REGIONAL PLANNING VERSUS DECENTRALIZED LAND-USE CONTROLS—ZONING FOR THE MEGALOPOLIS

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Before I built a wall I'd ask to know
What I was walling in or walling out,
And to whom I was like to give offense.
Something there is that doesn't love a wall. . .

Robert Frost, Mending Wall

INTRODUCTION: THE SETTING

POPULATION and land development trends in the United States have made some form of regional control over land-use increasingly necessary. The rapid growth of suburbia, particularly since World War II, has resulted in what is commonly referred to as "urban sprawl." In fact, the sprawl has been sufficiently concentrated around existing population centers so that by 1965 over two-thirds of the American people were urbanized and living in only 212 metropolitan areas.[1] It has been estimated that by the end of the century, sixty percent of an estimated population of 312 million will live on only seven percent of the land.[2] These growth patterns mean that proper regional goals in land-use planning will come more and more in conflict with the decentralized control over existing land-use decisions.

National projections of increasingly intensive land-use are clearly reflected locally in the development of the six county northeastern

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[1] 123,813,000 out of a total population of 192,185,000 were classed as urban in 1965, U. S. DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES at 19 (1966).

[2] This is an estimate based on a computer study of population trends made by the Urban Land Institute. The study shows that by the year 2000 there will be four major megalopoli in the United States: One stretching the lengh of California; one extending from northeastern Wisconsin south along the tier of states bordering the Great Lakes; one extending through the eastern states from Maine to North Carolina; and one in Florida. New York Times, April 9, 1967, § 4, at 7 (with map).

Illinois metropolitan area.[3] At the present time, although almost seventy percent of this metropolitan land area is still in agricultural use or vacant, less than six percent is being utilized for forest preserves or other recreational uses, and there is now less public outdoor recreation acreage per person than in 1940. Farm land that is now undeveloped is being rapidly converted to urban uses at the rate of about 10,000 acres per year.[4] It is expected that in the twenty year period from 1950 to 1970, while the population of the City of Chicago will remain relatively constant, the population of the balance of this metropolitan area will more than double from about 1.6 million to 3.6 million, with over 7 million people living in the entire region by 1970.[5] In 1960 there were 330,000 suburbanites commuting to employment in Chicago and over 100,000 Chicagoans commuting to the suburbs.[6] These commuters are dependent on existing rail and expressway networks and it is projected that the population growth in the metropolitan area over the next two decades will occur primarily around the interstices of these transportation systems, with the bulk of the growth in the close-in areas of Cook and DuPage Counties.[7]

This future land development will take place in what must be described as an administrative nightmare. The northeastern Illinois metropolitan region alone contains some 249 individual municipalities,[8] and over 1,200 local governments,[9] which range from school and sewage treatment districts to mosquito abatement districts. This governmental chaos has been appropriately described as the "Balkanization" of our metropolitan areas. Heavy costs have been incurred as a result of this orgy of decentralization. The situation has been a bonanza for a raft of public officials, lawyers, planners, political scientists and sociologists who, in varying degrees of professional outrage, have com-

[3] Encompassing 3,714 square miles and defined as including the counties of Cook, Will, Kane, DuPage, McHenry and Lake.

[4] NORTHEASTERN ILLINOIS PLANNING COMMISSION, 1965 ANNUAL REPORT, pt. II, at 22, 23.

[5] NORTHEASTERN ILLINOIS PLANNING COMMISSION, METROPOLITAN PLANNING GUIDELINES: POPULATION AND HOUSING at 74 (1965).

[6] CITY OF CHICAGO, DEPARTMENT OF CITY PLANNING, BASIC POLICIES FOR THE COMPREHENSIVE PLAN OF CHICAGO at 52 (1965).

[7] NORTHEASTERN ILLINOIS PLANNING COMMISSION, *supra* note 5, at 67.

[8] NORTHEASTERN ILLINOIS PLANNING COMMISSION, THE CHOICE IS YOURS, (1966 pamphlet).

[9] NORTHEASTERN ILLINOIS PLANNING COMMISSION, 1964 ANNUAL REPORT at 3.

piled a quite formidable body of literature dedicated to the proposition that it would be much more efficient to think bigger, plan bigger and govern bigger. To date, their influence on existing governmental processes have been virtually nonexistent and their proposed solutions, with few exceptions, have been greeted with a great deal less than overwhelming receptivity. However, their arguments elevating regional values over parochial governmental fetishes are logically irrefutable, if politically unpalatable. In the perhaps vain hope that a deus ex machina will eventually produce a somewhat more hospitable political climate for regional thinking, this article will explore the present and growing conflict between regional concerns in land-use planning and the decentralization of control over land-use which now reigns. The article will also briefly discuss possible methods of eventually mitigating this conflict to allow for a proper reflection of regional interests.

PUBLIC REGULATION OF LAND DEVELOPMENT

Obviously, population growth patterns of the magnitude noted above result in a greater demand for land near existing urban centers, since for every population increase of one million there is a demand for roughly 300,000 additional housing units. The suburban land developers who satisfy this market respond not only to the pressures of a free market, but also to governmental land-use controls, and these controls have a significant impact on the question of what housing is built where and for whom. Although land development may also be modified by private covenants respecting the use of land,[10] this is minimal when compared with public regulation of land which is much more extensive in nature, scope, and impact. Public regulation of land also raises serious questions of public policy which often do not arise with respect to private agreements affecting land-use.[11]

One method of public control over land development lies in the power to prescribe regulations for subdivisions.[12] These regulations

[10] *See* Consigny & Zile, *Use of Restrictive Covenants in a Rapidly Urbanizing Area*, 1958 WIS. L. REV. 612; and Dunham, *Promises Respecting the Use of Land*, 8 J. LAW & ECON. 133 (1965).

[11] *See* Toews, *Validity Rules Concerning Public Zoning and Private Covenants: A Comparison and Critique*, 39 S. CAL. L. REV. 409 (1966).

