

## The Two Faces of Gentrification: Can Zoning Help?

By Michael Davidson



All photos by Michael Davidson

*A "three-flat" in the Chicago community of Edgewater. Once a low-income neighborhood, these condo units (the structure contains three) start at \$370,000. Note the single-family home, wedged between two towering structures—a frequent sight in gentrifying neighborhoods.*

**W**hat is gentrification? This issue of *Zoning News* attempts to answer that question first by defining it, then by exploring why the issue generates heated debate among those affected, and, finally, by examining the role of zoning in this powerful phenomenon. That examination includes considering how, despite gentrification, neighborhood character can be preserved, affordable housing protected, and long-standing uses not forced out.

The word "gentrification," originating in Great Britain, is used to describe an influx of one societal group—usually a higher socio-economic class—into a community or an area of the community for the purpose of establishing itself as residents and homeowners, thereby displacing existing residents. In the 2001 Brookings Institution discussion paper, "Dealing with

Gentrification has three specific conditions: displacement of original residents, physical upgrading of the neighborhood, and change in neighborhood character.

Neighborhood Change: A Primer on Gentrification and Policy Choices," authors Maureen Kennedy and Paul Leonard define gentrification as:

The processes by which higher-income households displace lower-income residents of a neighborhood, changing the essential character and flavor of that neighborhood.

According to Kennedy and Leonard, gentrification differs from revitalization, defined as:

The process of enhancing the physical, commercial, and social components of neighborhoods and the future prospects of their residents through private sector and/or public sector efforts. Physical components include upgrading of housing stock and streetscapes. Commercial components include the creation of viable businesses and services in the community. Social components include increasing employment and reductions in crime. Gentrification sometimes occurs in the midst of the revitalization process.

It also differs from reinvestment, which is:

The flow of capital into a neighborhood primarily to upgrade physical components of the neighborhood, although reinvestment can also be made in human capacity.

The authors also are clear on what does not constitute gentrification:

Under our definition, gentrification has three specific conditions which all must be met: displacement of original residents, physical upgrading of the neighborhood, particularly of housing stock; and change in neighborhood character. Thus, gentrification does not automatically occur when high-income residents move into a lower-income neighborhood, for example, at a scale too small to displace existing residents, or in the context of vacant land or buildings. Nor does economic development activity—revitalization—necessarily imply gentrification. Tenants can leave their units for a range of reasons, so departures in a revitalizing neighborhood do not necessarily mean gentrification is occurring.

Gentrification is associated closely with urban neighborhoods in large, popular cities, but the phenomenon does occur elsewhere. Resort towns—both coastal and inland—

often succumb to its seductive forces. The March issue of *Zoning News* (See “Short-Term Vacation Rentals: Residential or Commercial Use?”) discusses the implications of short-term rental properties on affordable housing in almost 40 small communities frequented by vacationers, including Aspen, Colorado; Saugatuck, Michigan; and Saco, Maine. Property owners who raise their rent streams by utilizing short-term rental agreements rather than renting for a season or year effectively tighten the housing market, thereby driving up costs and eventually rendering the community unaffordable to low- and even middle-income residents, and certainly to much of what is often an ethnic work force. The prosperity invariably attracts wealthy year-round residents. In the article, planners in Key West, Florida, talk of workers being “bused in from the mainland” to work on the island for a few days at a time.

Still, it is important to note that gentrification is not a universal problem. Rather, it occurs in a select number of cities—mostly large—and in a select number of neighborhoods within those cities, say Kennedy and Leonard, who contend that the migration pattern for Americans is still away from the city.

### The Politics of Gentrification

Few would argue that gentrification is a hotly contested, politically charged issue occurring mostly in urban society, where residents new and old, developers, community groups, and political leaders try ever-so-haltingly to resolve matters of property and entitlement. Race almost always plays a role, as many African-American and Hispanic communities are transformed into largely white enclaves. But “largely” is the operative word: Kennedy and Leonard also find a mix of high-income minorities, including Asians and African-Americans, in all of their gentrifying case-study communities.

