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Paul Davidoff

Neil Newton Gold

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## **Exclusionary Zoning\***

**\*Major portions of this article were originally presented as testimony at the New York State Division on Human Rights Hearings on Exclusionary Zoning. The authors also draw in part on their article entitled *Suburban Action: Advocate Planning for an Open Society*, 26 *Journal of the American Institute of Planners* 12 (1970), co-authored with Linda Davidoff.**

by Paul Davidoff  
and Neil Newton Gold

Paul Davidoff and Neil Gold are directors of the Suburban Action Institute in White Plains, N.Y.

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### Focus on the Suburbs

Present efforts to solve the "urban crisis" tend to restrict solutions to inner-city poverty and ghetto areas. These ghetto and poverty areas have been the locus of nearly all the research and action programs undertaken by both public agencies and private non-profit groups as part of the war on poverty. Job programs have concentrated on finding employment opportunities for ghetto youths in declining areas. Industrial development programs have concentrated on bringing industry into the ghettos. Housing programs have tried to rehabilitate obsolete slum apartments or "renew" ghetto neighborhoods. The Model Cities program—which was aimed at improving the lives of the urban poor—has tended to restrict chances for such improvements to Model Cities areas.

These programs all share an underlying strategy which is based on a false assumption: because the problems of race and poverty are found in the ghettos of urban America, the solutions to these problems must also be found there. These ghetto-oriented programs largely ignore the geographic distribution of resources throughout metropolitan regions. The resources needed to solve the urban poverty problem—land, money and jobs—are presently in scarce supply in the inner-city areas. They exist in substantial supply in suburban areas, but they are not being utilized to solve inner-city problems or to combat poverty and discrimination. As a result, ghetto

residents are denied the income gains and improvements in housing quality that would result from freer access to suburban jobs and land.

The cities must create new opportunities for their poor, and they must create decent environments in areas that are now slums. But these goals cannot be achieved until there is effective utilization of all resources in metropolitan regions.

### The Suburban Shift

One of the most striking aspects of American economic growth over the last two decades is that 80 per cent of all new jobs, and nearly 100 per cent of the new production worker jobs, created in the nation's large metropolitan areas have been located in their suburban rings. The central cities of these metropolitan areas have not only failed to win a significant share of new urban employment, but, in some cases, they have experienced a net outflow of jobs.

In the tri-state New York area, for example, the central city gained only 111,000 new jobs between 1952 and 1966, compared with a gain of 888,000 jobs for the region as a whole. In the St. Louis area, employment in the central city actually declined in this period—by 50,000—compared with an employment increase of 193,500 in the suburbs. In Philadelphia, central-city employment also declined in this period—from 773,622 jobs in 1952 to 758,925 jobs in 1966. The Philadelphia suburbs, on the other hand, gained a total of 249,433 new jobs in these years. In San Francisco, to take a final example, the central city gained only about 25,000 new jobs in this 15-year period—roughly one eighth of the employment increase that took place in the San Francisco suburbs (202,000).<sup>1</sup>

In the face of public attention on the urban crises, it is important that policy-makers realize that this remarkable shift in the location of urban economic growth has taken place, and that the process of industrial and commercial decentralization has had a transforming impact on the distribution of opportunities and rewards within urban areas.

Better known than the shift in location of new metropolitan employment is the shift in location of population growth within metropolitan areas. Here, too, the results are striking and fateful in their implications for urban policy. Between 1950 and 1966, the population of the nation's central cities increased by 7,400,000. In the same period, the population of their suburban rings increased by 36,500,000. By 1966, more Americans lived in the suburbs of our urban configurations, than in the central cities.<sup>2</sup>

Not only have central cities been on the short end of urban population growth, but their share of future growth is destined to decline still more. According to the most reliable estimates of the distribution of future population growth, nearly all of the additional persons who will live in the United States by the year 2000 will live in suburban areas. There will be little if any growth in central city (or rural) population during this period. In some central cities, in fact, the prognosis is for sustained population outflow to the suburban rings, depending upon availability of sufficient housing opportunities.<sup>3</sup>

The nation's suburbs, then, have been the locus of the bulk of new job openings and new population growth in metropolitan areas. Not surprisingly, suburban areas also have experienced the greatest share of all new housing starts in urban areas, increasing from 60 per cent in the 1950's to 70 per cent and above in the 1960's. In some of the largest metropolitan areas—such as St. Louis, Philadelphia, Detroit, the District of Columbia, Cleveland, Boston, and Baltimore—nearly 80 per cent of new residential construction is taking place outside the central city.<sup>4</sup>

Underlying the movement of jobs, housing and population from central cities to their surrounding suburbs is the availability of a relatively vast supply of vacant land. Indeed, in the nation's twenty largest urban areas, 99 per cent of the vacant land lies outside of core cities. The unavailability of vacant land within central cities necessarily sets reasonable firm limitations on the employment and population capacities of these areas. Conversely, the existence of a seemingly limitless supply of vacant land on the urban periphery practically insures that future urban growth will take place in the fringe areas.<sup>5</sup>

In sum, the suburbs of the United States have become the New America of the twentieth century: the growth area of the private economy and the locus of most of the nation's new jobs, housing and population.

