



10-1-1969

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Recommended Citation

D. J. Potvin, *Suburban Zoning Ordinances and Building Codes: Their Effect on Low and Moderate Income Housing*, 45 Notre Dame L. Rev. 123 (1969).

Available at: <http://scholarship.law.nd.edu/ndlr/vol45/iss1/14>

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SUBURBAN ZONING ORDINANCES AND BUILDING CODES: THEIR EFFECT ON LOW AND MODERATE INCOME HOUSING

A. The Central City

The urban problem presents the greatest internal crisis America has faced since the Civil War. As the National Commission on Urban Problems has stated, there is "a web of urban matters, often ignored and equally often misunderstood, which combine to deny decent housing, job opportunities, and minimum urban services to the poor."¹ It is indeed a web, a web spun largely, it would seem, from outdated assumptions and misdirected idealism. We have assumed that the cities could eventually surmount any problem, that local control of economic growth would ultimately bring the greatest public good. We have naively hoped that the narrow self-interest of the merchant, the homeowner, the suburban town, the labor union, and the manufacturer would all somehow coalesce to produce the greatest social good.

Obviously our assumptions have betrayed us. The self-interest of some has relegated the large majority of our black citizens to a second-class life in ghettos. The self-interest of the suburbs has placed an enormous financial burden on the central cities; the self-interest of the manufacturer has polluted air and water. As large numbers of middle class families move to the suburbs, they are replaced by families seeking opportunity in northern cities. Unlike those who flee to the suburbs, the newcomers are largely unable to add to the financial stature of the city. As more poor move into an area, property values decline, thereby lowering the local tax base so that neighborhoods which once supported their municipal services become a financial burden on the city.²

The flight to the suburbs has thus placed an enormous strain on the central city. While the city remains the social, economic, and cultural center of an area, it no longer partakes in the region's economic growth. The city must provide transportation facilities, police and fire protection, water, sewage, and a host of other services to the thousands of daylight residents who stream to its environs every day. The city, however, seems unable to extract its just due from this parasitical multitude that uses its facilities. If present trends continue, by 1985 sixty-three percent of the population in America's standard metropolitan statistical areas [SMSA's] will reside in the suburban ring, an increase from forty-eight percent in 1960.³ This occurrence will, of course, further increase the strain on the central city.

1 NATIONAL COMMISSION ON URBAN PROBLEMS, *BUILDING THE AMERICAN CITY*, H.R. DOC. NO. 91-34, 91st Cong., 1st Sess. 2 (1969) [hereinafter cited as DOUGLAS REPORT].

2 REPORT OF THE ADVISORY COMMISSION ON CIVIL DISORDERS 399 (Bantam ed. 1968) [hereinafter cited KERNER REPORT]; see DOUGLAS REPORT 5; Note, *Enforcement of Municipal Housing Codes*, 78 HARV. L. REV. 801, 802 (1965).

3 P. HODGE & P. HAUSER, *THE CHALLENGE OF AMERICA'S METROPOLITAN POPULATION OUTLOOK — 1960 TO 1985*, at 16 (1968). This report is one of a series of research reports prepared for the National Commission on Urban Problems, and is hereinafter cited as REPORT NO. 3.

B. The Urban Center

Though we have become an urban nation,⁴ we have not yet learned to live as an urban people. The state of the cities bears grim testimony to this assertion. The air is so polluted that it filters out one-quarter of the sun's light.⁵ The great rivers that flow through many of our cities are little more than open sewers. Noise levels threaten the sanity of inhabitants, and strikes by municipal employees endanger the very existence of the city. The city is choked with traffic jams; its residents victimized by muggers. In many cases, the large, centralized government of a city has alienated important segments of the population, particularly minority groups.⁶ According to one view, this "urban crisis in the United States, including physical, personal, social, intergroup and governmental problems, may be better comprehended as frictions in the transition still under way from an agrarian society to a metropolitan order."⁷ If this transition is to succeed, it will require a revolution in American ideals and values.

