



CONTROLLED GROWTH STRATEGIES
AND THE POOR

by

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ABSTRACT

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This thesis is the result of an interest in how controlled growth policies will affect the mobility of the poor. Various levels of government are taking steps to limit their growth by putting fixed levels on the number of residents allowed in the community as defined by housing construction, or by specifying the rate of growth allowed in various sectors of the economy.

Controlled growth policies will have definite and ultimately, measureable impacts on the poor. By limiting the number of houses to be built, and prohibiting industrial growth or expansion, the traditional symbols of economic mobility for the poor will be changed in those contexts. If opportunities are based upon housing and jobs, then governmental actions stopping growth must be measured to determine if those controls adversely affect the poor.

Our legal system is evolving the concept that cities must be sensitive to the regional housing demands for low and moderate income housing. Increasingly, de jure exclusionary cities are being required to assume their "fair-share" of the low income housing responsibility. Thus, when cities decide to limit their growth, they typically specify a certain amount of low income housing to be built to avoid allegations of exclusionary controlled growth ordinances. But housing is not enough to complete the opportunity structure of the poor. If jobs which fit the skill levels of the low income residents, future and present, are not a part of those controlled growth strategies, there is an illusion of mobility as represented by housing.

The illusion of low income opportunity in suburban contexts has great potential for interfering with other processes which will ultimately be instrumental in minorities achieving political parity in the United States. Power bases for minorities and low income people in the cities and in rural areas is a crucial phenomenon in recent political developments. Providing access to state houses and the nation's Capitol is a critical function of that power. To trade-off that political power for the illusion of opportunity in the suburbs, however it may be defined, requires that those suburban opportunities be long-term. If political power is not traded for economic stability, there can be little justification for advocating the suburbanization of racial and economic minorities.

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To my wife, Paula

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PREFACE

The rapid post World War II suburban expansion in the United States has not produced an equitable opportunity structure for all income and racial groups. Though the process of land development has generated new housing and employment, leap frog and undirected sprawl has created growth patterns which are often ecologically disastrous and fiscally wasteful. Without countervailing public policies, the private market does not tend to increase the mobility of minority groups and the poor in the suburbs. The government has not implemented affirmative guidelines for a better distribution of opportunity resulting from the growth. Existing trends of uncontrolled growth mean further racial and income segregation as well as unequal access to environmental and economic amenities.

The marked absence of long range public policies in the field of land use planning has been responded to on national, state, and local levels. Implicit is the assumption that if current trends of land consumption are not challenged and met with goals for growth, those environmental amenities and benefits which can be attributed to suburbanization will be negated. Most of the impetus for land use control grows out of on either fiscal or environmental concerns. National Land

Use Policy Bills, the National Environmental Policy Act, State land use policies, a tremendous dialogue on general welfare zoning and planning requirements in the common law, and local attempts to control growth are all aimed at altering the pattern and quality of land conversion and development.

There are, however, profound social dimensions of land use policy that have long been ignored. Increasing affluence in the suburbs is paralleled by increasing relative poverty in cities. It is important to recognize how recent efforts to control or to slow down growth will affect various income and minority groups. Without specific criteria and incentives to provide opportunities for low income groups, no-growth planning strategies will impede the mobility of the poor; the results of which will be an extension of the status quo provided with new ecological and financial arguments. No-growth policies must be reconciled with concerns for the overriding general welfare. Regions must not be created and countenanced by governments which disproportionately distribute access to select groups.

Most efforts to control growth have been initiated at the local level. Though many advantages have been derived from the current patterns of development, localities perceive a conflict between future growth and the quality of life. Local actions tend to be parochial in scope. However, regional demands from both developers and citizens for increased housing, the need for industrial expansion as seen by the private market, and the need for increased public

services and facilities exert pressures for modifications of the concept of local no-growth.

Many minority sub-groups within the population see their needs for shelter and employment in diametric opposition to no-growth. The elderly need housing, the unemployed need jobs, the low income need housing which they can afford, the handicapped and unemployable require housing and many public welfare facilities.

Those who have already received the benefits of suburbanization must not close opportunities to those who now require new facilities in which to relocate. When localities seek to change their growth patterns and rates, they must look not only inward to define the scope and solution of the problems; they must look outward to understand their responsibility to the region in which they exist. Only in such a way are the possible regressive effects of no-growth to be avoided. It is only through such a balancing process that more enlightened goals and directions for future urban growth become explicit.

INTRODUCTION

Greater understanding of the complexities of ecology and the fragility of the natural environment requires that advocates of growth specify under what assumptions continued development should occur. Natural resources are scarce, eminent shortages of fuel and developable land, global competition for capital assets and the raw materials from which goods are produced, combine to make uncontrolled growth infeasible.

Between 10 and 20 per cent of the population of the United States is malnourished or hungry. Families which have incomes under poverty levels represent approximately 20 per cent of the population. Between 15 and 20 per cent of the population is ill-housed.

Therefore, the articulation of more equitable ways of redistributing the economic resources and environmental amenities which result from urban development should be among the highest priorities of future urban growth policies. Growth in economic sectors which address the mobility of the poor is a legitimate basis for growth.

A recently compiled list of cities, regions and states which are instituting controlled growth policies, indicated that the scope of concern for development controls is great.* During the next decades, it can be expected that this phenomenon will increase in scope. How to deal with the effects of governmentally imposed non-growth policies in light of the needs of the poor is a major question.

In the legal literature, land use law addresses the role of public intervention in the process of land conversion. While there is no explicit national urban growth policy, there are policies implicit in the legal structure which regulates legislative actions. Constitutional provisions require public actions to be made with respect to the due process clauses of the Fifth and Fourteenth Amendments, and the equal protection clause of the Fourteenth Amendment. Developments in the common law have clarified the various due process and general welfare requirements of the police power. However, to depend upon constitutional or common law alone to define urban growth policy would be limiting. The courts cannot initiate legislative acts, they can only regulate and clarify legislative policies and actions.

Furthermore, it is not clear that laws are implemented in such a way as to accomplish the purposes or goals under which they are legislated. Therefore, other methods must intervene to establish and direct urban growth policies.

* Conference at the National Association of Home Builders, Washington, D.C., March 1973. It was estimated that 34 cities 15 regions, 5-7 states are instituting measures to control or specify urban growth.

An equitable distribution of housing and income is not a natural result of urban growth. Assuming that better systems to allocate income and housing are necessary and desirable goals of urban growth, there are relatively few policies which directly address that position. Equity is often interpreted as fairness. "Our concept of what is fair is an evolving one, as we slowly forge an economic bill of rights consisting of guaranteed income, access to education, compensation to victims of discrimination, crime, sickness, etc."¹ However, there are few measures of economic equity. Defining parameters by which the fairness of controlled growth policies can be judged is the purpose of this study.

John Stuart Mill presented a theory of utility which is easily adopted as a goal. Yet, Mill's theory offers little in the way of practical ways of implementing that goal. Lester Thurow suggests that there are several directions from which one can attempt to specify economic equity:²

¹ William Alonso, Equity and its Relation to Efficiency in Urbanization, Institute of Urban and Regional Development, University of California, Berkeley, California, July, 1968.

² Lester Thurow, "Towards a Definition of Economic Justice," The Public Interest, Number 31, Spring 1973, New York, Page 58.

- 1) Reliance can be placed on process and procedures. An economic game is fair or equitable when individuals agree on the rules of the game, and any outcome of that game is thus considered just.
- 2) Individual preferences can be the key criterion. Equity is achieved when society reaches the distribution of economic resources that generates the most agreement. This is basically an anarchistic approach.
- 3) Merit, however defined, can be used to specify equity. Equity occurs when resources are distributed in the same manner as merit. Based essentially upon a free market concept of distribution, he who contributes the most, gets the most.
- 4) Equity can be related to the common good, however defined. Equity is that distribution of economic resources that maximizes the common good.

Each of these definitions of equity devolves into the problem of what the individual or society decides to be a value system. Thurow responds to this problem suggesting that economists have abandoned their quest for a definition of economic equity, and that there are other ways of rationalizing the distribution of economic rewards. He suggests that economic resource redistribution should be done according to specified goals.³ Moreover, he states that one particular system of distributing economic resources is more equitable than another at some moment in time. His whole assumption concerning the most useful system of economic resource distribution is that it should follow specified goals and priorities determined in the political arena. Economic equity should pro-

³ Ibid at 75.

ceed as an extension of other political and social goals. Therefore, the economic resources which are results of urban growth should be redistributed according to specified policies. If job and housing resource distribution to the poor, job training, educational or health facilities are stated public policies which must accompany growth, the market must be dealt with in such a way as to produce those results. Since the capitalist ethic will never fully allow a completely average level of income for all people, this will perpetuate an acceptable degree of inequality.

There is a big jump from formulating policy stating that low income opportunity enhancement is a goal of urban growth, to a strategy for implementing that goal. Jay Forrester has stated that to separate housing from income or employment as a goal is ultimately detrimental to the opportunity structure and mobility of the poor. Forrester's urban dynamics model is extremely important because it presents a wholistic approach to specifying and analyzing goals for urban growth. It has been criticized, however, for not relating to regional questions.

Growth policies often advocate housing construction for the poor in order to create a context of mobility. Forrester demonstrates through his urban dynamics simulations that low-cost housing programs are much more detrimental to the long-run conditions of the urban area than other strategies with redistributive or income generating motivations, such as employ-

ment programs, job-training programs or tax subsidies.⁴ Forrester's research has been the subject of great criticism, but it highlights the fact that solutions often based upon an intuitive approach to problem solving can adversely affect the very problems they are designed to alleviate.⁵

The existence of opportunities in the suburbs for low income, low skills level people may be an illusion. This myth is reinforced when energies are focused on building low cost housing instead of generating jobs. Housing may present the illusion of opportunity for low income people.

Commonly, in complex systems a vicious cycle develops in which the action erroneously assumed to be corrective makes the problem worse and the worsening calls forth still more of the presumed remedial action, which only further aggravates the situation. 6

What is referred to as increased remedial action is increased public assistance and welfare payments.

Framed in this context, controlled growth policies must specify those aspects of low income opportunity they will enhance. One-dimensional "fair-share" or equitable housing allo-

⁴ Jay Forrester, Urban Dynamics, M.I.T. Press, Cambridge, Massachusetts, 1969, Page 65.

⁵ Ibid, at Page 70.

⁶ Ibid.

cations for low and moderate income may become regressive if other aspects of mobility are not included in the policy design. If nothing else, the examination of income and housing and the law provide a matrix in which to analyze and assess urban growth policies. The free market has little stake in the future of the poor insofar as creating housing and jobs. Therefore, governments must assure that goals for economic resource redistribution are explicit urban growth policies.

Our goals for continued growth must be made more explicit beyond priorities expressed in budgetary allocations, military spending, transportation and highway construction. Recent debate in Congress and other levels of government has produced a series of reports and legislative proposals to create goals for urban growth. Though there exists nothing which can be labeled national urban growth policy, Congress is on the verge of passing what will become a National Land Use Policy.

Bills introduced into the 92nd Congress by Senator Jackson and Representative Aspinall, under the Senate and House Committees on Interior and Insular Affairs as well as a compromise bill submitted by the Administration have called for a National Land Use Policy. Existing legislation under the National Environmental Policy Act of 1969 details what role the federal government will have on assessing the impact on the environment of its expenditures. Along with the Housing

and Urban Development Acts, these bodies of legislation will form what can be called the beginnings of more formal goals for urban growth.

The illusion of low income opportunity in suburban contexts has great potential for interfering with other processes which will ultimately be instrumental in minorities achieving political parity in this country. Power bases for minorities and low income people in the cities is a crucial phenomenon in recent political developments. Providing access to state houses and the nation's Capitol is a critical function of that power. To trade-off that political power for the economic opportunities in the suburbs, however they may be defined, requires that those opportunities be long-term. If political power is not traded for economic stability, there can be little justification for advocating the suburbanization of racial and economic minorities.

CHAPTER I

THE LAW AND URBAN GROWTH CONTROLS

LEGAL ASPECTS OF CONTROLLED GROWTH

This chapter uses case law to illustrate the use and misuse of the zoning power in controlling growth. The examples presented are by no means exhaustive. They do, however, demonstrate the dilemmas of land use planning and limiting urban growth. Cities must control certain aspects of urban growth. But in so doing, the opportunity structure of the poor and racial minority groups demanding employment mobility and requiring access to housing must not be pre-empted.

The genesis of controlled growth policies may be found in the adverse reaction in many communities to rapid residential growth. This growth has produced three sources of concern: (1) housing has been developed that is not supported by adequate community facilities, such as roads and schools, which have become overcrowded as a result; (2) the attempted provision of these facilities has occasioned a rapid increase in real property taxation, particularly for earlier arrivals to the community; and (3) the failure to provide some facilities such as sewers and waste treatment plants, has contributed to deterioration of the quality of ground water or nearby streams, lakes, or other bodies of water. ¹

¹ The Potomac Institute, Inc., Controlling Urban Growth -- But for Whom? Unpublished manuscript, January 12, 1973, Page 2-3.

Many cities and states are changing their perception of the benefits of unlimited urban growth. There are many reasons for this modification. There is a greater understanding of the tremendous expense caused by the need to finance public infrastructure and services, an understanding that the current patterns of growth produce many unnecessary adverse effects on the physical environment, inherent or overt residues of racial, class and economic discrimination, finally, a need to control population growth.

Zoning is the basis for most locally controlled urban growth. As an extension of the power to promote the health, safety, morals and general welfare, and granted by state enabling legislation to municipalities, zoning allows cities to exercise control over the patterns of urban development. Under the aegis of a comprehensive plan, a city may segregate various uses of the land.² Industrial, commercial and residential uses may be separated in space and intensity through zoning ordinances. Residential densities can be categorized and separated. Multi-family housing may be separated from very low density single family housing.

² Ambler Realty Co., v. Village of Euclid, 297 Fed. 307, 313, 316, (N.D. Ohio 1924); Village of Euclid v. Ambler Realty, 272, U.S. 365, (1926)

However, the zoning power is granted to localities by the state, and the exercise of those powers must, in an affirmative way, further the "general welfare." Zoning ordinances which are shown not to encourage the general welfare are commonly invalidated by the courts. This discussion looks at the common law surrounding the use of zoning to control residential and industrial land use at the municipal level.

Zoning must be implemented within a comprehensive plan established by a governmental body responsible for the affected area, which demonstrates that the categorization of various uses is neither unreasonable, nor arbitrary. Among the more important purposes under which zoning can be used are the lessening of congestion in the streets, the prevention of overcrowding of land or buildings, and the determination and encouragement of the highest and best use of land.*

Historically, most cities were relatively discrete entities with little regional interaction or responsibility. But with the post World War II suburbanization, "urban sprawl" has characterized growth. Cities and regions are becoming coterminous; the effects of one municipality's actions are quickly felt in adjacent jurisdictions. Because of this, the concept of "general welfare" is no longer strictly a local phenomenon. As the regional aspects of urban growth have become

* See discussion of the zoning power on page 49 footnote 2

better understood, the regional responsibilities of local actions have become more important. Local zoning is increasingly required to take into consideration these regional impacts.

