EXCLUSIONARY ZONING: LEGAL, SOCIAL and ECONOMIC ASPECTS

by

David C. Nearing

A PLAN B PAPER

Submitted to
Michigan State University
in partial fulfillment of the requirements
for the degree of

MASTER OF URBAN PLANNING

School of Urban Planning and Landscape Architecture

1985

I. Introduction
   A. Purpose
   B. Methods of Exclusion

II. Legal Aspects
   A. Legal Restrictions
      1. Standing
         a. State Court Standing
         b. Federal Court Standing
      2. Standing of Third Parties
         a. Third Party Standing in Federal Courts
         b. Third Party Standing in State Courts
      3. Burden of Proof
      4. Remedies
         a. The Courts Activities

III. The Courts Views on Exclusionary Methods
   A. Police Powers
      1. Zoning
         a. Large Lot Zoning
   B. Growth Control Issues
      1. Building Permits
      2. Utilities
      3. Referendum Voting
   C. Constitutionality
      1. Racial
      2. Housing
      3. Right to Travel
   D. Courts Views on Zoning Cases
   E. Political Interference

IV. Social Aspects
   A. Barriers
   B. Success of Exclusionary Zoning
   C. Filtering
   D. Use of Property Values to Measure Impact
      1. Brokers
      2. Lenders
      3. Builders
      4. Actual Outcomes

V. Economic Aspects
   A. Demographics
   B. Infrastructure
   C. Industry/Commercial Employment
      1. Other Reasons
      2. Exclusionary Effects on Suburbs
   D. Effects on Land and Housing Prices
      1. Costs of Zoning
      2. Costs of Building Codes

VI. Conclusion

Case Listing

Bibliography

INTRODUCTION

PURPOSE

It is the purpose of this paper to give its readers an overall view of what I feel are the three most important aspects of exclusionary zoning. These three aspects are legal, social, and economic in nature.

The legal aspects deal with federal and state case and statutory law. These are the battlefields in which many projects designed for low and moderate income residents are allowed to begin, or die. The legal aspects section is not designed to be a definitive catalog nor to provide absolute answers. If I were to attempt to do this, I could write a paper on each of the fifty states separately.

This section is only to give the reader a sense of what has been tried, why, and where it has succeeded or failed. It will also address the approaches and outcomes of different strategies in attacking the legal barriers to allowing a case to go before the courts.

The social aspects section will touch upon the different theories and rationale stated for the existence of exclusionary zoning. It should be pointed out that research on this area is limited, and sketchy. Studies are done sporadically over a long period of time. Most studies base their conclusions on economic outcomes, perhaps the best method of showing the actual effects of exclusionary practices on society.

The economic aspects section will give an overview of the effects of exclusionary zoning upon the central cities, land prices, and housing costs. It will also deal with the decline of central city infrastructure, the decline in central city job markets, and the movement of business and industry away from the central cities.

METHODS OF EXCLUSION

The methods of exclusion discussed in this paper will include zoning issues, building codes, growth control strategies, and referendum voting on use of local monies. These methods, for the most part, are the most commonly used.

Zoning ordinances cause exclusion through such means as large lot zoning, large frontage requirements, minimum housing size (floor space) requirements, and various yard size requirements and setback requirements. These requirements are designed to make a house suitable for only middle and upper income

families to support the tax base, and who usually have smaller families requiring less public services. Zoning is also used to exclude multiple family housing. The intention is to avoid low and moderate income housing from being erected in the town. This type of housing usually costs the town more than the tax revenues it generates.

Building codes often include unnecessary and extravagant amenities, designed to increase the cost of the house to exclude lower income purchasers. Though building codes are necessary for safe housing, if abused they will exclude many people.

Growth controls take the shape of limits and moratoriums on utilities extensions and hookups. These are used to keep a town at its present size and character. They are often invoked when a town is in the path of rapid urban expansion, and fear the encroachment of a larger population, many of whom could be lower income persons. Limits on the issuing of building permits further reinforces the strategy. It allows the town to be selective in who is or is not allowed to build.

Referendum voting allows a municipality to control where its local revenues will be spent. When a referendum law is in place on use of local money in housing projects, the citizens are allowed to exclude all unwanted persons as they choose.

LEGAL RESTRICTIONS

In cases which involve exclusionary zoning litigations, there are many barriers to entry into the legal system. These barriers include but are not limited to: standing, burden of proof, and remedies. These legal issues, especially standing, tend to be the leading cause of dismissals in court cases before the merits of the case can even be heard by the courts (Ayer, 1969, 344). I will address each of these subjects individually in a later part of this section.

Before the main barriers to a land use litigation can be covered, other topics of law should first be addressed. These are aspects of a case that can bar it from even coming before the bench. They include "case or controversy" and "ripeness."

The issue of case or controversy deals with whether the case is one of concrete facts and actual harm, which can be remedied, or it if is merely a controversial issue. If the court views the matter as a controversy, say between two political groups, it must act as a mediator. Courts refuse to act as mediator; thus the case will never come to trial. However, if the issue is one where someone has been wronged in some distinct manner, the courts will allow it to come to trial (Walsh 1976, 228).

The issue of ripeness is somewhat more complex. In this case, there is an obvious wrong that is being committed, but it is not yet clear as to who or whom is the injured party, and/or what the outcome of the wrong will be. In this case, the court will recommend that the case be dismissed until the issue can be remedied with a specific judgment to right the wrong.

Should the issues of case or controversy and ripeness be overcome, the courts will allow the issue to become a case. The case will then be scheduled for a trial date. Once the case goes to trial, the battle begins to keep it in court for an eventual remedy.

Standing

The issue of standing deals with the party or parties representing an issue: are they, in fact, interested parties, or are they simply raising an issue that they feel is wrong and should be corrected? Do the parties involved have a definite stake in the outcome? The issue of standing is designed to

avoid the crowding of the court calendar with cases that will remedy a specific wrong, but help no one in the process.

State Court Standing

As is commonly known, there exists the federal court system and a court system in each state. In general, each state court system is based upon the federal system with the highest court in the state descending to the lowest. Law, in general, is law. The difference is in interpretation and precedent. Federal courts are held to the precedent of previous federal cases; the variation comes from interpretation. In contrast, precedent in the court system of one state is not automatically accepted in the courts of another. They are only accepted between states if a judge is in agreement with the decision of that of another state. If the agreement is in a lower state court, it can be overturned by the next highest state court. Federal court precedent is accepted mandatorily by all federal courts in the nation if handed down by the Supreme Court, or if handed down by a lower federal court, until overruled by a higher court.

Federal constitutional law is determined by federal courts and final interpretation is up to the Supreme Court. State constitutional law, likewise, is interpreted by state courts and final interpretation is up to the highest state court. Some states do not have supreme courts, they have, many times, a state court of appeals. It is in the area of constitutional law where a greater degree of difference exists between the federal and state courts. When federal constitutional law is set, it is accepted by all courts of the land. Yet even though most state constitutions are based on the Federal Constitution, they can be interpreted differently by the state courts. This can allow a greater flexibility in determining state laws. Where federal precedents based on the Federal Constitution may be more narrowly defined in such areas as standing, the state may be more broad and encompassing in who is covered under its constitution and be more lenient in its application of standing. Thus, states may allow a broader category of persons, and different categories of persons standing, than those allowed in federal courts.

Two key points are raised in solving the issue of standing. In state courts, the first requires that the party bringing suit have some substantial, legal, or equitable incident of ownership in the property in question. The second point requires that the party bringing suit (agent) have some signifi-

cant economic interest in the outcome of the case (Boerner 1966, 1072).

When dealing with cases involving rezoning, there are several persons or groups who have a right to appeal. First and foremost is the property owner, also known as the Fee Simple owner. Fee simple is an old law which means the owner has complete ownership of the property--is the sole uncontested owner.

A person acting as an agent of the owner will have standing if the outcome has an economic impact on the agent directly. This can include construction companies and others under contract to do work on the property pending a zoning change, variance, or special use permit (Boerner 1966, 1073).

A lessee who has a long period of time left remaining on the lease will have standing. However, it should be noted that in this case persons with an oral lease or an at-will lease (which allows them to vacate at any time) have been questioned by the courts in respect to actual interest (Boerner 1966, 1074).

If a contract vendor is accompanied by the owner's consent, he can be considered to have standing by the court as an agent for the owner unless it is established that enough stake in the property does not exist to attempt a change (Boerner 1966, 1073).

If a person has purchased an option on the land and the owner consents, the option holder can be viewed as the agent. If the state views the option holder as having purchased the rights of fee simple, the owner's consent is not necessary. However, if the person purchases the land in full knowledge that the proposed use is not allowable, the problem will be considered self-afflicted and standing will be denied (Boerner 1966, 1076).

In 1926, when the Standard State Zoning Enabling Act was created on which most states base their zoning enabling acts, taxpayers were among those on the list of parties who could seek legal recourse. Yet only seventeen states have included taxpayers in their enabling acts. In these states they are seldom granted standing due to questions which arise as to the meaning and broadness given the phrase by its authors (Ayer 1969, 347). When taxpayers are granted standing, it is because they have sufficiently proven that they are personally aggrieved (Boerner 1966, 1083).

Nearby property owners within the jurisdiction, if their property abuts the land in question, are usually granted standing. If they are not abutting neighbors, they must show unique damages not suffered by the whole community will result due to the proposed change (Boerner 1966, 1078). However, in Pritz

v. Messer, the court held that persons in a neighborhood may have standing because a zoning ordinance affects the whole neighborhood, where building codes affect only occupants (Pritz v. Messer 149 NE 30 [1925]).

In general, those persons whose land is not abutting the property in question, and who are within the jurisdiction, will be allowed standing if the court places more weight on economic damages, such as stockholders when joined by the owner. The person must show that his property will suffer some damage. This damage must be special and unique to his property as a result of the proposed zoning change or variance (Boerner 1966, 1078).

Standing for parties outside a jurisdiction whose property abuts a parcel in question, were, until the Scott case, denied standing on the grounds that they were outside the zone in question (Ayre 1969, 356). However, in the Scott case, (Scott v. City of Indian Wells 492 P 2d 671 [1972]) it was decided that if the owner of property neighboring (abutting) a parcel in question is outside the municipality, that owner has the right to be heard and seek relief. In the Allen case, the court ruled that a change in a zoning ordinance can influence any neighboring property. It went on to say that even though the owner is not within the city, he has a right to expect that the ordinance serve the public welfare and not be changed unless in the public interest. Perhaps the best known case to uphold this finding dealt with a proposed mobile home park complex within a municipality which was opposed by residents outside the municipality. In this case, the Oregon Supreme Court held that residents from outside the municipality did have a right to be heard as the change could economically harm their property (Fasano v. Board of County Commissioners of Washington County 507 P 2d 23 [1973]). After the success of the Fasano case, most states began to recognize the property rights of nonresidents of a municipality.

Federal Court Standing

In general, Federal Court standing closely resembles that of state standing. One of the most obvious reasons is that state standing requirements are based upon the federal laws and statutes. The difference in state and federal standing will be noted later in this section, where differences in interpretation and constitutional law will be noted. Here, the flexibility differences will be shown more clearly.

The criteria for determination of standing in a federal court consists of a two-pronged test (Walsh 1976, 228). The plaintiff must determine which of the two tests he will address in order to prove standing to represent the issue. The two tests vary in the degree of liberalness of criteria to gain standing.

In the first test, the aggrieved must prove whether the challenged action has, in fact, caused injury to himself. This test is more liberal in that the meaning of injury can include not only economic but also aesthetic or even environmental damage. The action cannot be seen as a political question, and the aggrieved person must himself show some specific injury. The federal courts also insist that the person have ownership or real interest in the land, and that a remedy must be available. This is similar to the state courts' person aggrieved rule (Walsh 1976, 228).

Under the second and less liberal test, a person must show that the harm is real and not hypothetical in nature. The person must show that he fits into the zone of interest of the issue. He must prove that he fits into the category of parties to whom the congressionally created rights would allow the courts to grant some form of relief (Walsh 1976, 230).

Standing of Third Parties

Now that the ground rules for gaining standing have been laid, it is necessary to discuss a very important aspect of standing. In land use litigation, there are the two major parties of interest: the land owner desiring a change and those who oppose the change. Yet, perhaps the most important party in land use litigation is the third party. It is the third party who will gain or suffer the most from a change in exclusionary policies. His interest in the land use change issue may not be immediately identifiable as economic or aesthetic or even environmental, yet the failure of change can have very substantial economic impact on his entire life. Here lies the problem: to get his interests represented in court either directly as a third party or by representation by one of the two primary parties of interest (specifically, the party desiring the change is the first party, the party opposing the change is the second party). It is this third party who must fight the hardest to be heard.

Liberality of the bench is one key to the granting of standing to third parties. Yet here a problem arises: the attitude of the bench toward zoning litigation. This issue will be addressed in more detail in a later section. However, I will touch on it briefly now, as it is a most important aspect of the standing issue.

It could be that the major barrier to the third party standing issue is the courts' hesitance to hear zoning litigation arguments. It has been said, "Zoning is the child of nuisance. Nuisance is something that common law judges understand." (Ayre 1969, 345). Yet, as Richard Babcock has found, judges dislike nuisance cases (Babcock 1966, 101).

Judges' aversion to nuisance began to become apparent in the late 1950s when courts began, without overruling previous issues of standing, to impair their use (Ayre 1969, 348). It appears that by clearing their calendars of zoning cases by use of the standing issue, the courts were able to postpone or totally prevent the use of judicial controls over administrative action in zoning cases (Ayre 1969, 363). To further demonstrate their feelings toward zoning arguments, judges would many times confer standing, then declare a decision based on an issue which not only had not been raised by the plaintiff (first party) but had no effect on the plaintiff (Ayre 1969, 352). In effect, they skirted the issue by interpreting a new issue into the case, which till that time was not even thought of.

Third Party Standing In Federal Courts

In 1970, the City of Lackawana, New York, attempted to halt the construction of a low income housing project. When the case reached court, the city attempted to prove lack of standing on the part of the housing authority due to lack of ownership. However, the federal judge gave standing on the grounds of economic interests. The judge felt that the cost that had been incurred up to that point, the commitments by the other parties, and the fact that the authority has proven that the project in question could be built, gave the authority adequate stake in the outcome of this project to represent it (Kennedy Park Homes Association v. City of Lackawana, NY 436 F 2d 108 [1970]).

In this case, the Federal Court recognized the rights of nonowners for economic reasons. It was the view of the court that even though the association had not yet secured the land, it had shown that by halting this project, including the procurement of the selected site, many parties would suffer severe economic loss.

At the same time that the Kennedy Parks case was being heard in the New York federal courts, another case was being heard in the United States Supreme Court which would not only back up the Kennedy Parks decision but open other cases of similarity. That case was the Association of Data Processing Service Organizations v. Camp (Association of Data Processing Organizations v. Camp 397 US 152 [1970]). In this case, the court determined that any type of real injury, whether it is economic or some other type, would give a group standing to represent the argument. The injury, however, must be real "injury in fact" so the dispute is not simply an advisory situation (back to "case or controversy"). This case not only assured that nonowners of property could in fact gain the right to standing, but it left open a wide range of potential categories of "injury in fact."

In 1972, the Supreme Court of the United States opened a new area of injury in fact as a grounds for standing. The Sierra Club brought suit against Secretary of the Interior Morton for allowing federal wild lands to be opened for exploitation of natural resources. The Sierra Club stated that this infringed upon their rights to enjoy the wilderness. The Supreme Court recognized their right to standing on environmental grounds. It also recognized, and opened the door for, the third party aggrieved. In this case, it recognized the right of a party, once given standing, to represent the interest of third parties only remotely involved. In this case, every citizen's right to enjoy the outdoors (Sierra Club v. Morton 405 US 727 [1972]).