The problem of adjusting to a metropolitan order is further complicated by racial issues. Present trends indicate that central cities will continue to become simply nonwhite enclaves surrounded by white suburbs.⁸ The projections presented to the National Commission on Urban Problems contain an alarming statistical profile of this apartheid. Between 1960 and 1985, the total population of the country will increase by about 73 million people,⁹ of whom nearly one-fifth will be nonwhite.¹⁰ While ninety-nine percent of the nonwhite population growth will occur in SMSA's, only eighty-eight percent of the white population growth will so occur.¹¹ Within central cities, there will be a decrease of perhaps 2.4 million white persons, with a corresponding increase of 9.8 million nonwhites.¹² While seventy-four percent of nonwhites residing in SMSA's will live in central cities by 1985,¹³ only thirty percent of whites will so reside.¹⁴ As we approach the year 2000, then, an increasing number of our central cities will become predominantly black cities and will be governed by black mayors.¹⁵ But the acquisition of political power by the black man will not begin to solve the crucial problem of housing the cities' ever-increasing numbers.

4 Obviously, the United States did not become an urban nation overnight. In 1790, the time of the first national census, there were but twenty-four incorporated places of 2,500 or more people. Only six of these cities had a population in excess of 8,000, and the aggregate population of the twenty-four municipalities constituted but five percent of the nation's total. G. BEYER, *HOUSING AND SOCIETY* 87 (1965) [hereinafter cited as BEYER]. We truly became an urban nation by 1920, when for the first time over half of the population resided in urban areas. REPORT NO. 3, at 1. By 1960 there were 5,022 incorporated places of 2,500 or more, in which sixty-three percent of the population resided. BEYER 87.

5 NEWSWEEK, March 17, 1969, at 40.

6 See generally KERNER REPORT 266-77, 389-409.

7 REPORT NO. 3, at 2.

8 *Id.* at 25; see KERNER REPORT 398-99.

9 REPORT NO. 3, at 16.

10 *Id.* at 19.

11 *Id.* at 19, 26.

12 *Id.* at 26.

13 *Id.*

14 *Id.* at 26, 53.

15 KERNER REPORT 400.

C. Housing the Population Growth

The production of housing to fill the needs of this tremendous increment in population will require the combined efforts of many segments of the population. The Kaiser Report on urban housing recommended that 26 million new and rehabilitated housing units be provided by 1978.¹⁶ To accomplish this feat, the construction industry would have to increase its annual output more than seventy percent, from 1.5 million to 2.6 million units.¹⁷ To meet the needs of low- and moderate-income families, the Report recommended that 6-8 million of the new units be federally subsidized.¹⁸ Six million units would represent nearly an eightfold increase in existing federally subsidized units — units which took over thirty years to produce.¹⁹ Although the Housing and Urban Development Act of 1958 authorized the production of 6 million units in the next ten years,²⁰ a spokesman for the Nixon administration has reportedly expressed doubt that the nation can meet even this limited goal.²¹

Not only is there a need to construct new housing to meet the growing demand, but it is also of vital importance that the quality of the existing housing stock be upgraded. An estimated 6.7 million occupied housing units are currently categorized as substandard, meaning that they either lack indoor plumbing or are in a dilapidated condition.²² Our nation's housing inventory was recently estimated to total 66 million housing units.²³ The fact that 6.7 million of these units, representing more than ten percent of America's total housing stock, are substandard reveals the enormity of the upgrading task before us.

D. Urban Poverty Areas

A statistical survey of the poverty areas of the 101 largest SMSA's in the United States reveals further disturbing facts. Twenty-five percent of the housing stock in these urban poverty areas is substandard, and sixteen percent is overcrowded (containing more than one person per room).²⁴ Though these poverty areas contained but twenty-two percent of the total housing stock of the SMSA's, they held fifty-eight percent of the substandard units, thirty-nine percent of the overcrowded units, thirty-one percent of all units over twenty years old, thirty-five percent of all renter-occupied units, thirteen percent of all owner-occupied units, and seventy-four percent of all housing units occupied by nonwhites.²⁵ An analysis focusing on the central cities of these same SMSA's displays an even more pronounced poverty area - nonpoverty area disparity. Poverty areas within

16 PRESIDENT'S COMMITTEE ON URBAN HOUSING, A DECENT HOME 8 (1968) [hereinafter cited KAISER REPORT].

17 *Id.* at 9.

18 *Id.* at 8.

19 *Id.* at 9.