To prevent uncontrolled and unwanted aspects of growth, localities have traditionally employed a variety of planning mechanisms -- large lot zoning; minimum lot floor space, and bedroom specifications; fiscal zoning, and the segregation of uses. The legitimacy of these controls rests primarily on financial and environmental arguments. A locality may declare that it cannot finance further capital improvements unless they are programmed and phased overtime. In addition, because certain types of uses are potentially harmful to the drainage, sewerage, or water quality systems they cannot be allowed -- ecological and physical features of the area (floodplains, faults, severe inclines, wetlands, etc.) may preclude certain types of uses.

"Controlled-growth," "phased-growth" or "no-growth" policies are therefore increasingly being adopted or considered by localities to reduce their rate and volume of urban growth. Some municipalities have imposed restrictions only on housing and related development. Others place restrictions on all types of growth.

Implementation of these policies takes many forms. "Moratoria" on the issuance of building and subdivision permits, or on the issuance of new sewer and water permits are

common tactics. These are usually interim measures to halt growth while more elaborate and comprehensive growth guidelines are developed.

Effects of these controls are obvious. More conventional policies, such as the underzoning of land for residential uses generally or for apartments in particular, or limiting the number of bedrooms in an apartment -- so-called fiscal zoning -- preclude certain family sizes and potentially restrict certain racial, economic and age groups. "In addition, the transfer of costs for sewage, drainage, roads or recreation from municipalities to residential developers can provide a means to assure that more expensive housing, or less altogether, will result."³ Large scale open space acquisitions by municipalities remove tremendous amounts of potentially developable land from the market.

While there are usually valid reasons for the zoning or acquisition of these lands -- creation of recreational facilities and parks, preservation or enhancement of water quality -- the increasing use of environmental arguments as a basis of local controls makes one question whether these are contemporary surrogates for fiscal, snob, or exclusionary zoning.

³ Potomac, op. cit., page 3.

However, municipalities have many legitimate arguments for slowing growth. Without stronger regional and state financing of the improvements which accompany urban expansion, municipalities continue to bear the brunt of such facilities. The existing method of financing is both inefficient and regressive. Either the municipality pays directly for infrastructure improvements and in turn discourages further residential development because of the monetary constraints, or the municipality passes the costs on to the developer. As a consequence, the developer must pass them to the consumer. Absent of strong public policy and subsidy incentives, the developer rarely is able to provide the housing necessary for people with low incomes. The increasing segregation of people by income is perpetuated. Access to employment in suburban areas is diminished because of limited housing opportunities.

The common law is an extremely important way of intervening in the process of land conversion and the possible regressive effects. When evidence proves that zoning and planning do not advance the general welfare, the powers have been misused. If zoning has been instituted without due process of the law in a factual or procedural sense, there is a misuse of those powers. If overt, or de jure racial discrimination results, or if one particular income group has been excluded from a municipality because of the zoning ordinance, there are possible grounds for a denial of the ordinance on grounds of equal protection before the law.

If the general welfare of the region or state has been unreasonably diminished because of municipal actions, the police powers have been violated.

HOUSING: Large Lot Zoning to Restrict Municipal Growth

Large lot zoning is a tool used by many municipalities to control the type of residential development permitted in their boundaries. Such zoning has been upheld as a valid exercise of the zoning power when it does not unreasonably interfere with the general welfare. Where a municipality does not take into account the impact of its restrictions on the housing needs of the region, such regulations may constitute an unreasonable exercise of the police power. Most lawsuits that raise the question are brought by land owners or developers who assert that the regulation deprives them of reasonable use of their property without "due process of law." The developer will presumably represent the public interest in that his development will provide housing opportunities for citizens needing shelter. Such violations represent arrogations of powers delegated to municipalities in the zoning enabling acts.

This statutory interpretation by a court, however, could merely invite the redrafting of state legislation. Some observers fear that if this happened, anti-central city state legislatures would take the opportunity to make more explicit the delegated power of suburban localities to exclude 'unwanted' people. Consequently, a more basic objection regards unilateral exclusion as inherently

unreasonable and therefore an unconstitutional exercise of power even were it more consistent with state law ... Regional housing needs are relevant to both the statutory and constitutional approaches to the question. 4

The evolution of regional responsibilities with respect to residential opportunities for all income groups is evidenced by several cases in state courts which discuss regional housing/general welfare demands.

A zoning ordinance whose primary purpose is to prevent the entrance of newcomers, in order to avoid the future burdens, economic or otherwise, upon the administration of public services and facilities cannot be held valid, of course, we do not mean to imply that a governmental body may not utilize its zoning power in order to insure that the municipal services which the community requires are provided in an orderly and rational manner.. 5

Arguments advanced in many localities to legitimate controlled growth are that the environmental amenities desired by the residents are in conflict with high development rates. Large lot zoning is a technique to pre-empt high density development. The by-product just happens to be a pre-emption of the types of housing most often available to low and moderate income families.

4 Potomac, op. cit., page 29

5 National Land and Investment Co., v. Easttown Township Board of Adjustment, 419 Pa., 504, 215 A. 2d 597 at 612.

There is no doubt that many of the residents of this area are highly desirous of keeping it the way it is, preferring quite naturally, to look out upon the land in its natural state, rather than on to other homes. These desires, however, do not rise to the level of public welfare. This is purely a matter of private desire which zoning regulations may not be employed to effectuate. 6

The Pennsylvania Supreme Court further clarified and expanded on National Land in a decision concerning large lot zoning, The Appeal of Kit-Mar Builders, Inc., 268 A. 2d 612. Kit-Mar Builders, Inc., entered into an agreement to purchase a 140-acre tract of land in Concord Township, Pennsylvania. The agreement was contingent on the tract's being rezoned to permit single-family homes to be developed on one-acre lots. At the time the tract was zoned to require lot of no less than two-acres along existing roads and no less than three acres in the interior. The zoning board upheld the minimum lot requirements.

The court held that the zoning ordinance under the circumstances of this case was completely unreasonable. Basing the ordinance on a contention that smaller lots will create a sewerage problem, the court rejected the argument that sewerage problems could not excuse exclusionary zoning in National Land. This case was, however, litigated before NEPA 102 environmental impact statements became a tool for controlling growth. Yet the court held in National Land that because there were alternative methods for dealing with

nearly all the problems that attend growth, including sewerage problems, zoning which had an exclusive purpose or effect could not be allowed. The Court has frequently adverted to the effects of overly restrictive zoning on population growth, housing supply, and social mobility, with the resulting exclusionary zoning. Planning considerations and other interests can justify varied lot sizes in given areas of a community which are reasonable. "At some point along the spectrum, however, the size of lots ceases to be a concern requiring public regulation and becomes a matter of private preference." ⁷

The implication of our decision in National Land is that communities must deal with the problem of population growth. They may not refuse to confront the future by adopting zoning regulations that effectively restrict population to near present levels. It is not for any given township to say who may or may not live within its confines, while disregarding the interests of the entire area. ⁸

These cases concern instances where localities have passed simplistic zoning ordinances based upon a basic economic distinction between citizens. These people who can afford expensive housing are in, those who cannot are out. However, the courts have interpreted the zoning powers in more com-

⁷ 419 Pa. at 524, 215 A.2d at 608

⁸ 439 Pa. 466, 469, 469 A. 2d 765, 768 (1970)

elling terms. Controlled growth planning strategies must base their schemes on more firm grounds. The consequence of these two cases is that municipalities must plan for some increment of growth in all reasonable housing categories. Without clear ecological evidence that development is contrary to the general welfare, some growth and adjustment of lot requirements is necessary.

LOCAL ZONING AS IT RELATES TO REGIONAL HOUSING NEEDS:

A Discussion of General Welfare as a Zoning Purpose

Reducing and restricting housing construction is a method of controlling municipal growth. The effects of this reduced housing supply may be felt in the region. The common law has developed the concept of regional housing considerations when shortages effect the general welfare. Municipalities may not flout their regional responsibilities under the zoning power. Oakwood at Madison, Inc., v. Township of Madison,⁹ argues two concepts which are applicable to the legal questions surrounding housing and controlling growth. First, whether the court will use the zoning purpose of the general welfare to require municipalities to provide additional housing for all people whom they encourage to work within their boundaries.¹⁰ Second, whether a municipality's zoning ordinance which seriously inhibits the development of new housing

⁹ 117 N.J. Super. 11, 283 A. 2d 353 (Law Div. 1971) N.J. Sup. Ct. No. 8972 (cert. granted July 21, 1972)

¹⁰ 283 A. 2d 353 at 356

particularly multi-family dwellings is invalid for failing to further the general welfare of the population in a geographical region where there is a critical housing shortage.¹¹ Madison Township clearly illustrates the "due process" requirements of the police power.

The case is a prerogative writ action challenging the constitutionality of the state zoning enabling act and the validity of the township ordinance. The Superior Court held that the zoning ordinance of the township, which had approximately 30% of its land area vacant and developable, which because of restricted land, limited multi-family buildings to about 500 to 700 additional, none of which could be three bedrooms or larger, and which divided most of the remaining land to zones requiring one and two-acre lot minimums with minimum floor space of 1,500 square feet and 1,600 square feet respectively, was invalid for failure to promote a reasonably balanced community in accordance with the general welfare. There was an absence of a record to substantiate a claim that safeguarding against flood and surface drainage problems could be reasonably advanced by zoning revisions to the town ordinance into low population density districts.

The action challenged the constitutionality of the Zoning Act¹² on the basis that it does not further the general welfare as defined by regional needs. The plaintiffs

¹¹ Id. at 355, 356

¹² N.J.S.A. 40:55-30 et. seq.

are two developers who own vacant and developable land in Madison Township, and six individuals, all with low income, representing a class of citizens who reside outside the township and have sought housing there unsuccessfully because of the newly adopted zoning restrictions, including one and two-acre minimum lot sizes.¹³

Madison Township is 42 square miles in the southeast corner of Middlesex County, New Jersey. In two decades of explosive growth from 1950 to 1970, paralleling the trend in the county and the region, its population mounted from 7,366 to 48,715.¹⁴ Most of the new housing was single-family in developments on 15,000 square foot or smaller lots, and since 1965, multi-family in garden apartments. Reflecting school construction and other expanded costs of government, the real property tax rate increased from one of the lowest in 1950 to the highest in 1970 in the county. Despite this growth, 30 per cent of the land is vacant and developable and it has been estimated by a planning consultant in 1970 that the township could hold a population of 200,000 without overcrowding.*

In 1970 the administration of the Township decided to curb the population growth significantly and thus to stabilize

¹³ 83 A. 2d 353 at 354

¹⁴ Id. at 355

* Testimony before the planning board of Madison Township at the presentation of the master plan in May 1970, by planning consultant to the municipality.

the tax rate. It sought to shift the character of development from explosive growth on a patchwork basis to orderly growth in densely developed areas and the preservation of open space.

The attack on the constitutionality of the Zoning Act was aimed at expanding the definition of general welfare in regional terms. The plaintiffs contended that the declared zoning purposes of the New Jersey Zoning Act are fatally defective, thwarting the general welfare because they fail to encompass housing needs. The plaintiffs contend that the enabling legislation reflects a basically static population and is not commensurate to the general welfare today in a time of rapid population expansion.¹⁵

The provision for housing needs, local and regional is not a specified purpose of zoning under N.J.S.A. 40:55-32, however, the general welfare is. Although the general wel-

¹⁵ N.J.S.A. 40:55-32 Such regulations shall be in accordance with a comprehensive plan and designed for one or more of the following purposes: to lessen congestion in the streets; secure safely from fire, flood, panic and other dangers; promote health, morals, or the general welfare; provide adequate lighting and air; prevent the overcrowding of land or buildings; avoid undue concentrations of population. Such regulations shall be made with reasonable consideration among other things, to the character of the district and its particular suitability for particular uses, and with a view of conserving the value of property and encouraging the most appropriate use of land throughout such municipality.

fare is stated as a disjunctive zoning purpose, it cannot be circumvented or flouted in municipal zoning.¹⁶ This line of argument led the court to state:

... it cannot be maintained that the Legislature in the Zoning Act has empowered municipalities to defy the general welfare or to ignore housing needs insofar as such needs are embraced within the general welfare. 17

The constitutionality of the State Zoning Act was upheld.

Madison Township has attempted to balance the municipality by restricting various types of housing construction. It has limited the amount of multi-family units per year to 200. Its contentions were that it was seeking a balanced community, encouraging high income and moderate income housing to balance the predominant low income housing, and protecting drainage systems where high density residential development might result in floods and surface drainage problems and interfere with and imperil underground water resources. To enforce the construction of single family, middle and upper income housing, minimum lot requirements were built into the local zoning ordinance. In testimony, it could not be sub-

¹⁶ Harrington Glen, Inc., v. Mun. Bd. Adj., Leonia, 52 N.J. 22, 32, 243 A. 2d 233 (1968); Roselle v. Wright, 21. N.J. 400, 410, 122 A. 2d 506 (1956); Katobimar Realty Co. v. Webster 20 N.J. 114, 122, 123, 118 A. 2d 824 (1955); Schmidt v. Board of Adjustment, Newark, 9 N.J. 405, 416, 88 A. 2d 607 (1952); Gabe Collins Realty, Inc. v. Margate City, 112 N.J. Super, 341, 271 A.2d 430 (App. Div. 1970).

¹⁷ 283 A. 2d 353 at 356

stantiated that such large lot zoning would safeguard against flood and drainage problems.

In Madison Township's approach to the objective of balance, its attempted cure is a worse malady than whatever imbalance existed. About 8000 acres of land, apparently prime for low or moderate income housing development, have been taken out of the reach of 90% of the population, and are prohibitive in land and construction costs. The acreage available for multi-family apartment units is miniscule. Families with more than one child are barred from multi-family apartments because of one and two bedroom restrictions in the zoning ordinance, without any guise of a health or safety purpose.¹⁸

The court maintained that the exclusionary approach in the ordinance coincided in time with a desperate housing shortage in the county and region and expanded programs, federal and state, for subsidized housing for low and moderate income families. The judgment rules that regional needs are a proper consideration in local zoning.¹⁹

¹⁸ 283 A. 2d 353 at 358

¹⁹ DeSimone v. Greater Englewood Housing Corp. No. 1, 56 N.J. 428, 267 A. 2d 31 (1970); Duffcon Concrete Products v. Cresskill, 1 N.J. 509, 513, 64 A. 2d 347 (1949); Garland v. Maywood, 45 N.J. Super. 1, 6, 131 A. 2d 529 (App. Div. 1957); Molino v. Mayor, etc., Glassboro, 116 N.J. Super. 195, 204, 281 A. 2d 401 (Law Div. 1971).

