affordable housing development (New Jersey Statutes, Section 52:27D-301 to 329).

New York: County comprehensive plans are authorized to address “existing housing resources and future housing needs, including affordable housing” and to consider “regional needs and the official plans of other governmental units and agencies within the county” (New York General Municipal Law, Section 239-d). Parallel provisions exist for regional comprehensive plans (New York General Municipal Law, Section 239-i).

Pennsylvania: Comprehensive plans must include a housing plan to “meet the housing needs of present residents and of those individuals and families anticipated to reside in the municipality,” which is specifically authorized to include the preservation and rehabilitation of existing housing stock (53 Pennsylvania Consolidated Statutes Annotated, Section 10301).

Rhode Island: Municipal comprehensive plans must include a housing element “recog-

nizing local, regional, and statewide needs for all income levels and for all age groups, including, but not limited to, the affordability of housing and the preservation of federally insured or assisted housing” that is based on analysis of the existing and projected situation and proposes specific responses and programs (Rhode Island General Statutes, Section 45-22.2-6).

South Carolina: Local comprehensive plans must include a housing element that specifically addresses “owner and renter occupancy and affordability of housing.” The element must include an analysis of existing conditions, a statement of needs and goals, and implementation measures (South Carolina Code Annotated, Section 6-29-510).

Utah: The only reference to housing in the authorization for municipalities (Utah Code Annotated, Sections 10-9-301, 10-9-302) or counties (Utah Code Annotated, Sections 12-7-301, 12-7-302) is that the optional land-use element designates “housing” among the various land uses.

Vermont: Municipal plans must include a housing element that “includes a recommended program for addressing low- and moderate-income persons’ housing needs as identified by the regional planning commission” (Vermont Statutes Annotated, Title 24, Section 4382). Regional plans must also include a housing element that “identifies the need for housing for all economic groups in the region and communities” (Vermont Statutes Annotated, Title 24, Section 4348a).

Washington: Local comprehensive plans are generally optional (Washington Revised Code, Section 36.70.320) but, if adopted, must include a land-use element that addresses “housing” among other uses and includes “standards of population density” and “estimates of future population growth” (Washington Revised Code, Section 36.70.330). Such

plans may optionally include a housing element that includes surveys and reports to determine housing needs and housing standards to guide land development regulation appropriately (Washington Revised Code, Section 36.70.350). Under the growth management act, in counties over 50,000 residents or a 10 percent population increase over 10 years, the county and all municipalities must adopt and implement a comprehensive plan (Washington Revised Code, Section 36.70A.040) that includes a mandatory housing element “ensuring the vitality and character of established residential neighborhoods” (Washington Revised Code, Section 36.70A.070). The housing element must include an analysis of existing and projected housing needs, a statement of goals, identify land for housing, and make adequate provision for existing and projected housing needs.

West Virginia: Regional councils are authorized to make and disseminate studies of the region’s resources in order to resolve existing and emerging problems, including housing (West Virginia Code, Section 8-25-8). Local comprehensive plans may addresses [sic] the uses of land, including “habitation” (West Virginia Code, Section 8-24-16) and “land utilization, including residence...” (West Virginia Code, Section 8-24-17).

ENDNOTES

¹ Welch v. Swasey, 214 U.S. 91, 107 (1909) (upholding building height regulations of different levels in commercial and residential areas in Boston).

² *Village of Euclid v. Ambler Realty Co.*, 272 U. S. 365, 394 (1926).

³ *Ambler Realty v. Village of Euclid, Ohio*, 297 Fed. 307, 316 (1924).

⁴ See, e.g. *Country Club Estates, L.L.C. v. Town of Lorna Linda*, 281 F.3d 723, 724 (8th Cir. 2002) (increase in minimum square footage from 1,640 to 1,800 for single family, single story buildings in designated areas not facially unreasonable; “as applied” challenge not ripe because of failure to exhaust administrative remedies).

⁵ National Commission on Urban Problems (Douglas Commission), *Building the American City* (Douglas Commission 1968), the American Bar Association’s (ABA) Advisory Commission on Housing and Urban Growth, *Housing for All Under Law: New Directions for Housing, Land Use, and Planning Law* (ABA 1978), the HUD Advisory Commission on Regulatory Barriers to Affordable Housing (Advisory Commission, 1991), and a study by the Rutgers University Center for Urban Policy Research (CUPR), *Regional Housing Opportunities for Lower-Income Households* (Burchell, Listokin, and Pashman 1994) that had made similar observations (Meck, Retzlaff & Schwab 2003: 5-8).

⁶ Quoted in Meck et al. 2003: 26-28.

⁷) Reviewing von Hoffman, A., Belsky, E., DeNormandie, J. & Bratt, R. 2003)

⁸ *City of Cuyahoga Falls v. Buckeye Community Hope Foundation*, 123 S. Ct. 1389 (2003), discussed in Meck, S. (2003).

⁹ *Buckeye Community Hope Foundation v. City of Cuyahoga Falls*, 697 N.E.2d 1 (Ohio 1998).

¹⁰ The *Mount Laurel* cases involved over a decade of litigation leading to enactment of the New Jersey Fair Housing Act (N.J. Stat. Ann. 52:27D-301 to 329) establishing a “fair-share” housing system administered by a state agency. (*Southern Burlington County NAACP v. Township of Mount Laurel*, 336 A. 2d 713 (N. J. 1975) (Mount Laurel I); *Southern Burlington County NAACP v. Township of Mount Laurel*, 456 A. 2d 390 (N.J. 1983) (Mount Laurel II); *Hills Development Company. v. Bernards Township*, 103 N.J. 1, 510 A.2d 621 (1986) (upholding constitutionality of New Jersey Fair-Housing Act (Mount Laurel III). Numerous articles and books have been written about the *Mount Laurel* cases, which have been called “the best-known legal decisions overruling exclusionary zoning ever to be handed down by a court in the United States” (Nelson, Pental, Dawkins & Knaap 2002: 30, citing Kirp et al. (1995) and Haar (1996)).

¹¹ The discussion of the *Mount Laurel* cases is taken from Salsich, P. & Tryniecki, T. (2003). © American Bar Association. Reprinted with the permission of the American Bar Association.

¹² *Britton v. Town of Chester*, 134 N.H. 434, 595 A.2d 492, 498-98 (1991).

¹³ V.A.M.S. §§ 89.010-.491 (1998, Supp. 2003).

¹⁴ The discussion of inclusionary zoning techniques is taken from Salsich, P. & Trynicki, T. (2003) © American Bar Association. Reprinted with the permission of the American Bar Association.

¹⁵ The discussion of zoning override legislation and planning for affordable housing is taken from Salsich, P. and Tryniecki, T. (2003). © American Bar Association. Reprinted with the permission of the American Bar Association.

¹⁶ Meck, S., Retzlaff, R. & Schwab, J. (2003), pp 229-231. © American Planning Association. Reprinted with the permission of the American Planning Association.

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