[12] *See* ILL. REV. STAT. ch. 34, §§ 414, 415 (1965), for county enabling legislation of this sort; and ILL. REV. STAT. ch. 24, §§ 11-12-4 to 11-12-12 (1965), for enabling legislation giving municipalities jurisdiction over subdivisions up to one and one-half miles

generally govern the location, width, and course of streets and highways and the provision of necessary public grounds for schools, parks or playgrounds. They also often deal with water supply, sewage disposal and storm or flood water runoff channels. Municipalities may assess subdivisions directly for the costs of extending various public facilities to a newly developed area,[13] with the prospect that these exactions will be upheld in the courts.[14] A major adjunct to the use of subdivision regulations is the power municipalities have to set stringent building code standards.[15] Through the adroit use of both subdivision regulations and building codes, local municipalities can exert a major influence on the pace and cost of development within their jurisdiction, since generally the stricter the regulations the more expensive the land is to develop.[16]

The most significant governmental tool in controlling land-use, however, is zoning. Although zoning first developed as a device to protect New York's Fifth Avenue businessmen from encroachment by garment district merchants, the predominant early motivation was the protection of the single family dwelling from dissimilar land-uses.[17] After a somewhat faltering start,[18] the United States Supreme Court approved zoning as a permissible exercise of the police power.[19] Zoning

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beyond their corporate boundaries; *see also* IOWA CODE ANN. § 409.14 (1961); MICH. STAT. ANN. § 26.446 (1954); and ORE. REV. STAT. § 92.042 (1964), which extends jurisdiction over subdivisions six miles beyond municipal corporate limits.

[13] *See generally*, Johnston, *Constitutionality of Subdivision Control Exactions: The Quest for a Rationale*, 52 CORNELL L.Q. 871 (1967); Heyman & Gilhool, *The Constitutionality of Imposing Increased Community Costs on New Suburban Residents through Subdivision Exactions*, 73 YALE L. J. 1119 (1964); Powell, *An Analysis of Demands for Open Spaces in Maryland Subdivision Regulations*, 25 MARYLAND L. REV. 148 (1965); and Hanna, *Subdivisions: Conditions Imposed by Local Government*, 6 SANTA CLARA LAWYER 172 (1966).

[14] *See, e.g.*, Petterson v. City of Naperville, 9 Ill. 2d 233, 137 N.E.2d 371 (1956), curbs and gutters; Zastrow v. Village of Brown Deer, 9 Wis. 2d 100, 100 N.W.2d 359 (1960), water mains; *but see* Pioneer Trust and Savings Bank v. Village of Mt. Prospect, 22 Ill. 2d 375, 176 N.E.2d 799 (1961), which invalidated a requirement that a subdivider dedicate land for a school and park, where the benefit inured to the public generally.

[15] ILL. REV. STAT. ch. 24, §§ 11-30-1 to 11-30-8 (1965), is a typical enabling act.

[16] *See* Babcock & Bosselman, *Suburban Zoning and the Apartment Boom*, 111 U. PA. L. REV. 1040, 1053 (1963).

[17] BABCOCK, THE ZONING GAME 3 (1966).

[18] *E.g.*, People *ex rel.* Friend v. City of Chicago, 261 Ill. 16, 103 N.E. 609 (1913), which invalidated an exclusion of retail stores from residential neighborhoods.

[19] Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).

quickly caught on during the twenties with many states adopting the Standard State Zoning Enabling Act, promulgated by the United States Department of Commerce.[20] Often however, the early judicial response to zoning tended to be quite negative. It was not uncommon for municipalities to find some state courts more sympathetic to affected landowners than to the complaints of public officials appealing on the basis of the general welfare.[21] While the trend towards striking down particular applications of zoning ordinances often reversed itself,[22] these judicial turnabouts came at a time when persistent critics of zoning administration were deploring the political susceptibility, procedural irregularity and amateurish quality of a great deal of municipal zoning.[23]

REGIONAL INTEREST AND LOCAL CONTROL OF ZONING MACHINERY

At the same time that municipal zoning practices began to be attacked on procedural grounds, a new avenue of concern developed over certain substantive issues. Given the rapid pace of metropolitan growth and the social, economic and political changes attendant to that growth, it became clearer that the local concerns which had predominated in zoning prior to the great expansion of suburbia were beginning to give way to regional concerns. Thus, a growing body of legal and planning literature recognized that local municipal zoning decisions had a regional impact that extended beyond the boundary lines of the municipality making the particular land-use decision.[24] This change

[20] U. S. DEPARTMENT OF COMMERCE, STANDARD STATE ZONING ENABLING ACT (rev. ed. 1926).

[21] *See, e.g.*, Babcock, *The Illinois Supreme Court and Zoning: A Study in Uncertainty*, 15 U. CHI. L. REV. 87 (1947), which notes the difficulties faced by Illinois municipalities at one time.

[22] The Illinois change is noted in Babcock, *The New Chicago Zoning Ordinance*, 52 NW. U. L. REV. 174 (1957).

[23] BANFIELD & GRODZINS, GOVERNMENT AND HOUSING IN METROPOLITAN AREAS 74 (1958); Comment, *Zoning Amendments and Variations, and Neighborhood Decline in Illinois*, 48 NW. U. L. REV. 470 (1953); Babcock, *The Unhappy State of Illinois Zoning*, 26 U. CHI. L. REV. 509 (1959); Babcock, *The Chaos of Zoning Administration: One Solution*, 12 ZONING DIGEST 1 (1960).

[24] *See particularly*, Haar, *Regionalism and Realism in Land-Use Planning*, 105 U. PA. L. REV. 515 (1957); Note, *Regional Impact of Zoning: A Suggested Approach*, 114 U. PA. L. REV. 1251 (1966); Note, *The Regional Approach to Planning*, 50 IOWA. L. REV. 582 (1965); Clark, *The Extention of Political Order to the Metropolitan Area Community*, 111 U. PA. L. REV. 855 (1963); Comment, *Metropolitan Planning in the Chicago Area*, 48 NW. U. L. REV. 608 (1953).

came to be reflected in state statutes providing for regional land planning,[25] and in the creation of planning commissions to make comprehensive general plans for various metropolitan areas.[26] These developments did not provide a panacea, however, since such agencies usually had only advisory powers and therefore exerted little real influence in furthering regional values.

Having a completely decentralized zoning structure, with each municipality acting only in regard to its own self-interest, caused a number of problems for metropolitan areas as a whole. At one time local municipal zoning could be viewed as a simple segregation of incompatible land-uses to avoid the early proverbial "pig in the parlor." However, serious exclusionary practices have grown up which (1) contribute to increased economic, racial and age segregation thereby bringing about undesirable social consequences; (2) impede the proper placement of regional facilities; and (3) accentuate intergovernmental conflicts.

In 1941 the Supreme Court invalidated a California statute making it a misdemeanor for a person to assist any non-resident indigent in entering the state.[27] Justice Douglas, concurring, stated, "The conclusion that the right of free movement is a right of national citizenship stands on firm historical ground. . . . [The statute] would prevent a citizen because he was poor from seeking new horizons in other states."[28] Today many suburban communities have succeeded, often inadvertently, in preventing certain residents of the metropolitan community from seeking their new horizons through techniques such as large-lot low density zoning, minimum house size regulations, and the exclusion or restriction of apartments and industry. The indiscriminate use of these practices has in many cases contributed to a distortion of democratic values and a perverted use of the police power of the state, the foundation of all zoning. Further, the failure of local zoning boards to recognize regional needs and objectives in land-use planning has led to jurisdictional squabbles among various govern-

[25] *See* U. S. HOUSING AND HOME FINANCE AGENCY, COMPARATIVE DIGEST OF THE PRINCIPAL PROVISIONS OF STATE PLANNING LAWS (1951), collecting all the pertinent state statutes at that time on land planning.