## Exclusionary Zoning

Blacks and other minority groups have not moved out of central cities to the surrounding suburbs. Only the white population has benefitted from the availability of suburban job and housing opportunities. By 1966, as a result of the suburbanization of the white population, only 42 per cent of urban whites remained in central cities. On the other hand, more than 82 per cent of urban non-whites lived in central cities in 1966—a higher proportion than in 1950.<sup>6</sup>

The failure of the black and Puerto Rican population to share in the growth of the suburbs in the 1960's is shown in Table I, which compares white and non-white population growth in the New York SMSA for the period 1960-68. (What is not shown in this table is the fact that only three suburban cities—Hempstead, Mount Vernon and Babylon—accounted for more than 50 per cent of the increase of 75,000 in the minority-group population in all the suburbs.)

These remarkable population shifts and growth patterns have resulted in severely imbalanced population distribution in our metropolitan areas. The cities of the United States are rapidly becoming ghettos of the poor and the black, while the suburbs appear likely to remain affluent and white. We are well on our way to becoming the two nations, "one black, one white—separate and unequal," as the Kerner Commission report noted. This growing separation of white and black in U.S. metropolitan areas is a direct result of the nation's acknowledged failure to insure that all social and racial groups are able to gain access to suburban land.

Exclusionary suburban zoning is that complex of zoning practices which close suburban housing and land markets to all but the wealthy. Such practices include the following:

**Table I.**

Population Change by Race and Ethnic Groups in the New York S.M.S.A. in 1960 and 1968 (Data in Thousands)

	1960					1968				
	Total	White	Non-White	Puerto Rican	%N.W. and P.R. Total	Total	White	Non-White	Puerto Rican	% N.W. and P.R. Total
New York City (5 counties)	7,782.0	6,053.0	1,116.0	613.0	22.2	7,985.0	5,537.0	1,582.0	865.0	30.6
Suburbs:										
Nassau	1,300.2	1,253.9	42.1	4.2	3.6	1,433.3	1,363.3	63.6	6.4	4.9
Suffolk	666.8	624.7	34.8	7.3	6.3	1,049.0	982.7	54.9	11.4	6.3
Rockland	136.8	127.4	7.2	2.2	6.9	211.8	197.1	11.5	3.3	7.0
Westchester	809.0	743.3	62.5	3.1	8.1	879.6	791.9	82.1	5.6	10.0
Total	2,912.8	2,749.3	146.6	16.8	5.6	3,573.7	3,335.0	212.1	26.7	6.7
Total: N.Y. S.M.S.A.	10,694.8	8,802.3	1,262.6	629.8	17.7	11,558.7	8,872.0	1,794.1	891.7	23.2

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U.S. Dept. of Commerce, Bureau of the Census, *Census of Population*, 1960, and Regional Plan Association estimates.

(1) zoning vacant residential land for large minimum-lot size, thereby reducing the supply of developable land and increasing its cost;

(2) zoning for excessively large minimum-house size, without regard to the size of families occupying the house or a generally accepted minimum standard of floor area;

(3) prohibiting all forms of multifamily housing from an entire municipality, thereby zoning out the people who cannot afford their own homes;

(4) spot-zoning land for multifamily housing through the use of special or conditional permits, thereby allowing only expensive apartments in the suburbs; and,

(5) imposing unduly expensive subdivision requirements which increase the cost of land development by shifting the burden of public improvements from the public at large to new homeowners.

If only a small amount of the vacant land of a particular region were controlled through exclusionary practices, the public harm might be very limited. The example of the suburban region surrounding New York City, however, indicates just the opposite. The 1962 *Spread City* report of the Regional Plan Association pointed out that in 1960, two thirds of the vacant land in the New York Region was zoned for lot sizes of more than one-half an acre, and less than one per cent of the vacant land in the New York metropolitan area (New York City plus four suburban counties) was zoned for multifamily housing.