In short, they say the politics of gentrification are born of four key points:

- Gentrification means something different to everyone.
- Stakeholders have “varied, conflicting, and often unexpected positions on the issue.”
- The economic growth and related benefits that typically accompany gentrification may not otherwise be possible.
- The fluid nature of gentrification is one that bureaucracy-laden government institutions cannot quite get hold of, thus giving it a powerful edge.

The second point candidly is observed in *Gentrification in West Town: Contested Ground*, a report of the Chicago-based Nathalie P. Voorhees Center for Neighborhood and Community Improvement. In the report, a neighborhood stakeholder says, “People still don’t understand it. [Yo-yo zoning] is a strange tool that either the city is using or the residents are fighting over. Some preservationists want downzoning, developers want upzoning, and East Village Association wants both. It’s not clear whether the zoning yo-yo is a city policy or an effect of inside battles among residents and developers.”

### The Stages of Gentrification

Gentrification occurs in stages, according to Kalima Rose, in “Beyond Gentrification: Tools for Equitable Development,” an article published in the National Housing Institute’s *Shelterforce*

*Online*. The first begins with “significant” neighborhood investment from a public agency or nonprofit organization—perhaps the designation of the National Register of Historic Places or a TIF district—or urban pioneers coming into a neighborhood for the purpose of rehabbing inexpensive homes. Rose indicates changes in this first stage have relatively benign impacts on housing costs and neighborhood character.



*Note the banner signs. This Edgewater commercial district was placed on the National Register of Historic Places in the mid-90s, arguably setting the stage for gentrification. Neighborhood leaders found a solution, however, as monies became available for an historic rehabilitation of these two buildings for affordable housing. Potential occupants are screened for drug use and are required to earn less than a specified amount in salary.*



Stage two becomes more intense as word spreads about a neighborhood’s low housing costs, architectural character, or proximity to transit or recreation. Displacement starts at this stage, says Rose, “as housing costs rise and landlords begin to evict long-time residents in order to garner greater revenues by renting or selling to the more affluent.” Rose says heated debates naturally ensue between neighborhood regulars and newcomers, often artists, young professionals, and gay and lesbian households, who enjoy emerging neighborhood services, including coffee shops and upscale restaurants, catering specifically to them. “The rainbow flag is a great indicator that a neighborhood is changing, which is why I always look for it,” says one Chicago buyer in the market for a new home.

The final stage brings about distinctly visible changes to the neighborhood as prices rise substantially and displacement happens “in force,” says Rose. New residents are vocally opposed to unwanted land uses such as social service agencies, industrial uses, and the like, thus contributing to further

displacement by essentially dismantling the physical and social structures necessary to the previous generation(s) of residents. Rose cites the Latino Mission District in San Francisco, where nonprofit health clinics and auto repair shops yielded to Internet businesses. She raises a good point: namely, that displacement is not just a residential problem. Long-established neighborhood bars, faith-based institutions, cultural community centers, and industry often have to follow the displaced residents for their own survival.



*(Above) Developers have projects underway on nearly every lot of a vacant block in Chicago’s gentrifying Uptown neighborhood. Severe crime and blight over the past 40 years led to the abandonment and demolition of many beautiful buildings in this once-gilded section of the city. Change is in the air, however, as the blight gives way to upscale development. (Left) The news is not all good. Many Uptown residents are concerned about the future of local businesses, including this Asian commercial district just around the corner.*

### Why Do Places Gentrify?

Gentrification occurs in waves, according to Kennedy and Leonard, who say the federally sponsored urban renewal efforts in the 1950s and 1960s, and the back-to-the-city movement of the 1970s and 1980s were two such waves. Evidence suggests that America’s recent economic prosperity also enticed people back into cities. Development in places like Chicago surpassed even that of the 1920s, not an easy feat. Despite a strong economy and the proliferation of development, however, disparities in income continued to grow, leaving even wider gaps in the community, where different groups resided separately with clear lines drawn between them. Stated simply: gentrification is dynamic, and Kennedy and Leonard say its causes include:

- **Rapid Job Growth.** Historically, job growth in the center city has been the best indicator of gentrification, but rapid transit, telecommuting, and lifestyle changes have changed

all of that. Kennedy and Leonard point to Silicon Valley as a good example, where enough money was made by reverse commuters to gentrify the Mission District of San Francisco some 45 minutes to the north.

