

Review of HUD's 1991 Report: Not In My Back Yard: Removing Barriers to Affordable Housing

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And the
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By Ronald D. Utt, Ph.D.
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Published in 1991, HUD's *Not in My Backyard: Removing Barriers to Affordable Housing* (henceforth Report) acknowledges in the second paragraph that "The NIMBY syndrome is often widespread, deeply ingrained, easily translatable into political actions, and intentionally exclusionary and growth inhibiting." A prescient reader seeing that line eleven years ago might have thought to himself: "You ain't seen nothing yet." In the years since the Report was published, the many regulatory barriers the Report identified as typical of what some communities had erected to deter growth have since then been adopted by more and more communities throughout the country. Indeed, the rate at which such barriers have been adopted appears to have accelerated in the late 1990s and into the beginning of the early part of the new century.

I emphasize the word "appears", because no effort was made to systematically inventory all of the extant barriers when information in the Report was compiled prior to its publication in 1991, and no such effort was undertaken in the years that followed. Instead, what we have is the strong perception that the pile of compelling anecdotes available to the writers of the Report in 1991 have since been dwarfed by a new, vastly larger pile of anecdotes. With the authority to promulgate such regulations lodged with local governments, and with there being approximately 39,000 local governments in existence in the United States, the compilation of such data would be costly and time consuming. And given the rate at which these barriers are being erected, changed and enlarged, such a survey would be quickly out of date.

Nonetheless, it does seem certain, based on overwhelming anecdotal evidence from around the country, that such barriers are being erected at an accelerating pace, that multiple barriers exist in many communities, and that over time many of the existing barriers are made more severe when the initial implementation fails to slow growth to the degree hoped, or as community preferences against growth change. Typical of such a barrier implementation process is what has recently occurred in Stafford County, Virginia where the population grew by 47.5 percent between 1990 and 2000. In an effort to slow such growth and upgrade its demographics to ensure that new arrivals possessed the tax paying capacity likely to yield net new revenues of a sufficient magnitude to cover net new costs, Stafford began imposing a series of barriers on new home construction. Beginning in 1999, the county imposed "mandatory proffers" which operate much like impact fees, which in Virginia are illegal under state law. Imposed on builders seeking to rezone land to construct homes or apartments, these "proffers" were set at \$20,399 for a single-family detached house, \$19,301 for a town house, \$9,807 for an apartment, and

\$10,523 for a mobile home.¹ As the Report notes on pages 1-2 to 1-5 and on 2-10 , 2-11, such fees are highly regressive and disproportionately burden, and deter, lower income households, which is precisely their purpose.

When these proffers failed to deter growth in Stafford County to the rate desired, additional burdens were added. These included mandatory amenities such as sodded, rather than seeded, lawns and concrete sidewalks. Other parts of the community were downzoned by eliminating adjustments for unbuildable parts of the site (such as wetlands), and slowing the permit process by reducing the number of permits granted per day from an average of six to two (subsequently rescinded). Later, a new downzoning ordinance was approved, cutting the number of homes built on an acre from three to one and a half in some parts of the county, while in others it was reduced to one house per three acres. At present, a proposal is under consideration to reduce the three acre minimum at some sites in areas now zoned for agriculture to one house per ten acres, but to cluster such homes on the site and limit each house to a three acre lot while the rest of the land would have to remain undeveloped. In other words, a 100 acre site could contain only nine houses clustered on contiguous three acre lots totaling 27 acres, while the tenth house would have a 73 acre lot all to itself.

In other efforts to upgrade its demographics, Stafford County has proposed that some parcels of land zoned residential be rezoned to commercial, as was proposed in 2001 when 322 acres designated for mobile homes and slated for another 421 small, modest-priced, factory-built homes was rezoned commercial. Although existing residents would not be forced to leave, they would be forbidden to make any improvements in their homes that required a building permit, and repairs would be limited to no more than 10 percent of the unit's value. The Report addresses exactly this type of prejudice against low-cost, factory-built housing on page 3-9.