[26] *See, e.g.*, the Northeastern and Southwestern Illinois Metropolitan Area Planning Commissions, organized under ILL. REV. STAT. ch. 34, § 3051 to 3091.39 (1965), and empowered, among other things, to plan for "the orderly arrangements of land for residential, commercial, industrial, public and other purposes."

[27] Edwards v. California, 314 U. S. 160 (1941).

[28] *Id.* at 181.

mental zoning bodies, and has resulted in increased costs being imposed on residents of metropolitan areas due to the inefficient and uneconomic allocation of land resources.[29] Furthermore, the consequent urban sprawl has given birth to less efficient, higher cost transportation systems that, at least with respect to expressway navigation, literally drive men to distraction.

MINIMUM LOT AREA REGULATIONS

The first appellate opinion on the validity of acreage zoning, *Simon v. Town of Needham*,[30] sustained a one acre minimum lot area largely on health and safety grounds. It has been argued that low density zoning of this sort is motivated in part by a desire to keep out lower economic groups.[31] Though the immediate effect of large-lot zoning may be a depression of land values, the land when ultimately improved brings higher housing costs. A number of factors other than the cost of additional land contribute to these higher housing costs. One study has shown that in the construction of a $17,000 house on a quarter acre suburban lot, 75 feet wide, the construction costs of utilities and street improvements amounted to $3,000, but with a one acre lot, 150 feet wide, these costs doubled to $6,000.[32] For a moderate income family this amounts to a sizeable and perhaps insurmountable barrier to owning a home. In addition, since low density zoning stimulates urban sprawl, homes are farther away from businesses, shopping centers, recreational facilities and schools. Therefore, large-lot home owners pay higher taxes to support the expanded need for streets, expressways, additional parking areas and extended utility lines. Because mass developers will often leapfrog over areas having these restrictions, instead of an orderly compact growth outward from the central city, scattered tract housing occurs which not only increases the costs of transportation, municipal services and public utilities,

[29] *See* Spengler, *Megalopolis: Resource Conserver or Resource Waster?*, 7 NATURAL RESOURCES J. 376 (1967); and Harvey & Clark, *The Nature and Economics of Urban Sprawl*, 41 LAND ECON. 1 (1965).

[30] 311 Mass. 560, 42 N.E.2d 516 (1942).

[31] Coke & Liebman, *Political Values and Population Density Control*, 37 LAND ECON. 347, 354 (1961).

[32] AMERICAN SOCIETY OF PLANNING OFFICIALS, NEW DIRECTIONS IN CONNECTICUT PLANNING LEGISLATION at 214 (1967).

but also pre-empts easily accessible areas of woods and forests that were once taken for granted.[33]

Minimum lot area zoning is now widespread and serves as a fashionable attribute of many suburbs. Generally, the courts have not been hostile to this concept and have usually found sufficient health and safety considerations involved so as to uphold any constitutional challenge.[34] The rationale usually emphasizes possible school and traffic congestion, fire hazards, overcrowding of land with impairment of adequate light, air and sunshine, overburdening of public utilities such as water, light and sewer services, or conflict with the existing character of the adjacent area. All these worries have resulted in opinions upholding minimum acreage requirements ostensibly to prevent adverse effects on the public health, safety or general welfare. This rationale has proved successful in Illinois[35] with some notable exceptions.[36]

[33] WHYTE, THE EXPLODING METROPOLIS 137 (1958); *see also* APPALACHIAN HIGHLANDS ASSN., A CHALLENGE TO VISIONARIES (1967 pamphlet), for a conservationist view of the costs of "indiscriminate urban sprawl" in the New York-New Jersey area.

[34] County Comm'rs v. Miles, 246 Md. 355, 228 A.2d 450 (1967), five acre minimum sustained; Senior v. Zoning Comm'n, 146 Conn. 531, 153 A.2d 415 (1959), four acre minimum sustained; Flora Realty and Inv. Co. v. City of Ladue, 362 Mo. 1025, 246 S.W.2d 771, *app. dism.*, 344 U.S. 802 (1952), three acre minimum sustained; Dilliard v. Village of North Hills, 276 App. Div. 969, 94 N.Y.S.2d 715 (1950), two acre minimum sustained; and Annot., 95 A.L.R.2d 716 (1964); *but see* Hitchman v. Oakland Township, 329 Mich. 331, 45 N.W.2d 306 (1951), three acre minimum held invalid; Board of County Supervisors v. Carper, 200 Va. 653, 107 S.E.2d 390 (1959), two acre minimum held invalid.

[35] LaSalle National Bank v. City of Chicago, 27 Ill. 2d 278, 189 N.E.2d 273 (1963), 2500 square feet per dwelling unit; Galpin v. Village of River Forest, 26 Ill. 2d 515, 187 N.E.2d 233 (1962), one-fifth acre per single family residence; First National Bank v. City of Chicago, 25 Ill. 2d 366, 185 N.E.2d 181 (1962), 2500 square feet per dwelling unit; Cosmopolitan National Bank v. City of Chicago, 22 Ill. 2d 367, 176 N.E.2d 795 (1961), 2500 square feet per dwelling unit; Honeck v. County of Cook, 12 Ill. 2d 257, 146 N.E.2d 35 (1957), five acre minimum; Chicago City Bank and Trust Company v. City of Highland Park, 9 Ill. 2d 364, 137 N.E.2d 835 (1956), 1500 square feet per family.

[36] *See* Bjork v. Safford, 333 Ill. 355, 164 N.E. 699 (1928), stating that a Lake Bluff, Illinois ordinance if construed as prohibiting dwellings for more than fourteen families per acre would be void. The courts were not as inclined to support zoning at this time and looked more realistically at arguments based on the general welfare: "[A]n analysis of [Lake Bluff's expert testimony on the relation of the restriction to the general welfare] discloses that it is largely based on the undesirability of flats in a community like Lake Bluff, and . . . on the fact that the apartment house tends to bring a class of people to the suburban town different from the typical suburban residents, and a class considered by the suburban residents, in the development of their property, as less desirable, and on other aesthetic reasons which have no relation to the public health,

The adverse consequences on land development resulting from this doctrine, however, have increased substantially in recent years and have become a cause for widespread concern. In *Bilbar Construction Co. v. Easttown Township Board of Adjustment*,[37] the Pennsylvania Supreme Court upheld a one acre minimum lot area in a case which attracted the powerful and articulate interest of the home building industry. Although lip service was paid to a non-exclusionary ideal: "[M]inimum lot areas may not be ordained so large as to be exclusionary in effect and thereby serve a private rather than the public interest,"[38] many commentators argued that the net effect of the decision was to stifle natural regional development.

