Chapter One

The Land Development Process

Neighbors may become enemies. One landowner's activities can decrease the value of the properties nearby. Examples are legion: a fast-food restaurant built next to a single-family house, a recycling plant next to a school, a copper smelter situated near an orchard. This casebook examines the legal system that has evolved in the United States to resolve these sorts of conflicts. The issues are challenging because there are many regulatory options, none of them obviously best.

Social and economic trends determine the frequency with which disputes between neighbors arise. In general, rising population and increased economic output mean more land development activity and hence more growing pains. Conflicts also are more likely to occur when land ownership is fragmented as opposed to highly concentrated.

To provide a context for current systems of land use control, this chapter provides an overview of the underlying market forces that affect the allocation of land in the United States. We begin with population trends, a major determinant of the demand for new land uses. Next we turn to the supply side — to land and to the financiers, entrepreneurs, and workers involved in land development. The chapter then examines the products (especially housing) produced by the interaction of these forces of demand and supply.

A. The Setting

1. Population Trends

a. National Population Growth

National population growth is determined by fertility rates and mortality rates, combined with immigration rates. Demographers define a *fertility rate* — the predicted number of children born to an average woman — of 2.1 as the *replacement rate*, meaning the rate at which a population can be self-sustaining without net immigration. In 1940, the fertility rate in the United States was 2.3. By 1960, near the height of the baby boom, the rate had

risen to 3.7. By 1980, the rate had been halved to 1.8. By 2012, however, the total fertility rate had crept back up to the 2.1 replacement rate. Central Intelligence Agency, The World Factbook 2012. At the other end of the life cycle, the average life expectancy at birth in the United States has increased from 49 years in 1900 to 68 years in 1950 and 78 years in 2012. Id.

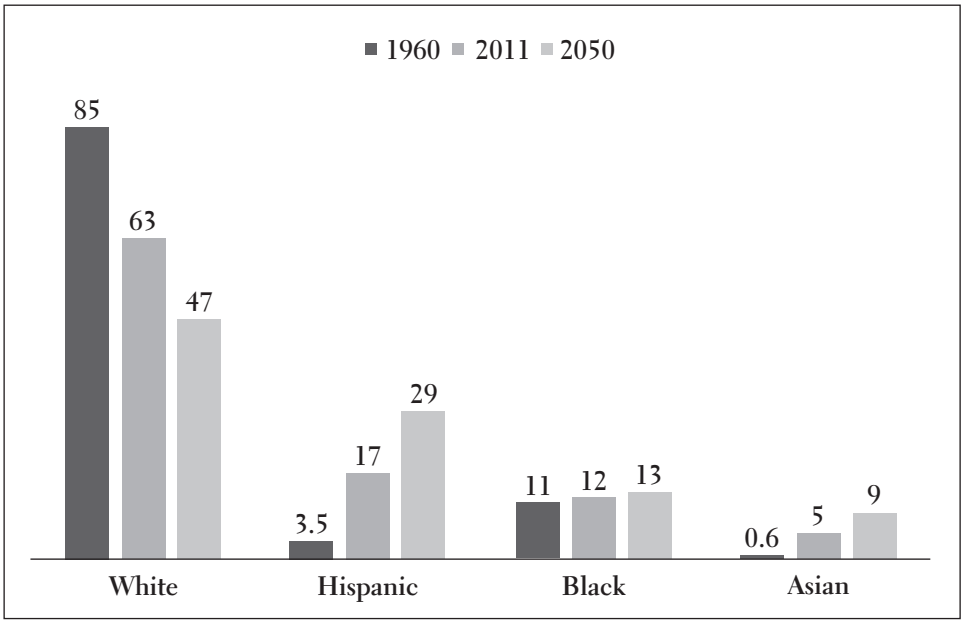
Immigration has been a primary driver of population growth in the United States — indeed in each of the past three decades, positive net migration accounted for at least 30 percent of our total population growth. Population Reference Bureau, Human Population: Migration, *at* http://www.prb.org/Educators/TeachersGuides/HumanPopulation/Migration.aspx. Seventeen percent of the foreign-born population, or 40 million residents, is reported to have entered the United States since 2005, with immigrants from Mexico making up 24 percent of this new population and those from India and China each constituting 7 percent. Nathan P. Walters & Edward N. Trevelyan, The Newly Arrived Foreign Born Population of the United States: 2010 (U.S. Census Bureau, American Community Survey Briefs, Nov. 2011).

Because of these trends in fertility, mortality, and immigration, recent population growth in the United States mainly has stemmed from a combination of increasing life spans and net immigration. Together, these forces boosted the U.S. population from 228 million in 1980 to 314 million in 2012. Will this growth continue? In 2012, the Census Bureau provided a "midrange" projection, which assumes a continuing increase in life expectancies, that the population of the United States will be 400 million in 2050. That estimate is less than the bureau's 2008 projection, which estimated a 2050 population of 440 million, with the reduction driven largely by decreasing levels of net international migration. U.S. Census Bureau, 2012 National Population Projections (2012).

b. The Demographics of the Population

The elderly population has grown rapidly in recent years, largely as a result of increases in life expectancy. Forty million people, or 13 percent of the population of the United States, were age 65 years or older in 2010, compared to just 12 million (8.1 percent of the population) in 1950 and 23 million (10.5 percent) in 1975. Laura B. Shrestha and Elayne J. Heisler, Congressional Research Service, The Changing Demographic Profile of the United States 14 (Mar. 2011). Since 2000, the total population grew 10 percent, while the 65 and over segment grew 15 percent; further, the 75 and over segment grew 12 percent (to 6 percent of the total population), and the 85 and older cohort grew 30 percent (to 2 percent of the total). Carrie A. Werner, The Older Population: 2010 (U.S. Census Bureau, 2010 Census Briefs, Nov. 2011). Projections estimate that those 65 years and older will make up 20 percent of the population by 2050. Shrestha and Heisler, supra. The huge leap in the elderly population has fueled demand for housing for seniors, particularly in Sun Belt locations. It also has affected housing demand because senior citizens tend to put more housing back on the market than they occupy: Between 2000 and 2010, people who began the decade age 55 and over released 10.5 million more housing units than they consumed. Bipartisan Policy Center, Demographic Challenges and Opportunities for U.S. Housing Markets (Mar. 2012).

Given the role that immigration has played in the nation's recent population growth, it is not surprising that there has been a dramatic transformation in the population's racial composition in recent years, as Figure 1-1 illustrates.



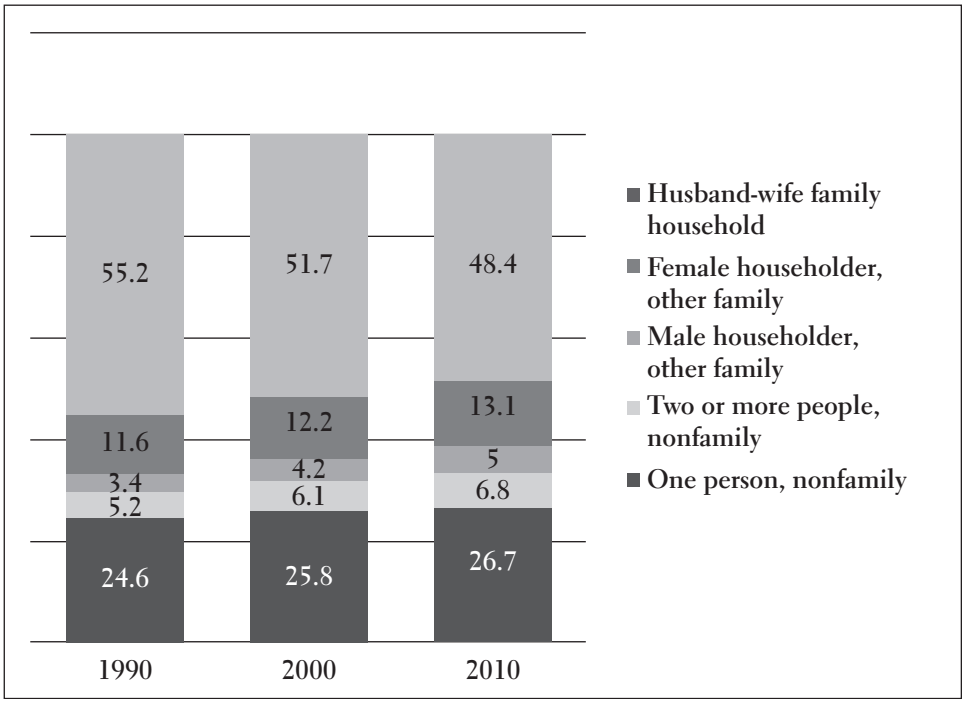
Source: Paul Taylor and D'Vera Cohn, A Milestone in Route to a Majority Minority Nation, Pew Research Social and Demographic Trends (2012), citing Jeffrey Passel and D'Vera Cohn, U.S. Population Projections: 2005–2050 (Pew Hispanic Center 2008) as updated with Census Bureau 2011 population estimates.

FIGURE 1-1
Population Shares by Race and Ethnicity, Actual and Projected, 1960, 2011, and 2050

As Chapter 8 discusses, the racial and ethnic composition of households seeking to move into a neighborhood has played a troubling role in many land use debates, and changes in the nation's racial and ethnic makeup will have a variety of consequences for the shape of housing demand and the nature of land use conflicts.

Another demographic trend critical for projections about what type of housing and neighborhoods will be needed in the near future is the household formation rate. Each occupied housing unit constitutes a household, but households vary from families to single individuals and from "traditional" families to various combinations of unrelated individuals. Generally, household formation rises as children reach adulthood, move away from their parents' home, and eventually form their own families. The household formation rate is sensitive, however, to economic pressures and cultural and societal trends such when people first marry, how often they divorce and remarry, and whether they form multigenerational households. Between 2000 and 2012, the United States added 11 million new households (an 11 percent increase) (Daphne Lofquist et al., Household and Families: 2010 (U.S. Census Bureau, 2010 Census Briefs, Apr. 2011)), but that fell about 2.6 million short of expectations for the decade, as a result of the Great Recession that began in 2007. Timothy Dunne, Household Formation and the Great Recession (Federal Reserve Bank of Cleveland Economic Commentary, Aug. 23, 2012). The average household size was 2.55 people in 2012, roughly what it was in the 1990s, but down sharply from 3.33 people in 1960. U.S. Census Bureau, Current Population Survey Historical Time Series, Table HH6 (2012).

In addition, the nature of households is changing, as Figure 1-2 shows.