In one way or the other, regulatory impediments such as these recently enacted in the Washington DC ex-urb of Stafford County Virginia are being implemented in many other counties and townships throughout the country, particularly where population growth has been above average.

As is apparent, all of these measures deter growth by raising the price of a new house, or the rent on a new apartment. And because most entry level buyers are dependent upon a mortgage to finance a significant portion of the price of the house, and because lenders limit the size of the mortgage in direct proportion to one's income, an increase in the price of a house raises the minimum income requirement, and renders unqualified those buyers at the margin. Similar relationships exist between rent and income. For example, a \$20,000 impact fee on a \$100,000 house financed with an 80 percent mortgage at 7.5 percent, would raise the minimum qualifying income for this mortgage and house from \$30,215 to \$35,009, a process that could disqualify from

¹ This and all subsequent references to growth control initiatives in the Virginia suburbs are drawn from extensive clips from the Washington Post and the Free Lance Star (Fredericksburg, VA) over the 2000-2002 period. Copies are in author's files and available on request.

ownership many of the 6 million households with an income that falls within this range.² Obviously, in places such as Stafford County which have imposed multiple barriers to entry, the entry level income would rise above what just the proffer would require as these other costs were added to the home price. In considering the magnitude and impact of some of these barriers, bear in mind that in 2001 the median household income in the U.S. was \$42,228 per annum. The President's Commission clearly recognized this exclusionary process by income (and thus by socioeconomic class) when they noted on page 1-1 of the Report that

“The results are excessive growth controls, exclusionary zoning ordinances, unnecessarily drawn-out permit and approval processes, and arbitrary restrictions against special types of housing units combine to make housing less affordable for many households.”

In effect, these restrictions serve as an “admission fee” to a community, and to date remain as one of the few exclusionary mechanisms legally permitted, what with the Supreme Court's 1940 ruling against California's attempt to keep out the “okies” during the Depression.

Efforts to exclude individuals from a neighborhood or a community probably date back to the dawn of civilization and likely haven't changed much over the time in purpose and intent. But in contrast to past practices, today's efforts have been subtle and indirect now that a variety of new federal laws and court decisions have made illegal exclusions from communities based upon race and creed. The Report acknowledges the virulence and persistence of this practice, and also notes the extent to which today's efforts to exclude are usually masked as having as their goal a higher social or moral purpose than protection from the hoi polloi. The Report, for example, observes:

The heart of NIMBY lies in fear of change in either the physical environment of population composition of a community. Concerns about upholding property values, preserving, community characteristics, maintaining service levels, and reducing fiscal impacts are often involved. Sometimes these expressed concerns are also used as socially acceptable excuses for ethnic and racial prejudices. Whether genuine or used as excuses for other motives, such concerns often generate strict development curbs.

Indirect evidence that this in fact may be an important motive in land use restrictions comes from a recent study by a California research organization which examined how California communities voted on growth management ballot measures between 1986 and 2000. Among the study's conclusions was that larger cities, cities with larger white populations, and cities with higher median incomes were more likely to engage in “ballot-box zoning”.³

² Wendell Cox and Ronald Utt, “Smart Growth, Housing Costs, and Homeownership”, Heritage Backgrounder No. 1426, April 6, 2001, pp. 12-13.

³ Posted at <http://www.solimar.org>

Although such efforts at exclusion have always been practiced, today's scope and frequency, and growing public acceptance, is without recent precedent, and not easy to explain. Part of it may stem from a long period of sustained prosperity that has allowed more and more Americans to become homeowners – today's homeownership rate is 68.8 percent, up from 43.7 percent in 1940 – and to manifest that tenancy choice with a single-family detached house on enough land to provide privacy and greenery. As America's population boomed along with personal incomes, the suburbs became increasingly crowded, less rustic and more congested, and those already living there, even if only for no more than a year or two, resented the newcomers whose encroachment led to a perceived diminution of the quality of life that attracted prior arrivals.