By taking this action the Supreme Court in essence opened the door to a very broad interpretation of injury in fact. The only bar would be the interpretation of the judge as to the extent of injury.

In the same year, a federal court in the State of Missouri opened the door for minorities and the poor to join with landowners as plaintiffs in federally subsidized housing cases. This was the case in which these groups were allowed standing in this type of case. It was the opinion of the court that these people had a definite economic stake in this case. The court held that economic hardship would be suffered by disallowing these persons from leaving the impoverished areas of inner-city St. Louis to pursue jobs in the outlying region because of lack of affordable housing. In fact, because this was a case first determined to be based on racial discrimination, the issue ended up being not one of standing, but one of ripeness. The argument of the defense, once standing was allowed, was that as there was no housing, were there in fact persons being injured at present. The court held that there were (Park View Heights Corporation v. City of Black Jack 467 F 2d 1208 [8th Circuit 1972]).

Also at issue was the question of whether or not it would be valid to allow, at that time, a particular segment of the population (who are of a large group) to join as plaintiffs, since they all suffer alike. The injury is not uncommon to persons in their situation. The court, however, determined that the group was of a specific enough category, that being exclusive to the St. Louis area. Thus the injury was one of a nature that was special to a segment of the St. Louis population (Park Vew Heights Corporation v. City of Black Jack F 2d 1208 [8th Circuit 1972]).

The next year, the U.S. Supreme Court further reinforced the beliefs of the Missouri court in the Park View Heights case in U.S. v. SCRAP (Students Challenging Regulatory Agency Procedures). In this case the court held that standing cannot be denied because many people suffer the same injury (U.S. v. SCRAP 412 US 669 [1973]). This position looked very promising for third party standing cases. It appeared that the door was now open for minorities and the economically disadvantaged to gain standing with first party plaintiffs. Such an opening could have allowed many groups to bring to light the plight suffered by them as a result of their geographic location and the near impossibility of change because of lack of affordable locations for relocation nearer jobs.

Unfortunately, in 1975 the U.S. Supreme Court made a ruling based on several other criteria, which closed that open door. Though the decision did not overturn the earlier decision of Park View Heights or U.S. v. SCRAP, it did place new burdens on the plaintiffs, especially third parties, to show the right to be granted the right to standing. One of the first blows was the decision to disallow standing to a large class of citizens if the wrong is suffered equally by all. The decision is left up to the judge (Warth v. Seldin 422 US 490 [1975]).

Another criteria for standing which creates barriers is the issue of project/no project. The project/no project test was the main aspect of the case which separated this housing project case from others. The project/no project test became one of the most crucial outcomes of this case. Standing was denied the third party potential tenents because in the Warth case there was no project underway. Since there existed no project site, the court felt that no one had any economic interest; so there was no injury in fact due to no interest in ownership (Warth v. Seldin 422 US 490 [1970]).

In the Park View Heights case, the third party had joined with the first party who had some interest in property. Thus, if no project has yet been begun, the court feels that it is merely mediating a political battle between

those who propose a zoning change and those who oppose it. In Warth, the court felt it was the place of legislature and the democratic process to make these changes. It was stated that even though some had attempted to seek housing there but had failed, it was not possible to determine whether the court could actually give relief to any specific group because it could not single out who had been harmed (Warth v. Seldin 422 US 490 [1975]).

The Warth court went on to say that a case would be proper only if it involved a direct threat to a person's rights or a concrete threat to constitutional rights. A proper case would also be one where it was deemed impossible to begin a project because of exclusionary barriers erected by the town's zoning and to locate a site on which to propose and design a project (Warth v. Seldin 422 US 490 [1975]).

One of the first victims of the Warth case decision was the City of Hartford, Connecticut. In 1977, the Second Circuit Court reversed a decision of the Federal District Court from a year earlier. The dispute centered on the release of federal block grant funds to the suburbs surrounding Hartford. The surrounding suburbs had failed to create a Housing Allocation Plan (HAP) to provide for their fair share of the area's low income and minorities as was deemed necessary under federal statutes. However, the Second Circuit Court, after review of the previous cases, stated that the City of Hartford lacked sufficient grounds to be granted standing. The circuit court ordered that the funds be released, and the HAP regulations be waived in this case. The court held that the city's claim that it would be forced into economic hardship due to more of the underprivileged residing there was unsubstantiated. The court could find no proof that the city would suffer any perceptible harm, or that relief would redress any alleged injury (Hartford v. Town of Glastonbury-2d-[2d Cir 1977]).

This is quite obviously a very dangerous precedent. This could very easily allow other suburbs in the position of Glastonbury to seek waivers of the HAP and receive it. The result would be to further force the concentration of the underprivileged into central cities, which would accomplish just the opposite that the regulations were designed to relieve.

Though racial discrimination will be addressed in a later section, it should be mentioned here due to its value as an alternative approach to deal with the issue of standing. In most cases, when racial discrimination is the issue courts often either put less emphasis on or ignore the standing issue entirely.

This is done to allow the courts to get right to the heart of the matter. In many cases where there is a chance of not only economic but also racial discrimination, it may be more advisable to attack the problem on the grounds of race rather than economics (Walsh 1976, 241). This fact could be based on the explosiveness and sensitivity of racial matters and the fear of the courts in being charged with avoiding such an issue. I cannot imagine any court that would take such a chance as to ignore such a constitutionally unallowable injustice.

One example would be the case of Sisters of Providence of St. Mary of the Woods v. City of Evanston. In this case, the plaintiffs were given standing due to economic interest in that they owned the property. The plaintiffs were also representing low income minorities who would reside in the housing, once rezoning was granted and the project completed. The court held that inasmuch as the expected tenants were being discriminated against for housing on the basis of their race, that alone would give them standing and the plaintiffs need not represent them. (Sisters of Providence of St. Mary of the Woods v. City of Evanston 335 F.Supp. 396 [1971]). The issue was the equal rights clause of the Fourteenth Amendment. In the Sisters of Providence case, those being discriminated against were ready to move in once the project was completed.

In 1976, in Hills v. Gautreux, the U.S. Supreme Court held that persons of a definite economic or racial segment who are discriminated against for housing in a metropolitan area have standing in a municiple exclusionary case because they are being affected (Hills v. Gautreux 425 U.S. 299 [1976]). This decision once again opened the door for successful litigation of exclusionary cases, allowing third party standing. However, these cases are still bound by the Warth decision of project/no project. It must also be noted that according to the U.S. Supreme Court's interpretation of the Fourteenth Amendment's Equal Rights clause, economic classes are not listed among those protected. This is another reason why an attack on constitutional grounds should take the form of racial discrimination when the chance arises.

A drawback to attacking exclusionary zoning on racial grounds is the increasing difficulty of proving racially discriminatory intent. As will be discussed later, in the Economics Section, most ordinances and regulations are exclusionary due to the excessive standards which make affordable housing nearly impossible to create.

If racial allegations appear as if they may not hold up in court, there is another course of action for gaining standing. The problem can be attacked

on statutory rather than constitutional grounds. If a person can show that denial of standing would cause the failure to carry out statutory duties, Congress possesses the power to grant standing. In fact, Congress has the power to grant standing where it is not normally granted. This approach can be extremely effective, especially when federal monies are involved. (Walsh 1976, 241-42).

The statutory attack is based on Congress's intentions when creating the Civil Rights Act, especially Chapters VI and VIII. These two chapters contain clauses designed to assure that standing be permitted on as broad a ground as the case or controversy laws will permit (Walsh 1976, 243).

Another very useful statutory attack is through use of the Housing and Community Development Act of 1974. This act ties disbursement of community development grants to housing assistance plans or HAPs. HAPs are created to assure that accommodations are made for those who are expected to reside in the community as a result of existing or proposed development of any kind. This type of an attack would be aimed at forcing the agency involved to stop or reduce the amount of federal subsidy being given to an area with exclusionary policies. The full payments would not be continued until these policies have been reviewed and amended to be more inclusionary (Walsh 1976, 246-46).

In essence, the plaintiff can gain standing on broader grounds, and directly attack the agency. This attack will force the agency--which has great power--to force the community to change its policies. This can be much more effective than the plaintiff attacking a community's zoning policy directly (Walsh 1976, 247). Of course, as can be demonstrated by the Hartford case, this is not always a foolproof scheme. An unsympathetic court can, and has, use a stricter definition or criteria for standing and thus avoid the issue, a situation that can be explosive. The plaintiff must still show injury in fact, and the Warth case project/no project criteria must still be met.

Third Party Standing in State Courts

When discussing standing in state courts, one must remember that the decision of a court in one state does not necessarily affect the decision of a court in another. Another point of interest is that the decision of a state court on third party standing, unless controversial or precedental, will remain obscure. For that reason, this section will discuss only a few of the most important decisions.

In general, the rule for standing in state courts is that the land use regulation in question has to be invading a legal interest that is personal to the plaintiff. This is based on the zoning enabling act of all states but New Jersey (Fishman 1978, 99). In New Jersey, the state amended the act to allow the right to judicial review of zoning ordinances, specifically to nonresidents as well as residents (Fishman 1978, 101). This is due to the decision of the case of the Southern Burlington County NAACP v. Township of Mount Laurel (336 A 2d 713 [1975]). It was the Mount Laurel case which first brought the nation's attention to the idea of "fair share" of a region's underprivileged and their right to be represented in court. True, the federal government had acknowledged a region's fair share. but this was in dealing with federal projects. New Jersey was the first state to recognize it at the state level. Should this idea spread to other states, the barrier of standing will become less insurmountable than at present.

Before Mount Laurel, little had been done in state courts to promote third party standing. The most active state, before the New Jersey Supreme Court ruling, was Pennsylvania. Between 1965 and 1970, there were three important cases decided in Pennsylvania that set and permanently established precedence for third party standing. These cases were: National Land Investment Company v. Kohn (215 A 2d 597 [1965]); Appeal of Girsh (263 A 2d 395 [1970]); and Appeal of Kit-Mar Builders, Inc. (268 A 2d 765 [1970]). These three cases were representative of other state courts' attitudes toward standing, but were also unique, with only a few states similar to them. The main similarity was the fact that, as with the federal courts, there must be a specific site and project involved before an ordinance can be challenged.

If the project and site criteria is fulfilled, then the court will allow those with stading to represent others whom the court would not grant standing, on questioning the constitutionality of a municiple ordinance. This will be allowed if it can be shown that these ordinances are adversely affecting the third parties. One example would be the Pennsylvania Supreme Court's holding that a municipality cannot decide who will or will not live within certain boundaries (Appeal of Kit-Mar Builders, Inc. 268 A 2d 769 [1970]). This decision shows that the court respects the rights of others to come and reside within a municipality and, if the zoning ordinance is exclusionary those directly involved have the right to speak on behalf of other unknowns. This was reiterated in the Appeal of Girsh, where the idea was openly stated (Appeal of Girsh 263 A 2d 397 [1970]).

Other states have also acknowledged the rights of others who are nonresidents living alongside a municipality or who are nonresidents judged to be adversely affected by an ordinance. Two states in particular exemplifying this would be California (Scott v. City of Indian Wells 492 P 2d 137 [1972]) and Missouri (Allen v. Coffel 488 SW 2d 671 [Mo. Ct. App. 1972]).

Unfortunately, in Pennsylvania the liberalness is offset by an air of conservativism. In Pennsylvania v. County of Bucks (302 A 2d 897 [1973]) the Pennsylvania Supreme Court held that low income and minority groups will not be allowed standing until they have actually attempted and been denied admittance to an area.

In California, a state which is notorious for its favoring of private property owner rights, the State Supreme Court has made one particular addition to the third party standing issue of note. If a plaintiff does not adequately represent a class of people in question, it would be appropriate for the court to allow the plaintiff to amend the complaint to include additional plaintiffs or to redefine the classes being represented (Scott v. City of Indian Wells 492 P 2d 1139 [1972]). This, of course, leaves the decision pertaining to amendment entirely up to the judge. If the judge is unsympathetic to exclusionary cases, he can deny any request.

Another opening to the barrier of standing deals with the methods for change of a zoning ordinance and the concept of hardship unique to a plaintiff's land. The Pennsylvania Supreme Court holds that it is not allowable to have a variance as the only means available for the plaintiff to avoid hardship caused by an ordinance. This is because of the regulation governing injury unique to a plaintiff's land. This is felt to be a recourse too severe and too little available (Appeal of Girsh 263 A 2d 395 [1970]).

Burden of Proof

Burden of proof refers to the idea that when an allegation is heard in court, it is up to one party to prove it has been wronged, or that the issue in question is necessary. One side will always have the burden of proving it is right.

The reason that burden of proof is such a barrier to exclusionary zoning cases is that it usually rests upon the person or group seeking the change.

The Michigan Supreme Court has summed up the general attitude of other state courts by holding that a zoning ordinance need only be reasonable, and is considered so until proven otherwise (Kropf v. City of Sterling Heights

215 NW 2d 179 [1974]). Because most zoning ordinances are veiled in this cloak of validity, the burden of proof always rests on the first party.

The Oregon Supreme Court has also stated a general belief held by other state courts: that the burden of proof must be met by the plaintiff that a change is needed contrary to the plan. The greater the change requested, the greater the degree of burden of proof (Fasano v. Board of County Commissioners of Washington County 407 P 2d 23 [1973]).

Federal courts share the same belief as state courts. One case in point is California, where the 9th Circuit Court of Appeals held that cities have the right to control and determine their own growth. This implies validity of local ordinances and puts the burden of proof on the plaintiff. This case dealt with the validity of referendum voting for amending zoning ordinances, and growth control issues (Construction Industry Association of Sonoma County v. City of Petaluma 522 F 2d 897 [9th Cir 1975]).

There are methods of changing whom the burden of proof falls upon. One of the primary methods is by showing that the ordinance is discriminatory in nature. Such a case was heard in the U.S. Court of Appeals in Florida where it was determined that minorities were being treated differently than whites when it came to utility hookup extensions, changes in the zoning ordinance, and changes in the master plan. The court held that this difference in treatment was based on race, which is inherently suspect according to the 5th, 13th, and 14th Amendments. Once discriminatory action was shown, it was the city's responsibility to show that the ordinance is in the best interests of the public good (United Farmworkers of Florida Housing Project, Inc. v. City of Delray Beach, Fla 493 F 2d 799 [1974]). Discrimination causes any court, state or federal, to immediately shift the burden of proof onto the municipality. Of course, the problem here is constitutional interpretation of who is covered by the state and federal constitutions. It appears that the best assault on oppressive burden of proof should be a constitutional attack.

In some states, there are ways of attacking a zoning ordinance and shifting the burden of proof without attacking the ordinance on constitutional grounds. One method is to show that the ordinance in question places an excessive economic burden on the owner. In National Land Investment v. Kohn (215 A 2d 597 [1965]) the Pennsylvania Supreme Court held that when a zoning ordinance imposes an unnecessary hardship on an owner, it cannot be considered reasonable. This court also held that the burden of proof should never be so severe as to limit an owner's ability to seek a change or his constitutional rights (National

Land Investment Company v. Kohn 215 A 2d 597 [1965]).

Also in Pennsylvania, though the plaintiffs lost their cases, the courts did set certain standards ruling what could be an unreasonable ordinance: an ordinance would be unreasonable if it completely excluded, or allowed very little, land in comparison to other land uses for a particular use, such as multifamily housing (Williston v. Chesterdale Farms, Inc. 341 A2d 466 [1965] and Waynesborough Corporation v. Easttown Township Zoning Hearings Board 350 A 2d 895 [1976]).