Exclusionary zoning practices have effects on the supply and cost of urban land. In part, the increase in the per unit cost of land results from the shrinkage in the supply of units that can be built on that land. But this is not the only way in which exclusionary zoning adds to costs. Table II—which compares the costs of land, land development and construction for detached, single-family homes in typical exclusionary and non-exclusionary communities in New York State—makes this clear. First, a single-family house in an exclusionary suburb must be built on a one-acre site rather than a quarter-acre site, as in a non-exclusionary suburb. The resultant savings in land cost is about \$5,000. Next, subdivision requirements for sewers, roads, street furniture and quality of materials in the exclusionary suburb have been increased to the point where the cost of land development amounts to roughly \$45 per lineal foot of frontage. On an acre lot, with 200 feet of frontage, the cost of land development amounts to \$9,000. In the non-exclusionary suburb, land development costs amount to only \$35 per lineal foot of frontage; on a 1/4 acre lot with 100 feet of frontage, the cost of land development amounts to only \$3,500. The result is a savings of \$5,500 in land development costs alone. Finally, the exclusionary suburb requires a minimum house size of 1,500 square feet. If we assume the cost of house construction to be \$16 per sq. ft. (a conservative estimate), the cost of building a 1,500 sq. ft. house in the exclusionary suburb is \$24,000. The house in the non-exclusionary suburb, on

**Table II**

Comparison of Costs of Land, Land Development and Construction for Single-Family Homes in Exclusionary and Non-Exclusionary Suburbs

Item	1 Acre Lot*	1/4 Acre Lot†
	200' Frontage 1500 Sq. Ft. House	100' Frontage 1500 Sq. Ft. House
Land	\$ 10,000	\$ 5,000
Land Development	9,000	3,500
Construction	24,000††	16,000††
Total (exclusive of financing)	\$ 45,000	\$ 24,500

\* Assumes frontage costs of \$45 per lineal foot.

† Assumes frontage costs of \$35 per lineal foot.

†† Assumes construction costs of \$16 per square foot.

Suburban Action Institute, 180 E. Post Road, White Plains, New York.

the other hand, may be built with only 1000 sq. ft. of floor space. At \$16 per sq. ft., construction costs for this house amount to \$16,000. The differential in construction cost between the exclusionary and non-exclusionary suburb is \$8,000.

Thus, the publicly imposed cost of land, land development and construction cost in the exclusionary suburb prohibits development of houses selling below \$45,000. If these restrictions were abolished, however, developers in the private market could build single-family housing for less than \$25,000. Additional savings could be realized through construction of attached housing and garden apartments.

**Table III**

Distribution of Income Groups in the United States by Race and Residential Purchasing Capacity in 1968.

Income	House Price Affordable at 2 Times Income	Percent of Households in Income Class and Above	
		White	Non-White
\$25,000	\$50,000	3.0	0.4
15,000	30,000	19.0	6.0
10,000	20,000	42.0	19.0
7,000	14,000	66.0	37.0
5,000	10,000	80.0	53.0

U.S. Dept. of Commerce, Bureau of the Census, *Current Population Report*, Series P-60, No. 66, Dec. 23, 1969.

To understand the full meaning of these zoning-imposed costs of new housing, it is necessary to indicate the per cent of families in the region who can afford housing priced at the \$45,000 level. In Table III, we show the income distribution of white and non-white households in the United States. The data show that less than 2.8 per cent of white households and .04 per cent of non-white households in the United States are in the income range necessary to purchase new housing in the New York region. The data also suggest that housing priced at \$35,000 would be beyond the financial reach of 90 per cent of the nation's households, assuming a housing expense/income ratio of two to one.

### Racial Segregation

Exclusionary zoning is largely responsible for the fact that segregation by race and economic class has, over the past few decades, become accepted social policy in large metropolitan areas around the nation. What is special about the use of zoning to this end is that it is accomplished through public law. We are not examining private agreements to discriminate. Rather, we are dealing with public mapping which determines where different classes may reside—with segregation flowing directly and predictably from the enforcement of these ordinances.

For this reason, current efforts to distinguish *de facto* and *de jure* school segregation are not only beside the point but also falsely premised. The segregation that exists in northern schools is *de jure* segregation. It is produced through the use of local zoning ordinances—adopted pursuant to state enabling legislation—which prevent all but a few urban non-whites from leaving ghetto and poverty areas. For New York State, the results have been graphically portrayed by the Division of Research of the State Education Department of the University of the State of New York in a study entitled *Racial and Social Class Isolation in the Schools* (December, 1969). Eighty-five per cent of the 495,000 black school children in New York State were enrolled in only eight school districts. Of this number, 72 per cent—or 356,000 school children—were enrolled in New York City alone. And the concentration of Puerto Ricans is even more intense: 93 per cent of the 280,000 Puerto Rican school children in New York State were enrolled in the New York City school system.