20 Housing and Urban Development Act of 1968 § 1601, 42 U.S.C.A. § 1441a (Supp. 1969).

21 NEWSWEEK, March 17, 1969, at 50.

22 KAISER REPORT 8.

23 *Id.* The estimate was made by TEMPO, General Electric's Center for Advanced Studies.

24 A. MANVEL, HOUSING CONDITIONS IN URBAN POVERTY AREAS 5 (1968).

25 *Id.*

these cities account for only thirty-three percent of all the cities' housing stock, yet seventy-six percent of the substandard units, fifty-four percent of the overcrowded units, forty-one percent of all units over twenty years old, forty-four percent of all owner-occupied units, and seventy-nine percent of all the central cities' housing units occupied by nonwhites.²⁶

The concentration of housing units per square mile — the "housing density" — within central-city poverty areas is typically higher than that of nonpoverty areas of the city.²⁷ For ninety-seven of the largest central cities, four had a housing density ratio of 4:1 — that is, there are four times as many housing units per square mile in the poverty area as in other areas of the same city. Six had a ratio between 4:1 and 3:1; thirty-three had a ratio between 3:1 and 2:1; and thirty-two had a ratio between 2:1 and 1.2:1.²⁸

The concentration of housing in poverty areas naturally has a direct and unfavorable effect on the tax bases of those areas. In twelve SMSA's, more than fifty percent of all housing is located in poverty areas. In twenty-two SMSA's, twenty-five to fifty percent of all housing is located in poverty areas. In forty-three SMSA's, from fifteen to twenty-five percent of all housing is located in poverty areas.²⁹ If we look solely at central cities, the percentage of all housing located in poverty areas increases markedly. Thirteen central cities have more than fifty percent of all housing located in poverty areas. Fifty-seven have from twenty-five to fifty percent of all housing so concentrated; and twenty-four have from fifteen to twenty-five percent of all housing situated in poverty areas.³⁰

The 1960 census reported that thirty percent of poverty-level³¹ renters occupied fifty-eight percent of the substandard rental units in SMSA's. The poverty owner-occupant fared much better, with fourteen percent of poverty-level owners occupying forty-eight percent of substandard owner-occupied units in SMSA's.³² If only nonwhite poverty-level occupants are considered, the percentage of renters occupying substandard units climbs from thirty percent to forty-four percent. Nonwhite poverty owner-occupants fare no better — the percentage climbs a phenomenal twenty points, from fourteen to thirty-four percent.³³

Presumably, nonpoverty households could afford to live in standard dwellings. However, ten percent of nonpoverty household renters live in forty-two percent of the substandard units in SMSA's. Three percent of nonpoverty owner-occupants live in fifty-one percent of the substandard units.³⁴ If this investigation is further limited to nonwhite renters above the poverty level, the percentage jumps to twenty-four percent, and for owner-occupants it increases to ten per-

26 *Id.* at 7.

27 *Id.*

28 *Id.* at 7, 9.

29 *Id.*

30 *Id.*

31 For analytical purposes, it is assumed that a family with an annual income of less than \$3,000 is in the poverty category. F. KRISTOF, *URBAN HOUSING NEEDS THROUGH THE 1980'S: AN ANALYSIS AND PROJECTION* 30 (1968).

32 *Id.* at 33.

33 *Id.* at 36.

34 *Id.* at 33.

cent.³⁵ This certainly confirms the need for moderate income housing within SMSA's, and raises a basic question as to why 1,459,000 nonpoverty households are now living in substandard units.³⁶

II. The Denial of Decent Housing

A. Introduction

A number of factors combine to deny adequate housing to moderate income groups. One could beg the question by declaring that "the basic source of the problem is not poor housing, or a faulty production system. It is poverty, itself."³⁷ That the situation is not so conveniently simple may be seen in the following hypothetical, which inflicts the auto industry with a variety of the ills that currently plague the housing industry.

Ignoring constitutional overtones, suppose that each city or town in the nation required that every automobile on its streets conform to certain minimum and maximum dimensions, have different structural components, and be equipped with varying accessories. Suppose further that the unions responsible for production refused to work with materials that might tend to endanger their membership's job security — a factor that has no doubt contributed to the inability of one manufacturer to substitute steel wheels for wooden spokes on one of its \$15,000 economy models.