In pursuing the valid zoning purpose of a balanced community, a municipality must not ignore housing needs, that is, its fair proportion of the obligation to meet the housing needs of its own population and of the region. Housing needs are encompassed within the general welfare. The general welfare does not stop at each municipal boundary. 20

The court held that the ordinance was invalid because it failed to promote reasonably a balanced community in accordance with the general welfare. The decision leaves open the possibility that a municipality which does not attract business or offer employment to a large number of people may retain a more restricted residential pattern. The Madison court's emphasis on consideration of factors transcending municipal jurisdictional boundaries suggests that if a municipality lies in a natural conduct of regional growth, it cannot avoid providing a share of the housing for the regional population.²¹ The court offered little in the way of criteria for the decision up to a compromise of the municipal planning board and the private market.

20 283 A. 2d 353 at 357

21 26: Rutgers Law Review, 2 Winter 1973, 401

Comments

The importance of the Madison Township case is that it clarifies the general welfare as a regional concern. The ordinance in question so restricted the total area available for multi-family housing so that no more than 500 to 700 additional units could be built at all within the city, and none of the units could exceed two bedrooms. Furthermore, land and construction costs were such that minimum purchase prices for most of the housing would be between \$45,000 and \$50,000. Only those with incomes in the top 10% of the nation and county could finance new housing in these areas.*

Clearly, there is a conflict between the demands of the region and the municipal zoning ordinance. The case argues that if a locality so limits its available developable land as to create a regional inequity without legitimate fiscal or environmental constraints, the ordinance is in violation of the police power under which zoning is granted.

The case does not speak to the problem of financing growth. When a municipality is unable to shoulder the mone-

* About 55% of the land area of the township is zoned R40 or R80. Minimum lot size is one acre in R40 and two acres in R80. Minimum floor space is 1500 square feet and 1600 square feet respectively. Since 1930 there has not been a development on a two-acre lot. Since 1964 only one subdivision plan for one-acre lots has been proposed.

tary burden of providing public services and facilities to accommodate regional housing demands who should pay? In planning and budgetary terms, the intervention of a regional authority which would help to finance infrastructure improvements appears to be necessary. More sophisticated municipal controlled growth schemes base their zoning on the development of programs for capital improvements which will phase growth. These strategies have been generally upheld as valid exercises of the zoning power.

RESIDENTIAL GROWTH CONTROL: Municipal Phased-Growth Zoning Ordinances

Municipal controlled growth plans have become sophisticated well beyond National Land, the Appeal of Kit-Mar, and Madison Township. Recently, arguing that the limits of municipal finance constrain the amount of housing development which the city can absorb at any given time, in 1971 the Town of Ramapo, New York instituted a phased-growth plan of urban growth.

The town amended its zoning ordinance to prevent housing development or subdivision of land unless the developer of such housing receives a "special permit." A permit is granted if the land to be developed is adequately serviced by certain public facilities. Construction of these facilities is scheduled in accordance with the town capital improvement plan (CIP). Land not near enough to municipal facilities may not be developed until such service criteria is met or for as long as eighteen years, after which all pre-existing city growth constraints are lifted. To prevent a taking of property without just compensation, and because development potential has been deferred, the tax on such land is reduced according to a scale of diminished value.

The ordinance places an additional layer onto the residential plat-approval process by requiring persons who directly or indirectly cause land to be used for residential purposes, to secure a 'special permit' before they can apply for site plan or subdivision approval, or for a building permit. An applicant, in order to receive a special permit, must achieve a minimum of 15 development points out of a possible 23 points. Points are 'awarded' on a sliding scale, based on the relative availability of five municipal services to each proposed house on the plat. These services include: sewers or approved substitutes; drainage facilities; roads; firehouses; and parks, or recreation facilities including school sites. 22

The basic plan for controlling growth is aimed at population growth. Phasing residential development is at the crux of the strategy. The ordinance is limited to the residential sector because it is felt that such uses contribute less to the tax base than commercial and industrial uses, which do not fall under the purview of the ordinance. The stated goals of the Ramapo "phased-growth plan" are:

1. To economize on the costs of municipal facilities and services to carefully phase residential development with efficient provision of public improvements;

22 The State and Urban Reporter, published by the National Association of Homebuilders, Washington, D.C. 20036. Issue of July-Aug. 1972.

2. To establish and maintain municipal control over the eventual character of development;
3. To establish and maintain a desirable degree of balance among the various uses of the land;
4. To establish and maintain essential quality of community services and facilities.²³

In Madison Township, the court stated that a municipality had the responsibility to allow housing opportunities for all people employed within the locality. The Ramapo ordinance clearly restricts housing development while establishing no new growth constraints on commercial, business and industrial uses. People are still encouraged to construct facilities and to generate employment, yet, commensurate new housing is highly limited. Because Ramapo has theoretically provided margins in which all types of housing development must occur, presumably, no particular income group will be unreasonably discriminated against.

Phasing or staging growth over time received judicial sanction in Golden v. The Planning Board of the Town of Ramapo,

Where it is clear that the existing physical and financial resources of the community are inadequate to furnish the essential services and facilities which a substantial increase

²³ "Ramapo" an editorial Planning, ASPO, July 1972 p. 108

in population requires, there is a rational basis for 'phased-growth' and hence, the challenged ordinance is not in violation of the Federal and State Constitutions. 24

The Ramapo ordinance presents fiscal arguments for slowing and phasing its growth over a certain period of time. Yet, the purpose of the regulation is neither to prevent development in an ultimate sense, nor to be unreasonable in its regional responsibility. The majority opinion in Golden v. Ramapo recognized the importance of a public interest in the control of land that is larger than reflected in the municipality exercising the powers. Ostensibly, Ramapo comes into conformity with other cases which extend general welfare requirements. The opinion describes as "largely antiquated" the notion that regulation of land use and development is "uniquely a function of local government."²⁵ In qualifying its endorsement of the Ramapo ordinance, the court adds that growth may not be permanently restricted and must ultimately be allowed because of the overriding pressures of population growth, and the enhancement of the general welfare.

There is, then, something inherently suspect in a scheme which, apart from its professed purpose, effects a restriction upon the free mobility of a people until sometime in the future when projected facilities are available to meet increased demands. Although

²⁴ 30 N.Y. 2d 359, 334 N.Y.S. 2d 138 (1972)

²⁵ Potomac, op.cit. page 26.

zoning must include schemes designed to allow municipalities to more effectively contend with the increased demands of evolving and growing communities, under its guise, townships have been wont to try their hand at an array of exclusionary devices in the hopes of avoiding the very burden which growth must inevitably bring. 26

The court recognized the dilemma of balancing municipal phased growth goals with the need to house people in adjacent densely settled urban areas. The situation in Ramapo is particularly critical because of its proximity to New York City. Financing urban growth and providing the municipal facilities and services which accompany development must become regionally administered. "These problems cannot be solved by Ramapo or any single municipality, but depend upon the accommodation of widely disparate interests for their ultimate resolution. To that end, statewide or regional control of planning would insure that interests broader than that of the municipality underlie various land use policies."²⁷

If the Ramapo ordinance were overtly aimed at the low income sector, or at any particular racial minority in purpose or effect, it would not have been upheld in court. The major-

²⁶ 334 N.Y.S. 2d 138 at 150; see National Land and Inv. Co. v. Easttown Twp. Bd. of Adj., 419 Pa. 504, 532, 215 A.2d 597, supra; Girsh Appeal, 437 Pa. 237, 263 A. 2d 396; Concord Twp. Appeal, 439 Pa. 266, 268, A. 2d 765

²⁷ 334 N.Y.S. 2d 138 at 150

ity opinion made specific reference to the existence of provisions for low and moderate income, and multi-family housing in the town master plan emphasizing that it would not endorse an exclusionary ordinance. Though the amount of such housing was small, it apparently was sufficient to preclude denial of the ordinance on equal protection grounds. It will take several years to measure the results of the plan on the low income opportunity structure.

If the CIP or the character of the facilities constructed under the plan preclude developments for the low income, elderly, or other "aggrieved" parties, these adverse effects could be the basis for further litigation. Under phased growth ordinances which time housing development in accordance with the provisions of sewer and other capital facilities, the plan for such facilities may determine the character of private development, rather than private development determine the nature of public facilities, which has been the characteristic of urbanization in the United States. It has been advanced that the Ramapo capital improvement plan, in fact, is designed to support only low-density housing as the town develops.

No effort is made in the capital plan to promote "cluster" or multi-family housing in areas that might be suitable for more intensive uses. The capital improvement plan thus contemplates a continuation of

expensive and exclusionary "sprawl" which in all probability would have occurred -- although somewhat faster -- without the plan. 28

Therefore, if structural improvements cannot support higher density developments, will the effects of the ordinance create an exclusionary pattern denying due process and equal protection clauses of the constitution?

Yet, there is a strong presumption of validity in favor of town planning boards in cases such as Ramapo. The court assumes that the city has reviewed all possible alternatives to its ordinance and has chosen the one most acceptable to the municipality's particular needs. The court cannot undertake planning in and of itself, and the grounds under which it can hold an ordinance invalid are strongly limited. In the Ramapo case, the court found neither a denial of due process nor of equal protection. The fiscal arguments on which the plan was based were found to be a valid and an accurate portrayal of the financial conditions of the city. Since the ordinance made provisions, albeit little, for low and moderate income housing, it is not procedurally exclusionary. However, in the long run, will private market pressures on land and construction costs or a developer's internalized infrastructure costs preclude construction of low cost housing? Will the factual situation in Ramapo change as the plan evolves?

What is lacking in the whole Ramapo case is an understanding of the regional growth phenomena and the effects of local actions on those patterns. Municipal ordinances such as Ramapo are chiefly concerned with local costs entailed in financing urban growth and development. Thus, decisions are made which attempt to minimize costs to the local taxpayer with little regard for the transferral of those costs to other taxpayers in other municipalities in the region or the state. When one locality attempts to reduce its costs, it may pose unreasonable costs on other areas. "The costs which are sensitive to the patterns of land development -- such as sewers, roads, fire protection -- cannot be reduced in one locality without putting its neighbors under greater stress to provide such services. Consequently, a program of development timing dependent on the provision of these public services may represent one locality's effort to transfer such costs to another locality, more than an attempt

* A developer may provide the necessary capital improvements on his property to string his land up to development standards instead of waiting for the improvements to be done under the CIP in such cases. The costs are passed along to the consumer.

to produce a more efficient use of land for residential needs."²⁹

What emerges is an interesting direction. The court recognizes the need to control urban growth at the municipal level through the institution of phased-growth zoning ordinances. It also recognizes the possible exclusionary effects of such an ordinance. Yet clearly, if localities throughout the New York City metropolitan area adopted controlled growth ordinances similar to Ramapo's the aggregate effect would severely interfere with housing opportunities for nearly all income sectors. It would withdraw a tremendous amount of land from the market, and driving up the prices on the balance so high that only the most wealthy could afford housing. Though a no-growth region under Ramapo, Madison Township, or National Land has not yet emerged, the possibility certainly causes concern. Has the court countenanced such regions through the Ramapo decision? Conversely, are localities forced to exercise their zoning powers in such ways because of the absence of regional planning authorities which would help to finance capital improvements according to regional needs?

²⁹ Potomac, op.cit. Page 38. The fact that Ramapo's not to the commercial or industrial sectors suggests a strong similarity to the fiscal zoning schemes commonly employed by localities competing for the best tax base. If Ramapo is successful in attracting commercial, light "clean" industry, office, research, and software developments while discouraging or "phasing" residential development, it will be successful in providing its citizens with a higher level of public facilities at a lower tax effort per household.

MUNICIPAL CONTROLS ON INDUSTRIAL GROWTH AND LOCATION:

How Cities Influence Low Income Employment Opportunity

Through Land Use Controls

Municipalities are able to influence low income opportunity by controlling various aspects of industrial and commercial expansion. In turn, certain industrial resources affect not only the supply of housing, but the employment opportunity structure. Industrial growth can be limited by controlling the use and development of land. The "nuisance doctrine" and zoning by-laws are the primary mechanisms for such action. The industrial growth which can be limited can be characterized as growth in the present location (intensive growth) and the expansion of industries into new location (extensive growth).

Nuisance, as one of the most direct extensions of the police power, must be distinguished from the powers of eminent domain; the former being a limitation or prohibition on the operations of an enterprise without compensation, and the latter being a taking of private property by a public body with just compensation. Evident in both English and American common law, nuisance is employed to prohibit or limit the intensive and extensive growth or the existence of publically obnoxious, offensive and detrimental uses. Because of

its non-compensatory nature, the courts are very careful about the application of nuisance as a legislative act, in order to assure that the abatement is neither an arbitrary nor an unreasonable abridgement of private property rights.

In Lawton v. Steele,³⁰ the court expanded on and clarified the concept of the police power to limit industry through nuisance. The concept is universally conceded to include everything essential to the public safety, health, and morals, and to justify the destruction or abatement of whatever may be regarded as a public nuisance.

... it must appear first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. 31

When a municipality chooses to impose the police power in the abatement of a "nuisance" there are obvious trade-offs. The employment and tax-generating capacities of the enterprise are transferred elsewhere for the increased environmental amenity. In order to accomplish this limitation, the application of nuisance must be directed at the causal link between industrial activity and the degradation of the general welfare through the loss of environmental quality.

30 152 U.S. 133, 14 Sup. Ct. 499, 38 L. Ed. 385 (1894)

31 Ibid.

Extensive growth may adversely affect the human or physical environment as may intensive growth through changes in the size and dimensions of buildings. Added effluent and air pollution through internal capital growth, or added stress on existing traffic systems may constitute a basis for municipal action. But again, the imposition of these municipal controls must enhance the general welfare.

In addition to nuisance, which works on an ad hoc basis, zoning and comprehensive planning further affect the distribution and amount of industry. Through zoning, various uses, densities, scales and classifications of industry can be segregated and limited. Heavy industry can be segregated from light "clean" industry. Zoning can define where a certain type of industry can locate. Through the use of various incentives and disincentives, related to zoning, the attractiveness for growth, industrial mix and intensity within a municipality can be controlled.

Euclid v. Ambler Realty Co., forwarded industrial zoning as it did residential zoning. Municipalities have the power to regulate land uses only in conjunction with a comprehensive plan.³² Therefore a town does have the right to exercise control over the nature of its industrial base. Of course there are many cases which modify the amount of discretion a town may exert over industry, but the basic powers of regulation remain.