- **Tight Housing Market.** This includes constrained housing supply, as in San Francisco, where 300,000 new jobs were created between 1995 and 1997, but only 31,000 new homes were constructed, or in Chicago, which grew by 112,000 residents in the 1990s but still lost 52,000 rental units, many to condo conversions in gentrifying neighborhoods. It also includes: relative affordability, where high demand in premium neighborhoods prompts buyers to pursue living opportunities in less costly neighborhoods; investment opportunities in high-risk neighborhoods; and substantial rent gaps, where deliberate disinvestment in specific neighborhoods ensues until a “gap” emerges, thereby triggering rapid reinvestment.
- **Preference for City Amenities.** Cities always have been bastions of culture, and certain groups invariably gravitate toward neighborhoods with food, entertainment, and beautiful architecture, or at least those with a potential for such. Kennedy and Leonard say groups less likely to have children, such as artists, young professionals, homosexuals, and even empty nesters are more likely to risk a move into a neighborhood with lingering blight or crime. Once these groups establish themselves, stage three of the gentrification process begins.



*Beautiful architecture is often cited as a reason for gentrification. This infill building in Edgewater fits in nicely with the adjacent “vintage” buildings.*

- **Increased Traffic and Lengthening Commutes.** Improving one’s quality of life by giving up arduous commutes is a gentrification factor for many who relocate to pedestrian-friendly neighborhoods with nearby transit stops. In “Are Cities Coming Back?,” a 2001 *Chicago Fed Letter*, published by the Federal Reserve Bank of Chicago, authors Margrethe Krontoft, Dan McMillen, and William A. Testa concur, saying affluent and largely childless individuals are migrating back to the city, motivated in part by the increased costs and “aggravation” associated with traffic and congestion in the Chicago area.

- **Targeted Public Sector Policies.** While Kennedy and Leonard contend “economic forces” are the predominant influence behind gentrification, they also acknowledge the role of local

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government in establishing change. Incentives such as tax credits and abatement for new homebuyers, tax credits for historic preservation, below-market land sales, and land bank purchases all help to facilitate gentrification, they say, along with tools such as the federal government's HOPE VI program for revitalizing public housing, which also may contribute to gentrification, although not conclusively. Federal policies involving mortgage market regulation, the "securitization and standardization" of mortgage finance, and affordable housing goals governing government-sponsored enterprises, such as Fannie Mae and Freddie Mac, may also be factors. Certainly, however, economic development initiatives are catalysts. Major public investment in a new transit station, public park, or even a convention center can be magnets for other neighborhood services, say Kennedy and Leonard, citing two rapidly gentrifying Washington, D.C., neighborhoods, one of which has a new subway station and the other a convention center.

### Zoning and Gentrification

Zoning policy plays an important role in gentrification. In Chicago's heavily gentrifying West Town neighborhood, zoning changes strategically have followed public transportation lines and access routes, and occurred throughout industrial areas. According to Rose, rezoning occurs either through spot zoning or areawide zoning.

Under spot zoning, properties are singularly rezoned until an area changes significantly, a strategy that raises serious ethical questions about context-appropriate development and the use of zoning to serve outside or personal interests. Coral Gables, Florida, defines spot zoning as:

[A] change in district boundaries, variances, and other amendments to the zoning code and use and area maps that violate sound principles of zoning and are characterized by the following: (a) Individuals seek to have property rezoned for their private use. (b) Usually the amount of land involved is small and limited to one or two ownerships. (c) The proposed rezoning would give privileges not generally extended to property similarly located in the area. (d) Applications usually show little or no evidence of, or interest in, consideration of the general welfare of the public, the effect on surrounding property (including adequate buffers), whether all uses permitted in the classification sought are appropriate in the locations proposed, or conformity to the comprehensive plan or to comprehensive planning principles (including alterations to the population density patterns and increase of load on utilities, schools, and traffic.)