If such a manufacturer were asked why certain economic groups could not afford his stipulated dimension, varying component, wooden spoked, \$15,000 economy car, he would be justified in responding that under such restrictions, "American private enterprise, working at its peak efficiency, cannot and will not succeed in building shelter [automobiles] for those left behind by our economic system"³⁸ However justified the manufacturer would be, reasonable men would agree that the entire situation is absurd. Yet every day the housing industry in America labors under a myriad of similar restrictions, including discriminatory zoning and subdivision controls and antiquated building codes.

B. Zoning

1. *Zoning as an Exercise of the Police Power*

Zoning, the public regulation of the use of private property, is based on the power of the state to regulate the use of land in the interests of public health, safety, morals, and welfare. The purpose of zoning is to confine certain uses of land to specific districts without imposing undue hardship on the property owner. Zoning and its handmaiden, planning, are essentially just devices designed to insure that land is used and developed in a harmonious manner. In *Euclid v. Ambler Realty Co.*, the Supreme Court, in rendering a decision that divorced

35 *Id.* at 36.

36 *Id.* at 33.

37 KAISER REPORT 47.

38 *Id.*

zoning from the nuisance analogy that had formerly restricted it, pointed out: "A nuisance may be merely a right thing in the wrong place — like a pig in the parlor instead of the barnyard."³⁹ Unfortunately, zoning has now become a device to separate more expensive parlors from less expensive parlors. In some instances, it appears that the goal is to keep other parlors from being built at all.⁴⁰

2. Racial Segregation Through Economic Zoning

Racial zoning — not allowing certain races to live within designated areas of a municipality — was declared unconstitutional in *Buchanan v. Warley*.⁴¹ An attempt to zone for racial peace recently met a similar fate in a state court.⁴² It is thus clearly settled that zoning may not be used directly to separate racial or ethnic groups. Any attempt to separate races through zoning restrictions must be done by subterfuge. The most effective subterfuge for segregating disadvantaged minority groups is the device of economically discriminatory zoning restrictions.⁴³

While economic segregation — restricting an area to persons above a specific income level — is generally assumed to be unconstitutional,⁴⁴ municipalities have been known to "rig" their master plans and zoning ordinances in order to insure that few moderate income families are able to emigrate from the central city into the suburban ring.⁴⁵ The devices commonly employed for this purpose are large lot zoning, minimum floor area requirements, prohibitions of multi-family units, and subdivision standards designed primarily to raise the cost of building.⁴⁶ Most of these devices have nothing to do with the separation of uses. That is, the zoning ordinance is not primarily concerned with keeping the pig out of the parlor, but rather with keeping smaller parlors out of the area.

Minimum floor area requirements have been treated variously by the courts. Generally, the case law has followed two distinct lines of reasoning. On the one hand, some courts have held area requirements void on the ground that they constitute an unreasonable use of the police power.⁴⁷ For example, in the *Appeal of Medinger*,⁴⁸ the Pennsylvania Supreme Court held that "neither aesthetic reasons nor the conservation of property values or the stabilization of economic values in a township are, singly or combined, sufficient to promote the health or the morals or the safety or the general welfare of the township"⁴⁹

39 *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926).

40 DOUGLAS REPORT 211.

41 245 U.S. 60 (1917).

42 *De Sena v. Gulde*, 24 App. Div. 2d 165, 265 N.Y.S.2d 239 (1965).

43 THE AMERICAN SOCIETY OF PLANNING OFFICIALS, PROBLEMS OF ZONING AND LAND-USE REGULATION 37 (1968) [hereinafter cited REPORT NO. 2].

44 Williams, *Planning Law and Democratic Living*, 20 LAW & CONTEMP. PROB. 317, 343 (1955).

45 DOUGLAS REPORT 19.

46 See generally REPORT NO. 2.

47 E.g., *Hitchman v. Oakland Township*, 329 Mich. 331, 45 N.W.2d 306 (1951) (800 square feet at the first-floor level, 10,000 cubic feet overall); *Senefsky v. Lawler*, 307 Mich. 728, 12 N.W.2d 387 (1943) (1,300 square feet); *Baker v. Somerville*, 138 Neb. 466, 293 N.W. 326 (1940) (2,000 square feet).

