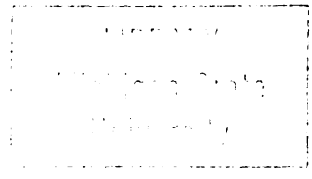

EXCLUSIONARY ZONING METHODS AND LITIGATION:

A REVIEW

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During the past two decades, the United States has experienced an unprecedented increase in population growth, per capita income, suburbanization, and a rising demand for facilities and services that historically accompanies high levels of affluence. Although middle- and upper-income persons have benefited from the prosperity of the 1960's, there has been little marked change in the absolute disparities existing in the allocation of wealth and resources. To the contrary, statistical evidence suggests that distributional imbalances are widening. Not only have the discrepancies in income dietribution remained the same in quantitative terms, no alterations have occured in the income and racial polarization existing between the white middle-class suburbs and the minority urban poor.

In addition to the perpetuation of racial segregation, the effects of racial and income concentrations has been a decline in the fiscal vitality of the central cities, a decrease in employment opportunities for minorities and lower-income groups, housing stock deterioration, and an increase tax burden for those remaining in urban cores.[1]

This pattern is not accidental. Although successful attempts have been made to end the era of overt racial discrimination in the areas of education, employment, criminal justics, and voting representation, the notable exception has been housing. Single family home ownership, an index of social and economic assimilation and the goal of a majority of families, is not a reality for minority or low-income groups.

It is the purpose of this report to elude, on a most general

level, these exclusionary methods in housing practices. In addition, litigation on such practices which impede the rights of groups or individual citizens will be studied to possibly reveal a pattern established by the courts. By researching the most widely implemented decisions either an established pattern for localities to follow or, judicial indecision implied by varied interpretations of the law, will develop as guidelines for future housing zoning and ordinance adoption.

The device by which municipalities control land allocation, and hence population and income, is zoning. Originally conceived as a stabilizer of property values and as a preventive tool against nuisances, zoning has been increasingly utilized to achieve social and political goals. Since the validation of zoning by the United States Supreme Court, in the case of Village of Euclid v. Ambler Realty Co., in 1926, the predominant trend of zoning has been one of allowing significant latitude in the scope and use of local government powers.[2]

In the Euclid case, the Court emphasized that the scope of the police power was elastic and capable of expansion to meet the complex needs of an urbanizing society. In addition, the Court expended to zoning enactments a presumption of validity that it had not formally received.[3] Thus, the Euclid case paved the way for local governments to further implement zoning for their own benefit provided, of course, justification was feasible for the measures taken.

Although Euclid was the landmark case which validated zoning as a police power to local governments, it was not the first such case to

deal with zoning. Euclid did not involve claims of racial discrimination, for which different standards could apply. In Buchanan v. Warley (1917), the Supreme Court considered the validity of an ordinance which stated that it was designed to prevent conflict and ill feeling between the races and to preserve the public peace and promote the general welfare. The method for accomplishing this end was to segregate the residential areas of Louisville, Kentucky.[4] The Court held that this municipal ordinance was invalid and recognized the consitiutional right to acquire, use and convey property. Police power cannot justifiably comply with a law or ordinance which runs counter to Federal Constitutional limitations.

Many cases deriving from the powers of the local government have reached the courts since Euclid. Although the validity of zoning has been established, many of the methods or uses of zoning have been determined illegal as implemented. The policing power guarenteed to local governments has not been detrimental to the rights of the citizens of local juristictions. The strict implementation of exclusionary zoning methods has, in most cases, been determined by the courts as going beyond the limits of governmental powers. The rights of the plaintiffs in exclusionary cases will be better understandable once the methods used by some local governments who have faced litigation is better explained.

Of the many techniques usen in zoning for protection, either against minority infultration, low-income group concentration, or the consequences of rapid growth, is large-lot zoning.