Areawide zoning happens when a governing body approves a request to change the zoning classification of a larger area, perhaps a contiguous number of parcels or blocks. For example, areawide zoning occurs when a city council approves the change of a four-block residential area from R3 to R4 to allow for greater density. The Renton, Washington, definition is simple but holistic:

Zoning adopted for all properties within a district consistent with the comprehensive plan, rather than on a lot-by-lot basis.

Areawide zoning can occur through downzoning, which the *Handbook for Planning Commissioners in Missouri* defines as "a change in the zoning classification of land to a classification permitting development that is less intensive or dense, such as from multifamily to single-family or from commercial to industrial to residential."

Rose looks at the downzoning case of The Polish Triangle, a Chicago subneighborhood, to show how downzoning is used to guide development. Two area downzonings between 1996 and 1999 were intended to "[give] the community an impression of control over large developments." Conversely, five properties in the neighborhood also received upzonings (the opposite of downzoning), presumably for larger developments. Rose says "it appears" the ward's alderman rejected two upzoning proposals necessary for the development of affordable housing projects. Clearly, areawide zoning can also be used to serve special interests.

Political muscle heavily influences the destiny of a neighborhood. Chicago aldermen are largely responsible for neighborhood zoning changes, effectively serving as the key decision-maker for local development. By downzoning an area, aldermen give themselves control over development that may previously have been allowed by right. Therefore, he or she can essentially "pick and choose" which developments happen.

A recent downzoning case born of circumstance but promulgated by gentrification came out of the Edgewater neighborhood on Chicago's North Side (See "Lakefront Areas Downzoned in Chicago," *Zoning News*, February 2002). The owner of a two-story, single-family home in a dense R6 district passed away, leaving the property to her offspring who presumably could sell it for millions to a developer for high-rise construction. That part of the neighborhood, snidely characterized as "condo canyon," is densely developed with many 15- to 40-story residences along Lake Michigan, some quite expensive—a by-product of both proximity to the lake and gentrification. The problem: the city radically downzoned the parcel from R6 to R2, thereby cutting the potential price tag on the property significantly. The local alderman defended the widely publicized measure, saying Edgewater was too dense and neighborhood residents were opposed to another high-rise.

Downzoning is an excellent tool to regulate building height. Theoretically, should all of "condo canyon" be downzoned to R2, the alderman would be under no legal pressure to approve an upzoning for any of the remaining parcels with single-family homes.

Downzoning also has impacts on commercial and industrial properties. The Vienna Beef plant in Chicago threatened to leave the city if the area—surrounded by gentrification—was downzoned, says Linda Lutton in "There Goes the Neighborhood: Concern Grows as Gentrification Spreads Through Chicago." Of course, downzoning does not mean

## CHICAGO'S

### PROTECTED MANUFACTURING DISTRICT (PMD)

A guaranteed measure to prevent non-manufacturing uses from infiltrating an industrial area. Without it, existing manufacturing uses—under the new rules of a non-manufacturing zoning district—would be governed by the following provisions:

- Certain materials cannot be stored or manufactured within 200 feet of residential, business, or commercial (Article 10.3). Fire hazards and explosive materials cannot be stored within 40 feet of residential, business, or commercial (Art. 10.10).
- All storage must be in completely enclosed buildings or screened by an 8-foot wall/fence within 300 feet of any residential district.
- Noise levels must be reduced along residential and business district boundaries (Art. 10.5).
- Equipment causing intense vibrations (i.e., from heavy hydraulic surges) must be placed 300 feet away from residential, business, or commercial zoning (Art. 10.6).



