

ARTICLES

URBAN PLANNING AND THE AMERICAN FAMILY

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Zoning and other local, state, and federal housing policies are decidedly anti-family. Local planning accommodates, subsidizes, and encourages the production of single-family homes in the suburbs served by personal automobile transport. Zoning segregates the community, excluding the poor and members of minority groups. “The worst thing one can say about local planning officials is that they did their job well and followed the law.”¹ The results are often poorly planned communities, dysfunctional public transport, and inadequate housing and neighborhoods for the poor and working classes.²

Because the quality of public services and facilities is a function of a community’s tax base, suburban planners often choose to

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1. James A. Kushner, *Comparative Urban Planning Law* ch. 2, 23–24, 39 (Carolina Academic Press 2003); see also Nicole Stelle Garnett, *Ordering (and Order in) the City*, 57 *Stan. L. Rev.* 1, 39 (2004) (noting local officials’ significant interest in maintaining their broad authority over zoning despite decades of criticism from all sides).

2. For a discussion of the negative consequences of current zoning policies, see generally Andrés Duany et al., *Suburban Nation: The Rise of Sprawl and the Decline of the American Dream* (N. Point Press 2000); James Howard Kunstler, *The Geography of Nowhere: The Rise and Decline of America’s Man-Made Landscape* (Touchstone 1993); James Howard Kunstler, *Home from Nowhere: Remaking Our Everyday World for the 21st Century* (Touchstone 1996); James A. Kushner, *The Post-Automobile City: Legal Mechanisms to Establish the Pedestrian-Friendly City* (Carolina Academic Press 2004); Andrea D. Haddad, Student Author, *Subsidized Housing and HUD Projects: Economic Confinement on Low-Income Families*, 31 *New Eng. J. on Crim. & Civ. Confinement* 243, 262 (2005).

exclude multi-family and subsidized housing that requires the expense of schools and other services in favor of subsidizing commercial and industrial development that will generate jobs, as well as payroll, property, and sales taxes.³ The result is that central cities lose their jobs and stores to the suburbs but still house the bulk of the region's poor.⁴

"Not in my backyard" (or NIMBY) attitudes impact zoning policies and are the major reason that our cities and neighborhoods are inadequate for most families, that our transportation system fails to offer efficient transport to jobs, shopping, and recreation, and that increasing traffic congestion⁵ spoils our air, increasing asthma and allergy problems (especially for children)⁶ and dramatically aggravating our cost of health care delivery.⁷

3. Myron Orfield, *American Metropolitcs: The New Suburban Reality* (Brookings 2002); Stewart E. Sterk, *The Federalist Dimension of Regulatory Takings Jurisprudence*, 114 Yale L.J. 203, 263 (2004) (discussing *Southern Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d 713, 725–735 (N.J. 1975), a successful challenge to fiscal zoning involving exclusion of multi-family housing in favor of tax-generating industrial and commercial uses); see also Richard Schragger, *Consuming Government: The Homevoter Hypothesis*, 101 Mich. L. Rev. 1824, 1850 (2003) (explaining that new homeowners are likely to approve of exclusionary zoning to preserve property values and realize capital gain).

4. Garnett, *supra* n. 1, at 33–34; James A. Kushner, *The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing*, 42 Vand. L. Rev. 1049, 1067 (1989); J. Celeste Sakowicz, *Urban Sprawl: Florida's and Maryland's Approaches*, 19 J. Land Use & Envtl. L. 377, 386–387 (2004); see also William W. Buzbee, *Urban Sprawl, Federalism, and the Problem of Institutional Complexity*, 68 Fordham L. Rev. 57, 125 n. 296 (1999) (noting the federal government's recognition of the need to provide transportation to the urban poor who seek access to the "many jobs located not in central cities but on the urban periphery").