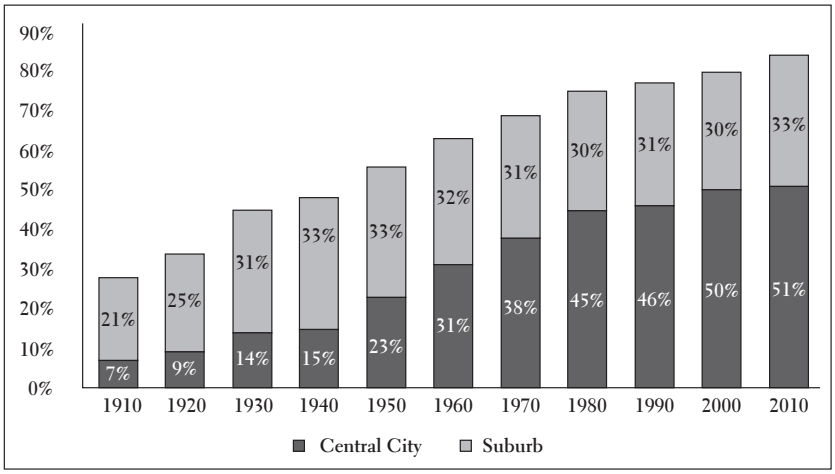
Sources: U.S. Census Bureau, Census 2010 Summary File 1; Census 2000 Summary File 1; 1990 Census of Population, Summary Population and Housing Characteristics, United States (1990 CPH-1-1).

FIGURE 1-2
Households by Type: 1990, 2000, and 2010

Further, households are locating in larger cities at an increasing rate: "Metro" areas (those with at least one urbanized area of 50,000 or more people) now contain 84 percent of the total population, up slightly from 83 percent in 2000, with most of this growth occurring in cities exceeding 1 million residents. U.S. Census Bureau, United States Summary: 2010 (Sep. 2012). As Figure 1-3 shows, although the majority of the population in urbanized areas lives in the suburbs, in recent decades, the center city has seen small relative gains. See also Nate Berg, Urban Versus Suburban Growth in U.S. Metros, Atlantic Cities, June 29, 2012. Finally, 8 million residents, or 2.6 percent of the population, reside in nonhousehold "group quarters" as follows: 1.5 million live in nursing facilities, 2.5 million live in correctional institutions, and 4 million live in noninstitutionalized facilities such as student housing and military quarters. U.S. Census Bureau, 2010 Census Summary File 1.

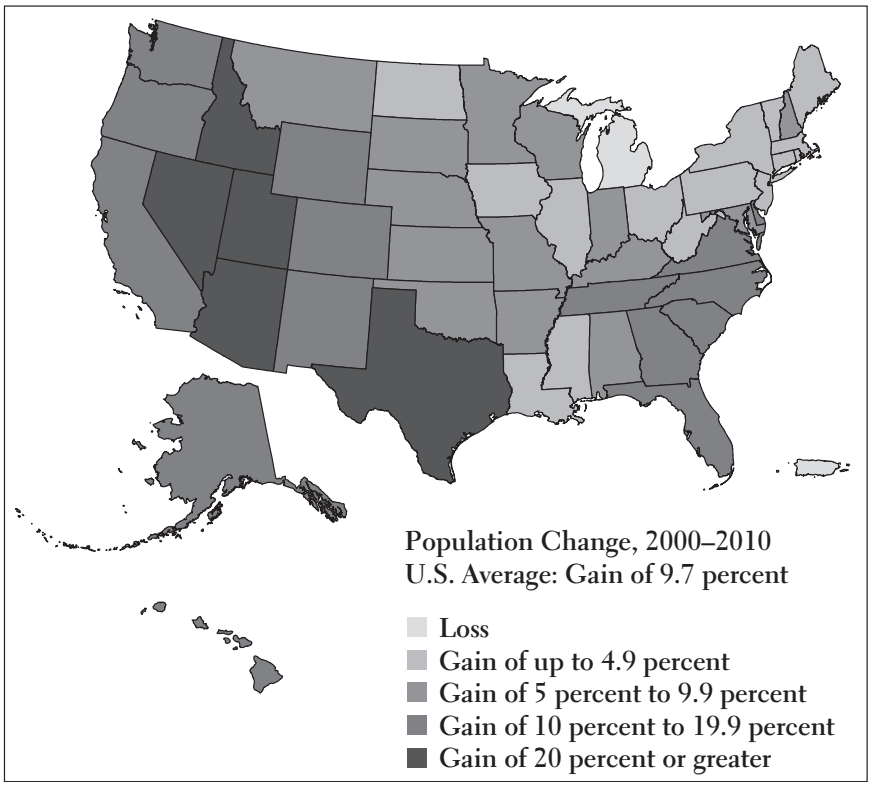
c. Migration Between Regions

Migration within the United States has tended to be toward the south and west, as Figure 1-4 illustrates, showing differences in states' rates of population growth during the 2000s. Land use law plainly takes on more significance where an area is growing quickly. The following selection, in the course of discussing differences in the growth rates of cities, identifies some likely causes of regional variations.



Source: Mark Mather, Kevin Pollard & Linda A. Jacobsen, First Results from the 2010 Census (Population Reference Bureau 2011), citing U.S. Census Bureau, Demographic Trends in the 20th Century (2002).

FIGURE 1-3
Percent of Total U.S. Population in Suburbs Versus Central City



Source: U.S. Census Bureau.

FIGURE 1-4
State Population Change, 2000–2010

Kyle Fee and Daniel Hartley, Growing Cities, Shrinking Cities

Economic Trends, Federal Reserve Bank of Cleveland Economic Trends, Apr. 14, 2011

What are some of the characteristics of the cities that grew [between 2000 and 2010], and how do they compare to those of the cities that shrank?

First, a lot of attention has been devoted to the fact that cities in warmer climates have been growing faster than those in colder climates. Examining the 64 cities in the United States with a population over 250,000 (excluding New Orleans, which lost a large percentage of its population after Hurricane Katrina), shows that cities located in states that experience warmer weather during the month of January grew more on average than cities located in colder states. Average January temperature explains 11 percent of the variation in population growth. It is interesting to note that the cities losing the most people (Detroit, Cleveland, Buffalo, Cincinnati, Pittsburgh, Toledo, St. Louis, and Chicago, all with population losses of more than 5 percent) are located in the Midwest or Great Lakes regions. The fastest-growing cities (Raleigh, Fort Worth, Charlotte, Las Vegas, Albuquerque, Austin, Riverside, Aurora, San Antonio, Fresno, Colorado Springs, and El Paso, with growth of more than 15 percent) are located in the South or West. . . .

Another factor related to population trends is the decline in manufacturing employment in the U.S. On average, cities with large concentrations of employment in the manufacturing sector at the beginning of the decade experienced less population growth. The fraction of employment in the manufacturing sector in 2000 explains 10 percent of the variation in population growth. . . .

On average, cities that had a higher median household income in 2000 saw larger population growth from 2000 to 2010. . . . [M]edian household income in 2000 explains 19 percent of the variation in population growth. . . .

On average, more highly educated cities experienced more growth. The fraction of residents with a bachelor's degree or higher in 2000 explains 13 percent of the variation in population growth.

Together, the four factors mentioned above explain about 33 percent of the variation in population growth. However, the education variable does not add much explanatory power to the other three variables. Temperature, manufacturing employment, and household incomes explain 32 percent of the variation in population growth. Furthermore, each of the above three factors is related to population growth even when the other two factors are held constant.

As one would expect, growth in the number of jobs in the MSA in which the city is located is correlated with population growth. In fact, MSA payroll employment growth can explain about 42 percent of the variation of city population growth. However, it is interesting to note that two of the other four variables mentioned — temperature and household incomes — explain an additional 15 percentage points of the variation in city population growth on top what is explained by MSA payroll employment growth (manufacturing employment and education do not add much explanatory power). . . .

While it may be tempting to conclude that people are moving to places with job growth, it is equally possible to conclude that jobs are moving to places where city population is growing. Most likely it is a combination of both. What is interesting is that even controlling for job growth in the MSA, warmer cities grew more than colder cities. If retirees are more likely to move to warmer climes, the growth of these cities could be due to the growing fraction of retirees in the population. Another possible explanation is that the populations of colder MSAs are becoming more concentrated in the suburbs relative to

warmer MSAs. Finally, the fact that cities with low household incomes in 2000 had population losses, even controlling for job growth in the MSA, may be due to a deterioration [in] public goods such as safety and high-quality schools stemming from a diminished tax-base.

Note on Metropolitan or Regional Growth and Shrinkage

1. *Managing population decline.* Certain metropolitan areas in the United States have recently exhibited stark population declines, due in part to the factors Fee and Hartley discuss. Having lost a quarter of its population over the past decade, Detroit is the "poster" shrinking city and embodies a range of symptoms common to such cities: mass vacancies, increasing crime rates, decreasing property values, and inefficient city infrastructure. See Edward Glaeser, Triumph of Cities 41–67 (2011). Exacerbating these problems are political and other roadblocks that prevent shrinking cities from using existing or new tools to address the challenges. See, e.g., Katrin Großmann, European and U.S. Perspectives on Shrinking Cities, 5 Urb. Res. & Prac. 360 (Nov. 2012); Justin B. Hollander et al., Planning Shrinking Cities, 72 Progress in Plan. 223 (Nov. 2009); Cristina Martinez-Fernandez, Shrinking Cities: Urban Challenges of Globalization, 36 Int'l J. Urb. & Reg'l Res. 213 (Mar. 2012). One approach to managing decline is to demolish dilapidated and vacant buildings in blighted areas, but regulatory barriers, the practical complexities of implementation, the difficulty of securing financing for the demolition, and the risk of severe health and social costs limit demolition efforts. See Alan Mallach, Laying the Groundwork for Change: Demolition, Urban Strategy, and Policy Reform, Brookings Metropolitan Policy Program (Sept. 2012) (advising cities on ways to strategically and effectively use demolition to revitalize shrinking neighborhoods).

Despite these difficulties, cities have been experimenting with an array of planning tools to manage the ills of urban shrinkage while concurrently trying to cure past land use mistakes and build more sustainable futures. Detroit's controversial sale of 140 acres of mostly vacant land for the purpose of urban forestation provides a good example of this balancing act. See Leslie MacMillan, Detroit Narrowly Approves Vast Land Sale, N.Y. Times, Dec. 11, 2012. Other cities have created land banks to acquire and repurpose vacant land, often with an emphasis on alternative uses and ecologically friendly purposes. See Smaller Is More Beautiful, The Economist, Oct. 22, 2011 (listing tactics employed by several shrinking cities). This type of planning has been termed "smart decline," as cities plan for reducing populations in specified declining locations, but it is still too early to determine whether these tactics are appropriate. See Justin B. Hollander & Jeremy Nemeth, The Bounds of Smart Decline: A Foundational Theory for Planning Shrinking Cities, 21 Housing Pol'y Debate 349 (2011).

2. *Auto dependency versus walkability.* In reviewing changes between 1990 and 2000, Ed Glaeser and Jesse Shapiro argued, "Cities built for pedestrians and for mass transit shrank (with a few exceptions), while auto-dependent cities grew." They assert that "the rise of driving cities represents an even broader phenomenon of an urban life cycle," namely that "in every age, new technologies have come along that have made some of the features of older cities somewhat obsolete." Edward L. Glaeser & Jesse M. Shapiro, City Growth: Which Places Grew and Why *in* Redefining Urban and Suburban America: Evidence from Census 2000, at 13, 18–25, 28 (Bruce Katz & Robert E. Lang eds., 2003). Others argue that auto friendliness does not explain patterns of growth. Richard Florida, The Rise of the Creative Class — Revisited (2012); Enrico Moretti, The New Geography

of Jobs (2012). Some observers argue that there are areas growing precisely because of their walkability and mass transit systems. See, e.g., Marcelle S. Fischler, "Walkable" Steps into Spotlight, N.Y. Times, Dec. 1, 2011, at RE10; Emily Badger, The Next Major Real Estate Cycle: Walkable Urbanism?, Atlantic Cities, Sept. 5, 2012. For metrics to compare the walkability or bikeability of different areas, see http://www.walkscore.com.