³² Berman v. Parker 348 U.S. 25, 75 Sup. Ct. 98, 99 L.Ed. 27 (1954)

When a municipality decides that it is in its best interests to limit industrial growth, it may do so provided it has weighed the impact on the community's future. But in whose interests are certain types of industry discouraged? Are all types of new industrial growth prohibited? Are capital intensive, service and "clean" industries allowed, while labor intensive facilities are discouraged? Has the municipality created an overriding policy for the future industrial and business growth of the community taking into consideration the needs for development in certain employment sectors?

The above questions must be asked. Conclusions that can be drawn from an analysis of the situation should determine the properties of a controlled industrial growth policy. In addition, the party that is responsible for such decisions also makes a difference. Thus, a broad spectrum of interest groups must be represented. The needs of minority groups, the handicapped, the poor, and the industrial sector must be balanced with the various interest groups concerned with growth control.

The incidence of unemployment in an area mitigates against absolute limitations over industrial growth.³³ The justification of industrial expansion and intensification by its employment generating capacities have been seen as a

³³ Oakwood at Madison, Inc., v. Township of Madison, Supra.

legitimate general welfare basis for growth. Until either the overall demand for employment is satisfied by the private market, or a national income redistribution policy is implemented, it can be argued that limited -- specified -- industrial growth must continue. Since the federal government has been reluctant to institute more extensive national income redistribution, there are compelling reasons why the private sector must continue to create certain types of employment. Allocations of industrial growth may be done as are "fair share" housing allocations; on a regional basis.

What are the overriding problems which limitations on industrial growth solve? What are the relationships between the perception of that problem and a municipality's abilities to affect the problem. It was initially suggested that unlimited industrial growth tends to cause environmental deterioration and rapid resource depletion. Natural resources (mineral, water, and land) are scarce, and proponents of "zero economic growth" (ZEG) state that the consumption of such resources should be curtailed and phased.

Many of the more sophisticated proponents of limited economic growth at the municipal scale certainly understand the necessity of changing existing national patterns of consumption and waste. However, many of the problems of limiting industrial growth require national intervention. Energy-related policies, mineral resource allocation, patterns of military-industrial spending, and other principal features of the eco-

nomy are determined by the national government. Localities may certainly wish to intervene in that process, yet, their spheres of influence often are not extensive enough. Local frustration at the lack of ability to affect national priorities is a possible root of strong municipal actions to assure more sensitive economic growth policies.

Does it necessarily follow, however, that increased industrial development means decreased environmental quality? In cases that it does (unavoidably high levels of effluent or air pollution) there may be legitimate grounds for a municipality to prohibit such an industry. The decrease in environmental quality may outweigh the benefits of any employment and tax generating capabilities of the industry. The use of an extended nuisance doctrine can be a more precise balancing test for the utility of a certain industry and can be another method of land use allocation. A blanket statement that all industry is prohibited in a municipality may be too extreme. Many facilities have little detrimental output and are not nuisances. Service and "clean" industries are non-pollutant and, therefore, perhaps it is not a sacrifice in the goals of the community to allow their development. In zoning out all industry per se, an ordinance may prohibit industries which are not in conflict with community goals.

Because of the changes in the characteristics of many industries, the contiguous use of land for residential and

business purposes is increasingly possible. Perhaps antiquated aspects of zoning could be avoided by using extended nuisance to determine the highest and best use of land. One can conceive a situation in the future that nuisance may be the better method for land use planning. Sweeping no-growth zoning ordinances may be premised on assumptions which are negated by advanced technology. In their attempts to keep industry from their cities, municipalities may discover that their ordinances and policy rationale are not justified under the police power.

CHAPTER II

FEDERAL INTERVENTION IN LAND USE POLICY

NATIONAL LAND USE POLICY: A Detente Between Municipalities
And Regions

Land use planning decisions have regional, statewide and national ramifications. Home rule and local efforts to plan for urban growth are often incompatible with regional needs, and in many cases, they can create or exaggerate social and economic inequities. A National Land Use Policy (NLUP) might address these issues.

It is in the national interest to develop a more efficient and comprehensive system of national, statewide, and local land use planning and decision-making the rapid and continued growth of the Nation's population, expanding urban development, proliferating transportation systems, large-scale industrial and economic growth, conflicts in emerging patterns of land-use, the fragmentation of governmental entities exercising land-use planning powers, and the increased size, scale and impact of private actions, have created a situation in which land-use management decisions of national, regional, and statewide concern are often being made on the basis of expediency, tradition, short-term economic considerations, and other factors which are often unrelated to the real concerns of a sound national land-use policy. ¹

¹ National Land Use Policy S. 632 U.S. Senate, 1971 Title III Part 1 Sec. 301. (a)

A NLUP may go far in rationalizing the jurisdictional confusion over which level of government is responsible for what types of land use decisions. Regional considerations are seldom incorporated into local growth decisions. With the advent of increased local controlled growth there is great potential, absent of the adoption of a NLUP (and state land use policies) that the imbalance and the poor distribution of planning power will perpetuate the regional versus local problems.

As previously developed, zoning is the basis of most publically directed efforts to control land uses. Zoning is an extension of the state's power to protect the health, safety, morals, and general welfare. The extent to which zoning ordinances reasonably contribute to the above criteria is a measure of their judicial sanction. When the exercise of zoning powers is unreasonable or arbitrary, it can be invalidated. These powers are primarily delegated to localities and have become a major feature of home rule.²

Besides zoning, fiscal allocations through governmental budgets are another way by which cities control urban growth. Public construction of schools, roads, municipal infrastruc-

² For a more thorough discussion of the zoning power refer to the section on the common law. An analysis of zoning as it contributes to the general welfare is documented by several cases clarifying the concept.

ture, major public buildings and facilities, open space allocations for parks and recreation all exert an influence on the pattern and sequence of development. Such public development powers strengthen and support home rule.

Though zoning powers emanate from the state, they are not generally thought of as state authorized. However, in constitutional terms, the delegation of zoning power is for the general welfare. The extension of that concept in space has caused tension between local control and identity and the extent of overriding regional and state general welfare requirements. The locality is the best level of jurisdiction for arbitrating such broader concerns. Localities are often incapable of financing broader based public projects and as previously mentioned, they are unable to extend their jurisdiction beyond their boundaries.

Localities can only effectively control that physical area which lies within their political jurisdiction. Cities may not directly control unannexed or unincorporated land without the consent of a higher level of authority (county or state). Yet, in the exercise of the zoning power and in the drafting of comprehensive plans, cities are increasingly called upon to be sensitive to social and environmental forces beyond their physical boundaries.

States have been reluctant to re-establish their fundamental zoning authority. In most states this would require re-enforcing legislation which would involve state legislators

in battles with their constituencies over a "misunderstood usurption" of planning authority.

NLUP, as envisioned, circumvents the home rule fight. Authority delegated to localities by state enabling legislation is re-affirmed as emanating primarily from state police powers. To be eligible for funds available under NLUP, states must incorporate several features of state and regional level planning abilities into their required state land use policies and plans. This begins a formal clarification of state versus local jurisdiction in land use planning.

Congress has seen that it is in the national interest to propose assistance to "state governments to assume land-use planning responsibility for activities within their boundaries through NLUP. To accomplish this end, a grant-in-aid program is proposed which would establish the procedures necessary to develop, implement, and administer a statewide land use plan which meets Federal guidelines and which will be responsive and effective in dealing with the growing pressure of conflicting demands on a finite land resource base."

The policy is aimed at long range land use planning at the state level. State plans must project land-use requirements within the state or region for agriculture, recreation, urban growth, commerce, transportation, the generation and transmission of energy, and other important uses for at least fifty years in advance. Conceivably, when a city attempts to

limit the residential growth within its boundaries, it will eventually have to reconcile its perception of future development with state expectations and demands. The federal government will expect land use planning to be orchestrated at the state level.

Federal requirements envisioned under NLUP are aimed primarily at cities under 250,000 in population or that are less than 20 per cent of the total state population.³ Coincidentally, unincorporated areas, suburbs, and smaller scale urban concentrations are experiencing the most accelerated rate of residential growth. This also appears to be the scale where most local no-growth initiatives have occurred. A state land use plan must determine the highest and best use, based upon projected local, state, and national demands for a variety of needs among which are recreation, agriculture, mineral, commercial, industrial, housing, and natural resource uses.⁴ The Policy has established guidelines which describe a very elaborate planning process. Broad-based locational decisions can be dealt with at the state level, and therefore local zoning can be reconciled to state and regional demands.

State level land use planning envisioned under NLUP is in marked contrast to another important federal program,

³ Title III sec. 305 (b) (1) (B)

⁴ Title III sec. 305

Bureau of Management and Budget Circular A-95 Project Review Procedure, which also intervenes in federally assisted land improvement. A-95 requires that a regional agency function as a clearing house to review the expenditure of federal funds for municipal infrastructure. The allocation of funds for such projects as water lines, sewerage, drainage facilities, and solid-waste treatment facilities, and federally subsidized housing have obvious impact on the patterns of urban growth. Such a process should assess the regional and inter-regional effects of such federal investment. The review functions on a project by project basis. The generation of plans is not authorized under A-95. The review may override plans, but A-95 is not designated to create plans or priorities.

This ad hoc process leaves much to be desired. With no specific long range program for federal investment, adequate survey or assessment of regional and competing needs, or no abilities to initiate a plan, A-95 is a highly emasculated function. "The State planning agency's authority must include the power to implement and enforce the provisions of its plan."⁵ Furthermore, the agency's power must include the authority to prohibit, under state police powers, the use of any lands in a manner which is inconsistent with the

⁵ Title III sec. 305 (c) (4)

provisions of the plan. According to how strong the state wishes to enforce the provisions of NLUP, this clearly means an endorsement of state override of much local planning. While states have historically been reluctant to engage in a battle over state versus local planning authority, NLUP can potentially obviate this battle. States may delegate planning powers, but the state agency must have ultimate responsibility for approval and coordination of local plans and enforcement procedures.⁶

In the light of the planning processes being used in no-growth contexts, the intervention of a planning agency responsible to regional and statewide issues is crucial. The Ramapo context highlights a situation whereby an aggregation of such exercises of the zoning power could have the effect of excluding large numbers of people from moving into an area. Through the exercise of the powers clarified in the National Land Use Policy, the state planning agency would be able to scrutinize the effects of local no-growth actions and to determine if they are in conformity with regional and statewide demands. For example, in Ramapo, New York, situation, a capital improvement plan was held as a valid way of staging development and as a valid extension of the zoning power.⁷

⁶ Title III sec. 305 (e) (1)

⁷ Golden v. Planning Board of the Village of Ramapo, 30 N.Y. A. 2d 329

In a case where the state determines that such a suburban area should accommodate more urban growth and absorb more of the residential pressures of the primary urban center, they may see it in the public welfare to help the locality extend its infrastructure at a faster rate, according to a broader based demand for such facilities.

Another context, Boulder, Colorado, is challenging in that the demands for both growth and no-growth demands have credibility. The local desire to maintain the environmental amenities of the Boulder Valley and the Flatirons of the Rocky Mountains dictates a conservative attitude towards growth. Developing performance criteria for residential construction, industrial and commercial location from Boulder's point of view means a basic discouragement of growth. It does not take much imagination to deduce from observation that rapid urban development is taking place between Boulder and Denver. Thus, Boulder's attempts to stop growth are futile unless a Boulder-Denver regional growth strategy is created. Boulder in limiting its growth simply transfers that potential to adjacent areas. This transference of potential is a matter of state and regional concern. Furthermore, the implications of Boulder's potential diminished low income opportunity structure is of state concern and should fall under the purview of the state land planning agency.

A National Land Use Policy has immense potential for opening up the process of controlled growth. Cities have

historically viewed themselves as private domains principally responsible and responsive to local residents. Contrary to this notion are realities which dictate a different approach to planning. Localities exist as parts of regions, and the general welfare as defined by state zoning enabling legislation, and NLUP means that localities are not private. The general welfare means consideration, citizens both inside and outside, present and future residents.

NLUP is consistent with many other programs of the Nixon Administration which promote the "new federalism." The fundamental planning authority of the States is re-confirmed through a number of provisions previously mentioned. Presumably NLUP parallels other attempts to put decision-making as close to the electorate as possible.

Until 1973, decisions on the allocation of funds for federally assisted housing development under the various sections of the Housing and Urban Development Act were primarily made by the federal government. Not only through the exercise of its funding powers for housing, but for water resources, solid waste, utilities, open space, park lands, and new communities, the federal level was increasingly called upon to make land use decisions. Often these decisions had a major impact. Federal health, housing, and anti-poverty programs directed what was then considered, national priorities. Funds which were never obtainable through the private sector and through smaller governmental units for low and moderate income housing, elderly housing and new communities were obtainable from the federal level. The insurgent political forces of racial minority groups in this country, the elderly and other groups began to direct national priorities in the area of housing beyond the traditional Federal Housing Administration Mortgage Guarantee Programs. Innovative programs in health, education, and job training were based primarily on the moral and ethi-

cal awareness produced in the civil rights movement. Yet, the money necessary to fund these areas was politically grounded in the new federal machinery, the Department of Housing and Urban Development, the Department of Health, Education and Welfare, and the Department of Labor. These programs had not been institutionalized as has been Social Security or any of the Trusts. Obtaining funds from HUD or HEW was greatly based on politics. There was little "automaticity"⁸ involved in the funding process. Nearly all of the funds of the housing and poverty programs were dependent on political ideology and national sentiment.

Federalism argues that government is more capable of response and responsibility at levels lower than the national. State and local officials are closer to the electorate and therefore, the priorities of the citizens can be more directly realized. In the area of urban development and land use planning, it is further argued that States and localities should direct growth rather than allowing many of the major decisions to be made by federal fiscal and budgetary allocation. NLUP asserts that beyond a few federal guidelines, the bulk of the

⁸ Automaticity is a feature of federal funding whereby proposals are awarded funds on specific criteria which are explicit. Proposals complying with the guidelines are automatically awarded funds. For example, obtaining funds from Social Security is an automatic process, there are mandatory requirements for both qualification and the issuance of funds.

policy, planning and budgetary formulations will be state and local functions. Therefore, in the area of housing, it will be up to each state to develop its own housing development policy. In reconciling the potential problems of no-growth, the state will have the ability to intervene, if it so chooses, to stimulate the development of housing where there may be severe shortages of particular categories. The planning process and the state response to adverse effects will be much closer to the constituency in proximity and jurisdiction.

It is not incumbent upon states to develop strong centralized planning agencies. There are no guarantees that the states will take strong advantage of NLUP potential. They may establish a variety of lesser institutional structures which will allow compliance with NLUP. Regional planning authorities are also an answer to the problem and they may also serve as surrogate planning structures. But they are not required by NLUP. However, in each of the cases, a central state agency must assume the responsibility for land use policy and implementation. In Colorado, where local control over land use characterizes the political culture of the state, there may be reluctance to enact a more powerful centralized planning agency. However, the New York Urban Development Corporation assumes broad state powers for planning and development and is able to waive local laws, ordinances, zoning codes, charters and constitutional regulations when such powers are required to undertake state development.