5. Michael Bernick & Robert Cervero, *Transit Villages in the 21st Century* 43–44 (McGraw-Hill 1997) (noting that congestion costs \$73 billion annually); Anthony Downs, *New Visions for Metropolitan America* 8 (Brookings Instn. Press 1994); Anthony Downs, *Still Stuck in Traffic: Coping with Peak-Hour Traffic Congestion* (rev. ed., Brookings Instn. Press 2004) [hereinafter Downs, *Still Stuck in Traffic*]; Kushner, *supra* n. 2, at 46–48; David Schrank & Tim Lomax, *The 2005 Urban Mobility Report* 30 (Tex. Transp. Inst. 2005) (available at http://tti.tamu.edu/documents/mobility_report_2005_wappx.pdf) (noting that congestion has grown in every area of the country, causing longer delays on more roads than ever before).

6. *The Automobile and the Environment: An International Perspective* 390–427 (Ralph Gakemheimer ed., MIT 1978); Robert Cervero, *The Transit Metropolis: A Global Inquiry* 43–47 (Island Press 1998); Kushner, *supra* n. 2, at 37–41; Pub. Health Policy Advisory Bd., *Asthma Epidemic Increase Cause Unknown* 2–3 (2002) (available at <http://www.phpab.org/asthma%20report/asthma.pdf>) (concluding that "asthma trends are getting worse" and that sufficient evidence exists to link the exacerbation of asthma with high levels of ozone); see also Robert D. Bullard, *Addressing Urban Transportation Equity in the United States*, 31 Fordham Urb. L.J. 1183, 1192–1193 (2004) (noting that Detroit, the nation's largest metropolitan area without a public transit system, has a childhood asthma

Zoning and development policies have further destroyed our natural and man-made environments. For example, in Atlanta, the extent of asphalt paving and the loss of tree cover has increased summer temperatures six to eight degrees and has generated an increasingly harsh climate of more violent storms.⁸ From 1975 to 1992, Atlanta lost 380,000 acres of trees to development,⁹ a loss of sixty-five percent of the city's tree cover since 1975.¹⁰ Houston has been described as a 540-square-mile parking lot.¹¹ The February 2005 AARP Bulletin reported a study of traffic and pedestrians,¹² showing a fatality rate for those over age seventy at twice the rate for younger persons¹³ and listing Orlando, Tampa-St. Petersburg, and West Palm Beach, Florida as the top most dangerous cities for pedestrians in America.¹⁴ Miami-Ft. Lauderdale, Memphis, Atlanta, Greensboro, Houston, Richmond, Denver, Buffalo, Columbus, and Pittsburgh are not much safer.¹⁵

rate three times that of the national average).

7. Kushner, *supra* n. 2, at 43; see also EPA, *Our Built and Natural Environments: A Technical Review of the Interactions between Land Use, Transportation, and Environmental Quality* 38 (2001) (available at <http://www.epa.gov/dced/pdf/built.pdf>) (noting that a comprehensive study of air pollution estimated as much as \$500 billion in increased health care costs due to motor-vehicle-based pollution).

8. Trees Atlanta, *Benefits/Facts*, <http://www.treesatlanta.org/facts.html> (last accessed Mar. 28, 2005); Ben Young, *Thinking Clean and Green: The Nonprofit Cool Communities Is Pushing Some Common-Sense Urban Cooling Ideas That May Help Clear the Air over Atlanta and Other Georgia Cities*, Ga. Trend (Nov. 2002) (available at http://www.coolcommunities.org/georgia_trend.htm).

9. Tracie Dungan, *UA Scientist Tests How Cities Affect Weather*, Ark. Democrat-Gazette 7 (Jun. 16, 2003).

10. Rennie Sloan, *The Fall of Atlanta's Urban Forest*, L.A. Times A13 (Aug. 11, 2003). For further discussion of the consequences of this loss of tree cover, see Trees Atlanta, *supra* n. 8; John Robinson, *Highways and Our Environment* 9 (McGraw-Hill 1971) (discussing how asphalt, concrete, streets, and parking lots render the modern city five to eight degrees Fahrenheit hotter in summer than the surrounding countryside); Charles Seabrook, *Stressed-Out Urban Trees Pose Danger*, Atlanta J. & Const. E1 (July 12, 2003) (noting that the loss of tree cover creates a "heat island"); Young, *supra* n. 8; La. Pub. Broad., *The Forest Where We Live: Case Studies—Atlanta*, <http://www.lpb.org/programs/forest/atlanta.html> (last accessed Aug. 10, 2006).