As cases throughout this book reveal, traffic and parking concerns play a major role in land use disputes. For a discussion of how walkability concerns may become a focus, see Louise Keely et al., The Shifting Nature of U.S. Housing Demand, Demand Institute (May 2012) (predicting that "resilient walkable" cities will be the source of initial housing recovery and that future suburban development will cater to walkability demands).

3. *Climate effects on coastal populations*. The devastation Hurricane Sandy wrought in New York City and along the New Jersey and Long Island coasts in 2012 reinvigorated debate over whether the increasing frequency of weather disasters will push growth patterns away from coastal cities. See, e.g., Mike Tidwell, We Are All from New Orleans Now: Climate Change, Hurricanes, and the Fate of America's Coastal Cities, The Nation, Oct. 29, 2012. Many of the cities enjoying the fastest growth in recent years have been coastal cities. What kinds of challenges will the decisions those cities and their residents and prospective residents face about whether and how to rebuild, adapt, or retreat from areas especially vulnerable to extreme weather events pose for land use planning?

d. Central Cities, Suburbs, Exurbs, and Edge Cities

Land developers pick their spots. They generally have been more active in metropolitan areas than in rural areas and in suburbs than in central cities. Chapters 8 and 9 address the extent to which the "suburban sprawl" that has resulted is a laudable adaptation to new technological conditions and higher levels of wealth or a lamentable outgrowth of suburbanites' racial and class prejudices and of misguided taxation, spending, and regulatory policies. For now, consider how the changing nature of suburbs affects land use planning and generates conflict.

John K. McIlwain, Suburbs 2.0: The Evolving American Suburbs

Urban Land, June 1, 2011

For over a century, American suburbs have been growing inexorably outward from central cities. Following World War II, this growth accelerated to the point where metropolitan regions in the United States now can have a 50- to 60-mile . . . radius. This ever-widening spread of suburbia seems to have continued through the past decade, if 2010 Census data serve as any indication. This, however, is not the whole story, and a closer look at facts on the ground suggest that the growth of the suburbs — now stalled by the housing bust — may in fact be winding down. If true, this would be a major and arguably a very beneficial shift in American urban development.

The traditional way of looking at the suburbs is to think of them like the growth rings of a tree. According to data from the 2010 Census, both the outer and inner suburban rings are where the action was in the past decade; in between them, the mature middle suburban ring grew more slowly. . . .

. . . [A]n analysis of suburban rings using 2010 Census data by Robert Lang, an urbanologist with the Washington, D.C.–based Brookings Institution . . . reports on the growth of the three rings as follows:

- The first ring outside the central city is the older, inner suburb, largely developed before World War II along trolley lines. Most [of these suburbs] declined following WWII as people moved to newer suburbs further out; recently, they have been redeveloped and have grown faster in the past decade than the United States as a whole, adding 6 million people according to Lang's analysis, an 11.3 percent increase compared with the U.S. growth rate of 9.7 percent. Their locational advantages have been rediscovered, lying as they do close to the central city and often along existing or planned transit lines. This easy access to transit reduces the amount of driving needed, which, in turn, offsets their somewhat higher housing costs. They also offer the added charm of older, compact development patterns and a sense of place; it is this more urban feel that has once again become attractive to a growing number of households.
- The next ring out is the mature, postwar suburb built from the 1950s through the 1980s; these grew more slowly in the past decade, adding 3.5 million people or 7.8 percent. They are composed mostly of low-density culs-de-sac that are now well settled and, in the minds of their residents, fully built out. There is little new development of the classic suburban design now occurring in them, and what development is happening is in growing urban clusters, suburban town centers that are reemerging or being newly developed.
- The last ring out, lying outside the mature suburbs, is the newest, developed during the 1990s and the last decade. This outermost ring added 6.7 million — a 24.5 percent increase — according to Lang. This makes it the fastest-growing part of American metropolitan regions during the past decade. This ring is really composed of two rings, one of which was built in the 1990s and the other, even further out on the edge, built during the housing boom of the 2000s and often referred to as the exurbs.

The rapid growth on the furthest edges of metropolitan regions is a continuation of a pattern six decades old; what is new is the resurgence of the innermost ring of suburbs in the last decade. This new pattern of suburban growth, where both the innermost and outermost parts of the region are growing rapidly, has provided evidence to both those who believe that the suburbs will continue to grow forever outward in the years ahead, and to those who believe that the suburbs have reached an inflection point where most growth will shift to the closer-in parts of metropolitan regions.

Will the lower cost of housing on the outer edges, and Americans' love of the new, draw yet another generation of homebuyers to these outer edges of metro regions? Or will the rising cost of driving in time and money and a new desire for more urban living draw the next generation of homebuyers to buy in the older, more settled parts of metropolitan regions?

It may seem hard to argue that the momentum of 60 years of outward suburban growth may be about to end based on the rapid growth of the outer suburbs shown in Lang's analysis. There are, however, facts not shown by the census which argue that a new pattern of suburban development may be emerging.

More than any other ten-year census in the past 60 years, this one covers two decidedly distinct periods: the housing bubble of the first six years, and the housing bust of the last four. In fact, all suburban development halted in 2007 and the greatest impact of the bust has been in the newest, outer-edge suburbs.

The outer-ring suburbs are where the most suburban foreclosures have occurred and are still occurring. Master-planned communities that were under development in 2006 have stalled, leaving large areas of vacant lots and half-finished and vacant houses. These are the regions where investors have moved in to buy foreclosed homes at a fraction of their original sales prices and are now offering them for modest rents in hopes of a future rise in price. Home prices on the outer edges have fallen more than prices nationally or elsewhere in the suburbs, often by 50 percent or more of their original value.

The question is whether it is the first part of the past decade or the second part that is the truest indicator of the future. The collapse of the exurban suburbs is continuing today and will continue for some years more as the housing markets are recovering with painful slowness. Yet this might still be an aberration. In time, the large population of echo boomers — now in their 20s and early 30s — may decide that the lower cost of housing on the edge is their best hope for buying that first home, overlooking the greater costs in time and money they will incur by having to drive so much more than elsewhere in the suburbs. If they do, they will be following prior post-WWII generations of Americans, but they will also be giving up their strongly stated preference for more urban living.

This [is] no mere academic debate among planners; the future of the outer edges of America's metropolitan regions is on the line. If the outer edges do recover, the cost in needed new infrastructure, increased consumption of gasoline, and impact on land use and air quality will be substantial. Fortunately, the most probable outcome is that while there will be some people moving out for the lower cost of housing, more households than at anytime since 1950 will find a home closer in to either the central city or other job center. The reurbanizing of America is in fact beginning, though it will take time to fully manifest itself.

Note on Population Movement Within Metropolitan Areas

1. *Taxonomy of suburbs.* McIlwain differentiates between central cities, variously located suburban rings, and exurbs. A quick definition of these different terms may be helpful. "Central city" or "city center" typically refers to the dominant city of a given metropolitan area, where the central business district, or CBD, is located. Lower-density suburban growth usually emanates outward from the city center in waves, beginning with "inner," or "first-ring" suburbs. As further development occurs, additional rings of suburbs may be added; often these are less dense and have different housing characteristics than the prior waves of suburbanization. The outermost suburbs are often referred to as "exurbs," which are towns almost exclusively devoted to residential use, with residents commuting elsewhere to work. Finally, "edge cities" are city-like business districts, with significant office, retail, or entertainment development, that are located outside the formal city center within otherwise suburban areas. For a detailed overview of the characteristics and development patterns of the varying metropolitan forms, see Bernadette Hanlon et al., Cities and Suburbs 85–111 (2009); for the foundational work on edge cities, see Joel Garreau, Edge Cities: Life on the New Frontier (1991); Richard D. Bingham et al., Beyond Edge Cities (1997).

2. *The causes of suburbanization.* Professors Mieszkowski and Mills' 1993 exploration of the causes of suburbanization remains the best overview:

> Two classes of theories of suburbanization have been offered. The first, favored by urban theorists and transportation experts, might be called a natural evolution theory. When employment is concentrated at the center of a city, around a port or railhead, residential development

takes place from the inside out. To minimize commuting costs for work trips to the Central Business District (CBD), central areas are developed first, and as land in the central city becomes filled in, development moves to open tracts of land in the suburbs. As new housing is built at the periphery, high income groups who can afford larger and more modern housing settle there. The older, smaller, centrally located units, built when average real incomes were lower, filter down to lower income groups. This natural working of the housing market leads to income-stratified neighborhoods, and there is a tendency for low income groups to live in central locations and for affluent households to reside in outlying suburban areas. The majority of the middle class apparently prefers larger single family lots in the suburbs to denser multi-family residences in the central city.

The tendency of the middle class to live in the suburbs has been reinforced by transportation innovations and travel time considerations. . . . [T]he falling cost of intra-urban transport following the construction of freeways significantly increased the size of the urban area, decreased residential densities and allowed MSAs to develop in all directions at suburban locations. The decentralization of residential activity was followed by employment decentralization, made possible in part by the adoption of truck transport for goods. Firms followed the population to the suburbs, both to provide services to suburban residents and to take advantage of lower suburban wages and land costs. This process was self-reinforcing: as large employers became suburbanized, their employees followed them.

This natural evolution theory of urban development emphasizes the distance of residential sites to central work places, the effects of rising real incomes over time, the demand for new housing and land, and the heterogeneity of the housing stock. Other important considerations for this theory are transportation costs, innovations of intra-urban transportation and changes through time in the comparative advantage of different income groups at commuting longer distances to work.

In contrast, a second class of explanations for suburbanization stresses fiscal and social problems of central cities: high taxes, low quality public schools and other government services, racial tensions, crime, congestion, and low environmental quality. These problems lead affluent central city residents to migrate to the suburbs, which leads to a further deterioration of the quality of life and the fiscal situation of central areas, which induces further outmigration.

Those who move to the suburbs often seek to form homogenous communities, for several reasons. There is the preference for residing among individuals of like income, education, race, and ethnicity. By residing in income-stratified communities, the affluent avoid local redistributive taxes. Homogenous community formation is also motivated by varying demands for local public goods, caused by income and taste differences. Homogenous groupings enhance the quality of education, as there is evidence that peer-group effects are important in the production of educational achievement. . . .

. . . [L]and use controls . . . have clearly been an important part of the suburban homogenization process at least since World War II. Once a relatively homogenous group has collected in a suburban jurisdiction, they can exclude people whose housing demands are very different by land use controls on residences. To some extent, they can exclude other types of people by similar controls on commercial development. Land use controls have become increasingly stringent in the 1970s and 1980s, and residential segregation now works increasingly by income, and somewhat less by race and ethnicity.

Also, as affluent groups first had the means to use expensive transportation innovations to commute from suburbs, this natural process was instrumental in the formation of well-financed and high-achieving school districts. Once high quality school districts became established, they became magnets for further suburbanization and attracted other households that placed a high value on education, furthering their quality and reputation. . . .