(Left) Three beautiful new condominium buildings in Edgewater—two eight-flats and a four-flat—tower over a relic from the past. Other single-family homes succumbed to the wrecking ball to make way for the new developments. Zoning changes most assuredly accompanied the change. (Right) Consider the view from the backyard of the remaining single-family home.

existing businesses have to leave the neighborhood, but changes from gentrification, however gradual, invariably mean higher housing costs, increased taxes, and rising rents for plant workers who live in the neighborhood, not to mention pressure from new neighborhood groups about noise, odor, and traffic.

Some industrial areas in West Town have been rezoned PMD (Protected Manufacturing District) as a result of gentrification pressures and a fear of losing more industry in a city that has lost a quarter of a million manufacturing jobs since 1960. PMD zoning offers additional protection in existing industrial areas, virtually ensuring the prohibition of residential development. Such a change would need the approval of the entire city council. Without the PMD, aging warehouses surely would give way to adaptive reuse for residential or commercial lofts.

North Halsted Street is the center of Chicago's gay community, one of the largest in America. This commercial district, complete with the country's first and only gay-themed streetscape of rainbow pylons—credit Mayor Richard M. Daley—is aligned with bars and clubs, "edgy" retail shops, galleries, upscale restaurants, a gay community center, and provocative but tasteful sex shops. This gay cultural Mecca known as the Lakeview neighborhood—whimsically named "Boystown"—was once a low-income Hispanic community that gentrified when gays were "pushed out" of neighboring Lincoln Park in the 1970s. The pattern continues even today as professionals move into Lakeview by the thousands, further driving up housing costs and rents, and prompting many of the gay pioneers to move northward into Uptown, Edgewater, and Rogers Park.

(Right, above) The reuse of aging warehouses is a common sight in gentrifying industrial cities, like this one in Chicago's trendy—and now expensive—South Loop neighborhood. (Right, below) This residential loft building is in the heart of Chicago's Fulton Market (located in heavily gentrifying West Town), a seven-block stretch of wholesale food distributors, dealing mostly in perishables that include meat and poultry. An industrial area that dates back to the turn of the 20th century, the changes in the Market are quite noticeable, with lofts and galleries strangely co-existing with throngs of forklifts, semi-trucks, and mysterious olfactory nuisances. Activity in the market starts every morning at 2 A.M.



North Halsted Street still is alive with activity and entertainment, but some feel the future of the colorful commercial corridor is in jeopardy, as a strong economy and many of the aforementioned indicators generate unprecedented development along its blocks. Much of the new development is mixed-use, with ground-floor retail and pricey residential above. Concerned neighborhood groups have questioned the proliferation of residential development along Halsted, fearing that new homeowners, many of them affluent, white, and



straight, and though fully aware of the neighborhood's character and energy, will eventually tire of it and lobby for a political shift, effectively ending an historic era.

### Zoning as a Mitigator to Gentrification

Kennedy and Leonard argue convincingly that many of gentrification's contributory factors—regional job growth and metro-wide housing market demands to name a few—are not easily adjusted at the local level. Other, more subjective, factors might include a neighborhood's fashionable or trendy reputation or even its politics. Predicting the next hot spot is not so easy, so employing a top-down strategy can be helpful.

**Inclusionary Housing Policies** Inclusionary zoning is a requirement by the jurisdiction for residential developers to include a specified percentage of affordable units in new developments. It ensures mixed-income communities, jobs-housing balance, and helps to offset the decrease of public dollars in low-income housing. Some inclusionary housing programs are voluntary, some incentive-driven; some allow developers to build the units at a different location, while others require that they contribute to an affordable housing fund. Whatever the method, the goal is to maintain a degree of socio-economic balance in the community by protecting low- and moderate-income families in an otherwise upscale and growing market. For example, East Palo Alto, California, near the Silicon Valley, adopted a Below Market Rate (BMR) ordinance requiring that one in every four residential units be made available to residents making no more than 30 percent of the median area income.