11. Eric Berger, *Hot? Blame the Pavement: Researchers Indicate City's Blacktop Fuels Rain, Smog, Warmth*, Hous. Chron. 01 (June 7, 2003) (reporting a temperature rise between five and nine degrees during the summer).

12. *Report Reveals Pedestrian Dangers*, AARP Bulletin (Feb. 2005) (referencing Michelle Ernst, *Mean Streets 2004: How Far Have We Come? Pedestrian Safety, 1994-2003* (Surface Transp. Policy Project 2004) (available at http://www.transact.org/library/reports_html/ms2004/pdf/Final_Mean_Streets_2004_4.pdf)).

13. Ernst, *supra* n. 12, at 20, 24.

14. *Id.* at 16.

15. *Id.* at 17.

Even in the affluent suburbs all is not well. Families that move to the suburbs to escape the perceived dangers of the city unknowingly subject their children to other threats.¹⁶ For teens, the hazards created by driving far exceed the risks faced by inner-city youth.¹⁷ Moreover, the low-density sprawl of the suburbs makes walking and biking dangerous since almost all local trips require crossing large arterial highways to get to schools, friends, recreation, or shopping.¹⁸ Parents in working families are not available to supervise children, who are then locked at the end of cul-de-sacs passively watching television or playing computer games. The lack of walking and biking contributes to the epidemic of obesity and poor health in our country.¹⁹

While local planning and zoning caters to the nuclear family of two parents and children, such families make up only a small minority of households today. Nearly eighty percent of households consist of seniors, empty-nesters, singles, or single parents.²⁰ In part, the family is not thriving because of the financial stress of the expensive suburban home and the equally high cost of commuting and chauffeuring children.

16. James Gerstenzang, *Cars Make Suburbs Riskier than Cities, Study Says*, L.A. Times A1 (Apr. 15, 1996).

17. *Id.*; see also Joseph E. Kennedy, *Monstrous Offenders and the Search for Solidarity through Modern Punishment*, 51 Hastings L.J. 829, 879 n. 143 (explaining that motor vehicle crashes, rather than crime, are the leading cause of death for teenagers); Kushner, *supra* n. 2, at 41–44; Natl. Safety Council, *Report on Injuries in America, 2001*, <http://www.nsc.org/library/rept2000.htm> (last accessed Aug. 10, 2006) (identifying motor vehicle crashes as the leading cause of death for those under age thirty-three, and stating that those age fifteen through twenty-four are most affected by crashes); Ian Ayers & Barry Nalebuff, *Black Box for Cars; Why Not?* Forbes 84 (Aug. 11, 2003) (available at 2003 WL 55693447) (stating that there are twenty-four million collisions annually in the United States); see generally Michael E. Lewyn, *Are Spread Out Cities Really Safer? (Or, Is Atlanta Safer than New York?)*, 41 Clev. St. L. Rev. 279 (1993) (concluding that, despite the public perception to the contrary, certain low-density, vehicle-dependent sunbelt cities have crime rates similar to high-density cities).

18. Ernst, *supra* n. 12, at 7.

19. *Id.* at 9; Robert Garcia et al., *Healthy Children, Healthy Communities: Schools, Parks, Recreation, and Sustainable Regional Planning*, 31 Fordham Urb. L.J. 1267, 1267–1268, 1278 (2004); Steve Hymon, *Sprawling Suburbs Adding to Nation's Obesity Problem*, L.A. Times A20 (Aug. 29, 2003); Bradford McKee, *As Suburbs Grow, So Do Waistlines*, N.Y. Times F1 (Sept. 4, 2003).