Peter Mieszkowski & Edwin S. Mills, The Causes of Metropolitan Suburbanization, 7 J. Econ. Persp. 135–37, 141–42, 144–46 (Summer 1993); another classic exploration is Kenneth T. Jackson, Crabgrass Frontier: The Suburbanization of the United States

(1985). For recent embellishments on the theories Mieszkowski and Mills summarize, see, e.g., Leah Platt Boustan, Was Postwar Suburbanization "White Flight"? Evidence from the Black Migration, 125 Q. J. Econ. 417 (2010); Nathaniel Baum-Snow, Did Highways Cause Suburbanization?, 122 Q. J. Econ. 775 (2007); Pillsung Byun & Adrian X. Esparza, A Revisionist Model of Suburbanization and Sprawl, 24 J. Plan. Educ. & Res. 252 (2005).

3. *Differences in suburban growth rates.* During the 2000s, the populations of suburbs in the 100 largest metropolitan areas grew by 14 percent, a rate almost triple that of their central cities. William H. Frey, Population Growth in Metro America Since 1980: Putting the Volatile 2000s in Perspective, Brookings Institute Metropolitan Policy Program (2012). This aggregate figure, however, obscures significant differences, as exurbs generally exhibited wide fluctuations in growth due to their primary role in the housing boom and bust. For example, the most distant suburbs grew approximately 25 percent, the inner suburbs grew 11 percent, but the mature middle-ring suburbs only grew 8 percent. Haya El Nasser, Suburan Growth Focused on Inner and Outer Communities, USA Today, Apr. 26, 2011. For an overview of the differing growth patterns across various suburbs, see Brian A. Mikelbank, A Typology of U.S. Suburban Places, 15 Housing Pol'y Debate 935 (2009) (aggregating suburbs into ten distinct categories); John Rennie Short, The Decline of Inner Suburbs: The New Suburban Gothic in the United States, 3 Geography Compass 641 (2007) (introducing the suburban dichotomy and explain discrepancies within the "inner ring" classification). See also John Rennie Short, Metropolitan USA: Evidence from the 2010 Census, 2012 Int'l J. Population Research (analyzing broader metropolitan area growth patterns).

In addition to strong demographic shifts, what land use policies could have caused these changes?

4. *Changing racial and ethnic demographics.* While suburbs were once faulted for being almost exclusively white, as Chapter 8 takes up, the patterns of suburbia are changing dramatically, as ethnic and minority groups increasingly move to both the suburbs and exurbs, suburbs often contain significant commercial centers, inner-ring suburbs struggle with many of the problems that have traditionally characterized the inner city, and many inner cities enjoy considerable revitalization. See, e.g., Myron Orfield & Thomas Luce, America's Racially Diverse Suburbs: Opportunities and Challenges (Institute for Metropolitan Opportunity, 2012); Alan Berube, Bruce Katz & Robert E. Lang, Redefining Urban and Suburban America: Evidence from the 2000 Census (2005).

5. *Cities as gateways for immigrants.* Traditionally, a select few large metropolitan cities have acted as "gateways" for immigration, providing new immigrants a starting point and creating anchor neighborhoods to attract subsequent waves of immigrants. See, e.g., Charles Hirschman & Douglas S. Massey, Places and People: The New American Mosaic, *in* New Faces in New Places: The Changing Geography of American Immigration 2–3 (Douglas S. Massey ed., 2008). Recent settlement data, however, shows that many immigrants now completely bypass these metropolitan gateway points and move directly to suburban destinations. See Katharine M. Donato, Changing Faces, Changing Places: The Emergence of New Nonmetropolitan Immigrant Gateways, *in* New Faces, supra, at 75–98. What might explain the suburbanization of gateway entry points? See Casey J. Dawkins, Exploring Recent Trends in Immigrant Suburbanization, 11 Cityscape 8 (2009) (using Census data to correlate demographic, amenity-based, and economic factors that drive the suburbanization of immigrant communities).

6. *The revival of the central city?* As late as 1960, per capita income in central cities in the United States was higher than per capita income in metropolitan-area suburbs. By 1990, however, as whites and middle-income households living in cities

disproportionately moved to the suburbs, median incomes in central cities were almost 30 percent *below* those in their suburbs. Margery Austin Turner, Achieving a New Urban Diversity, 8 Housing Pol'y Debate 295 (1997); see also John D. Kasarda et al., Central-City and Suburban Migration Patterns, 8 Housing Pol'y Debate 307 (1997). Nonetheless, especially after the 1970s, some well-located central-city areas began to attract wealthier urban professionals for a variety of reasons. Falling crime rates in the cities relative to their suburbs helped retain families who might otherwise have moved to the suburbs, and had modest but positive effects on growth in cities. Ingrid Gould Ellen & Katherine O'Regan, Crime and U.S. Cities: Recent Patterns and Implications, 626 Annals Am. Acad. Pol. & Soc. Sci. 22 (2009). The proximity of high-income jobs in central locations, the benefits of agglomeration in a technology-based economy, and smaller households also have been credited with these relocation trends. See Edward Glaeser, The Triumph of the City (2012); Derek S. Hyra, Conceptualizing the New Urban Renewal: Comparing the Past to the Present, 48 Urb. Aff. Rev. 498 (2012) (providing an extensive analysis of the complex causes behind the urban renewal period of 1992–2007); Bernadette Hanlon et al., Cities and Suburbs 65 (2009) (detailing the supply and demand factors resulting in gentrification in select cities); Elvin K. Wyly & Daniel J. Hammel, Gentrification, Segregation, and Discrimination in the American Urban System, 36 Env't & Plann. 1215, 1216–18 (2004) (citing changes in federal mortgage policy that improved attractiveness of home purchase financing for central-city locations).

7. *The urban-suburban relationship*. Although much has been made of the competitive balance of a central city vis-à-vis its suburbs, much of the recent academic literature shows a strong economic alliance between the two. See, e.g., Michael K. Hollar, Central Cities and Suburbs: Economic Rivals or Allies?, 51 J. of Regional Sci, 231 (2011); Stephanie Shirley Post & Robert M. Stein, State Economies, Metropolitan Governance, and Urban-Suburban Economic Dependence, 36 Urb. Aff. Rev. 46 (2000). In fact, this relationship has even been shown to occur on the urban-rural level as suburbs thin out to exurbs and beyond. See Elena G. Irwin et al., The Economics of Urban-Rural Space, 1 Ann. Rev. Resource Econ. 435 (2009). What implications might greater interdependency have for land use disputes?

8. *The gentrification debate*. Some commentators lament the back-to-the-city trend. They fear that landlords in a gentrifying neighborhood will refuse to renew the leases of poor tenants or force relocation through harassment and that an influx of more affluent residents will adversely affect the culture of a poor neighborhood. See Kathe Newman & Elvin K. Wyly, The Right to Stay Put, Revisited: Gentrification and Resistance to Displacement in New York City, 43 Urb. Stud. 23, 29 (2006) (finding that up to 10 percent of relocations in New York City were a result of displacement by gentrification). Should a central city ever adopt policies to inhibit the upward filtering of the neighborhoods that are gentrifying? See Diane K. Levy et al., In the Face of Gentrification: Case Studies of Local Efforts to Mitigate Displacement, 16 J. Affordable Housing & Community Dev. L. 238 (2007) (framing the problem of displacement and offering strategies to avoid the ills of upward filtering); but see Andres Duany, Three Cheers for Gentrification, Am. Enter., Apr./May 2001, at 37:

> Gentrification is usually good news, for there is nothing more unhealthy for a city than a monoculture of poverty. . . . Gentrification rebalances a concentration of poverty by providing the tax base, rub-off work ethic, and political effectiveness of a middle class, and in the process improves the quality of life for all of a community's residents. It is the rising tide that lifts all boats.
>
> Opposition to gentrification often starts from the assumption that it is artificially induced, and controllable. But with few exceptions, neither of those things are true. . . . [E]xamples of

> spontaneous gentrification — improvement that takes off without municipal intervention — are legion. New York has undergone a continuous sequence of these, beginning with Greenwich Village and proceeding to SoHo and all the subsequent Hos. Elsewhere around the country, it is hard to believe today that the real estate of Georgetown, Beacon Hill, Charleston, Santa Fe, or Nob Hill was ever down; but it was, before spontaneous gentrification. . . . The government caught up later, sometimes trying to take credit, often interfering with the natural cycle.

Compare also J. Peter Byrne, Two Cheers for Gentrification, 46 How. L.J. 405 (2003), with John A. Powell & Marguerite L. Spencer, Giving Them the Old "One-Two": Gentrification and the K.O. of Impoverished Urban Dwellers of Color, 46 How. L.J. 433 (2003).

9. *The fate of the early suburbs.* The prototypical American postwar suburb is Levittown, in Nassau County, Long Island, New York. Levitt & Sons developed this community of 17,500 houses by offering only one of two basic house styles — Cape Cod or ranch — per neighborhood. By 2003, almost all owners had expanded and differentiated their units, although the basic layout of the suburb remained. See Barbara M. Kelly, Expanding the American Dream: Building and Rebuilding Levittown (1993); John Rather, Built All at Once, No Longer Look-Alikes, N.Y. Times, Mar. 9, 2003, Real Estate Section, at 5. In light of the recent housing bust and its effects on many suburban communities, as well as changing demographics, there has been increased interest in "retrofitting" suburban design to make suburbs more flexible for a wider range of household types. See, e.g., Ellen Dunham-Jones & June Williamson, Retrofitting Suburbia: Urban Design Solutions for Redesigning Suburbs (New York: Wiley, 2008); see also David A. Goldberg, Building a New Suburbia for All Generations (National Association of Realtors, 2012); Aron Change, Beyond Foreclosure: The Future of Suburban Housing (The Design Observe Group, 2011).

10. *The role of government in the ebb and flow of population between the cities, suburbs, and rural areas.* What regulatory policies, if any, would be appropriate to try to shape the movement of population between the central cities, inner-ring suburbs, outer suburbs, and rural areas within a metropolitan region? What level of government is best suited to addressing these issues? Most of the chapters that follow contain some materials that bear on these important questions. See especially Chapter 8, which addresses the role that race and class play in the changing fortunes of different areas, and Chapter 9, which discusses growth controls and the regional obligations of municipalities.

B. The Land Development Industry

President's Committee on Urban Housing, A Decent Home

Kaiser Committee Report 113–18 (1969)

The "housing industry" — defined here to include all firms that share in the receipts of expenditures for housing — is one of the most complex in the American economy. The firms that perform the critical function of putting together the finished housing unit make up the heart of the industry. These home assemblers include homebuilders, contractors, home manufacturers (and their dealers) and mobile home producers. These firms procure their materials from an extraordinary range of building products manufacturers, from tiny

millwork plants to some of the nation's largest corporations. Distribution of these materials from manufacturer to assembler is carried out primarily by specialized wholesalers and retailers — lumberyards and hardware stores, for example. Acquisition and preparation of land for the ultimate construction of housing commonly involves real estate brokers, lawyers, title-insurance companies, surveyors, and civil engineers, and possibly land planners and landscape architects. Engineers and architects are sometimes involved in design. Much on-site construction work is characteristically performed by specialty subcontractors, for instance, for painting, plumbing, or electrical work. Financing, needed both by the builders to complete construction and development and by buyers to finance purchase of completed units, is available through a battery of lending institutions. Operation of apartments may involve superintendents or management firms. Maintenance of housing adds to the cast of characters — for example, repairmen, janitors, remodeling firms, and domestic workers.