Montgomery County, Maryland, has one of the country's best-known and most effective inclusionary zoning ordinances. Adopted in 1974, the ordinance requires that at least 12.5 to 15 percent of the dwelling units proposed for a new development of 50 or more units be affordable (defined as 60 percent of the median area income). In exchange, the developer receives a density bonus of up to 22 percent.

Massachusetts, California, Minnesota, and New Jersey address inclusionary zoning at the statutory level. Statewide policies provide the opportunity to create mixed-income communities through the involvement of all municipalities, which decreases the risks of creating a concentration of poverty. New Jersey's legislation requires each municipality to create affordable housing, based on a "fair share" determination by the state's Council on Affordable Housing, using one of the following:

- Building the required number of units.
- Providing loans to homeowners who create affordable accessory dwellings.
- Paying another municipality with a high proportion of low-income residents.
- Giving the developer of affordable units a density bonus.

California uses its inclusionary zoning policy in all areas of redevelopment to thwart the most common market-based problem in gentrifying neighborhoods: residential displacement. Aiming to achieve mixed-income communities, the state requires private developers to set aside 15 percent of the units while public developments set aside 30 percent.

Some greet this approach with skepticism, however, because they feel mixed-income communities cannot survive the unfettered forces of the market. Lutton quotes urban planning professor John Betancur from the University of Illinois at Chicago, and co-author of the aforementioned *Gentrification in West Town: Contested*

*Ground*: "It's a nice dream, but the whole logic of the market, and even the dynamics of race and class, go against it. The reality is that [city planners] are saying one thing and they are doing another. I honestly believe that what they call a mixed-income neighborhood is either a very highly subsidized neighborhood or else it is simply a neighborhood in transition." Proponents of the Maryland zoning law have cause to disagree, with the construction of more than 13,000 affordable units between 1974 and 1999.

**Mixed-Use Development.** Creating mixed-use communities, especially those with transit-oriented development, can be instrumental in the struggle for affordable housing and an equalizing force in the jobs-housing imbalance. Mixed-use developments that include residential—perhaps through an inclusionary zoning initiative—and commercial uses can be instant job opportunities for residents. Montgomery County employs its inclusionary zoning ordinance in all mixed-use developments:

In planned development zones, mixed-use zones, transit station zones, and central business district zones (standard method of development) containing flexible development standards, the number of moderately priced dwelling units (MPDUs) must not be less than either the number of density bonus units or 12.5 percent of the total number of dwelling units, whichever is greater.

**Zoning Reform.** Certainly, one way to avoid local obstacles to affordable housing is for state governments to enact mandatory or at least voluntary inclusionary zoning policies. Where not



*This structure is at the center of a heated debate in Uptown. A recent TIF district designation provides the developer with public funds to restore the two front sections of the building, the foremost of which may house a Borders Books. Under the current plan, the back third of the structure is to be razed and rebuilt as market-rate condominiums with some "affordable" units. Preservationists are screaming about the demolition, and housing activists say the affordable units are still out of the price range of the neighborhood's low-income residents. Both groups are critical that TIF funds are being used to subsidize the project.*

possible, local options exist, as Betancur and co-authors Isabel Domeyko and Patricia A. Wright point out in their suggestion to work toward implementing such ordinances at the municipal level. They also recommend strong citizen participation as part of zoning reform, perhaps using democratic, locally elected citizen planning and zoning boards to bolster local involvement, build communication between neighborhood residents and elected officials, improve city services, and foster the development of future community leaders. The authors claim more than 20 cities around the country have adopted ordinances establishing such boards.