> The true significance [of the decision] lies in the fact that the court has approved the use of minimum density zoning to promote a pattern of rural development which may tend to delay, or even to block, the outward growth of a neighboring city . . . . The gradual urbanization of the rural fringe is actually retarded. Low density zoning not only spreads population throughout the area, but it also exerts pressure tending to atomize the city into a multiplication of new centers. The movement is accompanied by a flight of commerce and industry to new suburban shopping centers and industrial parks, while the city sees the percentage of unskilled workers increase in the face of declining tax revenues.[39]

Although the *Bilbar* case has not been directly overruled, the Pennsylvania Supreme Court has recently begun to weigh the regional interest in land-use decisions far more strongly. In the 1966 case of *National Land and Investment Co. v. Kohn*,[40] the court, with two justices dissenting, struck down the constitutionality of a four acre minimum lot area requirement in Easttown Township in suburban Philadelphia. While refusing to find minimum acreage requirements to be unconstitutional per se, the court recognized that at some point along the spectrum, such minimum acreage requirements cease to be a matter of public regulation and become a matter of private preference. All arguments that four acre zoning was necessary to preserve the general welfare were struck down. To complaints of possible sewage

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safety or welfare," 164 N.E. at 701; more recently see *DuPage County v. Halkier*, 1 Ill. 2d 491, 115 N.E.2d 635 (1953), invalidating a two and one-half acre single family minimum in an "Estate" zone.

[37] 393 Pa. 62, 141 A.2d 851 (1958).

[38] *Id.* at 76, 141 A.2d at 858 (1958).

[39] Stephenson, *After Bilbar—The Future of Rural Residence Zoning*. Stephenson, ed., ZONING FOR MINIMUM LOT AREA, FOUR COMMENTS ON BILBAR, 2d ed. 61, 63 (1961).

[40] 419 Pa. 504, 215 A.2d 597 (1966).

pollution it was said that the reasonable method of protection was a legislatively sanctioned sanitary board and not four acre zoning. To complaints of future traffic congestion with consequent fire hazards the court replied:

> Zoning is a tool in the hands of governmental bodies which enables them to more effectively meet the demands of evolving and growing communities. It must not and cannot be used by those officials as an instrument by which they may shirk their responsibilities. Zoning is a means by which a governmental body can plan for the future—it may not be used as a means to deny the future. . . . [T]he roads will become increasingly inadequate as time goes by and . . . improvements and additions will eventually have to be made. Zoning provisions may not be used, however, to avoid the increased responsibilities and economic burdens which time and natural growth invariably bring.[41]

Thus, the view that the cost of increased public services could be used to limit housing demand was explicitly struck down. In rejecting the argument that preservation of open spaces was necessary to preserve the "character" of the area, it was pointed out that the proper methods of achieving this end were either "cluster zoning" or condemnation of development rights with full compensation paid for whatever is taken. Finally, in an affirmation of regional planning, the court made it clear that the effects of four acre zoning on the residential region as a whole had to be considered. The opinion stressed:

> . . . the township's responsibility to those who do not yet live in the township, but who are part, or may become part, of the population expansion of the suburbs. Four acre zoning represents Easttown's position that it does not desire to accommodate those who are pressing for admittance to the township unless such admittance will not create any additional burdens upon governmental functions and services. The question posed is whether the township can stand in the way of the natural forces which send our growing population into hitherto undeveloped areas in search of a comfortable place to live. We have concluded not. . . . [T]he general welfare is not fostered or promoted by a zoning ordinance designed to be exclusive and exclusionary.[42]

It would seem likely that in the future, the judicial attitude towards minimum lot area zoning expressed in the *Kohn* case will receive wider attention than it has in the past.[43]

Other officials, besides the judiciary, are beginning to have similar reservations regarding minimum lot area zoning. Significant economic interest groups, such as the home building industry and land invest-

[41] *Id.* at 527, 528, 215 A.2d at 610 (1966).

[42] Id. at 532, 533, 215 A.2d at 612 (1966).

[43] *But see* County Comm'rs v. Miles, citing Kohn, *supra* note 34 at 369.

ment companies, are becoming unhappier with low density zoning, since in some areas it has resulted in what they regard as a serious impediment to natural suburban growth and, thus, has had a depressing effect on the construction industry.[44] Builders condemn such zoning on the grounds that it results in lower quality housing at higher costs. The argument that large lot zoning decreases the local tax load by eliminating the need for new public services is also questionable, since low density zoning decreases the number of people able to share the tax load.

MINIMUM HOUSE SIZE REGULATIONS

The use of zoning techniques to achieve socio-economic exclusion is well illustrated in the celebrated case of *Lionshead Lake, Inc. v. Wayne Township*.[45] There the court, purporting to protect public health and prevent "suburban blight" and the construction of "shanties," upheld a zoning ordinance requiring a minimum house size that in effect excluded homes which cost less than $12,000 (1952 prices).[46] The court went on to say, "City standards of housing are not adaptable to suburban areas and especially to the upbringing of children."[47] Apparently the court felt a city childhood was so traumatic an experience that suburban manifestations of city living, with respect to housing at least, should be avoided wherever possible. Although the opinion has met severe criticism,[48] the rationale is still indicative of typical judicial responses to issues of this kind.

EXCLUSION OF APARTMENTS

The negative attitude of many suburban governments to apartment construction has resulted in another broad area of exclusion. Often, either restrictions are so severe that the building of apartments is

[44] *See* the New York Times, Oct. 4, 1963, at 47, for a statement damning "fanatical" public officials in Westchester County, New York on this point.

[45] 10 N.J. 165, 89 A.2d 693 (1952).

[46] Some commentators have considered the public health argument a sham. *See particularly*, Banfield and Grodzins, *supra* note 23, at 78.

[47] 10 N.J. 174, 89 A.2d 697 (1952).