One of the first cities to implement such a plan was Sanbornton, New Hampshire. The city adopted a 6-acre minimum zoning in remote sections of the town, with a primary objective of limiting the number of "second

homes" to be built in the area. Such zoning was upheld.[5] In Los Altos Hills, California, the maintenance of the rural character of the town was the primary objective in the minimum one-acre lot size for the entire city. Through long court litigation the ordinance was not seen as exclusionary, as shall be noted later.[6]

Larger-scale minimum lot sizes have also been implemented successfully, but only with plans which were not outright exclusionary. Four counties in California; Napa, Santa Cruz, Marin, and Monterey, all have areas of 40-acre to 60-acre minimum zoning catagories. Although these zones are used to a great degree, they are termed "wait-and-see" zones, or interim zoning, because of their temporary status. Zoning of this kind is a useful implementing device for plans that call for incremental development rather than for the historically accepted leapfrog pattern.[7] Similar large-lot zoning was implemented in Easttown Township, Pennsylvania with a 4-acre minimum lot size. Such zoning was invalidated by the courts partially because it was not of a temporary nature and therefore exclusionary.[8]

Although many justifications may be sighted for large-lot zoning, the exclusionary effects are evident. Ecological reasonings are the most prominent and the most successful in supporting their usage. Sometimes, though, this tool can be used over zealously. Large-lot requirements can raise the cost of land and make it impossible for even the moderate- to middle-income family to afford decent housing.[9] In a study of the large-lot zoning of Mount Laurel, New Jersey (which was found exclusionary),

it was determined that by requiring large lots, the township increased the cost per lot. Moreover, since builders prefer that there be some correlation between lot costs and the cost of the house constructed upon the lot, more expensive lots result in dramatic increases in the cost of homes. Also, larger lots and larger lot widths require that utility lines be run for greater distances at an increased cost of improvements per lot. In addition, it was determined that extensive mapping for large lots drives up the cost of smaller lots and thereby significantly raises the overall price of housing.(10)

A review of the many number of cases dealing with large-lot zoning show almost no real established pattern to its validity. Many areas with extreme large-lot zones have been determined legal, as in California, while courts in Pennsylvania, New Jersey and elsewhere have taken the opposite view. Cases in which large-lot zoning has been employed for fiscal objectives or to regulate the tempo of development have produced a mixture of judicial reviews. Some courts hold that neither are permissible purposes for zoning. More will approve such ordinances if these objectives are "incidental" to the more traditional zoning goals. The rest expressly approve fiscal and development timing objectives providing that they are accomplished through reasonable regulation, that does not substantially deprive the landowner of his investment.(11) No court, however, has clearly defined the difference between racial discrimination and economic discrimination when dealing with large-lot exclusionary zoning matters.

While large-lot zoning sets limits to certain sizes of residential development, prohibitive zoning excludes various types of housing. The most common type of prohibitive zoning applies to multiple housing structures. The objective of many suburban areas is to retain a rural atmosphere, thus the inclusion of apartment buildings presents a threat. The most notable cases dealing with the exclusion of multiple dwelling units are in Pennsylvania. Cases can be sighted from the townships of Easttown, Nether Providence, and Waynesborough, all of which determined that such zoning was exclusionary.[12]

Again, the pattern of judicial decisions regarding this application of zoning has been scattered. The New Jersey courts leave to the municipality the decision in regard to the kind of housing type which they would prefer to have within their community, so long as they do not exclude future residents at any income level. Pennsylvania, on the other hand, seems to ignore the realities of how exclusionary zoning operates to exclude potential low- and moderate-income residents while requiring that all options be available to everyone regardless of community character.[13] While those courts that have dealt with exclusionary zoning of multiple units depicted various views, many cities retaining such areas of prohibitive zoning have thus far been unchallenged. Examples are; Brentwood, Tennessee, Windsor, Connecticut, and Framingham, Massachusetts.[14]

Despite the common belief that multiple units place a larger strain in the cost of public facilities by providing for low- and

and moderate-income who don't pay their way, evidence proves that the opposite is true. The St. Louis County Planning Department estimated the relative costs and revenues produced by developing a 132-unit apartment complex of single family dwellings on the same 13 acre site. The agency found that building the apartment complex would result in a net surplus of revenues over service costs. Building single family homes would result in a net loss.[15]

In another study, the North Central Texas Council of Governments found that the cities in the region which had the highest percentage of apartment units had enjoyed a slower rate of increase in per capita municipal expenditures for maintenance, and for water and sewer.[16]

Another prohibitive zone may be targeted toward mobile homes. The precedence established by Michigan and New Jersey to uphold regulations that exclude trailer parks within the borders of a community not only goes counter to many other state laws, but also to those of their own state which do not allow the exclusion for apartments.[17]