In the 1990s there emerged an organized social and political movement that purported to address these concerns by offering better suburban living through alternative project design and land use, and participants in this movement have generally come to be known as advocates of “smart growth” or its variant “new urbanism”. Although there sometimes seem to be as many definitions of smart growth as there are individuals claiming to support it, its core principles generally seem to be supportive of residential developments of a greater density than is common today in order to preserve land and encourage social interaction, a closer mix of commercial and residential use to encourage walking, and overall design and site placement to encourage transit and discourage driving. Some variants of this movement seek to mimic an idealized version of small town America in the early 1900s, including the rectilinear street grid common to older cities.

In contrast to the apparent diversity of ideals and building arrangements marching under the banner of smart growth, the new urbanists attempted to avoid this branding problem by establishing, in 2000, a formal charter consisting of 27 principles. However, many of these concern issues of social equity and other community-related intangibles with all the verbal exotica of a wine review and, thus, do not offer clear guidance on land use and site design. Principles such as No. 19: “A primary task of all urban architecture and landscape design is the physical definition of streets and public spaces as places of shared use” or No. 20: “Individual architecture projects should be seamlessly linked to their surroundings”, or No. 26: “All buildings should provide their inhabitants with a clear sense of location, weather and time” would pose real challenges to make operational, or guide county planning commissions.⁴

Despite its lack of specificity, the smart growth movement took off in popularity, probably because it held a vague promise of offering a pretty alternative to those things in our communities that we didn't like at a time when the list of things we didn't like were growing. The print media extols the movement's virtues on a regular basis, and most elected officials and real estate related businesses have found it in their interest to favor it. Notwithstanding this popularity, few households had much interest in living a life in accordance with the core principles of the smart growth movement. Most wanted space,

⁴ Emily Talen, “The Social Goals of New Urbanism”, *Housing Policy Debate*, Volume 13, Issue 1, 2002, pp. 172-177.

privacy and nature at their door step, not higher densities. Few wanted to live near or by a commercial establishment; apparently the convenience of being able to walk to the dry cleaners did not outweigh the traffic – foot or car – that the dry cleaner would bring to the neighborhood. And no one was prepared to give up the convenience of the car for transit. What they did want, however, was an end of congestion and the preservation of what greenery, charm and rusticity was there when they first arrived.

The consequence of this lack of specificity in process and goals, combined with the warm and fuzzy feelings it invoked (who can favor dumb growth?) allowed the “spirit” of the smart growth movement to be embraced by a wide variety of entities for a wide variety of purposes, much to the dismay of the true believers who viewed their intentions to be “inauthentic.” This led one smart growth advocate with the National Governors Association to complain that:

“The smart growth community has not focused enough attention on inauthentic actions of those who seek benefits of smart growth but do not deliver the real thing.... When the fundamentals of smart growth get muddled or distorted, then the movement is sliding down the slippery slope to sprawl.”⁵

He may have had in mind developers like Ray Smith who said this in defense of his request to build 2,350 houses and 2.4 million sq. ft. of commercial space on 790 acres of land that is a part of the Chancellorsville battlefield about 60 miles away from downtown DC:

Somewhere along the way, the charm and pleasure of our towns and villages mutated into the ugliness of many cities. And when people left cities for the supposed charms of the suburbs, we lost our way again in the debilitating, wasteful sprawl of endless suburbs and highways.⁶

Smith’s proposal was approved by the county in early November 2002.

Although the NGA’s complaint was primarily about builders, developers, realtors, retailers, property owners and other commercial interests, such as Ray Smith above, who claimed to favor the concept, the more destructive hijacking of the smart growth mantle was by the NIMBY crowd who early on used the movement’s high blown rhetoric of land preservation, community spirit and auto independence to erect a variety of barriers to slow or stop growth in their community. Moreover, the irony of this hijacking is that the barriers erected are not only inconsistent with the movement’s core values, but fully contradictory to them.