## Unequal Job Opportunity

In discussing the employment problems of ghetto residents, the December 1968 report of the National Commission on Urban Problems (Douglas Commission) stressed the costs of maintaining large inner-city ghettos—both in terms of the actual costs of providing services and in terms of the socially explosive character of the ghettos. The Commission noted that:

“Available employment of the type for which slum adults might qualify is generally not available in the slum. In a recent year, 63 per cent of all construction permits for industrial buildings were issued for locations outside central cities. On the other hand, 73 per cent of office building construction permits were issued inside central cities. Central cities increasingly are becoming white-collar employment centers while the suburbs are becoming the job employment areas for new blue-collar workers. This is ironical in view of the fact that low-paid blue-collar workers, especially if they are Negroes, live in the central cities while the white-collar workers are increasingly living in the suburbs. Traveling to work becomes increasingly difficult for both.”

Although no exact data is available on the number of jobs in suburban areas, census publications—particularly *County Business Patterns* and the *Census of Business*—show clearly that many of the jobs that have been recently created in suburban areas are for unskilled and semi-skilled workers. For this reason—and in light of the fact that if present trends continue, 80 per cent of future employment growth in large metropolitan areas will take place in the suburbs—appropriate linkages connecting the central city labor force and areas of expanding job opportunities must be created.

In large part, the Federal Mass Transit Demonstration Project was an effort to test methods of assisting inner-city workers in getting to suburban plant sites. Regrettably, interim results from mass transit demonstration projects strongly suggest that transportation linkages are insufficient to overcome the barriers that separate the unemployed in central cities from suburban job areas.<sup>7</sup> It seems clear that more substantial linkages must be created if the suburbs are to enter fully into the mainstream of American life. Pre-eminent among these is the creation—reasonably close to suburban job sites—of a supply of widely dispersed, moderate-cost housing for working-class families. As the Report of the President's Committee on Urban Housing put it, “A family should have the choice of living as close as economically possible to the breadwinner's place of employment.” Yet this cannot be done without revising municipal zoning practices which currently prevent the matching of jobs and workers.

## Policy Issues

A basic policy issue must be decided before the nation can embark upon a program of affirmative action in the suburbs. The issue is whether the expenditure of billions of dollars of public funds to rehabilitate substandard housing in central cities and to encourage industry to locate within urban cores—particularly within the slums and ghettos—is justified in the face of the overwhelming trend toward decentralization of American economic life.

The facts of suburbanization have long been recognized by planners, demographers, developers and the general public. What has begun to change is the public policy stance adopted toward these facts. In the early 1950's recognition of the decline of the central city led to a concern with “bringing back” the fleeing middle class family to live in renewed and rehabilitated downtown neighborhoods. In the mid-1950's, the failures of the renewal program—its displacement of black and poor families, its failure to provide adequate relocation housing—brought a shift in policy toward rebuilding the ghettos for the benefit of their residents. This may be termed the “keep back” theory for ghetto residents.

Now there is a growing recognition that both the “bring back” and the “keep back” theories are inadequate to stem the tide of movement to the suburbs. Urban development policy is moving toward acceptance of suburbanization. Seen in this context, urban development policy is no longer aimed at rearranging general trends of population movement. Instead, it is arguing for structural changes in the society against the backdrop of these movements.

In our view, the decentralizing forces of American economic life are not reversible. The absence of vacant land within central cities, coupled with the existence of an enormous supply of vacant land on the urban periphery, will not permit a major expansion of the employment or housing capacity of central cities. Public programs that seek only to rebuild the central city housing stock and to encourage industry to locate within central cities and ghettos run counter to the movement of the private economy. While isolated examples of in-city plant location will occur, as in the case of the IBM plant in Bedford-Stuyvesant, the private sector will continue to locate the bulk of its new plants and equipment outside central cities.

The bulk of the central-city substandard housing stock is found in areas considered ripe for urban renewal. These areas contain most of the non-white population of central cities. Increasingly, they are the locus of central city unemployment and underemployment. Land prices in central city urban renewal areas have been rising even more rapidly than suburban land prices. This is occurring in spite of the fact that the level of land prices in suburban areas is markedly lower than the level of land prices in central city urban renewal areas. The convergence of these factors gives some indication of the added cost involved in building low- and moderate-cost housing on developed land in areas characterized by a declining blue-collar job market. It suggests that substantial housing-cost savings can be achieved by locating the bulk of new low- and moderate-cost housing stock outside central cities.