[48] Haar, *Zoning for Minimum Standards: The Wayne Township Case*, 66 HARV. L. REV. 1051 (1953); Nolan and Horack, *How Small a House?—Zoning for Minimum Space Requirements*, 67 HARV. L. REV. 967 (1954); Haar, *Wayne Township: Zoning for Whom?—In Brief Reply*, 67 HARV. L. REV. 986 (1954).

prohibitively costly,[49] or there is a direct attempt at complete prohibition.[50] However, changing patterns in the housing market have lessened the demand for single family homes which predominated in the 1930 to 1956 period and increased the apartment demand. It has been predicted that the ratio of housing construction in years to come will be only sixty per-cent homes to forty per-cent apartments.[51] In part this is attributable to smaller families, rising construction costs, increasing real estate taxes and higher commuting costs. While the pressure from developers to meet this demand increases, the issue of apartments in the suburbs remains an emotional one, and often leads to political repercussions. Even when political and emotional obstacles to apartment construction can be overcome, it occasionally happens that only the least desirable land in a suburb is zoned for multiple family dwellings, apparently on the odd theory that although it is bad planning to abut single family houses against business properties, it is good planning to place five families next to the same commercial sites.

A wide range of possible motivations has been noted to explain the emotional reaction of many suburbanites to apartment construction. Some appear to be worried about an influx of "transient" lower socio-economic classes in general,[52] while others fear huge government housing projects. There are also fears about lower property values, increased taxes, and destruction of the "character of the community." Further, fiscal arguments against apartments are open to considerable doubt.[53] Since there are fewer school age children in apartment devel-

[49] For a general discussion of regulation of suburban apartment buildings *see, Symposium, Apartments in Suburbia: Local Responsibility and Judicial Restraint*, 59 NW. U. L. REV. 344 (1964).

[50] *See* MacDonald v. Bd. of County Comm'rs, 238 Md. 549, 574, 210 A.2d 325, 339 (1965), involving a celebrated refusal to rezone a single family district to permit a large commercial and apartment development. The majority opinion provoked a thirty page dissent by Judge Barnes who felt among other things, that "the concept of a large development appealing to *all* economic classes in the community in which the amenities of comfortable living are enjoyed by all is a new and imaginative concept in planning."

[51] Babcock & Bosselman, *supra* note 16, at 1061.

[52] One theory is that suburban insecurities generate a fear of downward social mobility resulting in a strong antagonism to any of the symbols that the suburbanite associates with the feared groups. *See* Babcock & Bosselman, *supra* note 16, at 1072 citing BETTELHEIM & JANOWITZ, DYNAMICS OF PREJUDICE 65-70 (1958).

[53] A 1958 New York survey of 285 garden apartments in Freeport and Rockville Center showed they paid $100,568 in property taxes of which $60,000 went to the

opments to drain school tax funds and since the cost of extending municipal services is obviously cheaper per capita with apartments than with single family developments, the fiscal anti-apartment arguments tend to be weak ones.[54]

EXCLUSION OF INDUSTRY

Much suburban zoning is equally antagonistic to industrial development. In *Duffcon Concrete Products, Inc. v. Borough of Cresskill*,[55] the New Jersey Supreme Court sustained the complete exclusion of heavy industry from a municipality, using a rationale based, oddly enough, on regional considerations.

> The effective development of a region should not and cannot be made to depend upon the adventitious location of municipal boundaries, often prescribed decades or even centuries ago, and based in many instances on considerations of geography, of commerce, or of politics that are no longer significant with respect to zoning.[56]

Similarly, *Valley View Village, Inc. v. Proffett*,[57] in view of regional considerations upheld the zoning of an entire municipality for residential uses only, "so long as the business and industrial needs are supplied by other accessible areas in the community at large." Where regional planning is absent this rationale insures legal immunity for the municipality imposing such restrictions ahead of its neighbors.

More often than attempts at complete exclusion, there is a desire on the part of suburban communities to attract white collar industry

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school system. This provided more than $2,000 per child attending school, whereas the cost of educating a pupil in a suburban school was less than $1,000. New York Times, May 29, 1960, § 8, at 1; coming to the same conclusion was a study made by Board of Education School Dist. 63, Maine Township, Illinois, Chicago Sun Times, June 30, 1967, at 40; HOMER HOYT ASSOCIATES, ECONOMIC SURVEY OF THE LAND USES OF FAIRFAX COUNTY (1954), also found that apartments in suburbs contribute taxes above costs because of their having fewer school age children; *but see* BOARD OF EDUCATION SCHOOL DIST. 68, SKOKIE, ILLINOIS, A STUDY OF THE EFFECT OF ZONING ON PUPIL ENROLLMENT AND FINANCIAL SUPPORT OF AN ELEMENTARY SCHOOL (1961), though such findings did not impress the court in *First National Bank of Skokie v. Village of Skokie*, 53 Ill. App. 2d 326, 229 N.E.2d 378 (1967); both these last studies are cited in Comment, *Legal Significance of Cost Considerations in the Regulation of Apartments by Suburbs*, 59 NW. U. L. REV. 413 (1964); *see also* Babcock & Bosselman, *supra* note 16 at 1063.

[54] See Krasnowiecki, *Planned Unit Development: A Challenge to Established Theory & Practice of Land Use Control*, 114 U. PA. L. REV. 47, (1965); and Babcock & Bosselman, *supra* note 16 at 1064.

[55] 1 N.J. 509, 64 A.2d 347 (1949).

[56] *Id.* at 513, 64 A.2d at 350 (1949).

[57] 221 F.2d 412, 418 (6th Cir. 1955).

which will add greatly to its tax base, while not requiring significant increases in municipal services. As the Planning Commissioner of Westchester County, New York states:

> What every community wants to help pay its taxes and provide jobs is a new campus-type headquarters that smells like Chanel No. 5, sounds like Stradivarius, has the visual attributes of Sophia Loren, employs only executives with no children and produces items that can be transported away in white station wagons once a month.[58]

Where these attributes are lacking the result is apt to be unduly restrictive zoning effectively excluding blue collar industry and workers.

If using the police power to achieve these ends gives one pause, the example of Pepsico, Inc.'s proposed relocation from New York City to Purchase, New York, in Westchester County, is even more instructive.[59] Purchase is a three-square-mile neighborhood, with four acre zoning, located within the twenty-square-mile town of Harrison. Pepsico asked Harrison to rezone a 112 acre polo club so it could build a twelve million dollar "campus-type" world headquarters. Both the Harrison town government and Westchester County Planning Board viewed the rezoning favorably. It was stated that fully fifty per-cent of the 1,000 employees would be executives and the employees would have to live outside Purchase, in the less affluent parts of Harrison, because of Purchase's four acre zoning. Taxes on the headquarters would amount to $289,000 a year compared with only $68,000 should the 112 acres be developed with $75,000 homes. Pepsico also promised to produce a blend of woodland screening and rolling lawns. In short, this would appear to be the kind of "industry" most suburbs welcome, since a great deal of tax revenue is produced, while the services which must be provided are relatively inexpensive. The residents of Purchase, however, unlike the Harrison residents, did not want either the corporation or the tax revenue, so 122 of the 275 resident property owners who were qualified voters petitioned for a mandatory referendum on incorporation. Incorporation, later rejected by a vote of 136 to 134, would have allowed the residents to control their own zoning and exclude Pepsico.