Litigations on prohibitive zoning, dealing with multiple housing and mobile homes are the only ones which present a case for exclusion of low- and moderate-income families. Since approximately 80% of zoning litigation takes place in 13 states and prohibitive zoning litigation arises primarily in New York, New Jersey, and Pennsylvania, no clear precedent has been established on the legality of the tool.[18] Again, refering to the case of South Burlington County NAACP v. Township of Mount Laurel, the Supreme Court of New Jersey determined that the housing

needs of low-income people could be met only with multiple family housing because the cost of construction was so high that single family housing could not be built and sold at prices that the poor could afford, thus, the prohibition of multi-family housing had disproportionate effects upon low-income persons. "Low-income families must, of necessity, be renters rather than purchers. If there are no dwelling units to rent, there is no way for them to reside in the municipality."[19]

Although there are other zoning techniques which could be implemented for exclusionary purposes, none have been as notable or have had as much litigation as large-lot zoning and prohibitive zoning. Other measures not directly related to the zoning powers of the local government, but do relate to the policing powers, can be sanctioned with exclusionary objectives.

Litigation dealing with the control and providing of public facilities by local governments has increased over the past decade.[20] Here again, the judicial process has produced a mixture of results. United Farmworkers of Florida Housing Project Inc. v. City of Delray Beach provides a prime example of exclusionary practices with the use of public facilities. The plaintiffs for a tract of land, which lay adjacent to Delray Beach, wanted the city, which owned and operated its own water and sewer systems, to extend its service to their site for a planned subsidized housing project. Since the plaintiffs would not agree to the annexation of their land by the city, and the city contended that this was a condition for the extension of the services, the city denied the application. The plaintiffs contended that the denial was racially

discriminatory. The District Court accepted the city's explanation and held that the city had a valid nonracial reason for rejecting the application.

The Court of Appeals, however, concluded that racial discrimination had been proved;

> "It was undisputed that the city has made exceptions to its annexation requirements for whites. The City did not do do for these minority farmworkers. It is also undisputed that the City has changed its Master Land Use Plan designations for whites. Again the City would not do so for these farmworkers. From this alone, it is clear to us, and it should have been clear to the city officials, that the effect of their refusal was racially discriminatory. To prove a prima facie case of racial discrimination no more is required." 21

The case of Evans v. Lynn saw an action brought by low-income residents of Westchester County challenging grants to the town of New Castle for construction of sewer facilities and the clearance of a swamp for recreational use. Plaintiffs claimed that New Castle practiced exclusionary land use policies and that approval of the grant would deny members of racial minorities and low-income persons equal opportunity to benefit from the grants. The sewer facilities were to be constructed in peripheral areas of the city and not in areas of concentrated minority dwellings.

The Court agreed that "the plaintiffs presented a serious injury by the condition of living conditions in the ghetto area," but concluded that "the injury was in no way linked to the particular grants received by the City."[22]

Finally, restrictions on public facility extensions have been upheld because of their inclusion of provisions for low- and moderate-

income persons. In late 1973, the Planning Board of Montgomery County, Maryland adopted an adequate public service ordinance, which compells a builder to prove that there are proper police and fire facilities, roads, water and sewer systems and other amenities before building. In addition, the County Council passed an ordinance requiring developers of 50 or more units to provide 15% in moderately priced catagories for sale or rent. The requirement was not keyed to the availibility of HUD subsidies, and applies to all residential developments.[23]

While seeking to control their growth rate, many communities are finding it feasible to include provisions for low- and moderate-income housing to prevent costly litigation. Fairfax County, Virginia is the only example of a local government which did this but failed because of the methods used in implementing the program which in themselves were discriminatory. Boca Raton, Florida is an example of an exclusionary city which has no provisions for low- and moderate-income housing; while it is pursuing a strategy of population limits and higher market residential costs which tend to exclude these people. The more pleasing programs of Boulder, Colorado, Montgomery County, Maryland, and Petaluma, California place limitations on growth but yet make provisions for all housing needs successfully without fear of exclusionary litigation in regards to public service or fair market prices.[24]

Confusion faces all local governments which attempt to control their own future by implementing growth management techniques. Some precedent has been set by judicial litigation, but that premise and easily be

lost in a mass of confusion. Federal Courts will look for racial discrimination or procedural failures in litigation proceedings rather than making clear decisions. Meanwhile, the state courts differ in litigation. Michigan and New York, at one time the prime examples in exclusionary litigation, have recently followed seperate patterns with judges seemingly overturning their own decisions.[25] Specifically, New York has not allowed the exclusion of mobile homes parks, whereas Michigan, in certain instances, has allowed such segregation of housing patterns. Cities are still seeking to exclude minority or lower-income people from their borders and are learning that, with no pattern established as of yet, good planning and reasoning are required. Recently the key aspect of exclusionary zoning ordinances have been their sublety. On their face they seem reasonable enough, but a closer examination reveals the insidious scheme to "prevent lower-income housing from entering the community, restrict the area to a specific income level, and deny a growing population a place to live and work."[26]