## MONTGOMERY COUNTY, MARYLAND, INCLUSIONARY ZONING ORDINANCE

25A-5. Requirement to build MPDUs (moderately-priced dwelling unit); agreements; alternatives

- (a) Any applicant, in order to obtain a building permit, must submit to the Department of Environmental Protection, with the application for a permit, a written MPDU agreement approved by the Director and the County Attorney. Each agreement must require that:
  - (1) A specific number of MPDUs must be constructed on an approved time schedule;
  - (2) In single-family dwelling unit subdivisions, each MPDU must have 2 or more bedrooms; and
  - (3) In multifamily dwelling unit subdivisions, the number of efficiency and one-bedroom MPDUs each must not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision.
- (b) When the development at one location is in a residential zone in which a density bonus is provided; and
  - (1) Is covered by a plan of subdivision; or
  - (2) Is covered by a plan of development or a site plan; or
  - (3) Requires a building permit to be issued for construction; the required number of moderately-priced dwelling units is a variable percentage that is not less than 12.5 percent of the total number of dwelling units at that location. Except as specified in subsections (c) and (d), the required number of MPDUs must vary according to the amount by which the approved development exceeds the normal standard density for the zone in which it is located. Chapter 59 permits bonus densities over the presumed base density where MPDUs are provided. If the use of the optional MPDU development standards does not result in an increase over the base density, the Director must conclude that the base density could not be achieved under conventional de-

velopment standards, in which case the required number of MPDUs must not be less than 12.5 percent of the total number of units in the subdivision. The amount of density bonus achieved in the approved development determines the percentage of total units that must be MPDUs, as follows:

Achieved Density Bonus	MPDUs Required
Zero	12.5%
<i>[Each 1 percent increment up to 20% then produces a .1% increase in MPDUs required. The final increment below concludes the table. -Ed.]</i>	
Up to 22%	15.0%

- (c) In planned development zones, mixed-use zones, transit station zones, and central business district zones (standard method of development) containing flexible development standards, the number of MPDUs must not be less than either the number of density bonus units or 12.5 percent of the total number of dwelling units, whichever is greater.
- (d) In central business district zones, for development under the optional method, at least 15 percent of the total number of dwelling units must be MPDUs.
- (e)(1) In exceptional cases, instead of building the required number of MPDUs, an applicant may offer to:
  - (A) Build significantly more MPDUs at one or more other sites in the same or an adjoining planning area;
  - (B) Convey land in the same or an adjoining planning area that is suitable in size, location, and physical condition for significantly more MPDUs;
  - (C) Contribute to the Housing Initiative Fund an amount that will produce significantly more MPDUs; or
  - (D) Do any combination of these alternatives that will result in building significantly more MPDUs.

Kennedy and Leonard's definition of gentrification strongly implies that this seemingly desirable land-use pattern ultimately divides communities and people, segregating various groups into homogenous clusters. The same does not apply, however, to revitalization or reinvestment. The key, according to many experts, is to anticipate gentrification early enough to get organized and develop a plan. A packet of selected information on this topic is available to *Zoning News* subscribers. Send inquiries to Michael Davidson, Co-Editor, *Zoning News*, American Planning Association, 122 South Michigan Avenue, Suite 1600, Chicago, IL 60603, or e-mail [mdavidson@planning.org](mailto:mdavidson@planning.org).

## NEWS BRIEFS

### No Takings Found in Tahoe Moratorium Case

Should the government be required to pay compensation to property owners for every moratorium on development, regardless of its purpose, its duration, or the impact it might have on property values? At the core, that was the bold question presented to the U.S. Supreme Court in January. On April 23, Justice John Paul Stevens, writing for a 6-3 majority, answered "no" in the court's

## INCLUSIONARY ZONING/GENTRIFICATION RESOURCES

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decision in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 2002 WL 654431 (April 23, 2002).

The case involves two development moratoria in the Lake Tahoe area: the first between August 1981 and August 1983 and the second running between August 1983 and April 1984, for a total of 32 months. There was general agreement that the moratoria served a laudatory purpose. The lake's pristine quality has deteriorated rapidly during the past 40 years, in large part because of the increased runoff and sedimentation from development activities in the Lake Tahoe Basin. The moratoria were enacted to give the planning agency time to prepare and adopt a plan to stop the deterioration and, it was hoped, return the lake to its original clarity, described by Mark Twain in *Roughing It* as "not merely transparent, but dazzlingly, brilliantly so."