After the Mount Laurel decision, the New Jersey courts stated a partial list of reasons that a zoning ordinance is unreasonable, causing a shift in the burden of proof onto the municipality. That list includes but is not limited to regulations that do not offer or make possible a variety of housing types, contain restrictive features such as allowing only large lots, or completely or almost completely exclude multifamily housing. Should any of these situations exist, the plaintiff need not attempt to prove the intent of the municipality to restrict meeting its regional fair share; that is automatically implied.

One interesting concept that started in Michigan is that of preferred use. The idea arose as a result of a district court judge believing that certain uses should be given a preferred status. Such preferred uses are in the best interests of the state and public at large. It was felt that this included decent housing, which people have a right to. The court felt such a use would satisfy an unmet need. If a municipal ordinance were at odds with this use, the ordinance was invalid (Bristow v. City of Woodhaven 192 NW 2d 322 [1971]). This concept was used in a case the following year to strike down an ordinance restricting multifamily housing (Simmons v. city of Royal Oak 196 NW 2d 811 [1972]).

Unfortunately, in 1974 the Michigan Court of Appeals overturned the Bristow case, which action also overturned the Simmons case that had been based upon it. The Court of Appeals stated that the major problem was in definition of what is or is not a preferred use. The problem is deciding if the alleged unmet need is really needed at all (Kropf v. City of Sterling Heights 215 NW 2d 179 [1974]). The Michigan courts now use the same criteria as the Pennsylvania courts in determining reasonableness.

Remedies

After a court has heard a case and if its decision is in favor of the plaintiff, it will create a remedy to the wrong the plaintiff has suffered. In this section, I will review and comment on some of the remedies that have been created by the courts.

In the late 1960s and early 1970s, cases involving federally subsidized housing projects were becoming more common. At this time, it was hoped that the federal courts would become more involved in creating well thought out remedies that could be administrated. It was also hoped that the federal courts would become more involved than the state courts in land use litigation. Unfortunately, because of decisions such as the Warth case, the federal government showed its hesitance to expand its activities in land use decisions. The federal courts decided to limit their activities to the Federal Constitution and statutory activities. Even though they now include not only violations of the aforementioned but also federal planning assistance and funding, they will deal at present with little else (Fishman 1978, 73-74). It is mostly left to the state courts to deal with land use issues.

So, the problem of exclusionary zoning cases is left to the state courts. Often the courts do not feel they are the best body to deal with land use disputes. A case in point is the Pennsylvania Supreme Court where it felt that judicial action expanded into private property rights and municipal self-determination would amount to judicial activism. They felt it best left to state and national legislative bodies (Pennsylvania v. County of Bucks 302 A 2d 902 [1973]). With such an attitude in both federal and state courts, it is not difficult to understand why exclusionary zoning has been allowed to go unchecked for so long.

The Court's Activities

There are two types of court-created remedies. The first involves a court-created plan. The second type is one where the court maintains jurisdiction over the matter, to oversee and assure that the guilty municipality creates a plan acceptable to the standards set by the court (Fishman 1978, 164). The court decides who will formulate the plan, based on the views of the guilty municipality. If the municipality is adamantly opposed to inclusion of the excluded uses, the court will create the plan (Fishman 1978, 164), or the court may hire an independent consulting firm to create a plan for it (Pascack v. Washington 329 A 2d 89 [1974]).

Another determining factor is whether minorities sit in positions of power such as commissioners, zoning board members, or zoning commissioners (Fishman 1978, 164). Should sufficient minority representatives exist, the court could demand that they be included in the plan development.

If the court finds that it should create the plan, there are some potential problems. Judges, for the most part, are scholars of law, but may be unfamiliar with planning. The court's remedy may not be what is best for the city. The site the court selects could be inappropriate,for instance, for multifamily housing. Or it could be too far from jobs with no mass transit access. The area could be environmentally sensitive to high density residential use, or too far from shopping or other services.

Adding to the dilemma, if the court leaves it up to the city to formulate a plan and the city is adamantly opposed, nothing may be accomplished. One problem in particular is whom to lay the blame on if nothing adequate is accomplished. The lack of a specific person to hold accountable lies with the municipal system overseeing any type of development. Because of the many permits and ordinance compliances involved, a breakdown could occur at any point, and no one could say exactly who caused it. One reason that no one can actually pick out the specific person is possibly due to the many projects that may be in progress at the time. A person could easily lose the paperwork in the process for the court ordered project. One solution passed by a federal judge in Michigan was the suspension of all work being done on building permits, utility hookups, and rezoning for all projects other than the court ordered project. This moratorium was to last until all permits and ordinance compliances had cleared (Garrett v. City of Hamtramck 394 F Supp 1151 [ED Mich 1975]). This allowed the court to monitor the permit process and assure compliance.

Another method to avoid the "no one to blame" problem is to appoint a committee to oversee the creation of a plan acceptable to the courts. This method was used by a federal court in Georgia (Crow v. Brown 457 F 2d 788 [5th Cir 1972]). The court can take two approaches to the overseeing committee. One approach is to form the committee of members of the city government, placing a penalty if compliance is not met. The second approach is to create an independent committee with authority to recommend to the city what is or is not proper and report to the court any infractions or slowdowns caused by the city.

In Chicago, the federal court ordered the halt of an Illinois state statute that required the city councils to approve acquisition of all properties for public housing. This statute was interfering with the acquisition of property

for court ordered federal housing (Gautreux v. Chicago Housing Authority 304 F Supp 2d 736 [ND Ill 2969]). In this case, the court also ordered that each party submit a plan, with the court to choose the best to remedy the situation. Also in this case, the court ordered the holdup of federal housing funds until an appropriate plan existed to assure proper use and decentralization of blacks into white neighborhoods. This case showed the power of the federal courts to deal with infractions in the carrying out of federal statutory mandates. By suspending the state statute, the court assured that no city could block entrance of a housing project and cover its actions legally. This was especially true in that this was a case of racial discrimination. According to both the U.S. and State Supreme Courts, this could not be enforced by any agent of any government body (Jones v. Alfred H. Mayer Company 392 US 409 [1968]), and these statutes were contributing to racial discrimination. Ordering both sides to formulate a plan forced the city to create a very good plan. If the city created a slipshod plan, the court could obviously choose the plaintiff's plan. Holding further disbursement of federal housing monies assured that a desegregated site would be purchased instead of a more concentrated inner-city site. Such actions point to the need to occasionally take control of the situation by controlling resources and allocation processes, if it appears they are being abused.

In New Jersey, the State Supreme Court, in a case that upheld the fair share concept, repeated the actions of the federal courts (Gautreux). In this case, the court decided to attempt to accelerate the filtering process by recommending that least cost housing be erected and that the township overzone for this new housing to assure a sufficient number will move. The court also recommended relaxing building codes to allow for the construction of least cost housing (Oakwood at Madison, Inc. v. Madison Township 371 A 2d 1192 [1977]).

The allowance of least cost housing is an acceptable practice; it is not cheap, it just does not have many of the amenities that higher priced housing has. This would include such things as allowing the use of plastic pipe in place of copper for plumbing, and using less costly but good quality building materials. It also includes lot sizes with smaller frontage and smaller setback and yard requirements.

The difficulty arises out of the overzoning to assure adequate movement from older residents. Here, several things could go wrong. Overbuilding could cause a glut on the housing market, which would affect real estate prices as well as the agents involved. Economically, it could attract many from

outside the area to move in, filling the new housing before local residents could move in. This would have little effect on filtering and would enlarge the population, possibly straining public services. Or, over-construction of least cost housing could undesirably overbalance the market. A remedy to this situation would be for the court to consult local real estate experts for advice on ways to balance the types of housing construction.

The Oakwood at Madison case (371 A 2d 1192 [1977]) and Crow v. Brown (332 F Supp 382 [ND Ga. 1971]) demonstrate a problem often experienced by court created plans in that the plan is vague and makes many recommendations (often uninformed and from judges lacking expertise). Another problem is quantifiable goals. In Crow v. Brown, the plan lacked specific minimum and maximum standards for site selection. The plan was very vague, only stating that sites for federal housing projects had to be located away from Atlanta.

One dissenting judge in the Oakwood at Madison case felt, in reference to fair share housing formulas, that it was too difficult to place numerical quotas and regional boundaries into formulas. This was in response to an averaging scheme put in use the year before, the result of Urban League v. Carteret (359 A 2d 526 [1976]). This scheme took the average amount of low income housing for cities in the region and allocated part of the ordered amount proportionately between the cities involved in the dispute, then divided the remainder evenly among all the cities in the region. One problem with averaging allocation of low income housing is that the housing may be placed in the wrong location, away from jobs, with no transportation access such as mass transit. The housing could be placed in an area which had better alternative uses (Fishman 1978, 175).

Court orders should be written with enough specific guidelines to allow the defendant to know exactly what is expected. Adequate specificity will also allow the court to determine if the plan is being complied with (Fishman 1978, 167). The court, however, should not become so specific as to lock the defendant city into a plan which may not be sound, or become impossible to comply with.

In the section on Referendum Voting to Control Land Use, I will discuss the impacts of such activities. For now, I will give an example of how the court constructs remedies to deal with referendum voting. Different states have different viewpoints on referendum. In California, well known for its tolerance of referendum, the court handled a case by failing to overturn it, as they often do. After sustaining the right to referendum, the court did

impose an affirmative action housing policy. Defendant city had to accommodate low and moderate income families. They were to do so through use of private, state, and federal funds. The city council then appointed a citizens' committee made up of citizens from the pro and con sides of the issue in order to come up with a suitable plan. (SASSO v City of Union City 424 F 2d 291 [9th Cir 1970]).

This type of a solution, however, gives a city an opportunity to stall development. The court recommended use of funds other than city funds for construction of low/moderate income housing. No limit was placed on the citizen committee to prevent it from haggling for so many years that a potential developer might quit in frustration, with the burden of holding costs on the land.

The court responded to another form of government land use regulation by imposing affirmative state ordinances. A southeastern court felt that requiring certain percentages of land to be devoted to low/moderate income housing was overstepping the bounds of the zoning enabling act. The court felt that the ordinance was motivated by the users of the land, not the physical characteristics of the land. Also, because this land had to be sold at below market costs, it became confiscatory in nature, resulting in a taking from the owner (Board of Supervisors of Fairfax County v. DeGroff Enterprises 198 SE 2d 600 [1973]). It is possible that an allocation system could be created that would be acceptable to the courts, if it was based on sound planning practices such as existing and surrounding land uses, topography, access to employment, etc. and the owner received compensation. Compensation could be monetary, density bonuses, tax breaks, etc. An apparent flaw in the court's logic is in reference to zoning taking into account the concerns of the user rather than the physical characteristics of the land. Zoning is designed to facilitate the general health, safety, welfare and morale of the people. This means the concerns of the users' zoning is to help the people, not just the land--and people live on that land.

THE COURT'S VIEWS ON EXCLUSIONARY METHODS

POLICE POWERS

In general, the vast majority of court cases involving land use matters are based on alleged abuse of police powers. The police powers were designed to give the government control over the use to which land is put. This control should guarantee that all development will be in an orderly manner and contribute to the health, safety, morals and general welfare of the population. Police powers were not designed to hinder a person's use of his land, only to assure that the use to which the land is put will not hinder the enjoyment of others in the use of their own properties. If police powers were to deprive a person of the right to use his property and benefit from it without just compensation or due process, it would constitute a taking, clearly an abuse of the law.

Police powers are also not designed to affect the rights of those economically less well off. This is accomplished by the community manipulating the land use codes and ordinances to deny the rights to entry and residence in the community. While this cannot be accomplished through racial restrictions, the most common method is through exclusionary zoning techniques that affect costs to the consumer. Zoning can also be used to exclude multifamily housing, the most common form of low or moderate income family housing. Other methods include establishing extravagant building codes or implementing slow process of building permits.

Another method would be to require the developer to install special concessions or amenities, the costs for which would have to be handed down to the consumer. Concessions may be imposed in the form of donations of property for parks or schools, density restrictions, or extra-wide streets and sidewalks. Amenities might be considered extravagant if they include extensive landscaping, pools, and privacy fences or other structural barriers.

The following sections will be dedicated to viewing how the courts feel about and deal with exclusionary land use cases. In the first land use case in the history of the U.S. Supreme Court, the court upheld zoning as a reasonable method of controlling land use and development. It did, however, issue several warnings. One of these warnings was that there would come a day when the interests of the general public will so far outweigh the interests of the municipality that the municipality will not be allowed to stand in the way (Village of Euclid v. Ambler Realty Company 272 U.S. 39 [1926]). Though it is approaching slowly, that day is coming. Of the decisions made concerning

land use, many have sided with the municipality, but others--some of them landmark decisions--have sided with the public in general.

Where the previous section dealt with legal restricts, this section will deal with how the courts work once the case is heard and a remedy is created. The cases reviewed deal with zoning, and growth control issues.

Zoning

The roots of exclusionary zoning go back to the Euclid case. According to Bernard H. Siegan, the Euclid case made zoning mostly a matter of local administration. It is not likely that the courts will interfere in this unless a person has suffered a grave abuse (Siegan 1972, 205). This grave abuse goes back to the standing issue, and project/no project criteria. If a specific parcel or project is in question, the court can strike down the entire ordinance. Once the ordinance has been thus invalidated, the court will allow the project to proceed (Township of Williston v. Chesterdale Farms, Inc. 351 A 2d 466 [1975]). Once the project is complete, the municipality must amend, revise and approve the ordinance.

Large Lot Zoning

The most commonly used form of zoning is large lot zoning, designed to allow residents a sense of openness and privacy. This type of zoning also assures that low income persons and large families who generally cannot afford substantial tracts of land for housing will not move in. It also assures that residents in the municipality will not cost it more than they will contribute in the form of property taxes. These costs would be for increased needs for school facilities, water and sewer, and solid waste collection.

When state courts look at large lot zoning, they use many types of criteria to determine the validity of the ordinance.

One criteria used by the courts to determine whether a zoning ordinance is valid is the effect of that ordinance on housing prices. Large lot zoning will almost always be upheld if its effect on housing prices is negligible. However, it will often be struck down if it is likely to affect the cost and availability of housing (Lefcoe 1971, 1430). This is reinforced by a court decision stating that if a large amount of land is zoned out of the price range of consumers it is exclusionary. This is especially true when there is little market for land zoned as such (Oakwood at Madison v. Township of Madison 371 A 2d 1193 [1977]).

The courts do, however, recognize the fickle nature of the housing market. The price of a house can be affected by the surrounding housing. A person who desires a "status" house will probably not buy a large house in a subdivision that contains some smaller houses. The courts feel that size requirements are valid. Without these restrictions the character, and thus the value, of housing could be destroyed by construction of small housing (Williams and Wacks 1969, 828). This seems unfortunate due to the advances made in space efficiency in architectural design. I believe, based on the idea of the Planned Unit Development (PUD), that housing of all sizes can be incorporated into one neighborhood without adversely affecting the attractiveness of that neighborhood.

Often, the courts will look at population projections for the city. There are several methods for projecting growth rate, including looking at present growth and comparing it to census figures. Based on these projections, the courts look at the existing quantities of land zoned for different lot sizes. If the court feels that there is adequate land zoned for many lot sizes, then it will allow the continuance of large lot zoning. Two cases point out this fact. In Senior v. Zoning Commission of the town of New Canaan (153 A 2d 415 [1959]), the Connecticut Supreme Court held that, based on the latest census reports and the fact that over 1000 sites were zoned for half-acre or less lots, five-acre lot minimums were valid. In Maryland, the court upheld five-acre minimums for prime residential land. They sited the fact that only 6.7% of the land in the county was zoned for five-acre lots and pointed out that the county growth rate was below that of the state and that there was already enough land set aside for housing of all types (County Commissioners of Queen Anne's County v Miles 228 A 2d 450 [1967]).