20. Jason Fields, *America's Families and Living Arrangements: 2004*, at 4 (U.S. Census Bureau 2004) (available at <http://www.census.gov/prod/2004pubs/p20-553.pdf>) (reporting that, as of 2003, married couples with children represented only 23.3% of all households).

Atlanta has the lowest density of any urban area in America,²¹ at one-fourth of the density of Los Angeles.²² As a result, efficient public transport is rendered impractical. Low density means low ridership. Public transport serving ubiquitous low-density American cities rarely serves transportation needs, typically fails to link workers with job locations, and requires expensive personal automobiles for access to jobs, shopping, and most other services and destinations. It also means that, for most residents, congested roads are an ever-worsening consumer of family time, as well as an expanding generator of emotional stress. By this analysis, Atlanta, because of its extremely low density, is the most anti-family urban area in America. Kansas City, Dallas, Baltimore, Houston, Philadelphia, Chicago, Minneapolis-St. Paul, and Tampa-St. Petersburg are not far behind.²³

Housing policy for families calls for safe streets where parents need not fear for their children. It calls for schools that can be reached by walking without crossing an arterial street. When we look at the demographic changes facing America, our young and expanding families are increasingly composed of lower-income Americans and immigrants.²⁴ They require affordable apartments and homes designed around walking, public transport, and neighborhood shopping rather than the suburban

21. Jeremy R. Meredith, Student Author, *Sprawl and the New Urbanist Solution*, 89 Va. L. Rev. 447, 498 (Apr. 2003); Virinder Singh, *Fact Summary for Resolution on Sustainable Energy and Low-Income and Minority Communities, Renewable Energy Policy Project*, http://www.crest.org/repp_pubs/articles/ej/factssummary.html (last accessed Aug. 10, 2006); see generally Downs, *Still Stuck in Traffic*, *supra* n. 5 (discussing the relationship between low-density areas and increasing traffic congestion).

22. Demographia, *USA Urbanized Areas: 2000 Ranked by Population (All Areas)*, <http://demographia.com/db-ua2000pop.htm> (last accessed May 5, 2006) (noting that 2000 census data indicates 7068.3 people per square mile for the Los Angeles region compared with 1783.3 for Atlanta).

23. *Id.* (noting densities as follows, in people per square mile: Kansas City, 2330.1; Dallas, 2946.4; Baltimore, 3041.3; Houston, 2951.1; Philadelphia, 2861.4; Chicago, 3913.6; Minneapolis-St. Paul, 2671.2; Tampa-St. Petersburg, 2570.6).

24. Angela Glover Blackwell, *It Takes a Region*, 31 Fordham Urb. L.J. 1303, 1307–1308 (2004); Constance Mitchell Ford, *The Outlook: What's behind Hot Home Building Pace?* Wall St. J. A2 (Mar. 21, 2005) (estimating immigration between 1.2 and 1.3 million annually, nearly double the United States Census Bureau estimates, and anticipating another baby boom demand explosion); Dowell Myers & Elizabeth Gearin, *Current Preferences and Future Demand for Denser Residential Environments*, 12 Hous. Policy Debate 633, 650 (2001) (discussing immigration as one demographic factor that will shape the future of housing demand).

sprawl model of automobile-only, big-box, discount retail stores.²⁵ Large grocery stores and one-stop retail stores should be located in and about major transit stops, allowing for car-free shopping and replacing congested streets with life on the sidewalks. Strong families also require quality education, a commodity often available only in the expensive suburbs and unavailable in the increasingly poor central city.²⁶

Our state and federal income tax laws compound the problem by subsidizing the home owner an average of \$2,802 per year, as of 1990, by permitting the deduction of mortgage interest and property taxes.²⁷ The subsidy to the wealthy and those with second homes is even more extraordinary. At the same time, the average renter pays a premium of \$1,815 per year²⁸ in the form of tax benefits to the landlord and foregone tax revenues in which the tenant does not share.²⁹