Whereas smart growth encourages land preservation through greater densification, the common practice of using downzoning and prohibitions on townhouses and apartments as barriers to entry and growth more often than not contribute to an

⁵ Joel Hirschhorn, “Why the Smart Growth Movement Will Fail”, June 17, 2002 at <http://www.planetizen.com/oped/item.php?id=58>

⁶ Ray Smith, “Farm will be developed one way or other”, *Free Lance Star*, August 18, 2002, p. D1

acceleration in the loss of undeveloped land by requiring builders and homeowners to construct houses on lots that are larger than what an unrestrained competitive market would lead to. Disappointingly, in most such instances the advocates of smart growth, and the environmental organizations that are a key constituency of the movement, largely remained silent as their movement was misused for exclusionary NIMBY objectives.

As the debate on growth management and smart growth progressed in communities around the country, the silence of the smart growth advocates to the abusive and contrary practices invoked in their name allowed the movement to morph into a no growth and slow growth effort. And in the eyes of the popular press, elected officials and existing residents of communities, the implementation of various and costly barriers to entry were wholly consistent with a strategy designed to limit growth. In effect, several years of an aggressive and persistent smart growth advocacy had the effect of institutionalizing the objectives of slow growth and/or no growth as desirable public policy goals, in and of themselves.

As a consequence of this change in perception and the aura of respectability that the smart growth movement inadvertently bestowed upon NIMBY practices, the citizens of more and more communities found it easier to restrict growth and overcome the once formidable resistance of the local business community, builders and landowners. Downzoning, impact fees, mandated amenities, greater restrictions on apartments and townhouses, delays in permitting, building moratoriums, concurrence with infrastructure represent the type of barriers and regulations that a rapidly growing number of communities began to implement to slow, or stop growth.

Typical of the rapid escalation in barriers to entry are the trends under way in the fast growing suburbs of Northern Virginia where growth control is a top political issue. In addition to the trends in Stafford County regulations discussed earlier, listed below is a very brief summary of the barriers recently imposed in the remaining ex-urbs. The number presented in the parentheses is that county's rate of population growth between 1990 and 2000.

Loudon County (94.5 %) The largely undeveloped western half of the county (300 sq. miles) was downzoned to minimum lot sizes of from 10, 25 or 50 acres per house in 2001, depending upon where land is located and how the homes are clustered. An estimated 83,158 potential homes were eliminated from the previous land use plan. According to the *Washington Post*, the two year effort to achieve this downzoning was funded by wealthy individuals drawn from Loudon's "hunt country".

Prince William County (29.7 %) County added proffers in the late 1990s and has raised them every year since. Current proffer costs are \$16,656 per detached house, \$14,550 for a town house and \$8,151 for an apartment unit. County has also engaged in extensive downzoning beginning in the late 1990s. In the less developed south and western regions, approximately 80,000 acres were rezoned to one house per ten acres. In parts of the more developed eastern section, some land zoned for four houses per acre has been downzoned to one per acre. A suit seeking compensation by some land owners for

downzoning-related losses was rejected by the court, which noted that while “the downzoning was unfair, it was not illegal.”

Spotsylvania County. (53.7%) County in 1999 redid the comprehensive plan to reduce residential densities by 43 percent, and in 2002 amended the plan to limit future growth of housing to 2 percent per annum; new zoning plan in 2002 reduces “by right” development by 32,607 units; proffer for single family homes raised in 2002 to \$19,113 (from \$8,888). The county also rezoned from residential to commercial 141 acres once slated for 880 townhouses. County supervisor says “The leaders of Spotsylvania County can be very proud of their efforts to manage growth, and not stop it, with the tools that are available to us.”