48 377 Pa. 217, 104 A.2d 118 (1954).

49 *Id.* at 226, 104 A.2d at 122.

Another court, on the other hand, has upheld the reasonableness of minimum area requirements on the basis of density restriction and the desire to avoid suburban blight.⁵⁰

Minimum lot size ordinances are a second device commonly used for economic zoning. They have had a career much like their counterpart, minimum floor area requirements. The local legislature may have a number of reasons for prescribing minimum lot requirements — the need for developments which pay their own way, a desire to have plenty of green space, preservation of the character of the neighborhood, or the inability of the soil to handle waste from closely situated private sewage treatment facilities.⁵¹ In a number of cases, the courts have recognized the legitimacy of a desire to allow for open, spacious development.⁵² In fact, few regulations on lot size have been held invalid, so long as they bear some reasonable relationship to the welfare of the town.⁵³ Attempts to prevent urban expansion through large lot zoning, however, have not met with judicial approval. The Pennsylvania court said in *National Land and Investment Co. v. Board of Adjustment*,⁵⁴ "The question posed is whether the township can stand in the way of the natural forces which send our growing population into hitherto undeveloped areas in search of a comfortable place to live. We have concluded not."⁵⁵ A zoning ordinance used to block the entrance of newcomers into an area in order to prevent future burdens, economic or otherwise, cannot be held valid.⁵⁶

3. Zoning as a Threat to Adjacent Communities

Typically, zoning caters to narrow local interests.⁵⁷ It is directly responsive only to the demands of its immediate municipality, while many of the problems faced by large cities flow from the operation of this local self-interest. Although there are some decisions to the effect that a municipality cannot disregard the impact of its zoning practices on adjacent municipalities,⁵⁸ the courts generally react only to blatant abuses.⁵⁹ Thus, while there has been a growing judicial awareness of the regional impact of zoning, this is simply not enough. The courts are not planning authorities; they are not equipped to judge the overall needs of an area. In *Valley View v. Proffett*,⁶⁰ for instance, a federal court of appeals

50 *Lionshead Lake, Inc. v. Wayne*, 10 N.J. 165, 89 A.2d 693 (1952), *appeal dismissed for want of a substantial federal question*, 344 U.S. 919 (1953).

51 *J. BEUSCHER, LAND USE CONTROLS* 327a-b (1964).

52 *See Simon v. Needham*, 311 Mass. 560, 42 N.E.2d 516 (1942) (one-acre minimum sustained); *Flora Realty Inv. Co. v. Ladue*, 362 Mo. 1025, 246 S.W.2d 771, *appeal dismissed for want of a substantial federal question*, 344 U.S. 802 (1952) (three-acre minimum sustained); *Fischer v. Bedminster*, 21 N.J. Super. 81, 90 A.2d 757 (Super. Ct.), *aff'd*, 11 N.J. 194, 93 A.2d 378 (1952) (five-acre minimum sustained).

53 *See Annot.*, 95 A.L.R.2d 716 (1964).

54 419 Pa. 504, 215 A.2d 597 (1965).

55 *Id.* at 532, 215 A.2d at 612.

56 *See Simon v. Needham*, 311 Mass. 560, 42 N.E.2d 516 (1942).

57 DOUGLAS REPORT 236.

58 *See Note, Regional Impact of Zoning: A Suggested Approach*, 114 U. PA. L. REV. 1251 n.1 (1966).

59 *Cresskill v. Dumont*, 15 N.J. 238, 104 A.2d 441 (1954). In this case a municipality zoned one side of a street for industrial use. The other side of the street, which was in a bordering municipality, was zoned residential.

60 221 F.2d 412 (6th Cir. 1955).

upheld "residence only" zoning of an entire village on the basis that there was adequate provision for industry in other municipalities of the region.⁶¹ Such decisions might well lead to a region-wide rush to strictly residential zoning, with the municipalities in last place being forced to take on other uses. The ultimate effect of such decisions may well be to hinder the orderly development of an area and to precipitate a mad dash for exclusive zoning with no regard for the public welfare of the region.