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The second major public policy decision is whether the "urban crisis" is in fact an "urban" crisis at all or whether it is a crisis of class and race in the nation as a whole. It is our view that the problem is not confined to specific areas and that its remedy is to be found in the reallocation of public and private resources. This recasting of policy does not imply ending planned improvement of urban spatial and structural conditions; rather, it means that public policy to aid ghetto and slum residents should be tested in terms of its ability to enlarge opportunities for blacks and for the poor. If neighborhoods are to be rebuilt in central city ghetto areas, it will be necessary in many cases for the population density to be reduced. Rebuilding at present densities raises impossible problems of cost and residential amenity. To renew the neighborhoods, we must open opportunities for out-migration to new, decent housing outside the ghetto. Once densities have been reduced in this way, clearance of dilapidated structures can take place without creating insoluble problems of relocation or temporary relocation while reconstruction goes forward.

Restrictive zoning and land-use controls in suburban areas constitute the principal barriers to the development of job-linked, moderate-cost housing in the suburbs. These measures have been remarkably effective in preventing low- and moderate-income families from penetrating suburban housing and land markets, in greatly limiting the matching of jobs and workers in urban areas and in raising the cost of new housing in the suburbs to all home-seeking families. If this nation is to provide for the housing and job needs of its minority citizens, the power of government must be used to break the land-use barriers erected by suburban communities. This challenge may soon be recognized as the new frontier of the civil rights movement.

## Remedies

In searching for remedies to the practices of exclusionary zoning, it is logical to turn to the state, as the source of the police power which is the basis of local zoning ordinances, subdivision controls and building codes. State legislation of a state-wide or regional scope should be used to limit the range of zoning actions allowed to local municipalities. This basic redistribution of the power to regulate land use might take a variety of forms. For example, a share of the total responsibility for meeting regional and/or state housing needs could be allocated to each municipality within the state, with county supervision of local compliance. In addition, state governments should retain the power to review (and, if necessary, override) local zoning decisions which hamper the construction of state federal-assisted housing in suburban communities.

The State of Massachusetts has recently passed an "anti-snob" zoning bill which goes at least part of the way toward ending exclusionary zoning. The law creates a five-member state board in the Department of Community Affairs to oversee the proposed construction of housing in the suburbs. This enables builders of low- and moderate-income homes to challenge zoning restrictions when they are turned down by local zoning boards. Certain exceptions are written into the law to protect a measure of home-rule power. For example, the State Zoning Appeals Board may not override local zoning if there are "in excess of 10 per cent or more of the total land areas zoned for residential, commercial or industrial use."<sup>8</sup>

Another step towards ending exclusionary zoning involves reducing the financial incentives for such zoning. State and local fiscal systems should be restructured to put an end to local dependence on the property tax for the financing of municipal services and schools. The state should assume the total responsibility for educating *all* of the children within the state. This revision of the financing of educational services could take a variety of forms. The Governor of Michigan has recently proposed a measure for shifting the total responsibility for the financing of schools to the state level, and the Governor's Advisory Commission on Tax Reform in California has proposed the creation of a statewide property tax for schools. New York State Senator Laverne has called for the creation of regional tax-sharing arrangements which provide for a pooling of financial educational resources. But given the regressive nature of the property tax, the statewide income tax seems to be a better way to raise the necessary financial support for our educational systems.

Other possibilities for equalizing the cost of education should also be considered. The Urban Land Improvement and Housing Assistance Act of 1969 (S. No. 3025), introduced by Senator Javits in October, 1969, would

provide federal incentives for state and local governments to reform their zoning and tax laws to promote low cost housing. The Act would deny some federal assistance to communities that try to block such housing through restrictive land use practices.

The concentration in this presentation on the critical responsibility of state governments over the direction of physical land development is not meant to denigrate the role of the federal government. A positive federal financial contribution is an absolute necessity if we are to provide decent shelter for those citizens who need it. However, the states possess unique powers over the direction of land development. Furthermore, the Nixon administration has committed itself to a larger role for state governments. The suburban zoning challenge must be met at those levels of government which possess the legal and political potential for vigorous action.

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7. J. Kain and J. Persky, "Alternatives to the Gilded Ghetto," *The Public Interest* (Winter, 1969).
8. Chap. 774, Commonwealth of Massachusetts, an Act providing for the construction of low- or moderate-income housing in cities and towns in which local restrictions hamper such construction.