A controversy such as the Pepsico one produces at least three identifiable reactions. At one extreme stand those who feel that their

[58] New York Times, April 18, 1967, at 28.

[59] *Id.; see also* New York Times, April 27, 1967 at 41; and August 19, 1967, at 42.

prior Hegira to suburbia entitles them to use the zoning machinery to exclude any and all newcomers, whom they often fear will reduce their pastoral domains to "asphalt jungles." At the other extreme are those who would abolish local zoning altogether. They are angered because they believe that the exclusionary potential inherent in the zoning power will be manipulated to serve the parochial, though bucolic, reveries of those whose concept of the general welfare is not thought to extend beyond their own backyard. In the middle stand those who wish to preserve local zoning's traditional concern for those who have first settled in an area, but recognize that there are sometimes others who will be affected by a local land-use allocation and who are entitled to standing. They feel that where land-use decisions having a regional impact are involved, the size of the constituency making the decision should not be artificially reduced, as it was in the Pepsico case, due to mere historic or geographical happenstance.

While this middle viewpoint seems the most reasonable one, to effectuate it entails devising new and relatively sophisticated devices to properly balance the competing local and regional interests.

SOCIAL IMPLICATIONS OF EXCLUSIONARY ZONING

Large lot zoning and minimum house size zoning both increase the cost of housing in the suburbs. Similarly, exclusion of apartments and industry entirely, or favoring only white collar industry, means that lower income, predominantly Negro groups are effectively consigned to the inner city. As blue collar industries are permitted to incorporate in outlying areas, it often follows that lower-skilled workers must commute out long distances from the central cities because of the lack of available housing near their jobs. All of this exacerbates economic cleavages in the metropolitan area and has a corresponding depressant effect on population mobility. As commuting out of the city to dispersed industrial plants poorly served by public transportation becomes more costly and impractical, suburban employers face an increasingly inefficient and distorted labor market, while ghetto residents find themselves isolated from the areas of burgeoning economic activity in the metropolitan region.

The Department of Labor has recently pinpointed this development as one of the prime causes of the failure to match available jobs with available personnel.[60] The study noted that from 1959 to 1965 indus-

[60] U.S. Dept. of Labor, Bureau of Labor Statistics, *The Decentralization of Jobs*, MONTHLY LABOR REVIEW, May, 1967.

trial employment in twelve central cities grew by only twelve per-cent, while employment in the suburbs adjacent to these cities grew by thirty per-cent. The study further showed that public transportation to these suburbs was often either hopelessly circuitous, entirely unavailable, or when available required commutation costs ranging up to a prohibitive $50 per month.

Thus we have an inner city, losing its tax base, and surrounded by an expanding band of racially and economically homogeneous suburbs which pose an effective barrier to racial and socio-economic dispersion throughout the whole metropolitan area. While the impact of local zoning in perpetuating this cycle should not be overstated, it is certainly an important cause.

The relationship between exclusionary zoning practices and adverse social consequences has been summed up in the widely noted dissent of Justice Hall in *Vickers v. Township Comm'n of Gloucester Township*,[61] a case which upheld the total exclusion of trailers from a community. Justice Hall noted that many exclusionary practices are rationalized by reference to such statutory zoning purposes as "conserving the value of property" and "encouraging the most appropriate use of land," in the name of preservation of the character of the community or neighborhood. He went on to state:

> I submit these factors are perverted from their intended application when used to justify Chinese walls on the borders of roomy and developing municipalities for the actual purpose of keeping out all but the 'right kind' of people or those who will live in a certain kind and cost of dwelling. What restrictions like minimum house size requirements, overly large lot area regulations and complete limitation of dwellings to single family units really do is bring about community-wide economic segregation. It is a proper thing to exclude factories from residential zones to conserve property values and to encourage the most appropriate use of land throughout the municipality. It is quite another and improper thing to use zoning to control who the residents of your township will be. To reiterate, all the legitimate aspects of a desirable and balanced community can be realized by proper placing and regulation of uses, as the zoning statute contemplates, without destroying the higher value of the privilege of democratic living.[62]

The unconstitutionality of zoning for racial segregation has been clear for some time,[63] but not enough attention has been paid to the constitutional aspects of economic segregation.[64] If zoning for economic

[61] 37 N.J. 232, 181 A.2d 129 (1962), *cert. denied*, 371 U.S. 233 (1963).

[62] *Id.* at 266, 181 A.2d at 147 (1962).

[63] Buchanen v. Warley, 245 U.S. 60 (1917).

[64] *But see* the excellent discussion in Williams, *Planning Law and Democratic Living*, 20 LAW AND CONTEMP. PROB. 317, 343-48 (1955).

segregation is in effect zoning for racial segregation, and if courts permit this by accepting exaggerated or sham arguments about dangers to the general welfare, then the prospects of mitigating racial cleavages would appear diminished. As Norman Williams, a lawyer planner, has put it:

> [U]nder the equal protection clause . . . the facilities of government may not be used to prevent people from moving into and living in a given area, because of the color of their skin. . . . The next question is an obvious one—whether the same principle applies to invalidate governmental action aimed at preventing people from moving into specified areas because of the size of their income. Clearly, in a society with democratic pretentions, one question is as basic as the other. And the second question raises serious questions about several types of residential land-use controls, primarily zoning regulations. . . . *It is a major problem of American democracy that current trends in the development of the physical and social environment are tending to reduce the opportunities for those regular contacts which may result in spontaneous familiarity between different racial, ethnic and economic groups. In an era otherwise characterized by signs of decreasing social fluidity and decreasing racial contacts, such trends have ominous implications for the future of democracy.*[65] (Emphasis added.)

These portentous words were written in a more peaceful 1955 and one wonders whether the recent succession of summer disturbances has made the point any clearer. A democracy thrives on the interaction of all of its fragmented factions. Where there is no interaction, where there is no communication between the disparate elements of the society, anti-democratic, anarchic strains grow increasingly strong and corrective action becomes necessary if democratic values are to survive.

The use of zoning to promote, consciously or unconsciously, anti-democratic ends is not always accomplished by resultant economic segregation. The recent record is spotted with poorly cloaked attempts to directly influence racial housing patterns.[66] Few instances have been as imaginative in this regard as Deerfield, Illinois, which found it suddenly needed more park space when a developer announced he was going to build an integrated housing project.[67]

[65] *Id.* at 343, 348.