In 1969, Congress approved a compact between California and Nevada, creating the Tahoe Regional Planning Agency (TRPA), and assigned the agency the responsibility "to coordinate and regulate development in the Basin and to conserve its natural resources." Unfortunately, the lake continued to deteriorate, and California pulled its financial support from TRPA and unilaterally adopted more stringent development regulations for its side of the lake.

In 1980, Congress and President Jimmy Carter signed an amendment to the compact that required, among other things, that TRPA develop regional "environmental threshold carrying capacities" for addressing "standards for air quality, water quality, soil conservation, vegetation preservation, and noise." The amended compact also recognized the need for a development moratorium and gave TRPA a deadline (May 1, 1983) to complete its study and adopt the plan. The decision notes that even the property owners in the Tahoe Basin acknowledge that TRPA worked in "good faith and to the best of its ability" to prepare the plan but was unable to meet the deadline. As a result, TRPA adopted the two moratoria challenged in this case, prohibiting all construction on certain sensitive lands in the Tahoe Basin, while it finished working on the plan.

A number of property owners in the Tahoe Basin (and the Tahoe Sierra Preservation Council, a nonprofit organization) started legal action against TRPA almost immediately in 1984, claiming that the moratoria constituted a "takings" under the Fifth Amendment of the U.S. Constitution, which says:

"nor shall private property be taken for public use, without just compensation"

Clearly, if the city or state takes someone's land to build a community park or state highway, for example, they are required to pay the property owner compensation. Less clear is the case when the city or state adopts a regulation that prevents a property owner from using the property as the person wishes. Ten years ago, in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), the U.S. Supreme Court fashioned a clear-cut rule that, if the regulation takes *all* economically viable use from the property, as it did from David Lucas's beachfront property, the regulation is unconstitutional and the government must pay the property owner for the regulatory taking.

But what happens if the regulation takes all the value only temporarily, as in the case of a moratorium? The Tahoe property owners asked the Court to extend the *per se* categorical rule from *Lucas* to moratoria in general, urging the Court to consider the temporal slice of their property representing only the time during which the moratoria were in effect.

In response, the Justices considered the practical implications of such a finding, noting that:

Land-use regulations are ubiquitous and most of them impact property values in some tangential way—often in completely unanticipated ways. Treating them all as *per se* takings would transform government regulation into a luxury few governments could afford.

The Justices also concluded that the approach sought was too narrow, stating:

An interest in real property is defined by the metes and bounds that describe its geographic dimensions and the term of years that describes the temporal aspect of the owner's interest. Both dimensions must be considered if the interest is to be viewed in its entirety.

And they worried that such a decision might impair the quality of the decision-making process, noting:

A rule that required compensation for every delay in the use of property would render routine government processes prohibitively expensive or encourage hasty decision-making.

and:

Since a categorical rule tied to the length of deliberations would likely create added pressure on decisionmakers to reach a quick resolution of land-use questions, it would only serve to disadvantage those landowners and interest groups who are not as organized or familiar with the planning process.

In *Tahoe-Sierra*, the Court closed the door to a categorical *per se* taking in the moratorium context and, in the process, gave a ringing endorsement of the value of planning and the importance of community involvement in shaping communities. The majority opinion clearly says each moratorium must be judged on its own merits, weighing all relevant factors such as the government's purpose for enacting the moratorium, the duration of the moratorium, and the impact on the property owner's expectations, commonly referred to as the *ad hoc Penn Central* test. (*Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978).) If a majority of the Justices had accepted the property owners' contention, it would have sounded the death knell to moratoria. Instead, the opinion underscores the need for a thoughtful, inclusive planning process that takes into account all stakeholders, present and future, property owners, and interest groups alike.

Editor's note: The American Planning Association, in partnership with the National Trust for Historic Preservation, filed an amicus brief in this case.

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