The character and features of State Land Use Policies as defined by NLUP are extremely flexible. It behoves these political economic and social forces concerned with low income mobility to put pressure on the states to create more accountable state and regional planning bodies. Structures for appealing the decision making from the locality to the region to the state will be extremely important in adjudicating the effects on the poor of no-growth.⁹

Many no-growth problems are not dealt with in the proposed NLUP legislation. The specific criteria for local urban growth, regional criteria for allocating housing, public facilities and open space are not and cannot be explicit under NLUP. Such problems must be clarified under State Land Use Policies sensitive to the idiosyncracies of the individual states and regions. There is a profound recognition implicit in NLUP that the federal government has no business directing land use at the national level. NLUP cannot be seen as a panacea for the ills of land development. It does, however, put the states in a position of responsibility for planning

⁹ NLUP offers no guidelines for the creation of a land use appellate structure at the state level. Such a mechanism could offer legislative reconsideration of local actions as a prior condition to court litigation. Few states have zoning appeals boards which can arbitrate individual or aggregate local actions. Therefore, the courts have become increasingly involved with making land use decisions when in effect, one would assume a planning board to be more qualified to make such decisions.

decisions which have jurisdictionally overlapping and critical effects. This reflects both the realities of suburbanization and the increasing interdependence of regions. It also reflects the priorities of the Nixon Administration.

States may abdicate their low income responsibilities in land use as they may in fiscal allocations under revenue sharing. States may transfer the money and power to the municipalities if the forces of home rule are more articulate and powerful than those requiring publically directed economic redistributive effects. We can, however, look forward to a more accessible style of government. Land use priorities may be lucid, and the electorate can point to a governmental structure liable for its actions.

In conjunction with revenue sharing, state land planning agencies can seriously begin to address some issues of more equitable resource distribution. Depending on how far the particular state advances its planning powers, limited public purpose development becomes a possibility. With the ability to undertake a planning process and to establish plans and priorities coupled to state level revenue sharing funds, the states may be able to initiate much broader public interest development.

The private market is not always capable of initiating all of the development required in the public interest. Under no-growth constraints, more public interest development is necessary because of increased and inflated land and con-

struction costs. The Massachusetts Housing and Finance Agency is an example of a state private partnership in the area of housing development. A more broadly functioning agency is the New York Urban Development Corporation. Such public development corporations may have the powers to be instrumental in intervening when aggregations of local actions have the net effect of creating regional housing imbalances and diminishing other low income opportunities.

CHAPTER III

BOULDER, COLORADO AND CONTROLLED GROWTH

A CASE STUDY OF CONTROLLED GROWTH AND LOW INCOME OPPORTUNITY

Boulder, Colorado is facing the problem of uncoordinated land use planning. The Boulder Area Growth Study Commission was created as a result of citizen response to their perceived loss of environmental quality which poor development and overpopulation causes. Established as an effort to grasp the significance of growth in the Boulder Valley, the Commission must both study growth patterns, and formulate alternatives to the existing patterns. Goals for continued and controlled aspects of urban growth must be articulated. Trade-offs between political, economic, social and environmental interests in controlling growth must be made explicit. Policies for the articulation and implementation of the goals must be adopted. Legal constraints on the implementation of controlled growth must be understood and abided by. Competing regional demands and requirements for growth must be balanced with local desires and needs to limit growth. The costs of limiting growth must be understood as well as determining who must bear those costs.

A case study of Boulder will establish parameters for a discussion of controlled growth and low income mobility at the suburban municipal level. The above series of statements are offered to focus the basic issues which should underly a thorough understanding of how controlled growth can affect the opportunity structure of the poor, the elderly, and other groups which depend more heavily upon public policies, assistance and intervention for the basic amenities of life.

Establishing a no-growth policy which is both socially and environmentally sensitive is a task which demands a tremendous amount of consideration by the growth study. It would be relatively simple for the Commission to suggest a one-dimensional no-growth policy for Boulder which would contain all of the rhetoric of preserving low densities, protecting the ecology of the area, and preventing major new industry from entering the city. It is quite another thing to suggest a series of related policies which respect the differential needs for growth; leaves sufficient margins for the inclusion of a more diverse socio-economic population mix; and respects the overriding regional pressures for growth in various income and employment sectors.

To present a controlled growth planning strategy which is multi-dimensional; environmentally responsible, economically feasible, and most important, socially equitable is a formidable task for the Boulder Area Growth Study Commission.

EMERGENCE OF NO-GROWTH IN BOULDER: The Boulder Research

Model

The evolution of the no-growth planning concept in Boulder is an example of citizen interest groups attempting to direct city policy. Two local environmentally oriented citizen groups Zero Population Growth (ZPG) and People United to Reclaim the Environment (PURE) proposed an amendment to the City Charter. One of two no-growth issues on the ballot in November, 1971, the ZPG/PURE amendment advocated limiting of the ultimate population of Boulder to 100,000 persons. This resolution was defeated 58 $\frac{1}{2}$ percent to 41 $\frac{1}{2}$ percent. A city-sponsored resolution asking for a "definitive analysis of the optimum population and growth rate for the Boulder Valley" was approved by a 70 percent majority.*

These two citizen reactions represented a perception of the future development of the Boulder Valley; present trends will lead to irreconcilable environmental problems, overcrowding, and a loss of the suburban amenities. While it

* "The city government, working with the county government shall take all steps necessary to hold the rate of growth in the Boulder Valley to a level substantially below that experienced in the 1960's and shall insure that the growth that does take place shall provide living qualities in keeping with the policies found in the Boulder Valley Comprehensive Plan."

has been stated that the Boulder Valley would be able to support well over 140,000 people given the water supply, developable land, and existing transportation systems, (a doubling of the population) local sentiment demanded an addressing of growth with an eye towards curtailing the rate.* The ZPG and PURE amendment was aimed at limiting growth in all housing, economic, and industrial sectors. Allegations that the initiative per se was aimed at just one socio-economic group, as was true in the Valtierra Case in California, were false.

To carry out the mandate of the resolution, the Boulder Area Growth Study Commission (BAGS) was created. Appointments to BAGS were made by City Councillors and County Commissioners. Funded under a \$100,000 HUD 701 comprehensive planning grant, the Commission was to undertake a one year analysis of the area in and around Boulder.¹ BAGS developed a research model which contains many features of the community and professional involvement, and an analysis of four alternative futures for Boulder. The results of this process will be presented to the Boulder City Council and the County Commissioners in the fall of 1973. Whether or not the city and county will accept the ultimate proposals suggested by BAGS is undetermined.

¹ No-growth as a Planning Alternative: A Preliminary Examination of an Emerging Issue, Earl Finkler, American Society of Planning Officials, Chicago, 1972, page 33.

* Statement by Guage Davis, Beardsley Davis Associates.

The BAGS research model involves three primary processes:

1. Community Consultation Process
 - a. Articulation of Goals
 - b. Initial Reaction
 - c. Final Reaction

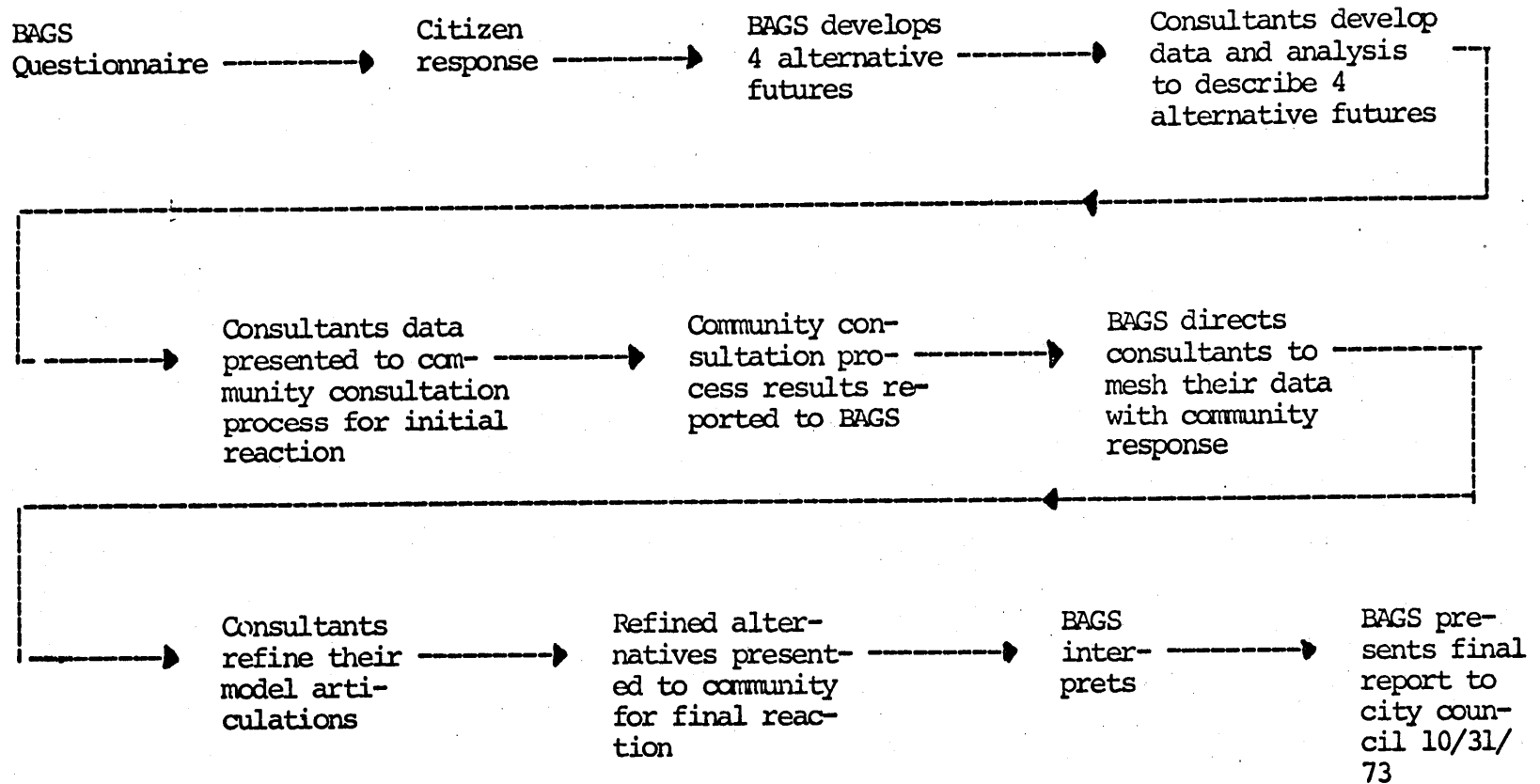
2. Modelling of Alternative Futures
 - a. Continue Current Policies Towards Growth and Land Use
 - b. Implement a No-Growth Planning Strategy
 - c. Emphasize Environmental Amenities
 - d. Emphasize Social, Economic, and Cultural Diversity

3. Analysis of Alternatives
 - a. Base Information
 1. economic/demographic parameters
 2. land use planning parameters
 3. physical/biological parameters

 - b. Special Analysis
 1. sociological
 2. legal/political
 3. optimum relationships
 4. incentives and disincentives
 5. other

FIGURE I

FLOW CHART OF THE BAGS RESEARCH PROCESS



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Source: William W. Harris, unpublished paper, M.I.T., Cambridge, 1973

The community consultation process is vital in that it provides the vehicle by which public sentiment is obtained and tested. The first part of the process seeks to clarify what the initial preconceptions of the public are relative to no-growth. What does the public want out of a controlled growth plan? During the course of the study, the public is supposed to be kept informed about the developments of the commission. After the four alternatives have been fully analyzed, the results are to be presented to the community for reactions. This process has received a great amount of criticism for its actual lack of response to the public. Though the rhetoric of community involvement is explicit in the study outline, in practice, the citizens have had little actual input. There has been little media coverage, and little attempt on the part of the Commission to disseminate information.

The second major step of the research model is the articulation of four alternative future scenarios for the Boulder Valley:

1. Status Quo (Continuation of Present Policies)

What might be expected to happen if we were to go on as at present, extending utilities with the developer paying most of the cost, changing zoning to more intense use when justified, and welcoming no new major employers.²

² Finkler, op.cit., page 61

2. Decreased Growth Rate (No-Growth Planning Strategy)

What would be the result if intensive development were halted, new business were discouraged, existing major employers were asked to stabilize, and restrictions were placed on intensity of use. This is essentially the no-growth concept as presented by the ZPG/PURE charter amendment. This policy is supposed to represent a contradistinction of the first.

3. Emphasis on Environmental Amenities and Ecological Protection

Through the use of land use and development control policies, this alternative seeks to maximize environmental amenities. Through the use of green-belts, bike-ways, anti-pollution controls, prohibiting industries which have any negative impact on the environment, by banking large tracts of land, and prohibiting development in the mountains, this alternative provides a scenario of what a 'radical no-growth' strategy based solely upon ecological concerns would be -- essentially zero growth.

4. Emphasis on Economic, Social and Cultural Diversity

To avoid the possibilities of becoming an affluent mono-culture, this alternative proposes to maximize the socio-economic distribution of Boulder residents.

Boulder is only about 2 per cent non-white as compared with Denver at 11 per cent. Diversifying the population making it more in conformity with the rest of the region is the explicit goal of this alternative. This alternative was presented in contradistinction to the third.

The third major part of the research model is the technical analysis of the four alternative futures. There are both primary and secondary analyses. Information concerning economic/demographic, land use, physical and biological constraints will help to clarify many of the "basic" parameters which must be respected by any of the four alternative futures. After the base information has been gathered and rationalized, special sociological, legal, political, and allied analyses will be undertaken. Implementation strategies for the alternatives will also be suggested.

BAGS commissioned three principal studies which could conceivably model aspects of low income opportunity and mobility under no-growth constraints. Dr. Charles W. Howe and colleagues, Department of Economics, University of Colorado, was assigned the development of economic-demographic models. Beardsley, Davis Associates, Inc., Denver, was assigned the development of planning and land use alternatives. Dr. Norman Hilmar and Colleagues, Department of Sociology, University of Colorado developed the sociological analysis of alternative growth strategies.

Howe's team undertook the economic-demographic modelling in order to weigh the impact on the economy and the population of various alternative growth and no-growth assumptions. Basically a sophistication of the San Diego model, the Howe's Boulder model attempts to simulate the population, value of housing, households, structure of income, occupation, schooling and other critical variables for the construction of community alternative futures.³ An adequate critique of the overall modelling process is impossible at this point, however, preliminary comments may provide an indication of the type of problems the study will encounter.