The federal and state policies of housing subsidies continue to segregate the limited availability of assisted housing to census tracts which often lack jobs and decent, racially integrated living environments. Today, our national housing policy features the building of prisons rather than housing for families and others who are homeless.³⁰ The number of poor is expanding, both those

25. Myers & Gearin, *supra* n. 24, at 633–635.

26. *Zelman v. Simmons-Harris*, 536 U.S. 639, 644 (2002) (describing extraordinarily poor-performing Cleveland schools); James E. Ryan, *Schools, Race, and Money*, 109 Yale L.J. 249, 271–275 (1999) (illustrating ineffective financial reforms); James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 Yale L.J. 2043, 2103–2104 (2002); Mildred Wigfall Robinson, *Fulfilling Brown's Legacy: Bearing the Costs of Realizing Equality*, 44 Washburn L.J. 1, 11–12 (2004); see also James K. Gooch, *Fenced In: Why Sheff v. O'Neill Can't Save Connecticut's Inner City Schools*, 22 QLR 395, 397 (2004) (arguing for extensive reform to “ensure that adequate public education is available to all students”).

27. Donald A. Krueckeberg, *The Lessons of John Locke or Hernando de Soto: What if Your Dreams Come True?* 15 Hous. Policy Debate 1, 15 (2004) (citing Joseph Gyourko & Todd Sinai, *The Spatial Distribution of Housing-Related Tax Benefits in the United States* 1 (Brookings Instn. Discussion Paper 2001)).

28. *Id.* at 14–16.

29. For a general discussion, see Roberta F. Mann, *On the Road Again: How Tax Policy Drives Transportation Choice*, 24 Va. Tax Rev. 587, 647–648 (2005) (arguing homeownership tax deductions encourage overinvestment, inflating housing prices); Thomas Benton Bare, III, *Recharacterizing the Debate: A Critique of Environmental Democracy and an Alternative Approach to the Urban Sprawl Dilemma*, 21 Va. Envtl. L.J. 455, 463–464 (2003) (arguing homeownership tax subsidies stimulate sprawl and class segregation).

30. Eisenhower Found., *Policy and Advocacy, Trends*, <http://www.eisenhowerfoundation.org/policy/trends.html#n11> (last accessed Aug. 10, 2006) (identify-

living in expensive and overcrowded housing and those lacking a home and often dependent on temporary shelters, an automobile, or a cardboard box.³¹ Forty percent of the homeless are families with children and fifty percent of homeless children are under age five.³² Indeed, the largest group of new entrants to the homeless are families with children.³³ The devolution of housing for the poor threatens families at a time when the federal deficit dramatically reduces assistance, resulting in families simply being unable to stay together as state and local governments fail to provide a safety net. Conflicting policies exacerbate the impact. For example, when a child is placed in foster care because a family lacks adequate housing, family reunification is conditioned on the family securing acceptable housing. The housing authority, however, typically conditions housing priority or subsidy availability to applicants with child custody.

The federal government has also robustly supported the denial of capital for central cities through former “redlining” policies³⁴ and the urban renewal of central cities³⁵ that removed the

ing the trend set in the 1980s when the number of prison cells quadrupled while federal funding for housing for the poor dropped by over eighty percent).

31. Martha R. Burt & Laudan Y. Aron, *America's Homelessness II: Populations and Services*, <http://www.urban.org/url.cfm?ID=900344> (Jan. 1, 2000) (estimating that of the 3.5 million homeless in 2000, 1.35 million were children); U.S. Census Bureau, Press Release, *Income Stable, Poverty Up, Numbers of Americans with and without Health Insurance Rise*, *Census Bureau Reports* (D.C., Aug. 26, 2004) (available at http://www.census.gov/Press-Release/www/releases/archives/income_wealth/002484.html) (stating that the nation's poverty rate rose from 12.1 percent in 2002 to 12.5 percent in 2003); see also Dennis P. Culhane et al., *Public Sector Admission Rates in Philadelphia and New York City: The Implications of Turnover for Sheltered Population Counts*, 5 *Hous. Policy Debate* 107, 108–110 (1994) (noting that, according to a report issued by the Community for Creative Non-Violence, there were 2.2 million homeless in 1982).