Caroline County. (15.1 %) Still largely rural, one-third African American, and closer to Richmond than Washington, some growth is leap frogging to Caroline, and the county has responded by erecting barriers. In mid- 2002, the county rejected a developer’s proposal to rezone a site to allow for small lot, cluster homes. Instead, the county rezoned the land for one house per 25 acres. A local newspaper serving central VA commended the county for replacing “one good sprawl-fighting idea for another” and noted that the “25 acre lot minimum means that there will be too few residents to justify the proliferating retail strips that can deface an area’s natural beauty in a hurry.”

And all of these are in addition to the existing land use burdens in Virginia, as described on page 2-5 of the Report.

As is evident from these trends and anecdotes relating to the reasons why some typical fast growing counties are erecting barriers, growth control is becoming an end in itself, rather than a means to other ends such as land and farm preservation, environmental protection, social equity, auto independence, and mixed-use development. And as the goal of growth control becomes institutionalized in public discourse, a community’s attainment of traditional NIMBY goals many no longer require the disguise that environmentalism offers.

Perhaps indicative of the more forthright nature of the growth control movement was the recent publication of a disturbing, but refreshingly honest, advocacy of NIMBY principles in a Midwest planning magazine called *Planning Scanning*. The article was titled *Is No Growth Also Smart Growth?* by a Ph.D. planner in California and includes a forthright defense of the no growth strategy, as revealed by the following quotes pulled from the brief article:⁷

- Accommodating growth never ends, therefore the rational choice is to draw the line now while you have something to save, no matter the consequences.
- ... in a state of constant population growth [one] alternative is to “just say no”

⁷ Chris Williamson, “Is No Growth also Smart Growth?”, *Scanning Planning*, Spring 2002, pp. 20-21.

- If a community of region refuses to grow, the result may be higher prices, economic displacement and hardship, and dangerous crowded housing in exchange for keeping a desirable quality of life for the “already landed” middle and upper income groups. If the local voters are willing to pay this price, why should planners try to prevent it?

And finally, reflecting further abuse of the smart growth/new urbanism definitional problem alluded to earlier, and blaming Washington for what ails us, the paper concludes with:

- As long as Congress and the White House have laissez-faire growth policies, No Growth is an arguable smart move.

Social Implications of Growth Barriers

As these views become more common and as costly barriers and regulations are erected to fulfill them, opportunities for homeownership will become more limited, and the considerable progress achieved in allowing a greater proportion of households to become homeowners will be halted or reversed as home prices begin to outpace incomes. The burden of more limited opportunity will not be shared equally by all, but rather will fall disproportionately on those with lower incomes and those not yet homeowners. At the same time, the financial beneficiaries of these regulatory constraints will be those with higher incomes and those who already own their house. In effect, the NIMBY strategy is essentially “trickle-up” economics made operational.

As revealed by existing homeownership rates and median household incomes, the implementation of NIMBY strategies that rely on cost-raising regulations will ensure that racial minorities will likely be under-represented among the beneficiary class and over-represented among the losers. According to the most recent census data, homeownership rates among white households is 74%, while that among African-Americans is 48 percent and among Hispanics, 48 percent as well. Although progress has been made over the last decade when minority homeownership rates were in the low forty percent range, the fact remains that despite substantial postwar income growth and a substantial reduction in housing discrimination, racial minorities in America have only now achieved a homeownership rate that was characteristic of this Nation as a whole in 1930.

Incomes of African American and Hispanic households are also lower than that of whites. In 2001, according to the U.S. Census, the national average median household income of \$42,228 reflected an income of \$44,517 for white households, \$29,470 for black households, and \$33,565 for Hispanics. What these differences mean is that as the price of the entry-level house rises, an even greater share of the black and Hispanic populations will be excluded from homeownership than are at present.

With African-American median incomes thirty-four percent lower than that of whites, the income-related limits on affordability incline African American homebuyers

toward communities with lower cost housing, and those communities are typically located on the ex-urban fringe where lower land prices lead to lower home prices. Reflecting such opportunities, the results of the 2000 decennial census reveal that most of the lower cost, fast growing Northern Virginia suburbs experienced an increase in the share of African Americans living in the county.