4. *The Effects of Economic Zoning on the Central Cities*

Economic zoning has disastrous effects on metropolitan areas. The largest SMSA's are surrounded by a myriad of small local governments whose main interest is to protect their social integrity. The small municipality within an SMSA is usually ill-equipped to plan the use of the land within its boundaries with due regard for the region as a whole. In 1967, the nation's 228 SMSA's were served by 20,745 local governments.⁶² The great majority of these local governments were extremely small. Two-thirds had a population of less than 5,000, and one-third had a population of less than 1,000.⁶³ The physical domain of these governmental units was also quite small. One-half had less than one square mile of land; four-fifths had less than four square miles. Fewer than 200 municipalities had an area exceeding twenty-five square miles.⁶⁴ Some of the larger metropolitan areas have an intolerable number of local governments within the SMSA. The Chicago area, for example, is served by 1,113 local governments, and only twenty SMSA's are served by fewer than 10 local governments.⁶⁵ On the average there are 91 local governments in each SMSA.⁶⁶ The sheer number of municipalities within SMSA's precludes a cooperative effort to plan for growth.

Three-fifths of all the local governments within SMSA's exercise land use controls.⁶⁷ If the discussion is limited to municipalities of at least 5,000 persons, over ninety percent exercise land use controls.⁶⁸ To make a bad situation worse, the vast majority of these small local governments do not have full-time employees to administer zoning ordinances. Ninety-eight percent of municipalities under 1,000 population do not employ any full-time zoning help. Of the municipalities of under 5,000 population, only twenty percent employ some full-time help.⁶⁹ Generally, the individuals who are employed (full- or part-time) are not well paid. In municipalities of under 5,000, eighty-eight percent are paid less than \$6,000 per year.⁷⁰ It is not realistic to expect such small municipal governments

61 *Id.* at 418.

62 DOUGLAS REPORT 7.

63 *Id.*

64 *Id.*

65 *Id.*

66 *Id.*

67 A. MANVEL, LOCAL LAND AND BUILDING REGULATION 4 (1968) [hereinafter cited REPORT NO. 6]. A survey of 17,993 local governments within SMSA's revealed that 59.6 percent have a planning board, 53.3 percent have a zoning ordinance, and 44.9 percent exercise subdivision controls. *Id.*

68 *Id.* at 28.

69 *Id.* at 26.

70 *Id.*

to hire professional help. The financial burden would be too great for a municipality of 1,000 to pay an annual salary sufficient to attract such employees. The net result of such a situation is chaos. While the SMSA needs area-wide planning to effectuate orderly and systematic growth, it has instead a great number of local governments independently planning for the growth of small segments of the metropolitan area. Each of these local governments is, it seems, unable and unwilling to look beyond its boundaries in order to implement orderly growth for the good of the metropolitan area as a whole.

5. *The Need for Regional Zoning*

The United States is now on the verge of the greatest urbanization trend in its history. "Over the next 30 years about 18 million acres of land will come into urban use" ⁷¹ Eighteen million acres is approximately equal to all the land currently in urban areas ⁷² — it is equal to the areas of New Hampshire, Vermont, Massachusetts, and Rhode Island. ⁷³ Lest these new areas be as haphazardly and discriminatorily developed as the old, regional planning must displace local self-interest. If current trends of economic segregation continue, the dark warnings of Charles Abrams may come to pass:

The pattern that we are forming in the United States is that of thousands of "Mason-Dixon Lines." And we are going to reach a crisis in this country that is probably going to be greater than the crisis we faced in the Civil War, unless we reduce the tensions and racial frictions gnawing at the Nation's roots. ⁷⁴

Predictably, such "politically unpalatable" ⁷⁵ regional planning has met with only limited success. ⁷⁶ This has led to a number of recommendations designed to preempt local zoning controls. The President's Committee on Urban Housing recommended that local zoning ordinances be preempted in the case of federally subsidized, low- and moderate-income housing. ⁷⁷ Such a position, if adopted by the federal government, would raise serious questions of federalism and might create more difficulties than it would solve. Local governments feel that they have a vested right to control their own destinies. Moreover, forcing a small municipality of less than 1,000 to absorb the tax burden of a large housing project is, in the final analysis, no more socially desirable than forcing the central city to absorb the cost of poverty. Such a position would be likely to promote racism in its most vehement form, causing battle lines to be drawn between whites desiring to preserve property values and blacks desiring to move into the suburbs. Placing housing projects in the suburbs might even have the

⁷¹ DOUGLAS REPORT 20.