The Senior and Queen Anne's cases are relatively old; therefore, a note of caution is needed. In today's transient and dynamic society, population projections can often change rapidly or be discounted completely. These two rulings might prove ineffective or detrimental if repeated in other areas today. For instance, a new industry could suddenly move into an area, drawing large numbers of people from other areas to live near their employment. If the new population included a high percentage of people in the market for smaller lots, the supply would quickly dwindle, thus excluding many through unavailability. For this reason, it is refreshing to see some courts looking at population growth not in the more restricted view of a city or county, but in the broader concept of a region.

Looking at regions one can see where some areas have lesser amounts of low and moderate income than others. Those with a higher proportion suffer a greater burden of supporting the needs of those less able to pay. Courts are now accepting the fact, especially in the northeast, that each community has a responsibility to accept its fair share of the burdens of the poor. The Mount Laurel decision popularized this phrase and concept, as well as this landmark decision, bringing the problem to the attention of all (Burlington County NAACP v. Mt. Laurel Township 336 A 2d 713 [1975]). This case promoted looking at the region as a whole when determining the fair share for each community. They did not feel that the zoning ordinance of one municipality should place an excessive burden on others. Yet even before the Mt. Laurel decision, courts in other states were finding the same conclusions.

In 1970, the Supreme Court of Pennsylvania determined that exclusion was a regional problem requiring a regional solution and the cooperation of all local governments (Appeal of Kit-Mar Builders 268 A 2d 765 [1970]). It was rulings such as this that opened the eyes of the New Jersey Supreme Court to regional needs. It seems unfortunate that all states could not adopt such a policy.

It is evident that the outcome of fair share cases in some state courts affects the outcome in other states. In New York, a court had created a two-part test for validity of zoning ordinances. According to the court, the ordinance must be based on a well-balanced and ordered plan. This plan must provide for a variety of housing opportunities based on existing housing stock. The existing stock must meet not only the needs of the present but also future population. The plan must also reflect the future needs of the region (New Castle 341 NE 2d 236 [1975]).

In 1977, the New Jersey Supreme Court reinforced its Mount Laurel decision. It held that in the absence of a reginal plan, the individual municipality has a right to create its own plan. The municipality, however, has no right to exclude anyone from the regional housing market, including low income populations (Oakwood at Madison v. Township of Madison 371 A 2d 1192 [1977]). The court went on to define proper bounds for a region as that area of available employment and transportation from which a town could draw its population.

Unfortunately, the New Jersey Supreme Court created what amounts to a double standard. They held in a review that some communities are not bound by the Mount Laurel decision and that that decision only applies to developing communities. Communities with little remaining developable land, large or small,

are not included in the fair share allocation plan. In a dissent, one judge felt that this allowed some communities that have already achieved exclusion to maintain it (Pascock Associated, Ltd. v. Mayor and Council of Washington Township No. A-130 NJ Supreme Court, March 23, 1977). This causes me to ask: what would happen if a community decided to annex unused land? would the status already determined by the courts change from static community to developing community? If that status would change, it would force communities either to remain as is or accept fair share.

Another possible solution involves redevelopment within cities locked in by other boundaries. In redevelopment areas, some land should be earmarked for low income housing, if the projects are privately or locally funded. Most federally funded projects already require some type of housing analysis.

Along with adequate lot sizes and fair share goes the idea of allowing housing for all types of persons regardless of race, wealth, family size, or borrowing ability. The aforementioned criteria, which cannot be used discriminatorily, are found in most state zoning enabling acts (Lefcoe 1971, 1439). In general, courts reflect the feelings of the New Jersey Supreme Court that the responsibility to provide suitable housing for all types is an administrative and legislative activity. (Oakwood at Madison v. Township of Madison 371 A 2d 1218 [1977]).

Perhaps one of the primary problems with exclusion of all types of housing is location. In the outer areas of a region, where smaller, "bedroom communities" exist, there is little industry. As a result, there is little reason for low and moderate income families to move there. Therefore, the small cities see no reason to provide housing space for low income people, and are inclined to provide only for present residents. A problem arises when industry moves in: there is no room prepared for, and much resistance exhibited toward, construction of low income housing (Lefcoe 1971, 1432).

Occasionally, when zoning ordinances allow for all types of housing, other methods are found to assure the "desired" population. A proper interpretation of most zoning enabling acts would prevent this. Most state acts allow for regulation of uses, densities, and sometimes design, but for the purpose of disallowing incompatible uses, not unwanted persons (Lefcoe 1971, 1431-32).

Another question which tends to add confusion to the issue is how much should be zoned for other than large lot use? One court held that restrictive zoning itself is not illegal as long as adequate provision is made in its ordinance to allow for other types of housing, such as multifamily housing.

(Paglee v. Township of Pemberton 372 A 2d 329 [1977]). This type of ruling leaves the interpretation up to the judge of how much is adequate. The judge may lack adequate expertise to make the decision, or may have unrecognized biases which preclude his making a sound decision.

In 1979, the New Jersey Superior Court began to add direction to remedying fair share cases.They ordered that Bedminster Township must rezone about three square miles of land to accommodate smaller lot, higher density housing. The court further recognized the validity of a county plan as a basis for township plans, and refused to allow small municipalities to ignore this plan. The court further appointed a "Master" to oversee and recommend for the court (Bedminster Township v. Allan-Dean Corp. [unreported, 1979]),(Raymond 1983, 177-178).

A brief mention should be made that most activity in this section occured in the northeast, the major location for fair share activities. Even though some action has been taken in other areas of the country, such as California, most activity does seem to occur in the northeast. Other sections of the country have yet, as far as I know, to catch on.

Growth Control Issues

Growth control, in my opinion, is not an unreasonable concept per se. Plans should be orderly, and the development should be timed. Proper timing will avoid the difficulties involved with rapid growth, such as too many new dwelling units dumped on a market too quickly, an overburden on the infrastructure and sprawl. The problem arises when growth control is used to exclude those who would be considered a burden, such as low and moderate income persons. Two of the most common methods of growth control are restriction on the number of building permits and sewer and water extensions and hookups.

Building Permits

Building permits can be used in many ways to exclude low and moderate income housing, or development in general. Building permit denial can be used to halt construction or slow it down and make it even more difficult. In 1970, a Pennsylvania court held that a certain zoning ordinance was invalid and ordered it amended to allow multifamily units. The municipality complied, yet the plaintiff did not receive the permit because the land to be used was not in the areas rezoned. The town then attempted to condemn his land, sending him back to the courts. By the time all of this transpired and the court ordered the issuance of a permit,the project was no longer feasible and was abandoned (Appeal of Girsh 263 A 2d 395 [1970]).

In New Jersey, the supreme court held that activities such as those in the Girsh case were considered exclusionary to low income persons due to costs of delay. In this case, delay was due to the need for additional permits and preliminary applications required for PUDs (Oakwood at Madison v. Township of Madison 371 A 2d 1199 [1977]).

In Michigan, the supreme court also decided to avoid the problems encountered in Girsh. They held that the courts had a right to issue bulding permits immediately, regardless of the existing zoning, if the project was found "reasonable under all circumstances" (Saboe v. Monroe Township 221 NW 2d 536-37 [1975]).

In 1974, one of the most famous permit cases occurred in Petaluma, California. The city's growth control ordinance was attacked as prohibitive of the right to travel clause of the Federal Constitution. The appellate court reversed a previous finding of a lower court. The lower court held that the ordinance was exclusionary and did deny the right of persons from the region to travel to and reside in the city. The appellate court stated that the city has the right to preserve its small-town atmosphere and that the plaintiffs lacked standing to argue constitutional issues for the third party. The court also stated that the plan was not really exclusionary because eight to twelve percent of the 500 annual building permits had to be for low income housing (Construction Industry Association of Sonoma County v. City of Petaluma 522 F 2d 897 [1975]).

Two years later, a California court held that building permit limits were valid as long as they were in the public welfare. However, they were subject to judicial review if they had an impact on regional housing supplies. In this case, the court decided to test the issue by ordering a record kept of who, from the suburbs and nonresidents of the region, were seeking better residence there. The court did uphold this growth control management plan because it was to exist only until the city had taken care of its overcrowded schools and overburdened water and sewer conditions. Even though in this case no timetable was created to begin reissuing permits, and no agency was placed in charge of carrying out the plan, the ordinance was not considered vague and was judged to be in the interests of the public welfare. It was also deemed nonexclusionary because it banned all permits, not just low income permits (Associated Homebuilders of Eastbay v. City of Livermore 557 P 2d 473 [1976]).

In 1976, a New York court held, in the second of the two most famous growth management cases, that a control on building permits was valid, In this case, the town of Ramapo had based its ordinance on what the court felt were sound planning principles created by professionals. The court held that refusal for permits to the plaintiff was not a form of taking, and determined that because the permit cap was based on an eighteen-year Capital Improvements Plan (CIP), eventual development would be allowed. The court also held that the points system devised, based on a guarantee of provision of certain public improvements, did allow for development and was sound. The points system was applied to development of housing other than single lot housing (Golden v. Planning Board of Ramapo 285 NE 2d 291 [1972[).

Utilities

In the case of utilities hookups, the matter can become quite confusing. There are often many issues involved in utility hookup cases. Such issues involve condemnation of property for installation and environmental problems. For this reason, the courts dislike hearing these cases, as they often lack expertise to create a sound remedy to the problem (Ramsay 1974, 951). Often, the courts feel that the local elected officials are best able to determine what is best for the area served and how best to spend scarce financial resources (Ramsay 1974, 950).

Another area that lends itself to exclusionary abuses is the wording of typical laws governing municipalities and the utilities that they provide. Most say that the municipality may provide for the service of water, may issue bonds and make contracts in order to do so, and may make all rules and regulations for and exercise full control and management over utility operation (Ramsay 1973, 948). Notice the wording: "may" is used, not "will." This leaves a great deal of room for the municipal service to legally operate in and for the court to interpret legality. One example on which most municipal defense is based occurred in Maine in 1913. In this case, the court held that it is up to the discretion of the municipal authority whether all within the district will be served (Lawrence v. Richards 88 A 92 [1913]). This viewpoint was shared on the other side of the continent sixty-six years later when in 1979 the California Court of Appeals stated that potential water users have no absolute right to service, and the state constitution does not require that they be treated the same as present consumers (Swanson v. Marin Municipal Water District 128 Cal Rptr 485 [1979]).

If it is obvious that the costs will far exceed the potential revenues, the court will usually side with the defendant municipality. One reason would be remoteness, as in the Lawrence case where the court felt that the cost to provide service to such a remote area would far outweigh the benefits (88 A 92 [1913]).

Another would be lack of demand, as in a 1954 New Jersey case where the municipality's decision was upheld because it had adequately shown that there was little demand in the area. Another reason that the court sided with the municipality was due to lack of utilization of a previously granted extension to the same plaintiff for land nearby that in question. The court agreed with the municipality that to grant this extension would be like the city taking a

stake in land speculation. The court seriously frowns on such activities (Reid Development Corporation v. Parsippany-Troy Hills Township 107 A 2d 20 [1954]).

However, if a case involves closer-in development or antiquated facilities, the courts take many views to moratoriums and restrictions.

If some type of discrimination is taking place, the courts will almost always side with the plaintiff. For example, in the City of Lackawanna, New York, the Federal Circuit Court ordered an extension granted to a low income housing project. The city stated that it denied the hookup due to full operating capacity. Yet it was proven that after this denial the city had granted hookups to upper class, single family housing (Kennedy Park Homes Association v. City of Lackawanna 436 F 2d 108 [1970]). Three years later, a Pennsylvania court ordered hookups for development due to obvious exclusionary tactics used to deny the hookups. The court held that if suburban areas were in the direct line of urban expansion, service had to be increased to meet the needs, and exclusionary tactics may not be used, such as large lot zoning or limiting multifamily development, or withholding hookups (Township of Willistown v. Chesterdale Farms, Inc. 207 NW 2d 464 [1973]). In 1973, the Colorado court ordered the City of Boulder to abandon its growth control plan because adequate capacity was available to provide services (Robinson v. City of Boulder 547 P 2d 228 [1974]).

If the municipality attempts to use inadequate facilities or lack of funds to upgrade existing facilities, the court can overrule the decision of the municipality. When the Borough of Confluence in Pennsylvania declared it could not afford to fund a new sewage treatment plant, the court said it could not use that as an excuse to avoid compliance with the law. The court sited many governmental agencies, and new methods of finance available, to assist them (Commonwealth ex rel E. Alessandroni v. Borough of Confluence 234 A 2d 852 [1967]).

In the Borough of Ramey, Pennsylvania, the court held that economic hardship was not enough to avoid compliance with pollution laws. The court would only see that as a factor if the condition exists when construction begins (Ramey Borough v. Commonwealth of Pennsylvania Department of Environmental Resources 327 A 2d 648 [1974]). A Michigan court had similar findings in Ann Arbor. The court stated that antiquity was no excuse for failure to provide hookups or noncompliance with state environmental protection laws, and went on to say that if the city had kept up its facilities, it would have been able to

handle additional services (Dwyer v. City of Ann Arbor 261 NW 2d 231 [1977]).

The major problem with courts ordering hookups when facilities are at capacity, or are antiquated, is an environmental issue. Such cases as Dwyer, Ramey, or Kennedy Parks could allow severe environmental damage. Perhaps a more fitting solution would be a moratorium, or reduction in hookups on a temporary basis, while orders to update are being carried out. It could be useful to also establish a deadline by which funding, bids securing construction, and full operation were to be completed.

If a municipality can show an emergency situation, the courts will often grant permission to continue a moratorium. In Maryland, a Federal District Court upheld a moratorium on utilities hookups due to a water shortage. It was considered a reasonable use of the police powers due to the severity and large area involved. The court did, however, warn that moratoriums could not be permanent and had to have a time limit. The court did recognize that each case is special and that a reasonable time depends on the severity of the problem (Smoke Rises, Inc. v. Washington Suburban Sanitary Commission 400 F Supp 2d 1369-71 [1975]).

It is important that one realize a difference between sewage and water emergencies. In a sewage emergency, the municipality can expand facilities. The courts will rarely allow upholding a moratorium unless the municipality is requesting one during construction. In this case, the court would see that the delay is only temporary and the city is not merely attempting to avoid its responsibility, such as in the Smoke Rises case--which also involved water shortages.

When it comes to water shortages, the court obviously realizes that new sources of water cannot always be quickly located. Such was the case in Marin County, California, where the state court held that a water district had a right to declare a moratorium to avoid a shortage. They could not, however, use the moratorium to create a no-growth policy (Swanson v. Marin Municipal Water District 128 Cal Rptr 485, 492-93 [1979]).

Referendum Voting

Referendum voting is a method of growth control used in relation to use of local government funding of public housing projects. The greatest use of referendum voting seems to be in California. The essence of the referendum is to allow people to have a say in where their local government money, much of which is tax revenues, is spent. In one case, the U.S. Supreme Court recognized refer-

endum voting as an exercise in the democratic process. This case dealt with an attempt to prove that referendum voting on the approval of local funding for low income housing was unconstitutional. The court further held that if it found this case discriminatory, it would ruin the effectiveness of future referendum voting because someone would always claim discrimination (James v. Valtiera 402 U.S. 143 [1971]).