³ Boulder Area Growth Study Commission, Outline of Work Programs, unpublished working paper and basis of HUD funding, December 26, 1972, page 16.

Employment is a primary feature of low-income opportunity. It will be necessary to analyze impacts which changes in the industrial structure under no-growth would have on the existing or potential employment pool. In determining basic characteristics of industry, part of the output -- income of employees -- should be measured in order to array the distribution of employment sectors. Relative labor intensity would be shown. The array would also help to measure which sectors dominate the employment market. Yet, because data on income distribution within industrial groups is lacking, there is no differentiation within the pay structure. Only aggregate, and therefore, average employee income can be derived. Nowhere in the industrial survey is there specificity of the distribution of income within the various employment sectors. Certainly one can assume that the construction industry is more labor intensive than the technical and research oriented industries, yet there is no actual measurement. Since only aggregate statistics for income within industry groups are available, the model will be unable to describe changes in the shares of particular employees within the group. Because of this, it will be impossible to understand exactly the distribution of income derived in Boulder by industrial/occupational sectors. A determination of who is housed in Boulder in relation to who works there is impossible because such an ana-

lysis is based on an array of all employed in Boulder.*

Low income opportunity and mobility is not a feature of the model per se. How much of the phenomenon the model captures can only be understood after a more rigorous analysis. The above qualification of its validity only seeks to exemplify that an actual paradigm of the internal low-income employment market will not be a by-product of the model.

Beardsley, Davis Associates is responsible for developing hypotheses about the interrelationships of various planning and land use factors for testing by the Howe team. These hypotheses will consider alternative land use patterns under all existing commitments and constraints: take the results of the economic-demographic projections together with the results of the physical-biological constraints mapping, and convert them into preliminary alternative land use patterns.⁴ They are also responsible for the calculations of the costs

* To understand how well Boulder fits the common low development requirement that people working in a town have a right to housing there, employment derived in Boulder must be compared to housing opportunities in Boulder.

⁴ Boulder Area Growth Study Commission, Outline of Work Programs, unpublished, page 19. Their study does not, per se, include consideration of common law regional housing requirements, developments in a NLUP, or concepts of regional general welfare requirements as per A-95 type leverage compelling communities to open up low income housing in situations where federal grant assistance is requested. The land use study is conservative in the sense that it considers primarily what the market will produce rather than what public welfare may require.

quantities, costs and locations of the public and private investments required for each hypothetical alternative future land use pattern to the year 1990.

The opportunity structure limited to employment, real income, industrial opportunity and housing (rental, ownership and publically assisted) should theoretically fall under these two studies. A third major aspect of the total modelling of the opportunity structure should be some forecast of changes in the role of public assistance caused by the implementation of the four alternative strategies. Are there going to be changes in public welfare facilities, health programs, educational resources, services for the handicapped, elderly, and unemployable? These three groups strongly rely upon public policy, public welfare, and transfer payments for their survival. To what degree are these groups presently adequately provided for in terms of housing and social services? To what degree are their programs unfinished or unstarted? Will development of further facilities be pre-empted by no-growth? Will public sector investment be seriously diminished under growth constraints; what will be the priorities of public investment?

Hilmar and Colleagues in their sociological analysis of alternatives should broach the above questions of public intervention. Their specific responsibilities include a report on the methods, assumptions and the critical sociological

factors pertinent to the future community.⁵ The feasibility of carrying out the alternative futures on sociological grounds are extraordinarily underplayed in the overall research in that it represents primarily software investment and hence depends on public expenditure rather than market conditions.

These three studies should measure the effect to which the opportunity structure is influenced by:

- urban growth and industrial expansion (current trends)
- growth moratoria on residential construction and limitations on the development of certain types of industry
- changes in the outlook on public sector investment in social services and facilities

Who are the minority groups addressed by the models? Racial minorities often reflect many of the poor in an area, however, the model should look more closely at sub-groups. More specifically, an adequate model must structure the poor, the elderly, the structured-in-poor, i.e., the handicapped, unemployed, or those out of the labor pool.

⁵ Boulder Are Growth Study Commission, Outline of Work Programs, page 29.

Through the use of incentives, public actions both establish and shape certain private market opportunities. "Public priorities" are very much established by those groups who are in control. In the name of the general welfare, the character of access to housing, health, education and other publically recognized necessities is shaped. The FHA Mortgage Guarantee Program is a program of public assistance to provide access to housing for people of middle incomes. The wealthy do not need such public financial assistance, and FHA housing is not priced within the grasp of the poor. When Blacks, the poor, elderly, and other groups who felt the private market was not responding to their needs, they pressed for public assistance in housing development. The shape of the public (federal) intervention was the Housing and Urban Development Act which provided subsidies to developers of low and moderate income housing.

All of this serves to illustrate the fact that the general welfare as articulated in public policy is dependent upon a political context reflecting economic, social, moral and ethical influences. Enhancing the general welfare is the duty of governments. Diminishing opportunities for disenfranchised groups is an arrogation of public powers.

The expression of the general welfare is, therefore, an aggregation of private ends. Boulder is facing the challenge

of balancing many sets of needs when it imposes controlled growth. The law states that all planning powers must relate to the health, safety, morals, or the general welfare. Under controlled growth, whose growth will be limited? What aggregation of private ends will be furthered? If the poor have been previously excluded, they have no internal power base from which to work.

Thus, the common law is one of the only vehicles for articulating and arbitrating provisions of low income opportunity.

Another legal requirement is that the ordinance controlling growth be neither unreasonably nor arbitrarily restrictive. This simply means that Boulder must have derived its scheme (zoning ordinance) and comprehensive plan through a legitimate planning process. If Boulder chooses not to have a comprehensive plan, it cannot have zoning.* There is evidence, however, that Boulder will continue to employ zoning as the basis for rationalizing its urban development. Yet, due process and equal protection are subject to a dimension of time. What is valid at the present may become invalid in the future as the factual situation evolves. Zoning ordinances too, are not one-dimensional. They are not solely dependent on whether or not a plan is properly formulated and endorsed.

* Conceivably, Boulder would employ an extension of the nuisance doctrine to determine compatible uses. Planning would function in this sense in an ad hoc manner.

The results of the plan must be weighed in time. Actual spatial arrangement, and actual opportunity may bear little resemblance to the original intentions. If low income housing was an intent, and no public subsidies were available to produce the housing, the results of the plan could constitute de facto discrimination.

Through its participation in the Denver Regional Council of Governments, Boulder County has informally accepted its share of low and moderate income housing. According to a housing allocation plan 21,424 such units are to be built in the region* between 1973 and 1977, of which 3606 are to be in Boulder. This represents approximately 12 percent of the total allocation.⁶

* Denver, Adams, Arapahoe, Boulder, and Jefferson Counties.

6. Town and County Review, April 4, 1973, Page 3.

The plan, which calls for the construction of 21,454 low and moderate income units is to be complete by 1977. In Boulder, it calls for the construction of 734 low income and 1,087 moderate income homes in the unincorporated areas of the county and 359 low income and 1,014 moderate income homes in the City of Boulder. For the purposes of the study, "low income" was defined as an annual income of \$4,000 or less and "moderate income" as \$4,000-\$9,000 annually. The council's plan estimates that 88,725 new housing units of all types will be needed in the five county area by April 1976, Boulder's share would be 14,495. In formulating the housing allocation model, the council took seven criteria into account, 1) deficient housing unit conditions, 2) low income housing needs, 3) moderate income housing needs, 4) assessed valuation and population, 5) employment growth by jurisdiction, 6) household income - economic dispersion and impact, and 7) housing growth opportunities.

This program has not been costed. Low and moderate income housing development requires substantial subsidy from the public sector. If adequate public incentives are not provided for development, the allocation may be no more than paper work. What level of government will provide the subsidy? Will Boulder itself be responsible for procuring the funds? The financing of 3606 units may prove beyond Boulder's abilities on an already heavily constrained budget. Though there may be every intention to provide necessary margins for such housing, fiscal limitations may foreclose the opportunities. Housing allocations are made with respect to the common law requirements for regional considerations and assessments of needs. However, if the entire region is not responsible for assuring the financing, municipalities may be unable to fulfill the allocation goals. There appears to be a lack of coordination between housing allocation and the financing responsibilities. In addition, perhaps there needs to be a state contribution to the financing in that the Boulder-Denver SMSA accounts for 55.6 percent of the entire state population.

The Denver Regional Council of Governments (DRCOG) housing allocation plan is informal and subject to the approval of the individual counties. In addition, the counties must allocate their share of the allotment throughout the incorporated and unincorporated areas. Therefore, this requires another round of negotiations at the sub-regional level before any firm policies can be instituted. Municipal policies may

even preclude what the county has allotted to the particular locality.

At the same time as DRCOG is allocating growth responsibilities, BAGS is trying to devise ways of limiting growth. This obviously reflects a conflict in the perception of the future for the two organizations. Moreover, it shows how undecided the entire question is. Essentially, BAGS is trying to stop or "limit" growth, but also achieve diversity within the population. DRCOG is trying to specify the development of various categories of housing growth. Presumably the private market continues to develop according to building permits already issued.

DRCOG has, however, recognized the regional character of housing allocation. Boulder County has been allocated a proportion of low and moderate income housing which would make those sectors account for approximately 12 percent of the total family housing stock.* This would account for 9-14 percent of the estimated total household population in 1977. Ostensibly, DRCOG is attempting to diversify the population in Boulder County, however, it has no powers to actually implement the plan.

With approximately 10-12 percent of the total population in the Valley at incomes between low and moderate categories,

* Based on remaining undeveloped approved units and projected 4.2 percent growth rate assumed by the Boulder Valley Comprehensive Plan, (existing low and moderate income housing included).

it will be mandatory to encourage employment opportunities at their level of skills. The conflict arises because BAGS wants to discourage new major employers in Boulder. Under this policy, only small new industry and intensive growth by existing industries would be available to balance the occupational categories. Most likely, given the current mix of occupations, the employment categories, and the current trends of increased technical and professional opportunities, few employment opportunities for the poor will be by-products of BAGS perception of controlled growth.

There are only a few alternatives available to answer this dilemma, 1) intensive job training to match the low income population with the skill levels of the Boulder employers; 2) provide incentives for employers matching the skill levels of the low income population to locate in Boulder; 3) allow the present employment and housing opportunity structure to continue; 4) rescind the low and moderate income housing allocation program and goal of socio-economic diversity.

The consequences of these actions are interesting, but speculative. The first two alternatives could provide a wholistic approach to controlled or specified growth. Balanced housing allocations would accompany specified directed employment opportunities. People moving to Boulder would know that employment mobility is as much a possibility as the new housing. Socio-economic mix would be more highly achievable than under either free market growth, or radical no-growth.

The last two alternatives contain strong elements of reality, though perhaps tainted by pessimism. One should assume the operation of the private market not to enhance specifically low and moderate income opportunity absent of strong public intervention and incentives. Without increased affirmative guidelines for publically subsidized housing, and concomitant jobs, the opportunity structure will be retarded, negated, or undeveloped by default.

At the outset of this discussion, it was stated that private interests greatly determine the priorities of the public. It is no accident that the relative attractiveness of Boulder for the types of industry currently located there is partially caused by public investment. Zoning ordinances and capital facilities developed by the city itself have made Boulder a desirable place to locate. In addition, Boulder's industry is characterized as capital intensive, technical, white collar, research-oriented, "clean," and is middle income generating. Likewise, if the city thought it in the public interest to provide incentives for a "share" of labor intensive, blue collar industry to locate in Boulder, it probably could be done. It is greatly a matter of public policy. The entire future of low income opportunity in housing and employment in Boulder is dependent upon public action to assure these types of developments.

Several organizations, agencies, and levels of government are undertaking planning in the Boulder-Denver region. Besides BAGS and DRCOG, the State of Colorado is attempting to rationalize and clarify the characteristics of its urban growth plan under a state land use policy. Boulder County, under its Planning Office, is undertaking land use planning in the form of amendments to the county zoning regulations, subdivision permits, and regulations for the development of unincorporated areas. The Boulder City Planning Department is engaged in capital improvements which strongly affect land use development patterns. The private developers have priorities of investment in housing and plans for development. Industries within Boulder and Boulder County all may see their economic future in terms of both intensive and extensive growth.

Many of these decisions have few effects beyond local boundaries. What the City of Boulder does in terms of bike paths may bear no importance to the total housing allocation for the Boulder-Denver region. Likewise, the creation of a municipal park in Boulder will have little appreciable effect on adjacent towns. Yet, many decisions have impacts at scales beyond the particular jurisdiction responsible for the act. The allocation of 21,000 units of low and moderate income housing between 1973 and 1977 is of regional if not state concern. The location of a major new industry in the Boulder Valley will affect all of the cities within the county. The

proposed construction of a rapid transportation system between Denver and Longmont will have effects on housing and employment in the entire region.

Much of what BAGS will suggest in its no-growth plan will have few if any effects beyond the City of Boulder. In a sense, much of the impetus behind BAGS is a desire to transpose Boulder's perception of the future into a planning strategy. Establishing recreational regions within the city, imposing height limitations on building construction, planting trees, providing bikeways, preventing development on floodplains and severe inclines are all measures which the city can employ to limit development and maintain character without appreciable effects on neighbors. However, prohibiting the location of major employers, severely limiting the number of housing permits to be issued in time and for certain areas are measures which will have effects beyond the municipality.

It is extremely important, therefore, that the agencies and authorities undertaking planning and environmental programming pool their resources. BAGS cannot work in isolation and expect the result to be immediately acceptable to other groups also interested in the future of the city, valley, and region.

The benefits of regional government with respect to planning decisions extending beyond local boundaries is key to rationalizing the problem. Both BAGS and DRCOG are able to suggest plans and priorities, however, they are not empowered

to undertake planning. The realities of figuring out political and economic feasibility make planning, in this respect, very different from planning implementation. A regional authority which could orchestrate local initiatives and could balance multi-municipal influences of local actions would be a tremendous asset to the Boulder growth study.

BAGS has shown a great amount of sensitivity to the enhancement of low income opportunity in Boulder. Throughout the process of determining alternative futures, the commission constantly referred to the inclusion of at least 10-15 percent low and moderate income housing. This allocation would, in theory, help to diversify a population which is presently relatively homogenous, while obviating any potential allegations of exclusionary zoning. BAGS and the character of no-growth as perceived by the advocates of controlled growth see new industrial development as contrary to their goals. Thus, the need for employment generating facilities for the future low income residents could be deleted from the planning strategy.

Whether or not a regional planning authority could persuade Boulder to adopt guidelines for limited industrial growth is a matter of speculation. The fallacy is, that if such guidelines are not adopted, Boulder will not be able to achieve the socio-economic diversity so often spoken of. Whether or not this dilemma stems from a flaw in the planning process, faulty or insufficient detail in research, or from

basic differences in perception, the consequences must be heavily weighed. It can, however, become a matter of public policy that incentives and margins are established to complete the opportunity structure for low income people in Boulder.