Thus, the housing industry is made up of literally millions of business enterprises. Most are small and specialized, and competition throughout the industry is characteristically fierce. . . .

B. A House Is an Unusual Product

Housing's distinctive characteristics require a production and merchandising system unlike those typical in manufacturing.

Housing Is Tied to Land. The fact that housing developments are inevitably associated with land operations has numerous consequences. Land development has historically been regulated primarily by local governments that typically impose a battery of building and mechanical codes, zoning ordinances, and subdivision regulations on potential builders. The tradition of local regulation of building contributes to the localization of markets. Builders, lenders, and real estate brokers often must learn a new set of rules each time they venture from their home territory. . . .

Housing Is Durable. A house or apartment building, if structurally sound when built, may last for generations. Repair and replacements can remedy whatever deterioration in materials may occur, and may even forestall market obsolescence. The dominance of the existing stock in the market means that housing production can be deferred for long periods (during wars or depressions, for example). The annual rate of production of new housing can — and does — vary widely. In addition, the durability of housing leads to a level of expenditures for repair and maintenance that is usually high in comparison to most other goods.

Housing Is Bulky. The sheer size of housing units and their components places strong pressure on the industry to minimize storage costs and handling expenses and to avoid the transportation of major elements where possible. The shipment of three-dimensional prefabricated houses is costly compared to shipment of the unassembled materials. Manufacturers of sectionalized houses, or mobile homes, who assemble materials at a convenient place and then ship the finished product to final site, have been successful primarily where they have not had to compete with modern line-assembly operations on the sites themselves. Many large homebuilders that have studied the problem believe that, if good production management is used, it is usually more efficient to assemble the structures on their sites. On-site assembly requires a complex system of supply of both materials and labor to diverse and shifting locations. The constant shifting of job sites has brought into being rather unique institutions in the construction labor market. The fact that much of the work is done in the open also means that it is vulnerable to daily weather conditions.

Housing Is a Large Expenditure Item. Housing represents the largest single fraction of most family budgets. As a consequence, both homebuyers and owners of rental units usually make their purchases on credit, characteristically through a loan secured by a mortgage on the property. Housing therefore is tied to the money market and interest rates to a degree far beyond that of any other consumer purchase.

Housing Comes in Many Varieties. . . . The highly individual character of housing demand has forced the housing industry to offer an exceptionally wide range of units. Mass-produced standardized units are often difficult to market because of the variations in consumer demands. In fact, in recent years, over one-third of all new single-family homes have been custom-tailored to the desires of their first occupants. Individuation in the market is increasing. In the early 1950's, large tract builders were able to build and sell thousands of identical units on contiguous parcels. Today, housing consumers are much more discriminating; tract builders now find it necessary to offer a range of models.

C. The Housing Industry Is Unique and Complex

The methods of producing housing have evolved in response to these characteristics of its product. Laymen are inclined to wonder why houses are not produced like automobiles through a highly capitalized, factory assembly-line production process. There are several reasons; one is that factory assembly has often proved to be more expensive than on-site assembly, because of high overhead and transportation costs. Much can be done to improve the efficiency of housing production, but even a high-technology housing industry might have little in common with assembly-line manufacturing industries.

With the major exception of the mobile home industry (and to a lesser extent the home manufacturing industry), the present characteristics of the housing industry are these:

Localization. The fact that housing is tied to land and locally regulated has meant that most builders, real estate brokers, and mortgage lenders (at least savings and loan associations) restrict their activities to rather small geographical areas. Only a handful of homebuilders look for nationwide market possibilities.

Fragmentation. The variety of the housing product has led to fragmentation of the industry into an elaborate complex of interlocking producing units. Different structures require different combinations of skills. Thus, the industry tends to work through ad hoc arrangements for each specific job. The practice of subcontracting, which is prevalent in the industry, is not necessarily irrational, and, in fact, is often an efficient response to the need to meet many specialized demands. It is not clear whether greater vertical integration in the industry — that is, permanent alignment of a broader range of skills under the umbrella of a larger organization — would greatly increase efficiency in production. One clearly adverse result of fragmentation, however, has been an inadequate amount of research and development. Trade associations have evolved to diminish the effect of this fragmentation. For example, in addition to providing technical services to its members, the National Association of Homebuilders has been effectively involved in the councils of government on housing policy, economic issues, and other questions affecting the housing industry.

Lack of Size. With the major exception of some building materials manufacturers and a few distributors and lending institutions, most firms involved in the production and distribution of housing are relatively small. Smallness is characteristic not only of most builders, contractors, and subcontractors, but also of architectural and engineering firms, real estate brokers, and real estate management and maintenance firms. The smallness of these firms results primarily from the industry's localized and fragmented nature.

There are, however, additional reasons for the smallness and light capitalization of construction firms. The rate of housing production is rather erratic, both on a national basis, and especially in each local market. The main causes of this instability are seasonal fluctuations in production (which now seem to be based mainly on tradition inasmuch as winter protection has been demonstrated to be completely feasible), the sensitivity of the industry to the supply of credit, and the dominance of the existing stock in the market. The erratic rate of output forces construction firms to try to keep their continuing overhead to a minimum, thus discouraging capital investment and the assembly of large central staffs.

Dependence on Outsiders. The firms that make up the heart of the industry — primarily, homebuilders and contractors — are dependent on larger enterprises not primarily engaged in housing. They are usually too small to bargain on an equal basis with the larger firms on the periphery of the industry. Thus financial institutions probably constitute the single most important locus of power in the industry. . . .

Note on Developers and Homebuilders

1. *The distinction between developers and builders.* The conversion of raw land to finished urban use can be accomplished entirely by one vertically integrated firm or serially through the complex interweaving of the contributions of many firms providing separate, incremental contributions. Because any particular participant is apt to perform an unconventional cluster of functions, the vocabulary used to describe real estate firms inevitably is imprecise.

The term *land developer* ordinarily connotes a firm that acquires raw land; subdivides the land into lots; installs site improvements such as streets, sewers, and water systems; and then sells the improved lots to buyers who then themselves build on the lots. The lot buyers may either be intermediaries such as speculative *builders* or final consumers who wish to design their own houses, stores, or factories.

Before World War II, it was unusual for a firm that had developed a large tract of land also to erect buildings on a significant part of that land. Today, however, many of the largest homebuilding firms perform both functions. They subdivide and improve raw land as well as design and erect houses, apartments, and related commercial buildings. Some companies still specialize in land development as such. Examples include the firms that develop "new towns," those that subdivide land in recreation areas for sale to small investors or would-be builders of vacation homes, and some developers of shopping centers and industrial parks.

Developers hire civil engineers (and, less often, professional planners) for design services. Builders hire architects (or use stock plans). Developers know about soils, sewers, and subdivision plat maps. Builders know about studs, Sheetrock, and shingles. Merchant homebuilders know about all these things and how to market their final product. Many builders of income property — whether residential, commercial, or industrial — after completing construction soon sell their interests to real estate syndicates or other investors. The few who build, hold, and manage are sometimes called *builder-investors.*

See generally Bipartisan Policy Center, The State of the Residential Construction Industry (2012) (overview of homebuilding industry environment and status of various market participants as following the recent housing cycle); Brent W. Ambrose & Joe Peek, Credit Availability and the Structure of the Homebuilding Industry, 36 Real Estate Econ. 659 (2008) (investigating the role credit availability has played in shaping the homebuilding industry). Classic explorations of the industry include Ned Eichler, The Merchant Builders (1982).

2. *Competition among merchant homebuilders.* Historically, the land development industry was highly competitive in most localities. Industry concentration experienced an uptick during the housing boom and bust of the late 2000s, but still remains relatively low. According to Professional Builder, a trade publication, the four largest homebuilding firms nationally — PulteGroup, D.R. Horton, Lennar, and NVR — each sold between 8,000 and 15,000 dwelling units in 2011 and together accounted for 9 percent of total national housing starts that year. In 2006, a boom year, the top 100 firms built 43 percent of all new homes. Bipartisan Policy Center, supra, at 20.

Market concentration tends to be higher in specific metropolitan areas. A 2005 study of the top 50 MSAs found that the largest ten homebuilders in those top markets had a combined market share on the order of 35 percent (they had 45 percent of the market share in the top ten major markets), as compared to an overall national average of 21 percent. C. Theodore Koebel, Innovation in Homebuilding and the Future of Housing, 74 J. Am. Plan. Ass'n 45, 47–49 (2008); see also John Gittelsohn, Biggest U.S. Homebuilders Take Over Market as New-Home Sales Begin Rebound, Bloomberg, Jan. 19, 2011 (reporting that concentration in the major markets actually slowed consolidation during the Great Recession because the largest ten homebuilders had such significant concentration in the areas hardest hit by the housing bust, such as Florida, Nevada, California, and Arizona).

3. *The Construction Trades.* In 1977, about 40 percent of the workers in the construction industry were union members. This number has been on a gradual decline, falling to 13 percent in 2012 (which was nevertheless almost twice the rate for the private sector as a whole). Statistical Abstract 2012, at 420. As of 2003, construction workforces were more unionized in the North and Midwest (Chicago has the highest rate at 48 percent) than in the South (less than 5 percent in the North Carolina markets, for example). Organized labor has had more success in heavy construction, including large commercial and industrial projects, than in homebuilding and other light construction. Unionization appears to be associated with significantly higher housing construction costs. See, e.g., Joseph Gyourko & Albert Saiz, Construction Costs and the Supply of Housing Structure, 46 J. Regional Sci. 661 (2006) (analyzing reasons for significant construction cost discrepancies across different markets).

Unions are particularly prominent in public works. When a government finances a construction project, a prevailing wage law is likely to prevent a contractor from reducing costs by hiring workers from the less expensive nonunion sector. The federal statute controlling wages on public works — the Davis-Bacon Act (40 U.S.C. §276(a)–(c) (2013)) — has many state and local counterparts. On the effects of these laws, see Daniel P. Kessler & Lawrence F. Katz, Prevailing Wage Laws and Construction Labor Markets, 54 Indus. & Lab. Rel. Rev. 259 (2001) (finding that repeal of a state prevailing-wage law is associated with reduced wages for union members and a narrowing of black/nonblack wage differentials).

Despite their declining ability to organize specific job sites, the building trades unions remain an important force in land development politics. For economic reasons, they tend to be strongly pro-development. They are likely to support all construction projects — even those that are likely to be nonunion — because their members generally benefit from any increase in construction activity. For example, some union members are willing at times to "put their cards in their shoes" — that is, to work at nonunion pay for an unorganized contractor.