In a later case, the U.S. Supreme Court upheld the Valtiera case by stating that zoning is a legislative action and subject to referendum vote. In this case, the dispute came about after the city had set land aside for multiple family housing. The citizens objected and by vote repealed the decision. In dissent, Justice Stevens stated that the action was, to him, aimed at excluding multiple family housing, not an exercise in democracy (City of Eastlake v. Forest City Enterprises, Inc. 426 U.S. 668 [1978]).

It has been said, and I agree, that referendum voting does not always express the opinion of the majority. Often those who have the money to run media campaigns are the only ones who are heard, and thus can sway the uninformed or undecided voter to their side (Lefcoe 1971, 1395).

One question that arises in referendum cases involves whether the action in question involves legislative or administrative activities. One very popular viewpoint among all courts is represented by the Supreme Court of Washington, who held that the creation of an ordinance is a legislative act and that changes in the ordinance are administrative (Fleming v. City of Tacoma 502 P 2d [1972]). As is generally true, as exemplified in a Michigan case, a referendum vote is not allowed on an issue unless it is purely legislative. In this case, the court held that rezoning was administrative (West v. City of Portage 221 NW 2d 303 [1974]). In Oregon, the court held that ordinances which affect property in general are legislative and subject to limited review. The only way to challenge legislative acts is on constitutional grounds (Fasan v. Board of Commissioners 507 P 2d 23 [1973]).

One of the most unfortunate outcomes of a referendum case is that low income is not one of the categories covered under the 14th Amendment's Equal Rights clause (Lefcoe 1971, 1386). The U.S. Supreme Court stated that if the equal protection powers of the 14th Amendment were stretched too far, they would begin to regulate all the private concerns of men (Lefcoe 1971, 1396). Yet if professor Leonard Freedman was correct in his analogy about whether referendum votes actually express the views of the majority, is it not the place of the courts to protect all who are unable? It appears to me that those most unable

are those who cannot afford defense. Though it is unfortunate, it appears that the Valtiera case has opened the door for any municipality to halt low income housing wherever it is not wanted (Lefcoe 1971, 1390).

Luckily, there appears one effective defense in federal courts against referendum voting on land use issues. If a state such as California has a history of referendum elections, the court will generally uphold the power to vote. If there is no such history, it would be difficult to pass a housing project referendum (Lefcoe 1971, 1401). Another criteria, which must be met, is the state's past attitude toward equal rights protection. If the state has a long history of unequal treatment it would be difficult to pass such attempts at referendum voting for housing issues through the courts (Lefcoe 1971, 1405).

CONSTITUTIONALITY

Racial

In 1968, the U.S. Supreme Court held that it is unconstitutional to deny any black the right to buy, own, or use whatever a white man is entitled to. This right is guaranteed by the 5th, 13th and 14th Amendments. The court also holds that it is unconstitutional for any government body, agency, or official--which includes the courts--to uphold any laws or covenants which discriminate against any citizen (Jones v. Alfred Mayer, Co. 392 U.S. 409 [1968]). When the word "blacks" is used, it is always interpreted as meaning any minority race.

The major problem in recent years is that race is generally never mentioned in exclusionary methods. Municipalities have seen the effects of specifically attempting to exclude a certain race: they lose. Instead, they exclude by economic methods. There, the reasoning seems to be that most poor are made up of minorities, and the poor are not covered in the Constitution as such. They are a concern of the government, but not legally recognized in most cases. In 1976, the U.S. Supreme Court further added a stumbling block when it created the element of intent. In a case unrelated to land use law, the court held that a plaintiff must prove that it was the intent of the defendant to discriminate against a specific race, or other category protected by the Constitution. The court held that racially discriminatory effect or racially disproportionate impact would not be enough to prove discrimination. The plaintiff must prove that it was, in fact, the intention of the defendant to discriminate. It was the fear of the court that holding otherwise would cause a constitutional backlash over many programs that place an unnecessary burden on the poor and minorities (Washington v. Davis 426 U.S. 229 [1976]).

The next year, this case claimed a victim. The federal court in Chicago stated that a failure to rezone, though discriminatory, had not been proven to be intentionally discriminatory. The court held that if a certain group were treated unfairly by a statute that on face value is racially neutral, it would establish purposeful discrimination (Village of Arlington Heights v. Metropolitan Housing Development Corp. 97 S. Ct. 555 [1977]). As this is an attack on constitutional grounds, the intent clause should have no effect on a statutory attack, which has much broader and liberal criteria.

There is another test that the courts can use that seems contrary to the Supreme Court ruling in the Washington case. This attack relies on racial impact of effect. Even though in the Washington case the court looked down on this method, it did not overturn its use (Washington v. Davis 426 W.S. 229 [1976]). This test shows whether the action affects a greater proportion of one race than another. This was reinforced when used in Resident Advisory Board v. Frank L. Rizzo (425 F Supp 987 [1976]). The major difference, as I see it, is that in the Washington case the court was attempting to invalidate an action and all parties had already gained standing, with the burden of proof squarely lying on the defendent from the start. In the Resident Advisory Board case, the impact of effect was used to shift the burden of proof onto the defendent after commencement of the case, to prove a compelling state interest. It required a compelling state interest, for the good of the vast majority, to allow discrimination to continue.

Once discrimination is proven and the zoning ordinance or statute has been overruled, a law found in Title VII of the Civil Rights Act of 1964 can be invoked, that being the rightful place doctrine. The rightful place doctrine states that if discrimination is proven, the discriminated party must be given preferential treatment in excess to that which he was denied until the overall percentage equals what it would have been if no discrimination occurred (42 U.S.C. 2050 [1964]).

Housing

The first point that should be stressed in dealing with the right to housing is that in the Federal Courts there is no right to dwellings of a particular quality; or, in simpler terms, decent housing. It is common knowledge that one of the goals of the U.S. Congress is to make it possible for all persons to have access to decent housing. However, in 1972, the U.S. Supreme Court upheld a lower court ruling that occurred in Oregon (Lindsey v. Normet 92 S. ct. 862 [1972]). In upholding this case, the Supreme Court agreed with the

accomplished if the regulations inhibit the right to migrate, resettle, find a new job, and start a new life (Shapiro v. Thompson 394 U.S. 618 [1969]). Perhaps someday the courts will reconsider this right and hold that exclusionary devices truly prohibit the right to decent housing.

COURTS VIEWS ON ZONING CASES

In James v. Valtiera, Justice Black stated the views of the U.S. Supreme Court in reference to zoning cases. He did not believe that the Supreme Court should become involved. He felt it would require the court to develop principles that would have to decide between racial exclusion and the reasonable desires of homeowners (James v. Valtiera 402 U.W. 137 [1971]).

The State Supreme Court of Pennsylvania seems to voice the opinion of most states' courts when they state that they are not a super board of commissioners or planning commission of last resort. Their job is to watch over local and state regulations to ensure they do not overstep their bounds. They feel that local zoning is best left to local boards, unless it is necessary to interfere (National Land Investment Co. v. Kohn 215 A 2d 597 [1965]).

In research conducted by Richard F. Babcock, it was shown that, by and large, most courts dislike zoning cases. One reason is due to the possible social and political overtones. He found that even judges who normally enjoy their work find zoning cases unrewarding (Babcock 1966, 102). The possibility of mistakes in judgment could cause very serious consequences, so perhaps the judge feels it is best to leave well enough alone.

Another reason is that most zoning cases have confused and unclear facts. Because of this, many courts feel they are not adequately knowledgeable and base findings on "gut instinct" (Babcock 1966, 196). Judges are used to dealing with hard facts; perhaps this is why they so often stress the case or controversy issue.

POLITICAL INTERFERENCE

Compounding the courts views on zoning, as well as other areas of conflict, such as referendum voting, there is the problem of executive and legislative interference. One example would be Birmingham, Michigan. After the citizens of Birmingham became aware that the mayor and a majority of the city council favored low income housing, they decided to change leadership. After half the proponents of low income housing on the council were defeated in a general election, the citizens staged a special recall election. This resulted in successfully relieving the remaining council supporters, one of whom was the mayor. A replacement for the mayor's

position was chosen by the remaining council members, who opposed low income housing, from among their ranks. The new mayor then appointed replacements for those ousted. These replacements shared his viewpoint. This shows that it is possible to create other barriers to low income housing, without even utilizing the legal recourse of the courts.

lower court's finding that there is no guarantee to access to housing of a particular quality covered in the equal protection clause of the 14th Amendment (Linsey v. Normet 405 U.S. 56 [1972]). For this reason, unless discriminatory arguments based on race can be proven, arguments based on economics must be fought on statutory grounds.

Sections of the Housing and Community Development Act of 1974 require that in order to receive federal assistance in housing projects, a HAP must be created. One of the reasons sited for the creation of a HAP is to avoid concentrating lower income persons (42 U.S.C. subsection 5304 (a)(4)[1974]). If a plaintiff can successfully argue that the defendent has failed to comply with the statute, he will lose federal monies.

Some states, through interpretation of their constitutions, have found that housing is a basic necessity of life and that housing for all classes is necessary for the public welfare. Two such states are Michigan (Nikola v. Township of Grand Blanc 232 NW 2d 604 [1975]) and New Jersey, as a result of the Mount Laurel decision (336 A 2d 713 [1975]). Even so, the pressure is always great against low and moderate income housing. As long as cities resist such housing, they will continue to devise methods to confound and circumvent the courts.

Right to Travel

To date, the right to travel doctrine of the 9th Amendment has been very ineffective against exclusionary zoning cases. Though it has long been an implied right of the Constitution, it has as of yet secured little housing for anyone. Perhaps the closest it has come would be the Mount Laurel decision, with its concept of fair share housing for a region.

It has been used successfully in disallowing states from using their police powers to ban entrance of low income persons to the state (Edwards v. California 314 U.S. 160 [1941]). It was nearly successful in gaining access for low and moderate income individuals to housing in California in 1974 (Construction Industry Association of Sonoma County v. City of Petaluma 375 F Supp 574 [1974]). Unfortunately, this case was overruled by a higher court due to lack of standing for the plaintiffs to represent an unknown third party (522 F 2d 897 [1975]).

Perhaps the greatest use of the right to travel doctrine is in allowing local and state regulations to come under the scrutiny of the courts. This is

SOCIAL ASPECTS

This section will discuss some of the social aspects of exclusionary zoning, examining some of the most common socially related reasons, such as the objections of the suburbanites to relocation of low income minorities. I will also look at what many experts feel is the success of exclusionary zoning. These I would consider to be the social status of those causing the exclusion.

I will also look at filtering and the difficulties it has had. I will look at some of the problems that still exist, even with filtering taken into account. This, when combined with certain facts of the success of zoning, will show the social status of those excluded.

Finally, this section will examine research regarding the effect of race on property values, touching on the fears of the major actors in development: the builders, brokers, and lenders. These fears deal with the encroachment of race on formerly all-white areas. In conclusion, I will look at some of the actual findings of the research.

To begin this section, it may be a good idea to look at some of the disparity between population growth and race in the cultural cities and suburban areas. This could give a possible reason for the basis of many of the upcoming accusations and arguments. Most of these, I feel, are based on fears, rumor, and ignorance. Unfortunately, I have found little research that deals directly with these fears. Most studies encountered deal with why exclusion exists, not whether fears and rumor are true or false. Yet, whether they are true or false, the fact still remains that as long as people have these fears, exclusion will persist.

The disparity began around the time of the great suburban exodus, just before and after World War II. Between the years 1940 and 1960, the total population increased by 40 million persons. Eighty-four percent of the growth in the black population occurred in the central cities, 80% of the white population growth occurred in the suburbs. Between 1950 and 1960, 90% of all metropolitan growth occurred in the suburban areas, mostly white (Kahn 1968, 191). Because so many have grown in a world where whites live in the suburbs and minorities in the cities, it seems to me that this has become perceived as normal.

Larold K. Shulz feels that most white persons living in suburbs are not aware of their own participation in exclusion (Shulz 1970, 59). What has been

the status quo for so long remains so, and those who attempt to change it are considered radicals or trouble makers.

One group of researchers created an hypothesis that, like the Irish, Germans, Poles, and other past waves of ethnic immigrants, some people--in this case minorities--cluster voluntarily (Branfman 1973, 504). To a certain extent, I feel that this may be true: minorities stay together for unity against the oppressive forces who try to keep them where they are.

BARRIERS

There are many barriers which continually arise in reference to low income and minority entry into the suburbs. The most persistent seems to be the effect on property values of relocation of the poor and minorities (Finch 1971, 63).

People in the suburbs fear that smaller lots will cause mass development of low and moderate income housing,thus affecting the prestige of the community (Schoenbrod 1969, 1446). Potential crime in the community is another objection (Schoenbrod 1969, 1420). Two other recurring fears are friction between black and white neighbors, and strain on the finances of the suburb. There is a fear that low income, minority housing will consume more than it will contribute in revenues, an increased tax burden. Residents fear a strain on public utilities, and an inability to absorb the increased enrollment into the schools. They fear a general change in the character of the community, so they zone out land uses which may result in realization of their fears (fiscal zoning) (Finch 1971, 64).

Though research into the area of housing and mixed neighborhoods is limited, James S. Millen has made one valid point. Because most mixed racial housing situations have so far been without incident, they have not commanded much attention (Millen 1973, 148). This, perhaps, goes back to the adage: "The squeaky wheel gets the oil." Without major confrontation, little attention has been generated. It is unfortunate that we must wait for conflict and unrest in order to take notice.

There is some proof, though by no means conclusive, that the racial barrier can be broken through increased income. Millen feels that there exists considerable evidence that racial mixing in any given neighborhood can succeed as long as the minority entering is of the same socio-economic and educational background as the current residents (Millen 1973, 148). This, of course, could

be looked on by the white residents as an exception, generating little fear that many will move in. However, in a study of black suburbanites, it was found that most were younger, better educated, had a higher income, were married yet more geographically mobile, and typically better employed (white collar) than typical urban blacks (Grier 1973, 1-4). This could be seen as a change of the times. Blacks and minorities could now be moving up and out.

Another fear that has emerged is that multifamily housing will attract transients as well as the economically depressed, who have no interest in the neighborhood or community (Listophen 1976, 13). This fear could be based on an expectation that people with no long-term interest in the community will vote tax increases that will be borne by those who are permanent residents. However, some research indicates that these fears are unfounded. This research points to the cost of housing, not the density, as determining status (Babcock and Boselman 1963, 1040). A case in point would be Park Avenue, New York City, where people pay incredible rent to live in a "high class" building that could actually have a population greater than some small rural villages.

SUCCESS OF EXCLUSIONARY ZONING

As one may conclude from the legal cases covered in the previous section, zoning does succeed in excluding those the community feels are least desirable. The community is made up of its citizens, the vast majority being homeowners. Suburban communities have the right to zone; however, it is the homeowners who control the decisions of the suburbs. This is accomplished through the political process. The citizens elect those who best represent their needs. If the political actions of the elected official are contrary to the wishes of his constituents, he is not re-elected (Schoenbrod 1969, 1420). If the citizens of a suburban community disagree with an attempted change in zoning, their elected officials work to comply. However, the citizenry often forgets that this democratic process also protects the rights of the minority while carrying out the wishes of the majority. The minority now lies within the central city of a metropolitan area. The suburbs now have control over the resources needed for change. Those resources include money, land, employment opportunities, and political power (Shulz 1970, 56). Those who control change desire little change in reference to land use policy. "As a device for exclusion, the scarcity of housing in any rental range has been the most effective and easily administered political ploy." (Schulz 1970, 59).