DIVERSITY IN BOULDER

Gaining a more socio-economically and culturally diverse population was sentiment expressed in the results of a questionnaire distributed by BAGS, and has become a goal of the entire study. Though there is fear that Boulder has the potential of becoming economically and culturally lopsided, the actual distribution of income, housing costs, and employment opportunity and changes over time should be evidenced. A more diverse population has been equated with increased low cost housing opportunities. Developments in the common law indicate that cities will increasingly be required to be more in conformity with the regional distribution of low and moderate income housing. While a more diverse population is dependent upon increased employment opportunities, there is no legal precedent which reinforces this assumption. Regional housing requirements may become a matter of law. Employment opportunities as controlled by public actions remain alterable only through locally directed public policy.

In relation to the Denver SMSA, in 1970, Boulder's housing and employment characteristics tended to be heavily weighted towards middle to high income housing, and an emphasis on technical and professional occupations. Most people in the City of Boulder worked in the County (83.1 per cent),

while in the rest of the SMSA, about 59 per cent of the work force worked in the county of their residence. 5.2 per cent of the population in Boulder had income less than poverty level of whom only 2.6 per cent received public assistance, while in the SMSA, the figures were 6.9 per cent and 4.9 per cent accordingly.

The industrial base of Boulder is strongly oriented towards education, research, and manufacturing, with allied services and facilities. (See Figure IV) The University of Colorado, the National Center for Atmospheric Research, and the National Bureau of Standards are located immediately in Boulder. IBM is located in Longmont, immediately adjacent to Boulder, and is one of the major employers of Boulder's population. Industry in the SMSA is more generally spread among manufacturing, wholesale and retail trade, the professional and administrative fields.

It is no surprise that occupationally, the Boulder population is extremely professionally, technically, and educationally based. (See Figure III) While in the SMSA, people are employed more as clerks, professionals, technicians, and laborers.

In 1969 the median family income of Boulder (\$11,437), was only slightly higher than that of the SMSA (\$10,777). As was mentioned about those less than poverty level, Boulder had relatively fewer people who could be classified as "poor". However, 9.3 per cent of Boulder's population earned less than

\$4,000 per year. In the SMSA, during the same period, 10.1 per cent of the population earned less than \$4,000 per year. (See Figure II)

With relatively more income, and fewer "poor" people in Boulder, it is not surprising to find housing and rents more expensive there in relation to the rest of the SMSA. In 1970, the median value of owner occupied housing in Boulder was \$23,000 while the figure for the SMSA was \$19,000. Boulder had little owner-occupied housing under \$15,000 (7.3 per cent) while the SMSA had 26.4 per cent. Low and moderate income owner-occupied housing is markedly absent in Boulder. Of the housing vacant for sale, the median price asked in Boulder was \$25,800, in the SMSA it was \$23,200. Most of the vacant housing in Boulder ranged from \$20,000 to \$49,999 representing 72.8 per cent. In the SMSA this was 56.8 per cent of the available housing. It is quite obvious that housing is becoming more expensive in Boulder than in the SMSA generally. Vacant low and moderate income housing opportunities in Boulder under \$14,000 account for only 5.8 per cent, in the SMSA they account for 22.8 per cent.

Though income in Boulder tended to be relatively similar to that of the SMSA, housing opportunities for the buyer are much more expensive. (See Figures II through VIII) The relative attractiveness of the housing stock in Boulder for the moderate income buyer is mitigated against because of

higher prices and fewer opportunities at lower price ranges.

The characteristics of rents parallel those of housing. The median price asked for renter-occupied housing in Boulder in 1970 was \$129; while in the SMSA it was \$105. Those rental units vacant for rent required rents of \$146 in Boulder and \$118 in the SMSA. Boulder being a "university" town has a high percentage of students renting apartments and houses. Because of the flexibility of life style and the relative need for less space, students often occupy housing which under other circumstances would have been occupied by families with lower incomes. However, with students, the landlord can partition units differently allowing more renters per structure, and gaining proportionately more rent.

This pre-emption of low and moderate income rental opportunities by students should be a matter of public concern. Both students and the families they displace have rights to housing within the city. Yet, the private market works in such a way as to foreclose housing to low and moderate income families. Higher returns are required by the investments of landlords, and without the subsidies required by developers, they are discouraged from building such housing.

Changes in distribution of housing, income and employment categories in the Denver SMSA between 1960 and 1970 are interesting. It is important to note that in relation to the SMSA, Boulder begins to have a greater proportion of white

collar, professional, technical, manufacturing and service industries; while construction, mechanical trades, and transportation related industries experience marked declines.

This ten year period has seen a tremendous acceleration in the location of major research centers, a near doubling of the University population from 11,006 to 21,482 students, and a virtual non-growth of citizens employed as laborers, craftsment, and operatives. Not that these are low income employment categories, but they reflect the employment attractiveness of an area for blue collar and unskilled jobs.

With the acceleration in the employment attractiveness for educational, professional and research occupations, significantly higher rents and increasingly more expensive housing for sale, Boulder has lost much of its socio-economic diversity. All of the changes in the economic distribution of citizens in Boulder which indicate affluent mono-culture are greater than changes generally throughout the SMSA. The aggregate picture is a growing imbalance between Boulder, its neighbors and the region. Low income opportunities in housing and employment suffered a severe decline between 1960 and 1970.

With fewer blue collar jobs in Boulder, where will the low and moderate income residents envisioned in the DRCOG housing allocation be employed? Long distance cummuting costs in time, energy and transportation expenses may be so exhorbitant to keep many potential residents from moving to Boulder,

perpetuating cycles of poor housing in other impacted areas.

Addressing jobs is as important as addressing housing. Neither DRCOG in their allocation or BAGS in their suggestions of allowing for the growth of low and moderate income housing have approached the need for these new residents to gain income near their place of residence as does 83.1 per cent of the Boulder population.

There are inherent fallacies in liberal schemes which purport to open up housing in the suburbs unless those advocates of fair-share recognize the needs for employment. In Boulder, opening housing in and of itself will mean little without greater access to income. Building thousands of units of low cost housing without proportional jobs could mean the people for whom the housing was developed would not fully occupy the units. The fair-share housing eventually could be occupied by the other group which competes for low cost housing, the students.

In analyzing the industrial base in Boulder, and recognizing the city's professed desires and abilities to curtail the location of new industry, one should become suspicious of the "liberal" sentiment surrounding "fair-share" housing. What this suggests is that DRCOG and more specifically BAGS propose an employment generating strategy to create a context of economic mobility for the low and moderate income residents. This will require a serious modification in the

attitude towards industrial location. It will mean establishing a more specific guideline for businesses desiring to locate in Boulder. They must specify what employment categories they will benefit. In addition to using environmental impact or other criteria to assess desirability, this will add a dimension of social welfare accounting. This may provide the city with more valid criteria for limiting industrial growth while eliminating some of the regressive by-products of no-growth.

One should bear in mind the consequences of not addressing jobs as an integral part of the total housing allocation. If new residents do not have access to jobs, either they will not re-locate in Boulder; they will re-locate in Boulder and commute elsewhere for jobs; or they will re-locate in Boulder and become unemployed. Neither of these scenarios is the most efficient strategy for utilizing human resources. The first alternative implies a basic failure to distribute low cost housing in a way which attracts poorer people. The second is basically regressive, requiring the poorer residents to bear greater costs to be employed. While the third means greater welfare payments, public assistance, and a perpetuation of cycles of poverty. Certainly if one is planning for poverty as opposed to planning for economic mobility, a housing allocation plan in the suburbs without consideration of the employment attractiveness of the area will accomplish that end. Bear in mind that Boulder's employment categories are skewed away from jobs which would approach the skill levels of the

poor.

What is suggested in light of the factual situation in Boulder is that a basic concept of new communities be adopted. Low income mobility is not simply dependent upon constructing shelters. Employment, supportive public facilities and infrastructure, schools, open space, and other integral urban functions must be recognized as interdependent. Housing opportunities must be accompanied by concomitant jobs, public services and facilities.

A housing allocation plan should adequately reflect the regional discrepancies in housing distribution. The allocation should be neither overly ambitious nor conservative. Boulder is not tremendously out of line with the distribution of low and moderate income families in the Denver SMSA. To over stimulate low income housing may produce the detrimental results of poverty re-enforcement which Forrester describes. Not to produce adequate levels of such housing will continue impacts on other areas in the region.

FIGURE I I

INCOME OF FAMILIES

DENVER SMSA

BOULDER

	DENVER SMSA		BOULDER	
	1959 %	1969 %	1959 %	1969 %
Less than \$1,000	3.0	2.0	2.0	1.0
\$ 1,000 to \$ 1,999	4.0	2.0	4.0	2.0
\$ 2,000 to \$ 2,999	6.0	3.0	7.0	3.0
\$ 3,000 to \$ 3,999	8.0	4.0	8.0	3.0
\$ 4,000 to \$ 4,999	10.0	4.0	8.0	4.0
\$ 5,000 to \$ 5,999	13.0	5.0	11.0	5.0
\$ 6,000 to \$ 6,999	12.0	5.0	13.0	4.0
\$ 7,000 to \$ 7,999	10.0	6.0	11.0	6.0
\$ 8,000 to \$ 8,999	9.0	7.0	8.0	6.0
\$ 9,000 to \$ 9,999	6.0	7.0	7.0	6.0
\$10,000 to \$14,999	13.0	31.0	16.0	30.0
\$15,000 to \$24,999	4.0	19.0	4.0	24.0
\$25,000 and over	2.0	5.0	1.0	6.0
Median income	\$6,894	\$10,777	\$7,105	\$11,437

Source: U.S. Census

FIGURE III

OCCUPATION

DENVER SMSA

BOULDER

	DENVER SMSA		BOULDER	
	1960 %	1970 %	1960 %	1970 %
Employed persons 16 years old and over				
Professional, technical, etc.	15.1	19.8	25.2	32.8
Managers and administrators	10.5	9.7	11.7	8.5
Sales workers	8.2	8.3	7.7	7.2
Clerical, etc.	18.6	21.2	16.1	19.3
Craftsmen, foremen, etc.	13.2	12.2	10.4	8.0
Operatives	12.5	11.5	6.7	7.3
Laborers (non-farm)	4.3	3.7	3.3	2.2
Farmers and farm managers	.7	.4	.3	.2
Service workers (non-household)	9.2	11.8	11.8	13.2
Private household workers	2.1	1.0	3.3	1.1

Source: U.S. Census

FIGURE IV

EMPLOYMENT

DENVER SMSA

BOULDER

	SMSA		BOULDER	
	1960	1970	1960	1970
Employed Persons 16 years old and over				
Agriculture, forestry and fisheries	2.0	1.2	1.1	.7
Mining	.9	1.7	.6	.4
Construction	7.0	6.2	6.0	3.6
Manufacturing	19.1	17.0	10.6	16.4
Railroads and allied services	1.5	.9	-	.1
Trucking service and warehousing	2.0	1.8	.6	.6
Other transportation	1.7	2.0	.7	.8
Communications	1.8	1.8	1.5	1.6
Utilities and sanitary services	1.4	1.6	1.7	1.0
Wholesale trade	4.9	5.8	1.4	1.4
Food, bakery and dairy stores	2.6	2.3	2.6	1.9
Eating and drinking places	3.1	3.6	3.0	5.5
(General merchandise retailing)		(3.2)		(2.5)
(Motor vehicles retailing/ gas stations)		(2.4)		(2.3)
Other retail trade	10.5	5.5	11.7	5.7

FIGURE IV (cont'd)

	SMSA		BOULDER	
	1960	1970	1960	1970
Employed Persons 16 years old and over				
(Banking and credit agencies)		(2.0)		(1.4)
Insurance, real estate, and finance	5.9	4.6	4.9	3.1
Business services	1.5	2.4	2.0	3.0
Repair services	1.5	1.6	.9	1.3
Private households	2.3	1.0	3.9	1.1
Other personal services	3.6	3.4	5.4	3.3
Entertainment and recreational services	.9	1.0	1.0	1.2
Hospitals	3.3	4.4	2.8	2.8
(Health services, except hospitals)		(2.4)		(1.9)
Education (government and Private)	4.6	8.6	19.9	24.1
(Other education)		(.6)		(.8)
Welfare, religious and non- profit	1.4	1.7	2.0	1.8
Legal, engineering and misc. Prof. serv.	3.6	3.2	4.5	5.3
Public administration	7.3	6.6	7.8	5.8
(Industry not reported)	(3.9)		(2.1)	

Source: U.S. Census

FIGURE V

FINANCIAL CHARACTERISTICS OF HOUSING

DENVER SMSA

BOULDER

	DENVER SMSA		BOULDER	
	1960 %	1970 %	1960 %	1970 %
Value of Owner-Occupied Housing				
Less than \$5,000	2.3	0.6	1.1	0.3
\$ 5,000 to \$ 7,499	6.0	1.8	4.3	0.3
\$ 7,500 to \$ 9,999	11.8	3.9	7.1	1.0
\$10,000 to \$12,499	19.9	8.5	12.0	2.5
\$12,500 to \$14,999	19.4	11.7	16.9	4.2
\$15,000 to \$17,499	15.2	14.3	21.6	9.1
\$17,500 to \$19,999	9.2	14.5	12.9	14.2
\$20,000 to \$24,999	7.7	19.7	11.3	27.3
\$25,000 or more	8.4	24.9	12.8	41.0
Median	\$13,800	\$19,100	\$16,000	\$23,400

Source: U.S. Census

FIGURE VI

FINANCIAL CHARACTERISTICS OF HOUSING

DENVER SMSA

BOULDER

	DENVER SMSA		BOULDER	
	1960 %	1970 %	1960 %	1970 %
Value				
Specified vacant for sale				
Less than \$ 5,000	2.5	1.4	-	-
\$ 5,000 to \$ 9,999	11.7	6.6	-	1.4
\$10,000 to \$14,999	29.2	14.8	-	4.3
\$15,000 to \$19,999	30.3	18.1	-	13.0
\$20,000 to \$24,999	9.7	14.1	-	29.0
\$25,000 or more	16.6	44.9	-	52.2
Median price asked	\$16,100	\$23,200		\$25,800

Source: U.S. Census

FIGURE VII

FINANCIAL CHARACTERISTICS OF HOUSING

DENVER SMSA

BOULDER

	DENVER SMSA		BOULDER	
	1960 %	1970 %	1960 %	1970 %
CONTRACT RENT				
Renter occupied				
Less than \$30	2.9	1.6	1.6	0.8
\$ 30 to \$ 39	5.8	1.8	3.8	0.8
\$ 40 to \$ 59	19.4	9.7	17.7	4.9
\$ 60 to \$ 79	22.2	15.8	22.7	9.3
\$ 80 to \$ 99	19.1	15.4	22.3	10.4
\$100 to \$119 (over \$100)	13.3	14.4	(26.9)	15.6
\$120 or more	12.9	37.7		55.7
No cash rent	4.3	3.5	5.0	2.4
Median rent	\$78	\$105	\$82	\$129

Source: U.S. Census

FIGURE VIII

FINANCIAL CHARACTERISTICS OF HOUSING

DENVER SMSA

BOULDER

	DENVER SMSA		BOULDER	
	1960 %	1970 %	1960 %	1970 %
CONTRACT RENT				
Specified vacant for rent *				
Less than \$40	15.9	3.7	7.4	1.9
\$ 40 to \$ 59	27.4	11.3	18.4	4.0
\$ 60 to \$ 79	22.0	14.8	15.9	12.9
\$ 80 to \$ 99	16.4	11.6	20.3	4.3
\$100 or more	18.3	58.6	38.0	76.1
Median rent asked	\$66	\$118	\$86	\$146

* Excludes one family homes on 10 acres or more

Source: U.S. Census

CHAPTER IV
COMMENTS ON CONTROLLED GROWTH STRATEGIES
AND LOW INCOME OPPORTUNITY

WHAT OR WHO IS THE GENERAL WELFARE? Comments on Low Income
Opportunity in Boulder

Boulder could foreclose opportunities in housing and employment for minorities through controlled growth. Depending on the character of the plan ultimately decided upon in the final community consultation, the city may radically alter patterns of access to housing and jobs for various income groups and occupational categories. Through directed public intervention, that alteration could be an enhancement, retardation, or negation of opportunity.