⁷² *Id.*

⁷³ REPORT NO. 2, at 6.

⁷⁴ 4 *Hearings Before the National Commission on Urban Problems* 129 (1968).

⁷⁵ BOWE, *Regional Planning Versus Decentralized Land-Use Controls—Zoning for the Megalopolis*, 18 DEPAUL L. REV. 144, 146 (1968).

⁷⁶ For an excellent statement on the problems of forming and administering metropolitan government, see 3 *Hearings Before the National Commission on Urban Problems* 266-328 (1968) [hereinafter cited 3 *Hearings*].

⁷⁷ KAISER REPORT 4.

disastrous effect of creating suburban ghettos. Property immediately surrounding the project would then decline in value, thereby starting the slow trend to blight. While economic zoning must be limited, there is no reason to destroy zoning or to seriously threaten its existence through federal preemption.

C. Building Codes

1. *Local Building Codes and the Cost of Housing*

Another basic problem caused by the Balkanization of the suburbs is inconsistency in local building codes. Nearly sixty percent of the municipalities within SMSA's have building codes.⁷⁸ Of municipalities over 5,000, eighty-two percent have building codes.⁷⁹ Of these municipalities over 5,000 that have a building code, forty-nine percent are based on modified model codes, and seventeen percent are based on state-recommended codes.⁸⁰ However, this outward indication of uniformity is illusory. Only twenty-seven percent of the model code governments of 5,000 or more persons have adopted ninety percent or more of the changes recommended by the model code organizations within the last three years.⁸¹ In all, only about fifteen percent of these large municipalities had in effect a reasonably up-to-date model code. The remaining eighty-five percent either had no code, did not use a model code, or had failed to keep the code current.⁸²

This lack of regional uniformity presents the builder with a myriad of local construction regulations. A brief survey of fourteen building practices, thirteen of which have been embodied in all model codes and one of which has been accepted by some of the code organizations, bears testimony to the variegation among localities. As Table 1 clearly illustrates, a number of cost-reducing materials and techniques are prohibited by a substantial number of municipal building codes.⁸³

2. *The Effect of Building Codes on Manufactured Housing*

The greatest immediate impact of building code variations falls on builders of prefabricated homes. In an assembly line procedure, standardization is essential.⁸⁴ Any major variation in the structural requirements of a unit plays havoc with the assembly line. In a survey of prefabricated-home builders conducted by the National Commission on Urban Problems, a list of structural requirements which exceeded model code and FHA requirements was compiled.⁸⁵ The survey cited code requirements of 32 counties and 109 cities and towns in 20 states. The extra cost per unit for *each* item ranged from \$25 to \$640.⁸⁶

78 REPORT NO. 6, at 24.

79 *Id.* at 33.

80 *Id.*

81 *Id.* at 34.

82 DOUGLAS REPORT 257.

83 REPORT NO. 6, at 3.

84 3 *Hearings* 103 (statement of John Odegaard).

85 DOUGLAS REPORT 262.

86 *Id.*

TABLE 1
MATERIALS AND TECHNIQUES PROHIBITED BY BUILDING CODES

<i>Construction Feature Prohibited</i>	<i>Percentage of Governments Prohibiting</i>	
	<i>All Governments</i>	<i>"Model Code" Governments</i>
Plastic pipe in drainage system.....	62.6	61.7
2" by 4" studs 24" on center in non-load-bearing interior partitions.....	47.3	43.5
Preassembled electrical wiring harness at electrical service entrance.....	45.7	44.8
Preassembled combination drain, waste, and vent plumbing system for bathroom installation.....	42.2	39.6
2" by 3" studs in non-load-bearing interior partitions.....	35.8	34.7
Party walls without continuous air space.....	26.8	27.4
Single top and bottom plates in non-load-bearing interior partitions.....	24.5	23.5
Wood frame exterior for multifamily structures 3 stories or less.....	24.1	22.0
1/2" sheathing in lieu of corner bracing in wood frame construction.....	20.4	21.1
Prefabricated metal chimneys.....	19.1	16.9
Nonmetallic sheathed electric cable.....	13.0	13.0
Wood roof trusses 24" on center.....	10.0	10.3
Copper pipe in drainage systems.....	8.6	9.4
Bathroom ducts in lieu of operable windows.....	6.0	5.3

If a manufacturer wanted to produce a standardized product which would comply with all the requirements, \$1,800 would be added to the price of a \$12,000 unit.⁸⁷ This places a formidable roadblock in the production of low-cost, prefabricated housing.