There is an interesting propagation effect in exclusion. Many times, when a family is able to move to the nearby suburbs, it is barred from doing so because the suburbs closer to the metropolitan areas are full. So the family moves further out, where there is either no zoning, or less stringent zoning ordinances. Yet as soon as the new, growing suburb has received the right to zone, it will create an exclusionary zoning ordinance (Schoenbrod 1969, 1427). It is interesting that these people have left the central city where they were held for so long, taking with them one of the concepts which held them.

The opposite can be seen in suburbs where the majority of residents are renters and not landowners, are farm owners, or a mix of both. In these areas, zoning ordinances are very lenient (Schoenbrod 1969, 1420). There may be several reasons for these more lenient ordinances. If most are renters, they may be transients who have no desire to stay. If they do wish to stay, they may want to keep the option open for less expensive housing when they decide to become permanent. Or, they may also be lower income persons who are looking to the future.

If most residents are farmers, they, too, may be looking to the future. If they are in the path of urbanization, they may hope to maximize profits by selling large quantities of more affordable lots. Or, they may not see their area as having a good growth potential and care little what the zoning ordinance is, since they do not expect to develop their lands.

Either way, this is the type of area that would be prime for settlement, if it meets the criteria for lower income housing. These criteria would include adequate access to utilities, nearby industry easily accessible to the residents, and adequate services such as education.

There are, however, few no zoning/lenient zoning suburbs, and exclusion of low income and minorities is widespread and continues to grow. Babcock has argued that if zoning was intended to achieve not only the physical amenities but also the secret desires of the citizens, it has succeeded even better than hoped (Babcock 1966, 123).

Filtering

As most planners are aware, filtering is a process involving the transition and succession of existing housing which takes place in most cities where older housing exists. Filtering involves succession of moves from one house to another.

It starts with someone moving to another, presumably better, house (new or old) and someone else moving to the old home from presumably poorer quality housing. Filtering usually begins when a family moves to a newly built house. Succession is generally considered a valid way for persons to move to better housing. The question is, does this work?

There is some reason to suspect that the method of property taxation can inhibit filtering as defined here. Fear of increased property taxes resulting from home improvement causes many to allow deteriorating housing stock to continue to deteriorate. (Sacks 1974, 171). If this fear is widespread among rental agencies, they may decide to continue renting for the income, but put little back into the property in the way of improvements or maintenance. When approached by authorities due to the deteriorated condition of the property, these landlords will abandon it. If this fear is widespread among homeowners, they may decide to simply sell out, fearing that they could improve the house and still be unable to sell. If such homeowners have already moved, they will have to pay a higher tax on the improved house as well as on the new one.

Another consequence of filtering deals with the inability of some middle income families to afford a move to the suburbs due to exclusionary zoning devices. When this inability to relocate is combined with higher rent due to competition for existing housing in central cities, many will be unable to make any type of move. The filtering process will be slowed, competition for better housing will increase rents, and those on the lower end of the income scale will be unable to move (Schoenbrod 1969, 1428).

Another drawback of filtering has to do with the movement of industry. As industry moves to the suburbs (see Economic Aspects section), employees move with it, increasing the filtering process. Yet, many in the central city are locked in due to transportation costs. If all housing were provided to low income families through the filtering process, the low income would still be almost completely spatially separated from the suburbs because they are still in the city (Downs 1969, 650). Being in the cities, they must rely on local employment and mass transit when available. Mass transit is most necessary for low income persons to be able to get to and from work (Schoenbrod 1969, 1419).

Often central city minorities in the low income category are forced to make the very serious decision of choosing between spending a large share of their income on transportation, either by automobile or mass transportation, or on housing and no better job. If the job is only a marginal one, they will

usually forget it. Many times they will not even attempt to seek a job because of the transportation problems (Kain 1968, 181). These persons are trapped.

Compounding the transportation issue is the large amount of commuters to and from the central city and suburbs. Because most use private transportation, there is a vast need for adequate roadways. These roadways potentially use monies that could be allocated for mass transit, for construction and repair of the roadway system (1969, 1419). Truly, ours is an automobile society.

Thus we see that filtering, though allowing some to move to better housing, is not always a chance to improve the life situation.

USE OF PROPERTY VALUES TO MEASURE IMPACT

In this portion of the Social Section, I will attempt to show what effect racial integration has on property values. Throughout my research, I have uncovered no research dealing with the effects of low income housing on property values. For this reason I have concentrated on race. Note, however, that many researchers equate race with low income.

I will also review the fears experienced by the major agents in development: the brokers, lenders, and builders. These fears are based on the fears of the consumer. If consumers fear encroachment of other races, the property will be more difficult for the agents to dispose of.

The fears of homeowners and property owners seem to culminate into what is referred to as a "psychological blight." This blight causes owners to dispose of their property even before any type of blight has commenced. As people move fearing minority encroachment, more minority buyers take their places, accelerating the process of "white flight" (Parker 1943, 232-34). In the 1960s and 1970s, this process was accelerated in some cases by what were called "blockbusters."

Whites who object to minorities tend to take two stances. The first is highly prejudicial; the second may not be prejudicial but only entails a fear of the effect of integration on the property. Of course, the second reason is shared by the first group (Laurenti 1960, 4-5).

Brokers

There is a theory known as the property value theory. This theory states that any use which adversely affects the property values of surrounding property must not be allowed. This will guarantee that the owners get the maximum for

their investment (Babcock 1966, 117).

Brokers may, in fact, feel that the property value theory relates to race, as well as other uses which create adverse sights, odors, or noises. Even though it is not legal for realtors to discriminate against any prospective buyer, there are unwritten codes and ethics which, if broken, could mean censure from the local market which is their livelihood (Laurenti 1960, 17).

In their fear of racial impact, brokers will often use two types of sales pitch: one for whites, and one for minorities. They can also discourage non-whites through stall tactics, such as delaying title searches and technical surveys for the property in question. Two-thirds of all blacks questioned in a survey felt that the broker was more of a hinderance than a help, and expected the broker to cause difficulty (Advisory Committee to HUD 1972, 23). Even if a minority person can find a broker who does not discriminate, the owner can find a reason not to sell. This occurs in about one-third of the cases (Laurenti 1960, 18). The prospective buyer could take the issue to court; however, it is difficult to prove that a reluctant seller is refusing to sell on racial grounds.

Lenders

Even though illegal, the act of "red lining" is still being practiced. Red lining is the designating of a section of the city considered high risk for loans. Potential buyers in the red lined area are either refused a loan, loaned less than they request, or allowed to borrow at a higher than usual rate of interest. Lenders prefer not to loan money to minorities who wish to move into all-white areas. They feel that once the color barrier is broken, property values will fall. If a number of minority families enter such a neighborhood, the result, regardless of race, is smaller loans (Laurenti 1960, 22-23).

Laurenti described what can best be considered a self-fulfilling prophecy on the part of lenders, referring to their fears of black inclusion. It goes like this: A black moves into a white neighborhood. A neighbor fears a drop in property values and sells. If more minorities move in, more whites leave. The market becomes glutted due to lack of buyers. The price of housing in the neighborhood drops sharply to attract buyers. When the prices fall, the whites blame it on the minorities' invasion, rather than on their own panic. The lender, meanwhile, fears the loss of a top grade neighborhood, and offers lower amounts for loans and mortgages in this area. This affects the appraised value of the property. Since sufficient money is no longer available to purchase

a home in the area, it becomes less attractive. The price for housing falls relative to comparable white neighborhoods, and the lender thus feels his fears justified (Laurenti 1960, 25-26). If, on the other hand, whites are willing to buy homes in integrated neighborhoods, the banks see this as a stabilizing factor, since whites are still interested (Laurenti 1960, 47).

Builders

"Builder" does not simply mean one who builds homes, but one who develops large tracts of housing--in other words, a developer. In this case, the development is dependent on surrounding housing, as is the case with much urban development. For this reason, I must once again mention the owners.

When racial integration begins and whites start to move, those who remain often allow their homes to fall into disrepair. This causes the developers holding vacant land to see a decline in the value of the area, making it less attractive. The developer feels there is less chance for high profit and sells his properties instead of building (Laurenti 1960, 22). Here, the builder could be making a mistake. Instead of attempting to capture a new market, he leaves it. There must be a demand for housing for minorities, as well as for whites. Perhaps a solution would be to build not for minorities, but for integration.

Actual Outcomes

The majority of the Social Section deals with findings of Luigi Laurenti in his research. Mr. Laurenti's study was chosen because nearly all other studies encountered in the research for this paper were based on and repetitive of Laurenti's findings.

Some of the statistics used in the measure of outcomes of a study Laurenti conducted involved several areas of a community in the U.S. These areas were considered either open to minority settlement or closed to it. The open neighborhoods were considered stable, most panic sales had already occurred, and no more were expected.

Some of Laurenti's findings were as follows: 41% of the open neighborhoods' housing prices stayed within 5% of that of the closed neighborhoods of comparable value. In 44% of the cases, prices in mixed neighborhoods actually finished 5-26% higher than in the closed neighborhoods. In only 15% of the open neighborhoods were prices lower, and then only by 5-9%. In 59% of the open neighborhoods, from the beginning to the end of the test period, values actually increased

faster per quarter of the test period than in closed areas (Laurenti 1960, 51-52). Based on this research, Laurenti found many such conclusions, Price, class status, and percentage of nonwhite settlement seemed to have no relationship to price movement. Both positive and negative effects occurred, but with no consistency. It also appeared that in at least one in four cases, the chance of nonwhite occupancy will cause the same or better value than in closed areas. It also appears that from analysis of studies done by others, nonwhite entry usually causes rising, not falling, prices and values (Laurenti 1960, 52-53).

One reason for this could be demand. As minorities see an area where they can leave what they have behind and move up,they will be willing to pay a premium to do so. It is this premium which causes a rise in prices that can be demanded, and in value. Every house in an open area is potentially open to nonwhite residents, thus each is worth a premium. In analysis of Laurenti's work, another researcher disclosed a lack of panic sales in the open areas. Though many were eager to sell, most waited till they could get the price they wanted (McEntire 1960, 164).

McEntire also concluded from studies he performed that it isn't just demand that determines the market price for nonwhite housing. The pattern of segregation has a good deal of influence. Only when more choices open in formerly closed areas can minorities have a choice. If the openings are few and widely dispersed, it creates a scarcity situation. If there are many or too large a supply, prices will fall (McEntire 1960, 91-92).

In another study, researchers found that in higher income housing, quality is closely related to price. There was no difference in value between closed and intergrated neighborhoods, neither benefited or payed. Values were higher in open neighborhoods than in those classified as moderately open, or closed. However, the open neighborhoods were of higher income residents (Bradburn 1969, 180).

There seem to be factors that have some bearing on whites' decision to move that seem to be the largest determinant to property values. How strongly they feel about moving out of the neighborhood is one. Another factor would be how strongly nonwhites desire to move into the neighborhood (Laurenti 1960, 47). Some whites may fear and run, others may wait to see what kind of price they can get, and others may have little or no concern. If there are many minorities desiring this housing, high demand will cause higher prices; if

there are few minority buyers, prices must fall to attract any buyer.

Another concern would be the availability of new housing for those whites desiring to move if not enough exists in the area, they may be forced to stay. This would slow down nonwhite entry, causing prices to stabilize.

McEntire's study pointed to some enlightening facts. He noted that even though the neighborhood was changing, whites still moved in. Perhaps they did not move right next door or even on the same street as minorities; they did, however, move into a situation where a minority family could potentially become their neighbor. (McEntire 1960, 167). This instance occurred in the late 1950s when "white flight" was at its height and could be indicative of a willingness to integrate.

In this section, I have examined the social aspects of exclusionary zoning from the standpoint of fears. These fears included falling property values, crime, confrontation, etc. Yet in all my research, I have found no proof that such conditions truly exist except for falling property values. However, though no proof to these fears exists, they remain. Based on my findings, I conclude that fear of falling property values, though it occurs, is a child of panic. I believe that in most cases a homeowner will take pride in his home. If a neighborhood was stable but aging, then the long run trend in values would be a slow and steady decrease (Laurenti 1960, 48), regardless of who lives in the neighborhood. One cannot stop the effects of time.

ECONOMIC ASPECTS

This section will attempt to point out some of the effects that exclusionary zoning has had on central cities, industry and commercial activities, employment, land prices, and housing prices.

First, it should be pointed out that exclusionary zoning did not cause every problem that exists in land use development. It did, however, add to them. Industry and commerce are faced with problems of competition. Competition means keeping the costs down. Industry and commerce need people, however, to create products and buy them. It is often necessary for a business to move with the population or market. Business must also continuously upgrade its production techniques. This often involves renovation of existing facilities. When upgrading is not possible, it must create new facilities. Often, the room for expansion or reconstruction is not available in central cities. For this reason, industry must move to where adequate sites are available. Keeping costs down also entails reasonable tax rates and pay levels; often an industry will relocate to areas with lower taxes and average wages to keep competitive. As will be shown, exclusionary zoning adds to the problem. It affects land values, taxes, and the cities' ability to provide the needed service adequately and economically.

DEMOGRAPHICS

In order to set the stage for this section, I will look at some of the demographic findings. This will give a clearer picture of some of the problems of the central city. These findings will also help to emphasize the effects of exclusion.

While the total population of the U.S. grew 6.4% between 1970 and 1977, all central cities lost an average of 4.6% in population. The central cities of the largest metropolitan areas lost an average of about 7.1%, and smaller metropolitan area central cities about 1.6% (Hughes 1978, 132). Of the twenty largest central cities, sixteen experienced a population decline between 1970 and 1980 (Lund 1984, 295).

Even though the population is declining, the number of households is increasing. In central cities of metropolitan areas of one million or more, black households have increased 15.2%, partly due to a 14.8% increase in female

headed households, or one in seven new households (Hughes 1978, 134). By 1977, four out of ten black households were headed by females (Hughes 1978, 138). Most increases in white households are made up of single persons.

In 1977, the average income for all central city families was just under $14,000. It was even lower for female headed households, at about $7,900, and even lower for black households headed by females, around $5,100 (Hughes 1978, 141).

Nationally, the number of persons living below the poverty level dropped 2.2 million. Yet households in the below-poverty-level class headed by females increased 710,000, almost 40%. In central cities, the number of persons below poverty level status rose 2.5%, mostly due to the increase in female headed households. This class rose 44.7% between 1970 and 1977, accounting for 37.1% of all such persons in the central city (Hughes 1978, 144).

There was an increase of nearly 250,000 persons in female headed households below poverty status, which represented a 51% increase for that category. Of those, more than half were in black female headed households, which accounted for 42% of all black related children under 18 years of age living within families at poverty level (Hughes 1978, 147).

Among the unrelated individuals under the poverty line, there was a 17.7% increase, or one in six, in central cities (Hughes 1978, 147). This fact combined with those previously stated points to the fact that the central city is more and more becoming a haven of the poor. In general, the central city population is becoming poorer, older, and plagued by higher crime rates than their better educated, housed, and payed suburban neighbors. In some categories, the crime rate was three times higher in central cities than in the suburbs (Colman 1975, 50).

INFRASTRUCTURE

As can be seen in the demographic breakdown, the average person in central cities is becoming poorer. When this is combined with the fact that in 1975 the thirty-seven largest central cities were paying about 43% more per capita for services than their neighboring suburbs (Colman 1975, 52), one must wonder what the effect will be. To further add to the dilemma, central city average per capita income has also fallen below that of the suburbs. The two worst regions are the northeastern and midwest, which now have an average of about 79% and 84% of the average suburban median income, respectively (Colman 1975, 45-46). Between 1970 and 1974, the aggregate family income of those leaving was about $55 billion, and of those entering the central cities, about $26

billion, almost a $30 billion loss (Hughes 1978, 148-149). This translates into a large loss of revenue in the form of sales tax and user fees, not to mention income tax in some areas.