The concepts which the police power encompasses are in constant flux due to amendments to of changing interpretations of statutory, constitutional, and case laws. It is this dynamic nature of the law which has buttressed governments broadened regulatory controls and policies allowing it to keep pace with changing societal needs. Yet this very lack of precision in the laws has also led to confusion in both the public and the private sector.

When we talk about exclusionary zoning, we are usually refering to the exclusion of low-income persons, particularly minority group members. There may also be exclusion of other classes of persons and there may even be exclusion of all future residnets. However, the chief brunt of the effects of exclusionary zoning in terms of those persons who are excluded falls disproportionatly upon lower-income persons and even more disproportionatly upon members of minority groups.

The initial theoretical difficulty in analysing exclusionary zoning arises from the fact that zoning ordinances do not accomplish their exclusion by direct impact upon persons excluded. They do not generally indicate that only certain classes of persons will be permitted to live in the municipality. This would obviously be unconstitutional. Furthermore, they do not generally limit the number of persons why may reside in the municipality by direct quota systems, though there have been a few examples of this. Rather, the limit in population growth is achieved by limiting development of the land or by staging the development in a way which inhibits growth. Zoning restricts development of land which, in turn, impedes access to the community by persons who desire to live in the community. Consequently, exclusionary zoning is directed towars the exclusion of specific persons.

In dealing with litigation of exclusionary zoning there are three possible legal theories upon which a lawsuit may be grounded;

* A constitutional decision based upon the <u>equal protection</u> clause,

that is, a judicial declaration of equality of rights in access to housing and good residential land, as against overt governmental discrimination directed against those with lower incomes. This could be based upon either the federal or state constitutions.

* A new interpretation of the general welfare as including housing needs, at least in metropolitan areas, together with the notion that promotion of the general welfare is an affirmative criterion to which zoning laws must conform. This could be either a constitutional of a statutory concept.

* A further interpretation of the evolving constitutional doctrine of the right to travel and to settle in different parts of the country.[27]

The equal protection clause of the fourteenth amendment has been the principal instrument by which the law has proceeded against racial discrimination in connection with access to housing and good residential land. On this basis the Supreme Court has outlawed racial zoning, and the enforcement of restrictive racial covenants and has assisted in the demise of the alien land laws. The emphasis upon racial discrimination has been more inportant than the value judgement on the importance of housing, but the opinions make it clear that the Supreme Court has regarded equal access to good housing a matter of serious importance. In more recent cases the Supreme Court has began to approach the question of whether there is a constitutional guarentee against the use of governmental power to limit access to housing on the basis of poverty, thus addressing the importance of economic discrimination in conjunction with racial discrimination. To date however, such an expansion of

doctrine has been almost totally unsuccessful. This is the case, even though the majority of the class discrimination against lower-income groups consists primarily of racial minorities. An equally disappointing defeat for the anti-exclusionary forces was that decent housing was deemed, in many cases, not to be a fundamental interest by the federal courts.[28]

The limits of the equal protection doctrine are suggested in the Supreme Court decision of Dandridge v. Williams in which it was stated that the category of fundamental interests would be limited to freedoms explicitly guarenteed by the Constitution. Under this approach, education, welfare, and housing would be excluded from further active review. The Dandridge case forms a precedent which portends difficulties for any arguement that wealth discrimination should be considered on the same footing as racial discrimination because economic terms are not explicitly addressed in the Constitution.[29] Further confusion exists with Supreme Court decisions because of the tendency of federal courts to cite state court decisions for principles of zoning law that have national application, even though those decisions were not clearly based upon any federal constitutional or statutory right. Cases concerning economic discrimination receive more favorable treatment in the state courts while the federal courts better handle those involving racial discrimination.[30]