In addition to imposing an undue burden on the totally prefabricated unit, excessive building code standards are a serious obstacle to the reduction of costs in standard construction. A large proportion of building codes prohibit such labor-saving devices as preassembled electrical wiring harnesses, plumbing trees, and prefabricated metal chimneys.⁸⁸ Certain materials are also prohibited by some building codes.⁸⁹ In addition, officials who enforce building codes are often chosen for their sympathy for a craft union or industry opposed to any change that might reduce the amount of labor needed or substitute one material for another.⁹⁰

In sum, building codes, which are supposedly written for the protection of the public, all too often reflect only the interests of certain private groups that

⁸⁷ *Id.*

⁸⁸ *Id.* at 258; REPORT NO. 6, at 36.

⁸⁹ REPORT NO. 6, at 36.

⁹⁰ TENANTS' RIGHTS: LEGAL TOOLS FOR BETTER HOUSING, REPORT ON A NATIONAL CONFERENCE ON LEGAL RIGHTS OF TENANTS 26 (1967).

are more concerned with private gain than the public good.⁹¹ Such codes are frequently little more than a collection of archaic practices frozen by custom.

III. Conclusion

Economic segregation, insofar as it denies the poor access to jobs in the suburbs, must be eliminated. This means that housing, particularly moderate-income housing, must be made available to ghetto dwellers. In order to do this, zoning ordinances and building codes whose excessive requirements increase the cost of housing should be amended. To effectuate these changes, zoning and building codes should become a state, rather than local, function.⁹² The resulting standardization of building codes would permit prefabricated-home builders to produce a less expensive product, and would also allow extensive use of prefabricated components in standard construction.⁹³

In the final analysis, the cure for sick cities lies in the political integration of the economic area. Before the widespread flight to the suburbs, the city was a political and economic unit. Most of the population that benefited from the urban economy lived within the political dominion of the city. Thus, the fruits of the association were readily taxable. In addition, those who benefited from the economy of the urban center were directly represented in the political body of the center. Today the situation is very different. An increasing number of wage earners no longer live within the political boundary of their place of employment. As a consequence, suburban dwellers have come to see their interests as distinct from, and often opposed to, the interests of those who live in the central city. Concerned with protecting their social, financial, and political integrity, they frequently view any attempt to politically integrate the area as an attempt to force their suburban recluse into the mold of a Harlem slum.⁹⁴ Such thinking simply must change. The suburban dweller should come to realize that the central city as a separately viable political unit is an anachronism. The new urban order, as did the old order, requires that the political entity encompass the economic entity.

D. Joseph Potvin

91 BEYER 219.

92 Another approach would be to make zoning a function of county government, for two-thirds of all SMSA's are located within a single county. AMERICAN LAW INSTITUTE, A MODEL LAND DEVELOPMENT CODE 143 (tentative draft no. 1, 1968). In these areas county-wide planning would, in fact, be regional planning.

93 Of course this would not solve problems created by a union refusal to handle prefabricated components. *National Woodwork Mfrs. Ass'n v. NLRB*, 386 U.S. 612 (1967) must first be struck down. Unemployment in the construction industry is directly attributable to seasonal employment. One solution to the problem would be the widespread use of factory-produced prefabricated housing. If adopted, this approach would result in the employment of a significant number of those presently engaged in contract construction, thereby fleshing out the annual work year of many construction workers. The *Kaiser Report* noted that many of the construction industry's employees labor only between 1,100 and 1,400 hours per year despite the fact that a full work year in the industry would consist of about 1,800 hours. KAISER REPORT 31. Factory prefabrication, if adopted on a large scale, could eradicate this startling discrepancy.

94 Bowe, *supra* note 75, at 157-58.