Between 1990 and 2000, African Americans in Prince William County increased from 11.7 % to 18.8%, in Stafford from 7.3% to 12.4%, Spotsylvania from 10.8 to 12.4%, and Fairfax from 7.8% to 8.3%. High cost, slower growth Arlington and Fauquier counties, saw their shares decline. Only Loudon county bucked the fast growth trend with an African American share that fell from 7.2% to 6.9%.⁸ These changes in population share also reflect changes in homeownership as well. According to a study jointly published by FNMA and the Urban Institute, African-American homeownership in the Washington DC area increased from 42 percent to 49 percent between 1990 and 2000. Similar patterns appear in the counties included in Atlanta's M.S.A. and those of Houston, two other fast growing regions.

While there appear to be no studies of academic rigor attempting to determine the extent to which such barriers can be proven to diminish the black household's homeownership opportunities, there was recently published an academic study attempting to determine the extent to which the existence of "sprawl" may improve black ownership prospects. In 2001, FNMA's *Housing Policy Debate* published a study by professor Matthew Kahn of Tufts University who approached the smart growth issue from the opposite direction but came to similar conclusions regarding race and opportunity. Kahn's study asked the question of whether sprawl was helpful to minority homebuyers, and concluded the following:

This article uses 1997 American Housing Survey data to measure housing consumption for blacks and whites in metropolitan areas characterized by more and less sprawl. In sprawled areas, black households consume larger units and are more likely to own their own homes than black households living in less sprawled areas.⁹

Specifically, the study found that:

"Relative to the average black household living in a low sprawl area, the average black household in a sprawled metropolitan area consumes a larger housing unit (by 0.4 more rooms), is more likely to live in the suburbs (by 11 percentage points), more likely to own a home (by 6 percentage points), and more likely to be a suburban homeowner (by 4 percentage points)."¹⁰

⁸ Ronald Utt, "Will Sprawl Gobble Up America's Land? Federal Data Reveal development's Trivial Impact", Heritage Backgrounder No. 1556, May 30, 2002, p. 10.

⁹ Matthew E. Kahn, "Does Sprawl Reduce the Black/White Housing Consumption Gap?", *Housing Policy Debate*, Volume 12, Issue 1, 2001, p. 77.

¹⁰ Kahn, p. 80.

As the evidence accumulates that some of the more common growth control restrictions may be having a negative impact on households' homeownership opportunities, even a few of the early and active advocates of smart growth policies have begun to acknowledge the potential for harm and express concern about the impact such policies may have upon families with more limited housing options. Recently, several academic authors prepared for the Brookings Institution a study on smart growth and homeownership that echoed some of the same concerns raised in the Report, and by Heritage Foundation scholars over the past several years. As the authors acknowledge in the executive summary of the paper done for Brookings:

Evidence shows that certain growth control and land use policies actually reduce jurisdictions' housing supply and the affordability of their housing. Such policies, already widespread in the U.S., include requirements for low density only, minimum housing size, or bans against attached or cluster homes. Such policies are in fact, specifically intended to make housing more expensive and thereby exclude lower income families, who are often people of color.¹¹

Within a month of this report, a more comprehensive study of housing affordability was conducted and written by two professors at Harvard University for a New York conference on "Policies to Promote Affordable Housing". Among their conclusions is the finding:

In places where housing is quite expensive, zoning restrictions appear to have created these high prices... One implication of this analysis is that the affordable housing debate should be broadened to encompass zoning reform, not just public or subsidized construction programs. While poor households almost certainly are not consuming the typical unit in areas with extremely high prices, we suspect that any filtering model of housing markets would show that they, too, would benefit from an increased focus on land use constraints by affordability advocates... [W]e do believe that the evidence suggest that zoning is responsible for high housing costs and, to us, this means that if we are thinking about lowering housing prices, we should begin with reforming the barriers to new construction in the private sector.¹²

¹¹ Arthur C. Nelson, et. al., "The Link Between Growth Management and Housing Affordability: The Academic Evidence", A Discussion Paper Prepared for the Brookings Institution Center on Urban and Metropolitan Policy, February, 2002, p. ii.