One of the first decisions which had an impact on both economic and racial discrimination was James v. Valtierra. The issue presented frew out of the United States Housing Act of 1937, which established a Federal Housing Agency authorized to make loans and grants to state agencies for slum clearance. Article 34 of the California Constitution

provided that no low-rent housing projects should be developed, constructed or acquired in any manner by a state public body until the project was approved by a majority of those voting at a referendum. The question before the Court involved the process or procedure of making the decision. The Supreme Court upheld Article 34 and ruled that it did not violate the equal protection clause. The Court did not consider if the effect of the procedure, that is, whether or not is resulted in racial or economic discrimination, would be constitutional.[31]

While both James and Dandridge were rejected on the equal protection claim and rather conclusively shut the door to further claims raising the issue of the application of the equal protection clause to economic discrimination, the case of Whitfield v. Oliver tied the attack of economic discrimination with that of racial discrimination. The Supreme Court found that in Dandridge there was no violation of equal protection involved in Marylands system of limitation of welfare benefits, where as the welfare program of Alabama, in Whitfield, violated equal protection because racial discrimination was cited in conjunction with economic discrimination.[32] Although these cases are not tied directly with housing, they help to set a precedent that economic discrimination must be tied with racial discrimination in order to prove a violation of the equal protection clause.

In the classic area of civil rights litigation, the federal courts have shown great sensitivity. Unfortunately, from the standpoint of exclusionary zoning litigation, the federal courts have generally been more receptive to racial discrimination cases in the areas of employ-

ment and education than in housing. Nevertheless, for exclusionary zoning litigation filed in the federal courts, a cause of action based upon racial discrimination would have a greater chance for success than one based upon almost any other grounds.

United States v. City of Black Jack presents one of the most noted cases of exclusionary zoning. In Black Jack, the exclusionary goal was defeated by the onvious actions and proceedings of officials. The 11-acre site in an unincorporated area of St. Louis County had been zoned for multi-family use, before the plans were unvailed for a moderate-income housing project. Soon after the plans were presented, in response to petitions, the county granted Black Jack independent status, where upon Black Jack enacted a zoning ordinance which showed that the effect and purpose of Black Jack's ordinance was racial discrimination.[33]

A similar case of rezoning for discriminatory purposes was determined in Metropolitan Housing Development Corporation v. Village of Arlington Heights. The plaintiffs based their claims upon the Fourteenth Amendment, Title VIII, and Sections 1982 and 1983 of the Civil Rights Avt. Specifically, they claimed that the refusal to change the zoning would make housing unavailable because of race, would perpetuate racial segregation and would deny the right to use property in a reasonable manner.[34]

In both Black Jack and Arlington Heights, racial discrimination was cited as an overt action in zoning practices. Other major cases

involving racial discrimination, which shall bot be covered extensively, are Dailey v. City of Lawton, where the pressure from a white section of the community to prevent a development in which blacks would participate, was seen as racially based,[35] and: Sisters of Providence of St. Mary of the Woods v. City of Evanston which also saw the prevention of construction of a subsidized multi-family project as racially based.[36]

More recently in Ybarra v. Town of Los Altos Hills, racial discrimination was not cited as an invalidation factor. Again, a non-profit corporation planned to build a Section 236 multi-family profect. Los Altos Hills permitted only one-acre minimum lot size, single-family development. In addition, they had only a few low-income residents. The practical effect of the zoning ordinance was to deny housing [illegible] throughout the city to low-income persons.[37]

The decision of the Ninth Circuit Court was clearly counter other decisions reached in similar cases:

> "Although it does, for all practical purposes, exclude low-income persons for residence in that community, it does not substantially impare any important interest of the poor, It does not operate to deny them the opportunity for low-cost housing in convient and decent locations nearby. Since Los Altos Hills itself has virtually no low-income residents, it is not neglecting any housing responsibility to its own. The city has no industry, has an insubstantial amount of commercial business, and thus offers little or no employment opportunity to low-income persons. Therefore, it need not zone to insure the availability of low-income housing for resident low-income workers. 38

Not only has the outright exclusion of minorities been determined as discriminatory, as previously cited, not the containing of minorities

in isolated areas of the community may also be considered as discriminatory. The plaintiffs in Kennedy Park Homes Association Inc. v. City of Lackawanna wanted to construct a subsidized housing project on the "other-side-of-the-tracks." The city was divided into wards seperated by railroad tracks and the homes to be constructed would provide housing primarily for members of minority groups in the white wards of the city. Both the District Court, in a long opinion with detailed findings of fact, and the Court of Appeals found that the city officials thwarted construction in response to the discrimination sentiment of the white community. which wanted to contain the city's low-income, black population in the first ward. Thus, the city officials acted as a reault of improper racial motivation.[39]

Finally, in dealing with discriminatory litigation of equal protection, growth management programs adopted by a local government could, and in many cases did, severly effect neighboring jurisdictions. In many cases plaintiffs would challenge a locality that adopted policies which had the effect of shifting the responsibility of providing low-income housing, accomodating population growth, or lay the costs of new services or facilities onto a neighboring community. Litigation of this kind can be challenged under equal protection of general welfare purposes. Above the fact that regional welfare litigation is relatively new, it also has remained quite vague.