As previously developed, municipalities have historically employed a variety of techniques to limit and constrain aspects of their land use. Zoning and patterns of public spending are the principal ways of controlling growth patterns, spatial arrangements, public development and improvement priorities. The ability for the public to intervene in land conversion and arrangement stems from traditional statutory laws, grants of police powers, common law, and more recently through state land use policies.

The concept of the general welfare as a zoning purpose is growing in scope. Public funds cannot be spent absent of stringent guidelines and public policies. All legislative

acts are ultimately subject to the scrutiny of the courts. The "public hand" in urban growth should be complementary to private interests, encouraging the private market to provide housing, environmental and employment amenities for all income and racial sectors. The "public hand" must also voice concern, adding incentives and often intervening directly when the free market is unable to provide the basic necessities of life for all groups.

An analysis of Boulder leaves many questions. What happens when this municipality consciously decides to control its growth? What should be its perception of limited growth? In the planning process, has Boulder recognized its obligation to plan for regional housing needs? Has the resulting planning strategy provided sufficient margins so that the poor and other minority groups have access to the city? Are there margins within plan for the eventual accommodation of all people employed within the city who wish to live there?

Prior to any overwhelming international, national, or state concern for the limits of growth, municipalities have helped to control growth and to shape their character by actively constraining and encouraging certain aspects of urban development. Various types of protective covenants and conservation conditions can limit who can use a certain parcel of land for specified reasons. As extensions of the "collective will" as delegated to planning authorities, cities were and are able to gain character and have their idiosyncracies sheltered.

Public priorities and initiatives are generally directed by financial, social and political forces. Those who are powerful can use the public arena to enhance their particular goals. It would follow that those powers able to control and limit growth do so from a position of strength. The strength may be in money, numbers, political or social ideology. Such groups obviously see their futures being enhanced by no-growth.

Yet, what about those groups who are unable to articulate their "urban" needs through traditional channels of power. What about groups who are not presently in Boulder. What about groups who view their economic survival in terms of added opportunities generated through growth in employment facilities and housing. Those who are impoverished because of a lack of opportunity and discrimination rather than because of lack of personal initiative, welcome growth and public policies demanding affirmative action in employment.

According to Penfield Tate, a Black city councilman, one of the problems of stopping growth in Boulder, especially industrial development, is that many of the service-sector workers in the city are unemployed. In commenting on the lower level maintenance and service jobs connected with the university, he said "that more industry is needed to free these people from the university domination on the job market."⁷

7. Finkler, op.cit., page 36.

However, this too, may be a naive assumption. If the private market does not provide housing or employment within the grasp of poor, or if the type of industry generated does not match the level of skills of the people in the area, more opportunity for the poor will not necessarily accompany more growth. If growth is characterized by capital intensive highly technical, cybernetic-based industry, and if the unemployed, underemployed or unskilled have no access to concomitant training, growth will offer no income redistributive effects.

THE PRIVATE MARKET AND LOW INCOME OPPORTUNITY UNDER NO-GROWTH:
CONCLUSIONS

Housing and public service facilities which affect the poor can be heavily controlled by public intervention. The zoning power can regulate the height, density, type and location of housing, while the amount of housing is regulated by building permits and subdivision controls. Priorities of the municipal budget control the pattern and quality of public investment and social services.

Site location (extensive growth) and capital investment (intensive growth) by industries are greatly determined at scales beyond the municipality. Land costs, proximities to transportation, "regional attractiveness," utility connections and tax assessments are chief factors governing future industrial investment. To a degree, some of the factors can be regulated by a municipality through nuisance and zoning. But many determinants are either beyond local control or easily circumvented. In any case, research and clean industry appear to be the type of installations most attracted by the Boulder Valley. They are certainly non-nuisance industries. One wonders of more of this minimal environmentally impacting industry

might ultimately be seen as an asset rather than a liability.*

It must also be determined what public services such as additional schools, recreational and transportation facilities, and social services for the elderly and handicapped are envisioned by BAGS even under controlled growth. The research must anticipate how dependent these facilities are upon the income and tax generating abilities of the private industrial market. If the industries locate beyond Boulder's jurisdiction, then how will Boulder capture their potential tax revenues? All of these questions are highly interesting because little is known about the effects which no-growth have on tax and income.

Absent of strong public intervention, the income and social service redistributive effects which BAGS expects, will be extremely difficult to produce. If filtering must help the poor, the growth mode is the only context in which filtering of housing or employment or their expansion can have any appreciable effects on the mobility structure of the poor.

* Boulder should re-assess its industrial zoning criteria. There is a need to differentiate between types of industry; not all industries are heavy polluters and case heavy impacts on the city. The grounds on which zoning ordinances preventing new major industries were passed may bear no resemblance to the type of industry attracted to Boulder. If "clean" industries attempted to enter Boulder and they were ruled out because the zoning purpose was to prevent polluters from coming in, then perhaps the rationale behind the zoning is irrelevant. Boulder may do well to consider a more nuisance/environmental impact orientation towards land use. Instead of warding off all industry, perhaps the nuisance doctrine or certain performance criteria would help Boulder differentiate between acceptable and unacceptable industry.

We also know that the private market will not in and of itself create housing for the poor; high land costs and building expenses mitigate against low cost housing. Additionally, industry in the Boulder Valley tends not to create labor intensive employment opportunities. If the poor are going to depend upon private entrepreneurs and developers to create opportunities enhancing their mobility, it can be anticipated under strict no-growth, that less mobility will result. Absent of countervailing governmental intervention, the interplay between housing development and industrial location will probably only allow new employers to be of a small scale, and only expensive high return housing to be built

Thus, there are strong arguments for BAGS to propose limited and specified growth in housing and industry. Public initiative in the direction of encouragement labor intensive employers and through affirmative action programs, coupled with a continuation and expansion of publically subsidized housing programs for the poor, elderly, and handicapped may help to obviate some of the regressive by-products of no-growth.

Earlier, the responsibilities of state land use planning as proposed in the National Land Use Policy were discussed. The concept of NLUP supports state scrutiny of local actions having effects beyond local jurisdiction. A-95 Clearinghouse Review is another "watch-dog" which scrutinizes effects of local development actions, albeit for federal investment in

local infrastructure. Additionally, the common law citations as developed by the Pennsylvania, New Jersey, and Massachusetts courts interpreted the general welfare as defined in state enabling legislation requires regional housing demands to be reconciled in local actions.

Boulder's growth limitations, or the aggregation of similar actions on a regional scale, may have the net effect of creating an entire region of diminished low income opportunity. Colorado has recently shown a strong inclination towards both controlling and balancing urban growth.* Many of the

* Colorado Land Use Commission, Senate Bills 91, 92 and 93 as adopted by the General Assembly of Colorado, 1971. The Colorado State Policies Act or Senate Bill 377 introduced April, 1973, which spells out a series of state land use goals, defines areas and activities of critical state concern, and establishes a five-member state commission with broad regulatory powers. As applicable to this thesis, the policies address the elimination of development which results in urban sprawl, and which fills in the land between existing communities; stimulation of population growth in rural areas outside the front range where local and regional plans call for such growth and development. The entire Front Range is designated as an area of statewide concern. All of Boulder and the Denver region is included in this area. Under the bill, the state regulatory commission would have the authority to review most of the subdivision and zoning changes proposed by local and regional government. If the commission found the proposed change did not imbibe the goals and policies of the Act, the commission could reject the request requiring the local governmental body to make appropriate corrections. Additionally, the bill provides for the creation of between 10 and 15 regional planning commissions throughout the state. The regional commissions may design and implement policies with the approval of the state commission.

above developments will be recognized. As evidenced in efforts to implement a state land use regulatory structure, regional accounting and state-level approval of local and regional policies may go far in making growth controls generally more economically and spatially equitable.

Boulder is exemplary of many cities attempts to reconcile their image of the future with economic, environmental, political and social realities. As a case study of a city's planning process in time, many of the unanswered questions confronting Boulder will perhaps leave the reader unsatisfied. What the final planning strategy derived from the community consultation process, and the policies which address low income mobility will be, can only be a matter of conjecture. What is interesting and significant is that Boulder has designed a planning process which does seek out many of the more difficult questions. By raising these apparent conflicts and dilemmas to a level of community consciousness, the Boulder Area Growth Study Commission is attempting to circumvent political battle lines from being drawn.

Two types of problems surround environmental issues: physical problems arising from development, and resultant social and economic by-products. This thesis has not attempted to elaborate upon physical and ecological justifications for controlled growth. While they are a major thrust for growth controls in Boulder, they have been de-emphasized.

The social dimensions of urban and industrial growth policies are so great that this thesis has clarified the legal and statutory parameters which help to ensure the rights of the poor under controlled growth. The experience of Boulder shows that suburbs have great abilities to diminish the opportunity

structure of low income people by controlling various aspects of growth. If Boulder were to implement a no-growth policy entirely based upon ecological arguments, it would be a misuse of those bases, and it would not address needs of the poor.

There are certainly many growth -- no-growth dilemmas confronting this country. Growth in-and-of itself will not necessarily produce income re-distributive effects. Uncontrolled growth will necessarily mean high rates of environmental pollution. Given our current free market system which distributes most goods, income and services, no-growth will mean the continued indefensible disparity in access to decent housing and employment between the poor and the affluent.

The ecological crusade, if taken literally, will either stifle growth or will drive up housing cost; in either event the heaviest burden will fall on the poor. By the same token, the production of all the housing that is needed, at the right price and near job opportunities, may be expected to have adverse effects on the environment that has become so¹ precious to the white middle class.

Ecological and environmental issues have been thought of as white middle class concerns, while housing, public health welfare services, and "public" facilities have been labeled minority problems. By escaping from the urban centers to

¹ Richard Babcock and David Callies; Ecology and Housing: Virtues in Conflict, Resources for the Future, April 14, 1972, Page 2.

the suburbs, the middle class hoped to leave many overriding "urban" problems behind. They found, however, that many of the social and physical problems they faced in the cities were evident in their new domain. Suburbs contain their share of urban problems such as traffic congestion, crime, racial conflict, poor schools, housing inadequacies and pollution.

Because answers to these problems are largely unknown, and where known, often difficult to implement, many groups have presented the alternative of stopping, if not seriously reducing the rate of urban development. Given more time, perhaps more alternative solutions will arise. Environmental and ecological concerns are the current rhetoric used to justify many land use and urban development regulatory policies. They have become surrogates for other more socially and economically based problems. Therefore, many unrelated problems become equated to the environment for political reasons.

...Controversies over federally subsidized housing are only the most visible evidence of a pervasive anti-growth mood. Those who have benefited from past growth seem less secure about retaining these benefits. Their mood does not reverse previous attitudes that welcomed racial and economic diversity in urbanizing areas: it simply strengthens a pre-existing hostility towards such diversity, providing it with more dramatic fiscal and environmental justifications. 2

² Potomac, op.cit., Page 5.

Environmental arguments are not of themselves anti-social, although a great many groups have mis-used them. High rates of economic growth have been accompanied by increasing unemployment, rising disparities in income both between groups and regions, and the deterioration of social and cultural conditions.

In the past, there has been a tendency to equate continued development with economic growth, and to measure both in terms of the rise in the gross national product. It is currently recognized that high rates of economic growth do not necessarily ensure that pressing social and human problems can or will be resolved.³ A dilemma posed by assuming that continued growth rates are the keys to solving poverty, is that, while a rising GNP and necessarily high accompanying level of energy consumption do mean greater amounts of pollution and material resources consumption, there are no guarantees that income redistributive effects which also accompany that activity will necessarily result. Unless the government recognizes this, there are few justifications for continued rates of economic and urban growth. Where growth can be demonstrated as having specific redistributive effects there is greater legitimacy in encouraging that growth.

³ Development and Environment, A report submitted by a Panel of Experts convened by the Secretary-General of the United Nations Conference on the Human Environment, Founex, Switzerland, June 4-12, 1971, Page 2.

It has been argued in many public and private sectors that there is a void of policy which addresses the social and economic by-products of controlled growth. While such policy tends to be more implicit in the political machinery than it ought to be, there is certainly not a void of domestic policy which relates specifically to these issues. Legal assumptions, which must be implicit in a growth control policy must address the due process, equal protection, and right to travel doctrines of the constitution. Furthermore, growth control measures are influenced by statutory laws which elaborate on the use of public powers and the general welfare purposes under which they may be exercised.

If local, state and national goals for continued urban growth are articulated and made more explicit, perhaps we will be better equipped to meet the future. No-growth advocates are right in biding for more time to assess our growth problems. But because many citizens are poorly housed and without adequate means to gain a decent income, they demand better ways of redistributing material and social resources. So long as we live in an economy primarily based upon private capital and the free market to create and distribute goods and services, continued growth in certain sectors of the economy to generate those needed facilities must occur.

Governments must recognize that the free market cannot distribute goods, employment and services to all income sectors in a manner concomitant with the greatest public utility.

Government itself must take affirmative steps to ensure better redistributive effects from growth. Under these conditions, there is further legitimacy in requiring industrial and urban growth rates to decline.

APPENDIX A

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