In 1974, the level of taxes in large central cities was equal to about 6.3% of the average income, but only 4.2% of the same category in the suburbs. This is a difference of almost 50% relative to a lower per capita income, and about 63% higher relative to a lower median income (Sacks 1974, 57). So the question that is raised is: who is paying for service, upkeep, and improvement? The state and local governments have decreased their share of capital spending from about 29% of all expenditures in the 1960s to about 15% in the 1970s (Peterson 1978, 55). The cities could raise taxes, but that causes industry to move and, in turn, those citizens able, to leave (Hughes 1977, 156). Communities could attempt to entice industry by lowering its taxes. However, decreased tax revenues lead to declining and decaying infrastructure, a condition which causes industry to be reluctant to locate in the area. A city can attempt to sell bonds, but older cities have difficulty in finding buyers; they are considered a poor risk (Peterson 1978, 50).

The problem calls for drastic measures. Cutbacks are called for. One of the first attempted remedies is that the budget providing services to the citizens is cut. This means upkeep of only that which is still functional. Older capital stock lacks the needed repairs, and replacement is not financially possible (Peterson 1978, 57). One point that aggravates the problem lies with those outside the central city. Researchers tend to feel that people in the suburbs put more pressure on the cities' services than the residents of the cities do. Researchers feel that in an attempt to keep down costs in their suburban communities, which keeps down the rates, the suburbs use services provided by the central city. Of course, they pay user fees and city taxes, but these do not cover the cost of their use (Berry 1977, 226). It appears that central cities have capital expenditures around 20% higher than the wealthier surrounding suburbs (Sacks 1974, 56).

So, in a quick overview, we find that the cities' population is becoming less capable of covering the costs of community provided services. It is becoming more difficult to finance projects. The city cannot attract business and industry because of declining infrastructure. To top it off, the suburbanites, many of whom left a particular city are placing as much, if not more, pressure on the city's services than its residents.

The problem began at the design stage. Cities design their infrastructure systems to operate at maximum capacity; this takes advantage of economies of scale. Yet, once it falls off its peak capacity, those consuming must pay more for the service. When the infrastructure was constructed, it was meant to receive continuous upkeep. As the city declined, upkeep occurred less frequently, and now at old age is extremely expensive (Peterson 1976, 44).

Another problem is the size to which many older cities' infrastructure grew. Because of the size, the replacement cost for one aspect of the infrastructure can devour an entire budget allocation, thus delaying repair of the other portions and making their eventual replacement even higher.

One case in point is the city of Newark. In 1977, in order to bring its infrastructure up to professional standards and codes, the city determined it would have to go into debt amounting to four times greater than that allowed by law (Peterson 1978, 64-65). In other instances, the city of Detroit would have to spend $750 million to upgrade its sewers and similar improvements in San Francisco would cost $2.5 billion. Even if the cost were to be split with the federal government, the taxpayer will suffer. Of course, these figures are from 1977; the actual cost today would be even greater. Replacement or maintenance cycles for repairing New York City's streets is best at 10-25 years, but in 1977 the actual cycle was 150 years. New York's water mains are best replaced every 100 years, but actual replacement time was projected at 267 years (Peterson 1978, 64-65). In 1972, the federal government set $18 billion aside to upgrade the nation's sewers. However, it is estimated that to correct all systems to code, install needed modern treatment facilities and provide for new customers, it will cost around $684 billion (Peterson 1978, 72). What it comes down to is this: the cities need help, but those left behind--the poor, poorly educated, hardcore unemployed, and aged--are the least able to support the needs (Berry 1977, 226).

One of the main problems is the major method of earning revenues, the property tax. The property tax generates about two-thirds of all local revenues nationwide, and comprises nearly 80% of local taxes (Peterson 1976, 52). Yet the property tax is highly regressive, it draws on a larger percentage of the low income group than of the higher income taxpayer (Netzer 1974, 168). This would mean that a higher property tax would suck out more from those who cannot afford it. This seems to point to a definite need for more creative financing structure.

INDUSTRY/COMMERCE/EMPLOYMENT

The effects of compressing so many low income people into a concentrated area has a devastating effect on the city. Drawing so many of its resources into public welfare in the form of housing and education (Netzer 1974, 152), the infrastructure declines and the replacement costs are outrageous. The city becomes blighted, less appealing to those within and those contemplating a move in. Those who may be contemplating entry would include industry and commerce. They see an old, broken city, with potentially high taxes, high crime and a bleak future. No longer would such a city appear attractive as a center of commerce and industry. So potential industrial "residents" look elsewhere, for better surroundings that are less expensive. Sacks points out one fact that burdens large cities. They lost their share of manufacturing and retail trade, which sets the tax rate for nonresidential properties. Next, those businesses who stayed were forced to pay a higher share. To compensate, the tax burden was shifted to the residents. And last, residents paying higher taxes, payed from lower average incomes (Sacks 1974, 49-50).

Perhaps the best method of demonstrating changes in industrial and commercial location is through job location. Between 1947 and 1967, the central cities suffered a net loss of nearly 300,000 jobs, a loss of 4%. Yet, the suburbs increased their number of jobs by nearly 4 million, an increase of 96%. The suburbs' share of total SMSA manufacturing employment rose from 36% in 1947 to 53% in 1967 (Berry 1977, 232). Between 1958 and 1963, there was a shift of more than 20,000 factory jobs from central cities to the suburbs. During the 20 years previous to 1971, about 100,000 wholesale and 300,000 retail jobs were also lost to the suburbs by the central cities (Netzer 1970, 29). From 1954-74, about 14,000 shopping centers were built, most to serve the suburban areas (Berry 1977, 228). Even though there is an incredible movement out of the central cities, there are areas of employment on the increase. There is an increase of jobs requiring specialized skills, such as administrative professionals, financial, and other jobs requiring specialized higher education. This, however, does not include an increase (actually there is a decrease) in businesses offering standard consumer goods and services (Berry 1977, 228). This is a paradox: those possessing more technical skills are moving to the fringe areas, those with little or no skills move into the central city (Berry 1977, 229). Why are those most suited for blue collar work moving away from the new areas of manufacturing (the suburbs)? They cannot afford to live in

the suburbs because of exclusionary devices which drive up the cost of living there (see Exclusionary Effects on Suburbs). Those who need a location close to work due to lack of transportation, live farthest from it. They are forced to live in areas where they can afford to survive.

With the loss of one job could come the loss of many. If the multiplier effect works in reverse, then the loss of a job which had once created two could cause the end of two, or one, depending on the overall economic health of the city. Many of the jobs lost due to the reverse multiplier effect could be low-skilled, service oriented jobs, such as waitress, cook, or cashier. These jobs pay little in most cases, but to unskilled persons they are a living.

Other Reasons

As mentioned earlier, there are other reasons for industry and commerce to leave the cities. Often, older facilities must be expanded or replaced. New technology calls for more spread-out operations. One problem with location within central cities is acquiring adequate amounts of land (assembly costs). It is generally cheaper for an industry to go to an area where large tracts are owned by one person. Dealing with one person is usually easier than dealing with many holders of smaller parcels, as in central cities (Berry 1977, 232). Other reasons sited would be labor problems, and inducements by suburbs. Such enticements would be tax incentives, better infrastructure, and improved quality of life (Lund 1984, 269, 277). It is generally cheaper to install infrastructure in undeveloped areas than in those already developed (Peterson 1978, 49). Quality of life would probably be seen as better in the suburbs than in a deteriorating city. And, although older central cities can give tax incentives, they must be careful to whom they grant them. After all, the major reason to attract business is the tax base.

Exclusionary Effects on Suburbs

Exclusionary zoning does have its negative sides. When an industrial developer looks at an area, he wants to make sure it possesses certain characteristics. The developer wants to make sure of adequate infrastructure, accessibility, proper tax rates, and proximity to suppliers. One other factor he observes is the supply of adequate housing for all employees. He looks not only at the zoning for the proposed site, but also at the zoning for the entire

town. He needs to know whether possibilities are available for adequate housing not only for executives, but for young technicians and blue collar workers as well (Babcock 1966, 60).

When a municipality zones out a specific land use because it would consume more public services than it would contribute to, it must rely on other locations for the excluded product (Margolis 1974, 284). In this case, suppose the excluded use is multiple family housing. If a desirable industry seeks a location in the suburbs, they will be happy. However,when the suburb discovers that the industry relies heavily on low income, low skilled employees, the suburb must rely on surrounding areas for its supply of low income workers. Several problems could arise at this point. First, the low income persons may be unable to travel due to lack of mass transit or personal transportation. When this happens, the suburb has to provide transportation or forget the industry. Another problem could be that the surrounding areas have also zoned out low income residents. In this case, the company will leave the region or never settle there to begin with.

EFFECTS ON LAND AND HOUSING PRICES

In the last few pages, I have examined the effects of exclusionary zoning on the central city and business. These pages have shown how central cities are more and more the home of concentrations of low income persons, while the jobs have moved to the suburbs. This section will explain why those most in need of these jobs have not moved with them. The major barrier is the high price of land to develop, and the high cost of housing--out of the reach of low income persons. The reason for such high prices lies within the zoning ordinances and building codes. If race and income are related, one could view this as a form of racial exclusion.

Costs of Zoning

The price of a new single family home, not accounting for large lot zoning, is prohibitive to low income households. When the effects of large lot zoning are added, a new dimension to the problem arises. The addition of large lot prices begins to put the price of new housing out of the reach of not only moderate, but also middle income persons. If they all desire a single family home, they must go to where these houses are most affordable, usually the central city. If single family housing is not available, they must look to multi-family housing, also located mostly in the central city. This causes competition

between three groups for housing. The one who can afford the most will get the best. This means that the low income individuals will have to settle for the worst (Bergman 1973, 7). According to the law of supply and demand, this increased competition will increase demand, lowering supply. The outcome will be higher prices, forcing some out of the market. The price cannot go down until more units become available. This is a difficult problem, in that exclusionary codes and regulations make it harder to build unsubsidized, affordable housing (Peterson 1976, 128). Large lot zoning and restrictions in zoning for multiple family housing make it difficult to locate sites for subsidized housing.

The question should now be raised as to how zoning and building codes affect housing prices. Zoning affects housing prices by controlling the supply of various sized sites and thus controlling the price which can be asked for each type of use suitable to the lot size (Seigan 1972, 95). Zoning creates an imbalance between supply and demand. It creates sub-markets for different lot sizes. Because the trend is toward large lot sizes, there is an oversupply of large lots. This puts smaller lots at a premium, driving up their prices (Seidel 1978, 175).

If zoning restricts the use of land to that for which there is a low market demand, the market would become glutted, and the price decrease. The major problem is adjusting to the market. If zoning holds the land in large lot single family status, and the town does not favor multiple family or high density smaller lot housing, the developer cannot change to meet the high demand (National Commission on Urban Problems 1968, 214). This points to a misallocation of land use, probably caused, in part, by those who presently own housing in the town. These homeowners accept what they perceive as the rights of a higher land use to be guaranteed protection from alleged lower land uses (Mieszkowski 1978, 83). This misallocation can also affect land prices during high demand periods, not for land but for housing. When housing demand is high, the actual amount of housing on the market in any one area is dependent on the lot size. Large lots reduce the total amount of housing, driving prices up (National Commission on Urban Problems 1968, 214).

According to Schoenbrod, eventually larger lots, due to higher price, will add to a decline in personal consumption utility. As housing prices rise due to large lots, more people will be denied access, thus demand will drop (Schoenbrod 1969, 1422). If one looks at lot size as a function of utility for

all persons looking for housing, then one should also look at the preference of all involved--city dwellers, home buyers, and present homeowners. If city dwellers who wish to leave the city, and those looking for housing outside the city, desire smaller, more affordable housing, and those who are already settled desire lots to stay as they are, the outcome is a smaller than existing lot (Schoenbrod 1969, 1429). If this argument is accepted, it points to a demand for smaller lot size.

Zoning for wide lots also affects the price of housing. In fact, since development costs are usually based on frontage for sewer/water, gas, electricity, streets, sidewalks, curb and gutters, a wide lot will cost more to develop. When this cost is transferred to the public through the housing price, it can be incredibly high (Seidel 1978, 177).

It could be said that in many suburbs zoning seems to lower the price of housing and land for the rich, but raise it for the poor (Seigan 1972, 99). To clarify this, one must look at the income of those in the market, as well as the market. Zoning for large lots, with bulk restrictions, minimum floor space, and bedroom number restrictions, make development of multifamily and smaller single family housing economically unfeasible. Rents would have to be very high to cover development costs (Seigan 1972, 96). If a suburb is mostly zoned for large lots, then the demand for multifamily housing will cause that land to go at a higher price. This will also create a need for higher rents.

So it can be seen that zoning affects the price of land and housing. Zoning also seems to create an artificially high demand for large lots. If that is all that is available, that is all that one can purchase. It affects the cost of developing land, due to the costs of land improvements required being directly proportional to the size and width of the lot. The lack of land zoned for multiple family use will cause land zoned as such to go at a higher price. This would, in effect, tend to cause the exclusion of low income persons even if land zoned for multiple family use were available.

Cost of Building Codes

Though building codes are necessary to assure safe housing, they can, if abused, cause two main distortions. Often, the codes demand more than the minimum needs (least cost) to be installed into housing for all consumers. This sometimes forces a consumer to purchase a greater amount than desired or is affordable. Second, a consumer's income will often rise after purchase of

a home. This should allow the consumer to improve the home. Instead, consumers are forced to spend more immediately when income is lower (Siedel 1978, 74-75). If housing were allowed to be built at least cost, it could be possible to keep the cost down. If this were accomplished, more people with less income could move. The move would be toward the jobs and better life in the suburbs. Because this is, for the most part, not the case, potential employees and residents are forced to stay in deteriorating central city housing. They are denied a chance at a better life.

Apparently, one of the biggest reasons for higher costs is that many amenities required by building codes are based on square footage, such as a certain grade of lumber or certain type of heating system, or roofing material. A supposition based on 1980 costs is that building codes which require a minimum building size could add an additional $20 per square foot.

In all, one research group stated that building codes can add an additional 9% to the final purchase price of a house (Burchell and Listoken 1980, 326-328).

It has been stated that reducing building codes and subdivision standards to the barest minimum for safety still would not reduce housing costs. This action must accompany a change in the zoning ordinance to allow higher density development and a mix of different housing types (Bergman 1974, 67). Only then can costs be lowered sufficiently to allow those who could not previously afford it to purchase housing in areas where they were once excluded because of income. To support this, it has been pointed out that in many cases it is the socio-economic status of an area which determines housing. Lot size and house size do not always go hand in hand (Sagolyn 1972, 66). If an area has high prestige, people want to show this by building large houses. Yet, I have seen areas of high prestige in towns with small lots. Still, those living there felt very important. It is necessary for people to realize that an apartment house does not have to be a square box. New architectural styles can allow very attractive housing to fit into any surroundings.

CONCLUSION

This paper was not designed to be the definitive answer to a problem which plagues almost every area and region of our country. Its main purpose is to show three of what I feel are the main aspects of exclusionary zoning.

In the Legal section, I examined the barriers to presenting an exclusionary case in what appears to be a most unwilling legal system. The plight of the most affected group, the nameless third party, and its major bar to justice, standing, were examined. The courts seem most reluctant in many cases to hear their pleas.