The landmark case in 1975 of South Burlington County NAACP v. Township of Mount Laurel, held that a zoning ordinance that did not

meet the fundamental needs of adequate housing possessed by people of all income levels who resided within the region, did not serve the general welfare of the region and was thereby to be considered invalid.[40] Since this New Jersey decision, only three other states; Pennsylvania, New York, and Michigan, have accepted regional welfare litigation in discriminatory cases. The Michigan case of Bristow v. City of Woodhaven is also one which is commonly cited in regional litigation; while the Ybarra case, previously cited, counters any regional consideration established by these state courts because, even though it was determined that the city did not carry its share of the variety of housing in the region, the large-lot zoning was upheld for other reasons.[41]

Litigation still remains vague with equal protection challenges to discriminatory ordinances and practices of local governments. While racial discrimination has been more easily recognizable, its connection with economic discrimination has not been. Challenges based upon the equal protection clauses of the United States Constitution and individual state constitutions have been generally successful. However, while the state courts have in some cases extended the equal protection arguement to include discrimination on the basis of wealth, as well as race, the federal courts have not.[42]

While a large majority of the litigation dealing with exclusionary zoning practices falls under equal protection decisions, the narrower role of the "general welfare" also receives limited attention. In most states, enabling acts list the statutory goals of zoning, most of which include the general welfare. The general welfare is regulated by the policing power of the local government. It is either a statutory

or constitutional consept in forty-six states.[43]

Very few cases can be classified as litigation involving the general welfare, especially in discriminatory terms. Aesthetic regulations are a new base upon which zoning requirements may face violation of the general welfare clause. Those areas which have been presented with charges of restricting land, either through land banking or regulatory power, have been successful in justifying this criteria. Requirements of a large minimum lot size have generally been rejected involving other justifications, as unrelated to the health, safety, or general welfare in particular cases. However this concept has not been declared invalid per se.

One of the first cases involving large-lot zoning for the "general welfare" of the community was in Needham, Massachusetts. This ordinance was challenged to the Massachusetts Supreme Court where, in the case of Simon v. Needham, of 1842, the zoning was upheld.[44] More recently, Palo Alto, California has successfully defended its 10-acre minimum lot size per one dwelling unit on the same grounds.[45] Other cities such as Boulder, Colorado, and Moses Lake, Washington have successfully retained areas for the public's benefit, or general welfare, under formal attack by private developers who were unable to prove that individual needs had a higher priority than that enjoyed by the whole community.[46]

Although litigation concerning the general welfare in zoning practices of local governments has been scattered, with no real established pattern, cases involving discriminatory practices involving the welfare or security of a community have been fewer. Much of the future of exclusionary rulings will not involve the general welfare charges but most likely those of the right to travel.

The right which would appear to be most directly affected by exclusionary zoning ordinances is undoubtedly the right to travel. Since exclusionary zoning affects all persons of limited incomes and not just members of minority groups, and since the effect is upon their access to a particular communiyt, the interference with the right to travel appears to be the most appropriate vehicle with which the exclusionary zoning lawsuit may be driven.

As we have seen, the violation of the equal protection clause may apply only to members of minority groups, and the same is partly true of the various civil rights statutes. In addition, because the right to housing is not a fundamental right, other potential causes of action are not firmly established as well. This leaves the right to travel as a basis for challenging exclusionary zoning, for exclusionary zoning does, after all, prevent future residents from migrating to and settling in certain communities.