[66] Note Anderson v. Town of Forest Park, 239 F. Supp. 576 (W.D. Okla. 1965); DeSena v. Gulde, 265 N.Y.S.2d 239 (1965); and the controversies in Englewood, New Jersey, New York Times, May 6, 1966, at 96; Scotch Plains, New Jersey, New York Times, September 1, 1961, at 26; and Teaneck, New Jersey, New York Times, December 9, 1961, at 27.

[67] *See* Progress Development Corp. v. Mitchell, 286 F.2d 222 (7th Cir. 1961), affording the developer no relief due to his failure to prove a conspiracy to discriminate; and Deerfield Park Dist. v. Progress Development Corp., 26 Ill. 2d 296, 186 N.E.2d 360 (1962), *cert. denied*, 372 U.S. 968 (1963).

Continuing suburban hostility to multiple dwellings also contributes to segregation by age groups. A large part of the booming apartment demand comes from the elderly, who no longer need, nor want to maintain single family homes. Many older citizens would prefer to rent apartments in the suburbs they have lived in for many years and grown accustomed to. Nevertheless, many suitable apartment sites, easily accessible to the elderly, are unavailable for development due to their often exaggerated effect on the "character of the community."[68]

EXCLUSION OF OTHER FACILITIES

Various other land-uses serving regional goals also incur municipal wrath. Often found objectionable are such regional facilities as incinerators, junk yards and garbage dumps,[69] hospitals,[70] tuberculosis,[71] narcotic or alcoholic sanitariums,[72] nursing homes and homes for the elderly,[73] jails and schools for delinquents,[74] trailer camps,[75] motels,[76] and even churches.[77] Generally, if the institution or facility will not

[68] For a believer in planned unit developments as a way out of this last quandary *see* Lloyd, *A Developer Looks at Planned Unit Development*, 114 U. PA. L. REV. 3 (1965).

[69] Oregon City v. Hartke, 240 Ore. 35, 400 P.2d 255 (1965) upheld the total exclusion of a junk yard from a city since "aesthetic considerations alone may warrant an exercise of the police power."

[70] Wilmington v. Turk, 14 Del. Ch. 392, 129 A. 512 (Ch. 1925).

[71] Mitchell v. Deisch, 179 Ark. 788, 18 S.W.2d 364 (1929).

[72] Planning & Zoning Comm'n v. Synanon Foundation, Inc., 153 Conn. 305, 216 A.2d 442 (1966).

[73] Cooper v. Bd. of Adjustment, 412 Pa. 429, 195 A.2d 101 (1963).

[74] *See* 6 CALIF. ASSEMBLY INTERIM COMM. ON MUNICIPAL AND COUNTY GOVERNMENT 19, noting problems of placing jails in metropolitan California counties; for problems faced by juvenile facilities *see* Wiltwyck School for Boys, Inc. v. Perry, 14 App. Div. 2d 198, 219 N.Y.S.2d 161 (1961), noted in Note, *Zoning Against the Public Welfare: Judicial Limitations on Municipal Parochialism*, 71 YALE L. J. 720 (1962).

[75] *See generally* BAIR, LOCAL REGULATION OF MOBILE HOME PARKS, TRAVEL TRAILER PARKS AND RELATED FACILITIES (1965); and Worden, *Exclusion of Trailer Camps and Parks*, 61 MICH. L. REV. 1010 (1963), noting *Vickers v. Township Comm'n*, *supra* at note 61; and for Everyman's view of these peculiarly American gypsies *see* STEINBECK, TRAVELS WITH CHARLIE 86-94, 175 (1962).

[76] *See* BAKER AND FUNARE, MOTELS 11 (1955); Pierro v. Baxendale, 20 N.J. 17, 118 A.2d 401 (1955), upholding the exclusion of motels from a community entirely; Renieris v. Village of Skokie 85 Ill. App. 2d 418, 229 N.E.2d 345 (1967); and Ward v. Village of Skokie, 26 Ill. 2d 415, 186 N.E.2d 529 (1962), reversing the denial of a special permit to a motel.

[77] *See generally* CURRY, PUBLIC REGULATION OF RELIGIOUS USE OF LAND (1964); Catholic Bishop of Chicago v. Kingery, 371 Ill. 257, 20 N.E.2d 583 (1939); State ex rel.

be excluded from a large geographical area, local prohibitions have been upheld.[78] To the extent that the facilities are economically misplaced, a misallocation of resources occurs and the costs of the misallocation must be borne by the residents of the metropolitan area as a whole.

INTER-GOVERNMENTAL CONFLICTS

Another growing cost of parochial zoning is inter-governmental conflict. The Pepsico case is typical and not infrequent. One community zoning body follows its own self-interest with no thought given to the fact that adjacent communities may be adversely affected. The chairman of one town's planning commission stated the problem in this manner:

> We zone industry right up to this railroad, with no consideration of Bay Village at all. And on the other side of the railroad are some very high class residential developments. We never even talked to them. We just bang and did it.[79]

Besides this kind of intermunicipal boundary line problem, there are often conflicts between municipalities and county governments over the zoning of unincorporated lands. Since a county government presumably is zoning more with regional needs in mind, this often antagonizes suburban governments which cannot veto county decisions. An interesting example of this kind of conflict occurred recently in Cook County, Illinois. The Cook County Board was criticized as being too liberal in granting rezonings in unincorporated areas, over the objections of neighboring communities. As a result of this friction, there was an attempt to grant such communities extraterritorial zoning power. One legislative proposal would have effectively prohibited the county from exercising its authority within one and a half miles of a suburb.[80] Naturally, if regional interests are to be accorded greater weight in zoning decisions, legislative "reform" will have to move in exactly the opposite direction.

Synod of Ohio v. Joseph, 139 Ohio St. 229, 39 N.E.2d 515 (1942); City of Sherman v. Simms, 143 Tex. 115, 183 S.W.2d 415 (1944); and State ex rel. Roman Catholic Bishop of Reno v. Hill, 59 Nev. 231, 90 P.2d 217 (1939).

[78] Haar, *supra* note 24, at 524.

[79] DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, THE CONFLICT BETWEEN REGIONAL GOALS AND LOCAL LAND-USE CONTROLS 18 (1966). This report is the most comprehensive study of the conflict to date.

[80] HB-15 and HB-16, were introduced into the 75th General Assembly of the State of Illinois in 1967 and later tabled.