4. *The owners of developable land.* Most private land in the United States is owned by individuals and co-owning relatives, not by corporations. See Morris A. Davis & Jonathan Heathcote, The Price and Quantity of Residential Land in the United States, 54 J. Monetary Econ. 2595, 2613 (2007) (value of privately owned residential land is approximately

16 times the value of corporate-owned land). Much of the land that eventually will be urbanized currently is used for either pasture or cropland. It is likely to be owned either by farmers or by speculating investors who are leasing it to agricultural tenants. See Cynthia Nickerson, Trends in U.S. Farmland Values and Ownership, Economic Research Service, U.S. Department of Agriculture (Feb. 2012); Erik J. O'Donoghue, The Changing Organization of U.S. Farming, Economic Research, United States Department of Agriculture Service (Dec. 2011) (material portion of farmland is owned by private individuals or closely held corporations); see also Lisa Henke et al., The Economic Drivers of Forest Land Use and the Role of Markets in the United States, *in* Managing Forest Carbon in a Changing Climate (2012) (corporations own only 32 percent of privately held forestland). If a government were to prohibit speculators from purchasing exurban land, would that prohibition help or hurt farmers?

The owner of land situated at the urban fringe commonly is actively involved in the development process. The owner may assist in land assembly, in financing developer operations, and in the time-consuming process of obtaining development approvals.

Securing development approvals from local officials has become an increasingly risky undertaking. As a result, a developer commonly conditions purchase of land on later success in obtaining specific rezonings, site-plan approvals, and the like from the local government. A conditional land-sale contract makes the land seller and the developer-buyer staunch allies during subsequent dealings with neighbors and local officials. It also helps spread the loss when a local government denies development permission.

5. *The homebuilding assembly line*. The Kaiser Committee report briefly mentions the prefabrication of houses that comply with basic maintenance and building codes, a practice known as modular construction. Key benefits of prefabrication include expedited construction schedules, reduced labor costs, and improved process efficiencies. See Modular Building Institute, Improving Construction Efficiency & Productivity with Modular Construction (Feb. 2010). Furthermore, the prefabrication process has been found to have a lower aggregate environmental footprint. See John Quale, Comparing Environmental Impacts of Building Modular and Conventional Homes in the United States, 16 J. Indus. Ecology 243 (2012). Technological innovations have helped modular construction grow, and by 2011, 2 to 3 percent of total residential construction used modular units, including 6 percent of new homes in the Northeast. Id. at 244. The Atlantic Yards real estate development in downtown Brooklyn, for example, broke ground in 2012 on the largest prefabricated residential tower yet built, which will reach 32 stories by stacking 363 modular dwelling units. The developer also plans a 50-story prefabricated tower. See Charles V. Bagli, At Atlantic Yards, Ready to Test Plans for Prefab Tower, N.Y. Times, Nov. 27, 2012, Real Estate Section, at A31.

Sherman J. Maisel, Real Estate Finance
460–67 (1992)

Developers must solve three problems in obtaining the necessary financing for a project:

1. The first and greatest difficulty is obtaining the actual equity money, called *front money*. This term is used to describe the money developers or promoters must put up prior to the time they can draw on financing through a mortgage. It also includes the amount needed to supplement the funds received through lenders.

2. Developers must obtain take-out commitments. These are promises from lenders that they will fund the project when it is completed. Lenders will make long-term,

permanent loans to qualified buyers or to developers if they retain ownership. The commitment makes certain that funds will be available to repay the construction loan.

3. If the developers have take-out commitments in hand, they can borrow for the development and construction process. These short-term loans are paid out as the work progresses and are to be repaid upon completion.

Obtaining Front Money

Financing the development of construction projects is difficult because the risks are so high. At this stage many things can go wrong. Indeed, the riskiest period in any project is when the proposals are completely fluid. Anyone putting up front money during this period expects a high reward because of the risks. Developers need capital for their preliminary plans, to make the necessary studies for their presentation, and to control the land they will develop. These expenditures must be made before they can arrange debt financing. As the number of approvals to be obtained and requirements to be met has proliferated, the amount of front money developers need has risen rapidly.

Front money is also needed during the actual process of land development and construction. Even though some loans are available during this period, developers must find enough money to bridge the gaps between the phases or times at which the financing becomes available.

Sources of Funds

Developers look to several sources for their front money. One is their own capital, which provides the maximum discretion and fewest restrictions. But only a limited number of developers enjoy the luxury of having substantial financing of their own. In addition to their own funds, developers can turn to several other sources of front money. One may be a regular credit line from their banks. Another is to obtain as much credit as possible from their suppliers or consultants. It is common to find that the lawyer, the architect, and even the market analyst delay their billing in return for a share of the potential profits.

During the construction phase, suppliers often act in the role of lenders. Even though they may not be compensated for it, they find that their bills are simply paid late. This whole problem of loans during the construction process is one of the factors raising the cost of construction. Suppliers who find themselves with debts continually owed to them reflect this in their prices. Suppliers who must anticipate waiting to be paid for their work will very likely charge higher prices. They add an extra increment both for the time they must wait and — more importantly — for the uncertainty associated with collecting the account at all.

Of greater concern is that the developers' dependence on suppliers for credit may influence the quality of the goods or services the suppliers provide. If payment is not immediately forthcoming, suppliers may be motivated to furnish less than top-quality materials. In the case of consultants providing professional services, their objectivity may be noticeably influenced by what form the payments take. Clearly, consultants whose payments depend on the successful availability of financing will be highly motivated to make sure that such funds become available. Consequently, the soundness of their advice may be impaired.

Joint Ventures

Because of the enormous difficulties of coming up with the needed front money, developers often turn to the joint venture in order to find financial partners who can

assume the major burden for these expenditures. This is one reason why some of the largest developers have gone into partnerships with insurance companies or pension funds.

If the venture is to be a form of limited partnership, the developer must provide prospective partners with considerable amounts of information before they can be admitted. Therefore, a good deal of the planning must have already taken place. The dimensions of the project must be defined, possible economic benefits must be identified, and there must be a projected set of financial statements. Without considerable detailed information of this type, joint venture partners cannot know whether they ought to become involved.

This means again that substantial resources are required even before a developer is in a position to admit financial partners. Even if the developer seeks to minimize front-money requirements through finding a buyer (preselling) for the project before it becomes necessary to incur capital expenditures, a fair amount of upfront work must have been done, and payments made, to move the venture to the point at which it can be considered by a potential purchaser.

Land Development and Subdividing Options

Probably the prime source of front money is through a favorable deal with landowners. Essentially, developers seek to have landowners allow them to defer the time when the money must be put up for the land. One frequent method of ensuring the availability of the land during the planning period is through a series of options. These might include a lease of the land with an option to buy at some later time. The first lease payments could be small, or payments might be deferred until the property is completed and income is being produced. In other cases, developers may buy the land on an extended purchase contract with only small early payments required. Developers usually insist that there be no recourse if they fail to meet the remainder of the contract. The entire security will be the land itself.

In another procedure, the owner retains title while the land is being developed and may even furnish part of the capital for improvements. As individual lots are sold, the owner transfers title to the purchaser. Part of the income from the sale is paid to the owner for his or her land and risk, while part goes as a return to the developer.

In still another method, the builder buys the land but the original owner retains a large purchase-money mortgage against the property. The lien is usually a *blanket mortgage*-that is, one that covers a number of parcels or the entire parcel of land. When an individual lot is sold, the mortgage holder receives payment for somewhat more than the amount of land involved, so that the debt owed becomes an ever-smaller percentage of the value of the still unsold land. Upon receipt of payment, the mortgage holder releases his or her claim and the purchaser receives a clear title. . . .

Credit for Improvements

If the land is to be built upon or improved before sale, the firm making a construction loan usually requires a subordination agreement. Under such an agreement, the holder of the blanket mortgage agrees to allow his or her claim to be junior, or second, to the construction loan even though it was recorded first in time. The conditions of such subordination clauses and the release clause that specifies the conditions for transferring titles on individual lots are an important part of the bargaining in land sales. Such conditions, as well as the use of options and developing on others' land, are usually paid for through the fact that the price of the land becomes higher than it would be in a cash sale. . . .

Credit for construction of land improvements is expensive, but not quite as difficult to obtain as credit for purchasing raw land. Developers who have used their own capital to buy the land or who have received financing through the owner or another land investor are often able to borrow the money needed for streets, lights, and other improvements from a combination of financial institutions, material suppliers, and subcontractors, in a system similar to that used for the construction of the house. In fact, in much tract development the construction of the house and land improvements proceed and are financed together. . . .

Note on Financing Land Development

1. *Tax incentives for landowner financing.* Internal Revenue Code §453 provides an incentive for the seller of undeveloped land to extend purchase-money financing to a developer. Section 453 may permit a seller to spread any income received on a sale over all the years in which purchase-price payments are made. For example, if a seller were to have provided purchase-money financing equal to 80 percent of the total purchase price, the seller's first-year receipts would be 20 percent, and only 20 percent of the gain on the sale would be recognized in that year. Small-time farmers or speculators who own land that has appreciated greatly in value are likely to welcome the income-spreading effects of §453. "Dealers" generally are unable to select this so-called *installment method*.

2. *REITs as sources of financing.* In addition to the sources Maisel discusses, developers today often look to real estate investment trusts (REITs) for financing. REITs secure funding by selling shares of stock through public offerings and provide the funds to a joint-venture partnership structure that includes the developer and the REIT. The REIT commits to provide a specific portion of the development costs in phases throughout the construction process as work progresses. A joint venture with a REIT may provide a developer with relatively inexpensive capital for construction and development because the dividends required by the REIT's shareholders may be lower than the cost of traditional construction financing. The developer also may be able to obtain more financing than would otherwise be available with a conventional loan. For discussions of REIT financing of single-family and multifamily development. See, e.g., Craig Emrick, REIT Joint Ventures and Funds: Weighing the Pluses and Minuses (April 2006); Donald S. Bradley, Frank Nothaft & James Freund, Financing Multifamily Properties: A Play with New Actors and New Lines. 4 Cityscape 5 (1998).

3. *The pro-development alliance.* The foregoing excursion into the organization of the land development industry has identified the members of the pro-development alliance. The applicant for a development permit is at the point of attack. Arrayed behind the applicant — perhaps visible, perhaps not — are prior and subsequent landowners, financiers, contractors, construction workers, real estate brokers, and the rest of the land development army. Together, these interest groups constitute a potent and persistent minority faction in almost every political arena. See John R. Logan and Harvey L. Molotch, Urban Fortunes: The Political Economy of Place (1987); see also Harvey Molotch, The Political Economy of Growth Machines, 15 J. Urb. Aff. 29 (1993); Harvey Molotch, The City as Growth Machine, 82 Am. J. Soc. 309 (1976). But cf. Vicki Been, Josiah Madar & Simon McDonnell, Urban Land Use Regulation: Are Homevoters Overtaking the Growth Machine?, forthcoming, _____ J. Emp. Legal Stud. _____ (2013) (study of rezoning activity in New York City between 2002 and 2009); Thomas K. Rudel, Situations and Strategies in American Land-Use Planning (1989) (an empirical study of land use politics in western Connecticut towns). Many of Rudel's findings are inconsistent with Molotch's

general hypothesis that pro-growth elites dominate the zoning process. Been and her colleagues find less evidence that the growth machine controls land use than Logan and Molotch suggest would be the case in a city like New York. See also David Schleicher, City Unplanning, forthcoming, 122 Yale L.J. _____ (2013) (exploring causes and cures for lower than expected development in big cities). For more extended discussions of the role of interest groups in land use politics, see pp. 000 and pp. 000.