¹² Edward L. Glaeser and Joseph Gyourko, "The Impact of Zoning on Housing Affordability", Harvard Institute of Economic research, Discussion Paper Number 1948, March 2002, pp. 6-7.

Final Thoughts and Suggested Next Steps

Although there is no detailed assessment of barriers in place or how they have changed over time, anecdotal evidence suggests that they have increased in scope and severity since the Report was published in 1991, and, if the northern Virginia experience is typical of other fast growing suburbs, then the pace has accelerated over the past few years. The result may be that the tremendous national gains in homeownership may be at risk and that minorities are likely to suffer disproportionately from these limits on growth.

Reversing these exclusionary trends will be a difficult, but some of the Report's recommendations serve as a foundation for the effort, while others may have been overcome by changes in the policy environment since the Report was published.

The Role of States. When the Report was published in 1991, the general view was that these initiatives were largely local in nature – accomplished at the city, county, borough or township level – and inconsistent with what the state government would view as acts in the best interest of the citizens. The Report urged states to get more involved in local land use policies in order to limit barriers. While that assessment may have been a correct one for 1991, it may no longer be applicable today. As the objective of growth control becomes increasingly institutionalized, many state governments are in the forefront of the effort. Oregon is the classic example: in the 1970s it mandated that all Oregon cities adopt growth boundaries. Anti-growth advocates attempted in 2000 to use state-wide referendums to impose more restrictive land use controls in Arizona and Colorado by way of new state-wide laws. Maryland's smart growth initiative was imposed by the state, often contrary to pro-growth tendencies in some counties, and in 2000 Pennsylvania enacted a five year, \$650 million program to pull land out of development despite the state's well-below average rate of growth. The National Governors Association has also become an aggressive advocate of smart growth strategies imposed by the state.

Under the circumstances, empowering states to take a more active role in land use planning may simply lead to a more centralized growth control regime with no source of relief or inter-county competition for business or development. Indeed, sponsors of the APA's controversial Guidebook envision the state in the role of implementer and enforcer.

Emphasize and Enforce Property Rights. The Report also focused on the importance of basic rights and the federal role in protecting them. Specifically, the Report states on page II-2 that: "The Commission also believes that many federal, State and local regulations limit fundamental rights and protections. The federal government has the responsibility to protect such rights, and the Commission recommends that the federal government become an active participant in seeking judicial review of excessive or discriminatory development controls and regulations."

With the states less inclined to interfere with local restrictions, or supportive of them, and with controls becoming increasingly severe, restrictive and potentially discriminatory, it may be appropriate to revisit the prospect of using the judiciary as a source of reform and relief. Although the courts to date have shied away from interfering with a government's right to zone and prohibit different types of land uses, it may very well be that such practices in some places exceed the powers earlier courts granted to communities to seek the common good and are now in the service of a privileged few.

With the exception of the Report's bold recommendation to stand up for basic property rights, since then the federal government has been largely silent on the issue. That should change, and Executive Order 12630 offers a legal foundation for pursuing such an initiative.

Compile Essential Research and Data. Although anecdotes suggest that the problem is severe and getting worse, no effort has been made to systematically compile such impediments, or determine how they have changed over time. At a minimum, such an effort should be undertaken in a sample of the faster growing metropolitan areas of the country. If the sample suggests a problem of growing magnitude, then the sample could be expanded to the scope needed to devise and undertake necessary reforms in the system. Similarly, studies should be undertaken to quantify the extent to which these land use restrictions are in fact diminishing affordability. Again a sample of a few metropolitan areas should be the starting point for a more ambitious study if preliminary results reveal potential problems.