The courts views on exclusionary devices were examined. The main finding seems to be, if it is not meant to prohibit rights, it is a valid use of police powers. If an ordinance does not totally exclude a certain land use, such as multiple family housing, it is valid as long as the court feels the amount set aside is adequate.

Growth controls, as long as they are viewed as reasonable and necessary, are generally allowed, though not forever. The court has shown its intolerance to municipalities avoiding or disregarding environmental laws when utilities are involved. As long as building codes are limited to all, not just minority, housing, and some provision to accommodate low income housing is made, they are generally upheld. If a state is known for referendum voting, such as California, and does not have a history of discrimination, the right to referendum will usually be upheld.

In the area of constitutional rights, it has been shown that as long as it does not discriminate against race in particular, but excludes income, it will not be heard by the courts.

The attitude of the courts toward zoning has shown that federal courts greatly dislike interfering, as do most state courts. They find little satisfaction and much confusion, as well as a lack of expertise, in most cases.

In the Social Aspects section, I examined the fears of citizens and the lack of foundation for most. One sees fears of lost property values, crime, confrontation, etc. The fears of brokers, lenders, and developers were also examined, most founded on the fears of the property owners. It was also shown that brokers and lenders still practice illegal activities, though only by unspoken means.

When one looks at the effect of race on property values, one sees that, in fact, there is in many instances just the opposite effect. Racial mix causes property values to rise. This is due to the desire of minorities to move into better neighborhoods.

In the Economic Aspects section, one sees that jobs are moving out of the central cities and into the suburbs. One sees that those left in the city are the poor, poorly educated, aged, and chronically unemployed.

The infrastructure was shown to be deteriorating in central cities, requiring great quantities of money for repair or replacement. Yet, those remaining in the cities are least able to afford to generate needed revenues. This fact is compounded by the strain on the infrastructure caused by suburban citizens.

It was found that industry is hesitant to go to central cities due to declining infrastructure. Other reasons would be need to expand with no room available, quality of life, location, and labor problems.

Exclusionary zoning also affects suburbs. Many suburbs must depend on surrounding areas for the labor required for much hoped for industry. If the surrounding areas exclude, the suburb loses its prospective industry.

In looking at the effects of exclusionary zoning on land and housing prices, one can see that large lot zoning drives up the land factor price. Zoning affects the quantity of land available for certain types of housing, forcing artificial markets to appear due to lack of choice. It also appears that large lot zoning could someday exclude even middle class persons out of the suburbs, as it already is. It will also cause the price that can be obtained to drop.

Where large lots tend to lower costs, building codes cause them to rise. Building codes tend to force many unnecessary amenities into housing, such as special heating and roofing, and to disallow less expensive, yet adequate, materials to be used.

It is my hope that this paper will be helpful and informative, and perhaps spark more research to provide badly needed solutions to remedy the negative effects of exclusionary zoning.

CASE LISTING

- Allen v Coffel 488 SW 2d 671 (1972)

- Appeal of Girsh 263 A 2d 395 (1970)

- Appeal of KitMar Builders Inc. 268 A 2d 765 (1970)

- Associated Homebuilders of Greater Eastbay, Inc. v City of Livermore 557 F 2d 473 (1916)

- Association of Data Processing Services Org. v. Camp 397 US 152 (1970)

- Bedminster Township v. Allan-Dean Corp. (unreported, 1979)

- Berenson v. Town of New Castle 341 NE 2d 236 (1975)

- Board of Supervisors of Fairfax County v. DeGroff Enterprises, Inc. 298 SE 2d 600 (1973)

- Bristow v. City of Woodhaven 192 NW 2d 322 (1971)

- Buchanan v. Warley 245 US 60 (1917)

- Charles v. Diamond 345 NYS 2d 764 (1973)

- City of Eastlake v. Forest City Enterprises, Inc. 426 US 668 (1978)

- City of Hartford v. Town of Glastonbury F 2d (1977)

- Commonwealth ex rel Allensandroni v. Borough of Confluence 234 A 2d 852 (1967)

- Construction Industry Association of Sonoma County v. City of Petaluma 375 F Supp 574 (1973)

- Construction Industry Association of Sonoma County v. City of Petaluma 522 F 2d 897 (1975)

- County Commissioners of Queen Anne's county v. Miles 228 A 2d 450 (1967)

- Crow v. Brown 457 F 2d 788 (1972)

- Decaro v. Washington Township, Berks County 344 A 2d 725 (1975)

- Dwyer v. City of Ann Arbor 261 NW 2d 231 (1977)

- Edwards v. California 314 US 160 (1941)

- Fasano v. Board of County Commissioners of Washington County 507 P 2d 23 (1975)

- 42 USC subsection 5304 (o)(4) (1974)

- Garret v. Hamtramck 357 F Supp 925 (1973)
- Gautreux v. Chicago Housing Authority 304 F Supp 736 (1969)
- Golden v. Planning Board of Ramapo 285 NE 2d 291 (1971)
- Hartford v. Town of Glastonbury-2d- [2d Cir 1977])
- Hills v. Gautreux 425 US 284 (1976)
- James v. Valtierra 402 US 137 (1971)
- Jones v. Alfred H. Meyer Co. 392 US 409 (1968)
- Kennedy Park Homes Association v. City of Lackawana 436 F 2d 108 (1970)
- Kropf v. City of Sterling Heights 215 NW 2d 179 (1979)
- Laurence v. Richards 88 A 92 (1913)
- Linsey v. Normet 405 US 56 (1972)
- Memorial Hospital v. Maricopa County 425 US 250 (1974)
- National Land Investment Co. v. Kohn 215 A 2d 597 (1965)
- Nickols v. Township of Grand Blanc 232 NW 2d 604 (1975)
- Oakwood at Madison Inc. v. Township of Madison 371 A 2d 1192 (1977)
- Paylee v. Township of Pemberton 372 A 2d 329 (1977)
- Paschach v. Washington 329 A 2d 89 (1974)
- Pennsylvania v. County of Bucks 302 A 2d 897 (1973)
- Pritz v. Messer 159 NE 30 (1925)
- Ramsey Borough v. Commonwealth of Pennsylvania Department of Environmental Resources 327 A 2d 647 (1974)
- Reid Development Corp. v. Parsipanny-Troy Hills 89 A 2d 667 (1952)
- Robinson v. City of Boulder 547 P 2d 228 (1974)
- Rose v. Plymouth Town 173 P 2d 285 (1946)
- Siabo v. Monroe Township 221 NW 2d 303 (1975)
- SASSO v. City of Union City 424 F 2d 291 (1970)
- Scott v. City of Indian Wells 492 P 2d 1137 (1972)
- Senior v. Zoning Commission of the Town of New Canaan 153 A 2d 417 (1959)

- Sierra Club v. Morton 405 US 727 (1972)

- Simmons v. City of Royal Oak 196 NW 2d 811 (1972)

- Sisters of Providence of St. Mary of the Woods v. City of Evanston 335 F Supp 396 (1971)

- Smoke Rises, Inc. v. Washington Suburban Sanitary Commission 400 F Supp 1369 (1975)

- Southern Burlington County NAACP v. Township of Mount Laurel 336 A 2d 713 (1975)

- Swanson v. Marin Municipal Water District 128 Cal Rptr 485 (1979)

- United States v. City of Black Jack 508 F 2d 1179 (1974)

- United States v. Guest 383 US 745 (1966)

- U.S. v. SCRAP 412 US 669 (1973)

- Urban League v. Carteret 354 A 2d 526 (1976)

- Village of Arlington Heights v. Metropolitan Housing Development Corp. 97 S Ct 555 (1977)

- Village of Arlington Heights v. Metropolitan Housing Development Corp. 517 F 2d 409 (1977)

- Village of Euclid v. Ambler Realty Co. 272 US 365 (1926)

- Warth v. Seldin 422 US 490 (1970)

- Washington v. Davie 426 US 229 (1976)

- Ybarra v. City of the Town of Los Altos Hills 503 F 2d 250 (1974)

BIBLIOGRAPHY

Advisory Committee to the Department of Housing and Urban Development, "Freedom of Choice in Housing, Opportunities and Constraints." National Academy of Science, Wash. DC 1972.

Aloi, Frank, and Arthur Abba Goldberg, "Racial and Exclusionary Zoning: The Beginning of the End?" 1971 Urban Law Annual, 9, Washington University 1971.

Ayer, John D., "The Primitive Law of Standing in Land Use Disputes: Some Notes From A Dark Continent," 55 Iowa Law Review, 344, The University of Iowa, 1969.

Babcock, Richard F., "The Zoning Game: Municipal Practices and Policies," University of Wisconsin Press, Madison, Milwaukee and London, 1966.

Babcock, Richard F., and Fred P. Bosselman, "Suburban Zoning and the Apartment Boom," University of Pennsylvania Law Review, 111, 1040, 1963.

Bergman, Edward M., "Eliminating Exclusionary Zoning: Reconciling Workplace and Residence in Suburban Areas," Balinger Publishing Co., Cambridge, MA 1974.

Berry, Brian J.L. and John D. Kasarda, "Contemporary Urban Ecology.: McMillan Publishing Co., Inc., 1977.

Boerner, Alfred V., "Standing to Appeal Zoning Determinations: The 'Aggrieved Person' Requirements," 64 Michigan Law Review, 1070. Ann Arbor, 1966.

Bradburn, Norman M., Seymour Sudman, and Galen L. Gochel, "Racial Integration in American Neighborhoods: A Comparative Survey." The University of Chicago Press, Chicago, IL, 1969.

Branfman, Eric J., Benjamin I. Chen, and David M. Trubeck, "Measuring the Invisible Wall: Land Use Controls on the Residential Patterns of the Poor," Yale Law Journal, V. 82, 502. 1973.

Buschell, Robert W., and David Listoken, "The Impact of Local Government Regulations on Housing Costs," America's Housing Prospects and Problems. by James W. Hughes, George Sternlieb, and the CUPR Research Staff. Center for Urban Policy Research, New Brunswick, NJ 1980.

Colman, William G., "Cities, Suburbs, and States." The Free Press, NJ 1975.

Downs, Anthony, "Housing the Urban Poor: The Economics of Various Strategies," American Economic Review. V. 56, 646. September 1969.

Finch, Philip R., "Low Income Housing in the Suburbs: The Problem of Exclusionary Zoning," University of Florida Law Review, V. 24, 158. 1971.

Grier, Eunice, "Black Suburbanization in Metropolitan Washington, Report No. 1: Characteristics of Black Suburbanites." The Washington Center for Metropolitan Studies, Washington DC. 1973.

Housing For All Under Law: New Directions in Housing, Land Use and Planning Law." Richard P. Fishman, Editor, Ballinger Publishing, Cambridge, MA 1978.

Hughes, James W. and George Sternlieb, "Metropolitan Decline and Inter-Regional Job Shifts," The Fiscal Crisis of American Cities. Ray E. Alcaly and David Mermalstein, Editors. Vintage Books, NY. 1977.

Hughes, James M. and George Steinlieb, "Some Economic Effects on Recent Migration Patterns on Central Cities," American Housing: Prospects and Problems. By James W. Hughes, George Steinlieb, and the CUPR Research Staff. Center for Urban Policy Research, New Brunswick, NJ. 1980.

Kain, John F., "Housing Segregation, Negro Employment, and Metropolitan Decentralization," The Quarterly Journal of Economics, V. 82, No. 2, 175. 1968.

Kain, John F., "Urban Form and the Cost of Urban Services (Exerpts)," Municipal Needs, Services, and Financing. W. Patrick Beaton, Editor. Center For Urban Policy Research, New Brunswick, NJ. 1974.

Kasarda, John D., "The Impact of Suburban Population Growth on Central City Services and Financing," Municipal Needs, Services, and Financing. W. Patrick Beaton, Editor. Center for Urban Policy Research, New Brunswick, NJ. 1974.

Laurenti, Luigi, "Property Values and Race: Studies in Seven Cities," University of California Press, Berkley and Los Angeles, CA. 1960.

Lefcoe, George, "The Public Housing Referendum Case, Zoning and The Supreme Court," 59 California Law Review, 1386, University of California, Berkley. 1971.

Lund, Leonard, "Factors In Corporate Locational Decisions," Crisis and Constraint in Municipal Finance. James H. Carr, Editor. Center For Urban Policy Research, New Brunswick, NJ 1984.

Margolis, Julius, "On Municipal Land Policy For Fiscal Gains," Municipal Needs Services, and Financing. W. Patrick Beaton, Editor. Center for Urban Research, New Brunswick, NJ 1974.

McEntire, Davis, "Residence and Race: Final and Comprehensive Report to the Commission on Race and Housing," University of California Press, Berkley and Los Angeles, CA, 1960.

Miezkowski, Peter, "Three Aspects of Urban Land Use Regulations," Metropolitan Financing and Growth Management Policies. George F. Break, Editor. University of Wisconsin Press, Madison, Milwaukee, London, 1978.

Miller, James S., "Factors Affecting Racial Mixing in Residential Areas," Amos Ho. Hawley and Vincent P. Rocks, Editors. National Academy of Science, Washington, DC, 1973.

National Commission on Urban Problems, "Building the American City." U.S. Government Printing Office, Washington DC 1968.

Netzer, Dick, "Economics and Urban Problems: Diagnosis and Prescription." Basic Books, Inc. Publishers, New York, London, 1970.

Netzer, Dick, "Impact of Property Tax: Effects on Housing, Urban Land Use, Local Government Finance," Municipal Needs, Services and Financing. W.Patrick Beaton, Editor. Center for Urban Policy Research, New Brunswick, NJ 1974.

Parker, Elsie Smith, "Both Sides of the Color Line," The Appraisal Journal II, No.3, 232, July 1943.

Peterson, George E., "Capital Spending and Capital Obsolescence," The Fiscal Outlook for Cities. Roy Bahl, Editor. Syracuse University Press, NY, 1978.

Peterson, George E., "Finance, the Urban Predicament," William Graham, Nathan Glazer, Editors. The Urban Institute, Washington DC, 1976.

Raymond, George M., "Use of a Court Appointed Master." 1983 Zoning and Planning Law Handbook, edited by Frederic A. Strom. Clark Boardman Co.,Ltd. NY 1983.

Sacks, Seymour, "Fiscal Disparities and Metropolitan Development (Exerpts)," Municipal Needs, Services, and Financing. W. Patrick Beaton, Editor. Center for Urban Policy Research, New Brunswick, NJ 1974.

Sagalyn, Lynne B., and George B. Sternlieb, "Zoning and Housing Costs: the Impact of Land Use Controls on Housing Prices." Center for Urban Policy Research, New Brunswick, NJ 1972.

Sager, Laurence Jean, "Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent," 21 Stanford Law Review. 767, Stanford, CA, 1969.

Shulz, Larold K., "Exclusion in the Suburbs: Restrictive Zoning Must Go," Christianity and Crisis, V. 30, 56, March 1970.

Siedal, Stephen R., "Housing Costs and Government Regulations: Confronting The Regulatory Maze." The Center for Urban Policy Research, New Brunswick, NJ 1978.

Siegan, Bernard H., "Land Use Without Zoning." Lexington Books, Lexington, MA, Toronto, London. 1972.

The Urban Land Institute, "Revitalizing Downtown Retailing: Trends and Opportunities," Crisis and Constraint in Municipal Finance. James H. Carr, Editor. Center for Urban Policy Research, New Brunswick, NJ 1984.

Walsh, Catherine Meir, "Alternatives to Warth v. Seldin: The Potential Resident Challenger of an Exclusionary Zoning Scheme," 11 Urban Law Annual, 228, Washington University, 1976.