C. The Product

1. Housing and Other Structures

a. The Housing Stock

Structures. The Statistical Abstract of the United States, published annually by the Bureau of the Census, provides an invaluable portrait of the nation's housing stock. The 2012 edition reports that in 2009 there were 130.1 million housing units. Their median age was 35 years; 42 percent were built before 1960. Statistical Abstract 2012, at 618. Throughout the last third of the twentieth century, about three-fourths of American households were living in single-family units, some as renters. During that same period, large multifamily buildings became somewhat more prevalent and small multifamily structures less so. See Table 1-1.

Mobile homes (or "manufactured housing units," as the producers' trade association prefers to call them) accounted for 1.4 percent of the housing stock in 1960. By 2009, their share had quintupled to 6 percent of the occupied stock. Mobile homes were most prevalent in South Carolina and New Mexico, where they constituted more than 18 percent and 16 percent of total dwelling units, respectively. They were least common in Hawaii (0.1 percent) and Massachusetts (0.8 percent). Statistical Abstract 2012, at 619. To what extent might differing regulatory environments be responsible for these variations among states?

Homeownership. From 1900 to 1940, slightly less than half of U.S. households were homeowners. During the massive suburbanization that occurred over the 20 years following World War II, this rate increased to 64 percent. See Matthew Chambers et al., Accounting for Changes in the Homeownership Rate, 50 Int'l Econ. Rev. 677 (2009). The national homeownership rate reached an all-time high of 69 percent in 2004, before dropping down to 66.9 percent by 2010 in the aftermath of the Great Recession. Statistical Abstract 2012, at 621. In 2004, West Virginia (80 percent), Alabama (78 percent), Delaware, and Michigan (both at 77 percent) had the highest rates of homeownership, and

TABLE 1-1
Occupied Housing Units, By Type of Structure

Units in Structure	*1960*	*2009*
Single-family, detached or attached	76%	77%
2–4 units	13	8
5 units or more	11	15
	100%	100%

Source: Statistical Abstract 2012, at 618.

New York (55 percent), California (60 percent), and Hawaii (61 percent) had the lowest. Statistical Abstract 2006, at 631. Again, how might variations in state regulatory policies affect these numbers?

In 2010, 52 percent of household heads age 30 to 34 owned their own homes, compared to 82 percent of those age 70 to 74 (the highest-owning age cohort). Statistical Abstract 2012, at 621. Of households that earned an income higher than $75,000 in 2011, about 85 percent were homeowners; the figure was 48 percent for households earning less than $30,000. Joint Center for Housing Studies, The State of the Nation's Housing 2012, at 2. Homeownership rates vary significantly across ethnic groups as well — in 2011, 74 percent of white household heads were homeowners, compared to 45 percent of blacks, 47 percent of Hispanics, and 57 percent of Asians and others. Id. at 36. Homeownership rates and owner versus renter demographics are subject to significant variation across different metropolitan areas. See, e.g., The Furman Center for Real Estate and Urban Policy, State of New York City's Housing and Neighborhoods 2012 (2013) (comparing homeownership rates in the largest cities in the United States).

In the decades after 1980, immigration to the United States surged. An influx of immigrants tends to dampen increases in homeownership rates because newcomers' homeownership rates come close to the rates of the native-born only after several decades of residence. See Gary Painter & Zhou Yu, Immigrants and Housing Markets in Mid-Size Metropolitan Areas, 44 Int'l Migration Rev. 442 (2010) (traditional pattern of lower immigrant homeownership rates holds even in new midsized gateway cities); Rakesh Kochhar et al., Through Boom and Bust: Minorities, Immigrants, and Homeownership (Pew Research Hispanic Center, 2009) (reporting that immigrant homeownership rates were about 17 percentage points lower than the native-born homeownership rate); Natalia Siniavskaia, Immigrants and Housing Demand, National Association of Homebuilders, Special Studies (Aug. 3, 2012) (modeling immigrant homeownership rates of 10 percent within the first year of arrival and reaching 40 percent by their tenth year of residency); Eileen Diaz McConnell & Ilana Redstone Akresh, Through the Front Door: The Housing Outcomes of New Lawful Immigrants, 42 Int'l Migration Rev. 134 (Mar. 2008) (untangling which immigrant groups and other factors correlate with lower homeownership rates). See also Sanjaya DeSilva & Yuval Elmelech, Housing Inequality in the United States: Explaining the White-Minority Disparities in Homeownership, 27 Housing Stud. 1 (2012) (identifying immigration patterns as a reason for the homeownership gap between whites and both Asians and Hispanics).

Early studies supported the notion that homeownership generates significant social benefits. See, e.g., Denise DiPasquale & Edward L. Glaeser, Incentives and Social Capital: Are Homeowners Better Citizens?, 45 J. Urb. Econ. 354 (1999) (homeownership tends to promote investment in local amenities and social capital); Richard K. Green & Michelle J. White, Measuring the Benefits of Homeowning: Effects on Children, 41 J. Urb. Econ. 441 (1997) (children of homeowners, particularly of low-income homeowners, stay in school longer). Some recent studies also find benefits. See Jinlan Ni & Christopher Decker, The Impact of Homeownership on Criminal Activity: Empirical Evidence from United States' County Level Data, 2 Econ. & Bus. J.: Inquiries & Persp. 17 (Oct. 2009) (homeownership has a statistically significant negative effect on neighborhood crime rates and increasing homeownership rates reduces criminal activity over time). But much of the recent research has questioned whether the benefits seen in the early studies were the result of homeownership or of other factors, such as residential stability. See David Barker & Eric Miller, Homeownership and Child Welfare, 37 Real Estate Econ. 279 (2009) (reanalyzing foundational studies on the benefit of homeownership to children and finding that after controlling for such factors as residential mobility, wealth, and dwelling type,

the observed benefits were substantially reduced). See generally Christopher E. Herbert & Eric S. Belsky, The Homeownership Experience of Low-Income and Minority Households: A Review and Synthesis of the Literature, 10 Cityscape 5 (critically reviewing the literature); Stephanie M. Stern, Reassessing the Citizen Virtues of Homeownership, 111 Colum. L. Rev. 890 (2011) (reviewing the universe of studies on the topic and questioning the claimed "citizen virtue" benefits of homeownership). Do these findings justify the many Internal Revenue Code provisions that favor homeownership (described at page 000)? See Denise DiPasquale, Rental Housing: Current Market Conditions and the Role of Federal Policy, 13 Cityscape 57 (2011) (weighing the benefits of homeownership in light to the recent foreclosure experience); Edward L. Glaeser, Rethinking the Federal Bias Toward Homeownership, 13 Cityscape 5 (2011) (proposing a rebalancing of federal policy toward renting and homeownership).

Housing conditions. The quality of housing in the United States has improved steadily in recent decades for all segments of the population. The proportion of occupied dwellings served by central air conditioning rose from 2 percent in 1960 to 28 percent in 1980 to 70 percent in 2009. Statistical Abstract 2012, at 618. The percentage of housing units lacking complete plumbing facilities fell from 35 percent in 1950 to 7 percent in 1970 to 1 percent in 1990. Statistical Abstract 1995, at 733. Moderate crowding among all households declined from 20 percent of the total population in 1940 to 4 percent in 2007, while more extreme crowding declined from 9 percent to 2 percent. Alex F. Schwartz, Housing Policy in the United States 24–26 (2d ed. 2010).

These statistics invite several questions:

(a) Is the standard for "decent" or "adequate" housing unvarying, or is it dynamic, changing with prevailing quality levels? If the latter, can we soon expect housing lacking central air conditioning to be regarded as substandard?
(b) Are indoor plumbing facilities, central air conditioning, and so on trustworthy measures of overall housing quality? What other relevant characteristics should the Bureau of the Census attempt to measure?

House sizes. The average square footage per person that households occupy has steadily increased over time, going from 300 in 1950 to 480 in 1970 and 840 in 2000. Sam Rashkin, Retooling the U.S. Housing Industry 59 (2011). In comparison, the European average was 363 square feet per person. Indeed, each person in the average U.S. household occupied roughly twice the space that people in France, the Netherlands, Germany, and the United Kingdom use. See Robert Rector & Rachel Sheffield, Understanding Poverty in the United States: Surprising Facts About America's Poor 11 (The Heritage Foundation, Backgrounder No. 2607, Sept. 13, 2011). Further, newly constructed homes in the United States grew to an average size of 2,480 square feet in 2011. U.S. Census Bureau, 2011 Characteristics of New Housing 389 (2012). A recent study shows that only Australia and New Zealand have comparable new housing size trends, while the averages for most of the other developed European countries remain around half the U.S. figure. Craig James, Australian Homes Are Biggest in the World (Commsec, Nov. 2009). American house sizes dipped a bit in the Great Recession, but it remains to be seen whether that is a long-term trend. See Louise Keely et al., The Shifting Nature of U.S. Housing Demand 31–35 (Demand Institute, May 2012) (predicting future trends in housing demand); John Pitkin & Dowell Myers, U.S. Housing Trends: Generational Changes and the Outlook to 2050 (Transportation Research Board, 2008).

On the opposite end of the spectrum, some renters and homebuyers are seeking "micro-units," and some high-demand cities, like New York, San Francisco, Boston,

Seattle, and Austin, are toying with allowing or encouraging small units to balance population influxes and supply constraints. See John K. McIlwain, Is Small Beautiful Again? The Sudden Interest in Micro-Apartments, Urban Land (Oct. 25, 2012) (explaining rebirth of interest in minimalist apartment sizes and weighing various costs and benefits). San Francisco, for example, has amended its zoning regulations, and New York recently ran a design competition to spark the construction of micro-units. See, e.g., Casey Ross, Developer Begins Build Micro Housing in Seaport, Boston Globe, July 26, 2012; Michael Howard Saul & Laura Kusisto, City Seeks Lilliputian Living, Wall Street Journal, July 10, 2012; Dan Schreiber, Supervisors Make Way for Tiny Apartment Experiment, San Francisco Examiner, Nov. 20, 2012.

Neighborhood conditions. The quality of a neighborhood is separate from, but intertwined with, the quality of housing units within it. The three neighborhood conditions that surveyed residents complain about the most are street noise (23 percent), crime (17 percent), and noxious odors (5 percent). Statistical Abstract 2012, at 627. Despite these complaints, 81 percent of households rated their neighborhood as a 7 or better on a scale of 1 to 10, with 8 (27 percent) and 10 (25 percent) as the most common rankings. U.S. Census Bureau, American Housing Survey for the United States: 2009 at 24–26 (2011). For an analysis of the substantial effect that improvements in crime control can have on a neighborhood's quality, see, e.g., Amy Ellen Schwartz et al., Has Falling Crime Driven New York City's Real Estate Boom?, 14 J. Housing Res. 101 (2003) (surveying research and performing case analysis for New York City); Benedict Carey, Diagnosis: Battered but Vibrant, N.Y. Times, Jan. 7, 2013, at D1 (discussing the effect of neighborhood quality in helping to maintain overall economic stability during the housing bust).