ASSERTING THE REGIONAL INTEREST

If it is finally concluded that there are certain economic and social interests of the region which are not being well served by the complete decentralization of power over land-use allocations, and if it is decided that these aggravations are worth ameliorating, then the problem becomes one of choosing the kind of mechanism which will insure that regional as well as local considerations are properly evaluated. To date, the courts in their reviewing capacity have not done an effective job of this and there are serious doubts as to their basic ability in this area. As Charles Haar has said:

> The limitations of the adversary process and the specialization of courts evoke serious doubts as to judicial competence in deciding the proper regional allocation of land resources. Indeed, the court may find itself interjected into the troubling and difficult aspects of metropolitan relations and becoming the center of controversy between the white-collar, upper-middle-class suburb and the increasing minority group, lower-income people of the central city. For serious racial and class cleavages are involved in the movement of slum dwellers to the suburban fringe. . . . Unless . . . regionalism is not a job requiring scientific, planning and engineering techniques, there is a patent need for further state legislation as to who should be the ultimate resolver of regional disputes. . . . This kind of decision making seems eminently suited for the administrative process.[81]

A state administrative review board would be one possible answer, perhaps the best one. The board could function somewhat as state public utility commissions now do. State zoning enabling acts could be amended to give statutory recognition to certain regional values. Such a review board could then consider whether or not in a given municipal zoning decision, the regional impact of the decision had been sufficiently considered. Regional density requirements would certainly be one factor to be weighed. Others might involve the location of a region's industrial development and the placement of various regional facilities. A state review board would probably be a more practical alternative than waiting for metropolitan government to develop, since that is likely to be a very long wait indeed.[82] Various techniques are available other than a state review board or some form of metropolitan government. The state could always assume primary responsibility for zoning, as Hawaii has done, though the lack of a multiplicity

[81] Haar, *supra* note 24, at 530, 531.

[82] *See*, Moak, *Some Practical Obstacles in Modifying Governmental Structure to Meet Metropolitan Problems*, 105 U. PA. L. REV. 603 (1957). Among the obstacles he lists: (1) legal; (2) political; (3) fiscal; (4) vested interests; (5) emotional; (6) communication; (7) plain cussedness.

of pre-existing zoning jurisdictions could limit this precedent as was the case in Hawaii.[83]

However, a Realpolitik analysis of the possibilities of significant state action could lead, at least for the present, to a rather pessimistic prognosis for reform because, while need to develop new land-use control techniques is growing more acute, the political climate is probably growing more hostile. The reapportionment decisions which have so radically altered the state legislative landscape have reduced the dominance of previously over-represented rural interests, but the chief beneficiaries have been the formerly under-represented suburbs and not the central cities. Therefore, it is possible that suburban factions in state legislatures will have the power to veto if they choose state attempts to alter the currently decentralized nature of land-use controls.

If state action is thus precluded, impetus for change may come from the federal government. While Secretary of the Interior Udall, at one time considered land-use planning and zoning to be without the purview of the national government, these attitudes are changing.[84] The Demonstration Cities and Metropolitan Development Act of 1966 already requires that federal grants for metropolitan areas be submitted for review by a regional planning agency. Mass transit, hospital, airport, library, highway and water and sewer projects are all included.[85] In addition to tying federal grants to regional planning, President Johnson has created the Temporary National Commission on Codes, Zoning, Taxation and Development Standards to be headed by the former U. S. Senator from Illinois, Paul Douglas. The Commission will make broad inquiries into the public policy issues underlying present zoning practices.

However, while the federal government with its conditional grants-in-aid has great potential power to stimulate regional land-use planning, it is also possible that federal initiatives may be proscribed by the same forces at work in the state legislatures. If the experience of the Department of Housing and Urban Development in trying to

[83] *See* Denny, *State Zoning in Hawaii: The State Land-Use Law*, 18 ZONING DIGEST 89 (1966); and DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *supra* note 79, appendix C.

[84] Udall's remarks are found in the New York Times, December 7, 1965, at 79; *see also Haar*, PLANNING AND THE FEDERAL ESTABLISHMENT, AMER. INST. OF PLANNERS (1967).

[85] Act of Nov. 3, 1966, P. L. 89-754, 80 Stat. 1255: 42 U.S.C.A. § 3331-3339.

bring about compliance with the Demonstration Cities Act's requirement for regional approval of certain projects is any lesson, there is a rocky road ahead for other federal efforts to encourage regional land-use planning. The United States House of Representatives was able to stall implementation of this provision by withholding funds. The rationale used was the preservation of suburban autonomy and the prevention of metropolitan government.[86]

If the political environment does turn out in the long run to be too hostile to permit substantial alterations in the present structure of decentralized zoning procedures, perhaps energies should be diverted instead to insuring that regional planning takes root in presently undeveloped areas now unaffected by well entrenched socio-economic interests. This result could be accomplished by having the federal government establish more responsive zoning in the proposed large scale developments called "new towns."

While widespread development of new towns may now seem somewhat remote, it does not take a seer or visionary to perceive that sooner or later the present martial preoccupation of the nation will eventually be resolved and will probably give way to more inner-directed concerns. When this shift finally comes, it will free for domestic use an enormous amount of federal revenue now being expended on other national objectives of a momentarily higher priority. It is not unreasonable to assume that a large part of these revenues will go towards curing the persistent ills which have turned our cities into social and economic disaster areas. Expenditures for the construction of new towns will no doubt be urged, not only because they will benefit society by promoting more efficient land development, but also because they offer the hope of contributing to the disintegration of racial ghettos. Since new towns will require enormous capital investments, perhaps beyond the unassisted capability or inclination of the private sector, it is likely the federal government will be pressed to vastly expand its mortgage insurance programs to encompass new towns or to provide direct subsidies similar to those afforded the development of the supersonic transport. If the federal government, as the munificent provider, thus uses its influence to guide the development of new towns, scarce land resources will stand a far better chance of being economically and democratically apportioned.

[86] Cong. Rec., July 10, 1967, H8399; and July 12, 1967, H8581.

CONCLUSION

The need for asserting regional considerations in local land-use decisions is rapidly increasing with the sprawling growth of metropolitan areas. At the same time, however, the decentralized machinery of zoning, which was fashioned in the 1920's, is creating serious impediments to effectuating a regional overview. Zoning is no longer local in its nature or effects and regional interests should therefore be considered when land use allocations are made. Through techniques such as large-lot low density zoning, the exclusion or restriction of apartments and industry, and the exclusion of certain regional facilities, democratic values are being distorted and economic costs due to the misallocation of resources are being needlessly imposed on metropolitan area residents.

Possible solutions for resolving the conflict between promoting regional goals in land-use planning and decentralized zoning would be administrative review of local zoning decisions by a state or regional agency, direct zoning in certain cases by states, or federally encouraged metropolitan planning. If these avenues of approach should prove politically impractical, the federal government should provide that, to the extent "new town" development becomes a federally assisted enterprise, zoning and planning principles are established attendent to such development, which insure a democratic as well as economic disposition of increasingly scarce land resources.