There have been a series of cases in which the Supreme Court has protected the right of citizens to travel from one state to another. In Edwards v. California, the Court invalidated a penalty for bringing indigent nonresidents into the state, adopted by the State of California to halt the influx of "Okies." The Court held that a state may not

place burdens upon entry into the state.[47] The right to travel was again used to invalidate a state imposed restriction upon access to the state in Shapiro v. Thompson. The Supreme Court held that a one-year residency requirement for public welfare payments was invalid, based upon the right of all persons to travel to and live in communities of their choice.[48]

Finally, in one of the most heavily financed and carefully prepared cases in the history of recent exclusionary zoning litigation, Construction Industry Association of Sonoma County v. City of Petaluma, the plaintiffs challenged a planned-growth plan. The importance of the consideration of this case is that the District Court invalidated the plan because it infringed upon the right to travel. This decision was reversed by the Ninth Circuit Court of Appeals for lack of standing to raise the right to travel. The Court of Appeals held that the plaintiffs in the case before it were not appropriate parties to raise the issue of interference with future residents' right to travel.[49]

While the courts have recognized that the right to travel exists, and while it has been implied in cases involving situations other than land use controls, it is not clear how a zoning case would be framed under the present state of the law. The obvious plaintiff would be someone whose ability to travel has been impaired. It may be seen that zoning restrictions do not apply only to subsidized housing but prevent all kinds of housing types or the number of dwelling units without reference to the potential identity of the occupants. However, there

is a definite impact upon the opportunity of future residents moving into a suburban community when the community limits the availability of dwelling units. It is this impact which makes exclusionary zoning an explosive issue.

Finally, throughout this report and the research therein, there have been several trends apparent in both the state and federal court decisions in challenges of exclusionary practices. Requirements of a large minimum lot size have generally been rejected as unrelated to the health, safety, or general welfare in particular applications. However, the concept has not been declared invalid, especially when tied to ecological means. Further, the courts have ordered municipalities to plan for the housing needs of all residents, particularly those in the lower- and middle-income groups. Some courts have also ordered the implementation of those plans. In addition, challenges based upon the equal protection clause of the U. S. Consitiution and individual state constitutions have generally been successful. However, while the state courts have extended the equal protection argeuments to include economic discrimination in some cases, the federal ourts have not. Lastly, the courts, particularly the state courts, have shown a growing awareness and understanding of the exclusionary effects and the social and economic consequences of an increasing number of zoning practices.

FOOTNOTES

[1] Mann, The Right to Housing, p5.

[2] Scott, Management and Control of Growth, p16.

[3] Babcock and Bosselman, Land use Controls; History and Legal Status, p199.

[4] Moskowitz, Exclusionary Zoning Litigation, p86.

[5] Cahn, Where Do We Grow From Here?, p72.

[6] Moskowitz, p129.

[7] Finkler, Peterson, Nongrowth Planning Strategies, p93.

[8] Godschalk, Consitiutional Issues of Growth Management, p50.

[9] DePaul, Exclusionary Land Use Techniques, p391.

[10] Moskowitz, p239.

[11] Babcock, Bosselman, Land Use Controls; History and Legal Status, p201.

[12] Moskowitz, pp208-9.

[13] Ibid, p201.

[14] Brower, et. al., Urban Growth Management Through Development Timing, p62.

[15] Lauber, Recent Cases in Exclusionary Zoning, p466.

[16] Ibid.

[17] Babcock, Bosselman, Land Use Controls; History and Legal Status, p202.

[18] Mann, p84.

[19] Moskowitz, p238.

[20] Brower, et. al., p58.

[21]Moskowitz, p138.

[22]Ibid., pp36-7.

[23]Einsweiler, et. al., Comparative Descriptions of Selected Municipal Growth Guidance Systems, p313.

[24]Ibid., p286.

[25]Mann, p86.

[26]DePaul, p391.

[27]Williams, Exclusionary Zoning Strategies, p482.

[28]Scott, p19.

[29]Lauber, p468.

[30]Moskowitz, p98.

[31]Ibid., p103.

[32]Ibid., p107.

[33]Mann, pp97-9.

[34]Falk, Equal Housing Opportunity, p70.

[35]Moskowitz, p121.

[36]Ibid., p122.

[37]Godschalk, p79.

[38]Moskowitz, pp129-30.

[39]Babcock, Bosselman, Land Use Controls; History and Legal Status, p204.

[40]Godschalk, pp68-9.

[41]Ibid.

[42]Lauber, p470.

[43]Ibid., p483.

[44]Brower, et. al., pp33-4.

[45]Cahn. p71/

[46]Fagin, Regulating the Timing of Urban Development, p297.

[47]Moskowitz, p176.

[48]Ibid., p177.

[49]Mann, p91.

COURT CASES

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