Quantifying neighborhood characteristics such as walkability, quality of open spaces, or social cohesion is no small feat. There have been several recent undertakings to implement creative indices to help homebuyers assess neighborhood quality. See Lynn M. Fisher et al., Amenity-Based Housing Affordability Indexes, 37 Real Est. Econ. 705 (2009), for an overview and analysis of the combination of affordability indices with neighborhood amenity and job accessibility characteristics.

How might land use regulation affect, for better or worse, the nation's homeownership rate, the quality and size of its housing, and the quality of neighborhoods?

b. The Pace of New Construction

In recent decades, the annual value of new construction has hovered at around 8 percent of gross domestic product, although it approached 9 percent during the recent housing boom and fell to 6 percent following the housing crisis. Table 1-2 breaks down the $1.2 trillion of construction activity in the peak year of 2006 and the $0.8 trillion of expenditures in 2010 into their major components. This analysis exemplifies the recent housing cycle — housing construction suffered a stark drop on an absolute basis and went from accounting for two-thirds of total private construction to being responsible for less than one-half of that figure.

The volume of private construction tends to be cyclical. Because homebuyers and other purchasers prefer to avoid paying high interest rates on mortgage loans, construction falls off when interest rates rise. On the other hand, when money is cheap, as is common during an economic recession, housing starts and related construction indicators begin to perk up. Because private construction tends to recover from recessions (and wilt during booms) prior to activity in other economic sectors, housing starts are regarded as a "leading" economic indicator. The cyclical nature of the housing industry has ramifications in land use litigation. If opponents of a proposed development can succeed in delaying it, the developer may be deprived of an opportunity to exploit a trough in mortgage interest rates.

TABLE 1-2
Value of New Construction Put in Place

	2006		2010	
	$ Billions	*Percent of Total*	*$ Billions*	*Percent of Total*
Private Residential				
New Single Family	$416	36%	$113	14%
Multifamily	53	5	14	2
Improvements	145	13	115	15
Private Nonresidential				
Lodging	18	2	11	1
Office	46	4	24	3
Commercial	74	6	38	5
Health Care	32	3	31	4
Manufacturing	32	3	38	5
Power	34	3	71	9
Communication	22	2	18	2
Other	40	3	36	5
Public				
Residential	4	0	7	1
Nonresidential	233	20	268	34
TOTAL	$1,150	100%	$784	100%

Source: Statistical Abstract 2012, at 606–07.

As Tables 1-2 through 1-4 demonstrate, the United States went through an extreme housing cycle during the 2000s with booming construction levels and double-digit annual housing price growth between 2000 and 2006. The ballooning of prices is blamed on many factors: interest rate policy, financial innovation and the spread of securitization techniques, ineffective regulation of the financial industry, and changes in lending practices. See, e.g., Adam J. Levitin & Susan M. Wachter, Explaining the Housing Bubble, 100 Geo. L.J. 1177 (Apr. 2012). The housing bubble eventually burst in spectacular fashion during 2006–2007, as evidenced by the severe slowdown in new construction activity. New housing starts peaked in 2005 with the addition of 2.2 million new dwelling units, while annual construction bottomed out in 2009 with a 72 percent drop from the 2005 peak, adding only 0.6 million new units. U.S. Census Bureau, New Privately Owned Housing Units Started.

c. Housing Prices

In 2006, existing single-family houses in the United States sold for a median price of $221,900. In general, houses are less expensive in the South and Midwest and more expensive in the Northeast and West. Table 1-4 shows the wide diversion of median house prices at the 2006 peak and at 2011 levels for the dozen most populous metropolitan areas, while Figure 1-5 demonstrates the initial growth and eventual decline of home prices during the past decade. At the high end of the sales price range, the median for the San Francisco Bay Area ($736,800) and Los Angeles ($469,300) grew rapidly during the housing run-up and suffered price declines steeper than the national average of 25 percent through 2011. At the low end were the two Texas markets, where prices remained relatively flat, and Detroit, which has suffered from urban decline, as discuss supra, at page 000.

TABLE 1-3
Average Private Housing Starts Per Year
(In Thousands of Dwelling Units)

	1960s	*1970s*	*1980s*	*1990s*	*2000–2006*	*2008–2010*
Single-Family Houses	924	1,143	986	1,103	1,451	646
In Structures with 2–4 Units	82	105	87	37	39	18
In Structures with 5+ Units	445	520	420	231	303	186
Total Private Housing Starts	1,451	1,768	1,492	1,371	1,793	850
New Manufactured (Mobile) Homes Placed	236	347	247	282	164	69
Total Housing Production	1,688	2,115	1,739	1,653	1,957	919

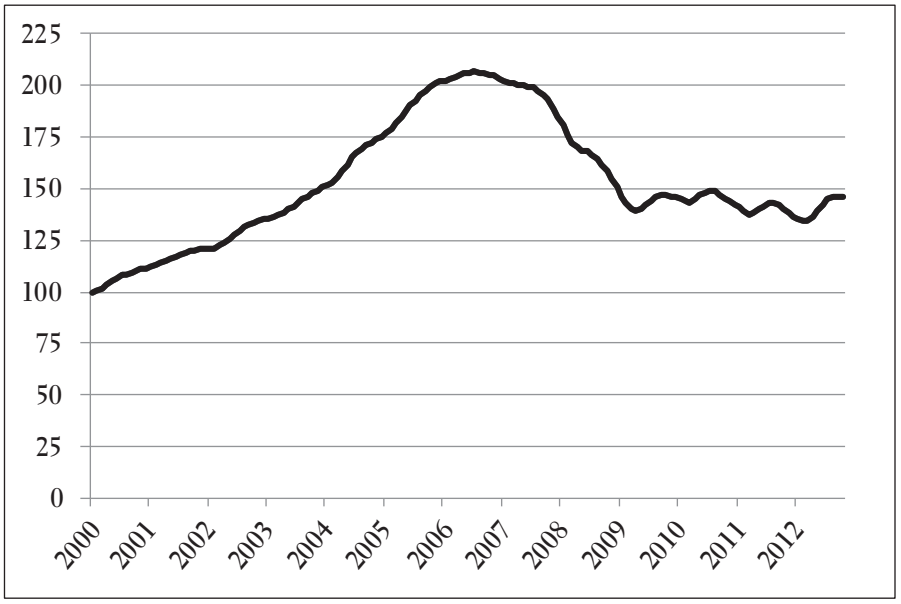
Source: U.S. Census Bureau, New Residential Construction.

TABLE 1-4
Median Sales Price of Existing Single-Family Homes, Most Populous Metropolitan Areas

	2006	*2011*	*% Change*
San Francisco Bay	$736,800	$483,400	–34%
Los Angeles	$584,800	$307,700	–47%
New York	$469,300	$378,700	–19%
Washington, D.C.	$431,100	$325,400	–25%
Boston	$402,200	$346,200	–14%
Miami	$371,200	$181,100	–51%
Chicago	$273,500	$176,500	–35%
Philadelphia	$230,200	$210,100	–9%
United States	**$221,900**	**$166,200**	**–25%**
Atlanta	$171,800	$ 98,600	–43%
Detroit	$151,700	$ 53,800	–65%
Dallas	$149,500	$148,900	–0%
Houston	$149,100	$155,700	4%

Source: National Association of Realtors, *at* http://www.realtor.org/topics/existing-home-sales.

In some respects, median sales price is a crude measure of housing costs. It fails to account for differences in the size and quality of units in metropolitan housing stocks. In addition, it ignores the amenities of neighborhoods and regions. Housing prices might be high in San Francisco primarily because people will pay a premium to live there. Pricing metrics also ignore the key concept of affordability, as home prices may interact with local income levels and the local rental market, which is the major competitor to homeownership. See generally Recent House Price Developments: The Role of Fundamentals, 78 OECD Economic Outlook 123 (2005) (comparing the multitude of factors that drive housing price increases and housing cycles across various domestic and foreign markets). For an example of market segmentation according to affordability, see Center for Housing Policy, Paycheck to Paycheck (2012), *at* http://www.nhc.org/chp/p2p (ranking both homeownership and rental affordability for the 200 largest U.S. metropolitan areas by looking at the percentage of local occupations that earn a median income greater than the qualifying income necessary to afford a median-priced home). For a comparison of price-to-rent ratios (home prices divided by annual rent on comparable housing) between peak levels, current levels, and historical averages, see David Leonhardt, Rent vs. Buy, a Longer List,



Source: S&P Dow Jones.

FIGURE 1-5
Case-Shiller 20-City Composite Home Price Index

N.Y. Times (May 10, 2011). San Francisco, for example, had peak ratios near 40, as compared to a 2010 ratio of 27, and a historical average ratio of 24; economists broadly define a ratio of 15 as the breakeven point between renting and owning. Id.

There is increasing evidence that land use regulations — the subject of this book — have significant impact on the cost of housing. Regulations that limit the supply of housing or increase production costs may raise the price not only of new housing but also of existing housing, which is a close substitute. A growing number of studies by economists attribute high housing prices in part to excessive regulation. Edward Glaeser and Bryce Ward argue, for example:

> Over the last 25 years, Greater Boston has seen a remarkable increase in housing prices and a decline in the number of new units. This change reflects increasingly restricted supply. The reduction in supply doesn't reflect an exogenous lack of land. There has been no significant increase in density levels associated with declining construction. Instead, the decline in new construction and associated increase in price reflects increasing man-made barriers to new construction . . . Regulations do appear to increase prices . . . This suggests the possibility that current land use controls are suboptimally restrictive, and it leaves us with the puzzle of understanding why communities are not choosing to maximize land values.

Edward L. Glaeser & Bryce A. Ward, The Causes and Consequences of Land Use Regulation: Evidence from Greater Boston. 65 J. Urb. Econ. 265, 278 (2009); see also Richard K. Green, Stephen Malpezzi & Stephen K. Mayo, Metropolitan-Specific Estimates of the Price Elasticity of Supply of Housing, and Their Sources, 95 Am. Econ. Rev. 334 (2005) (finding MSAs with increased regulation have less elastic housing markets than lighter-regulated counterparts); Keith R. Ihlanfeldt, The Effect of Land Use Regulation on Housing and Land Prices, 61 J. Urb. Econ. 420 (2007) (analyzing 100 Florida cities);

John M. Quigley & Steven Raphael, Regulation and the High Cost of Housing in California, 95 Am. Econ. Rev. 323 (2005) (creating a regulatory stringency index and finding that Californian cities with greater regulation were likely to have higher housing prices when compared to similarly situated but lighter-regulated cities in the same county). In addition, Peter Ganong and Daniel Shoag argue that stricter land use regulations raise the extent to which income differences are capitalized into housing prices and thereby impede population flows to richer areas and exacerbate income segregation. Peter Ganong & Daniel Shoag, Why Has Regional Income Convergence in the U.S. Stopped? (Harvard Kennedy School Working Paper No. RWP12-028, 2012). See also Haifang Huang & Yao Tang, Residential Land Use Regulation and the U.S. Housing Price Cycle Between 2000 and 2009, 71 J. Urb. Econ. 93 (2012) (analyzing housing price changes in 300 cities during the 2000–2009 U.S. housing cycle and identifying greater pricing gains during boom years and sharper price declines during bust years for cities with more intensely restrictive land use regulation).