32. U.S. Conf. of Mayors—Sodexo, *Hunger and Homelessness Survey 2003*, at 50 (available at <http://www.usmayors.org/uslm/hungersurvey/2003/onlineReport/HungerAndHomelessnessReport2003.pdf>) (Dec. 2003).

33. John Wong et al., *The McKinney-Vento Homeless Assistance Act—Education For Homeless Children and Youths Program: Turning Good Law into Effective Education*, 11 *Geo. J. Pov. L. & Policy* 283, 288 (2004); Natl. Coalition for the Homeless, *NCH Fact Sheet #12: Homeless Families with Children* (June 2005), <http://www.nationalhomeless.org/publications/facts/families.pdf> (last accessed Aug. 10, 2006).

34. Willie Brown, *The Forgotten Type of Capital: Addressing the Social Capital Deficiency in the Inner City*, 11 *Geo. J. Pov. L. & Policy* 527, 540 n. 93 (2004) (defining redlining as the federal policy that “systematically ‘redlined’ urban non-white neighborhoods in order to deny residents refinanced loans which could have enabled inner-city blacks to move to the suburbs”); accord Rachel D. Godsil, *Viewing the Cathedral from Behind the Color Line: Property Rules, Liability Rules, and Environmental Racism*, 53 *Emory L.J.*

only stock available for the poor, and demolished³⁶ most single-room occupancy housing.³⁷ Although the federal McKinney Act³⁸ has been used to fund temporary shelters, they are not a housing resource for homeless families.³⁹ In contrast to offering any solutions or support for homeless and under-housed families, the recent Bush budgets⁴⁰ slashed community development,⁴¹ housing

1807, 1845–1846 (2004); Willy E. Rice, *Race, Gender, “Redlining,” and the Discriminatory Access to Loans, Credit, and Insurance: An Historical and Empirical Analysis of Consumers Who Sued Lenders and Insurers in Federal and State Courts, 1950–1995*, 33 San Diego L. Rev. 583, 584–585 (1996).

35. Ngai Pindell, *Is There Hope for HOPE VI? Community Economic Development and Localism*, 35 Conn. L. Rev. 385, 413 n. 156 (2003) (describing the Housing Act of 1949 which provided federal funds for the razing and redevelopment of blighted areas); see also Garnett, *supra* n. 1, at 24–25.

36. See generally Martin Anderson, *The Federal Bulldozer—A Critical Analysis of Urban Renewal 1949–1962* (MIT 1964) (standing for the general proposition that urban renewal programs force the poor to leave their homes); Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 Fordham Urb. L.J. 305, 316 (2004) (observing that there is no requirement under the Housing Act of 1949 that affordable housing be built in formerly residential redevelopment districts); see also Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 Yale L. & Policy Rev. 1, 47 (2003) (stating that the redevelopment projects throughout the 1950s and 1960s resulted in the dislocation of more than one million people, the majority of whom were minority families).

37. Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 Yale L.J. 1165, 1216 (1996) (claiming that the loss of single-room-occupancy housing stock has contributed to the proliferation of homelessness); Ann M. Burkhart, *The Constitutional Underpinnings of Homelessness*, 40 Hous. L. Rev. 211, 269 (2003).

38. Stewart B. McKinney Homeless Assistance Act of 1987, Pub. L. No. 100-77, 101 Stat. 482 (1987) (codified and amended in 42 U.S.C. §§ 11301–11472). For a description of the Act, see National Coalition for the Homeless, *NCH Fact Sheet #18—McKinney/Vento Act* (July 2005) (available at <http://www.nationalhomeless.org/publication/facts/McKinney.pdf>). See also Michael A. O’Connor, *Homeless: A Local View of the McKinney Act*, 23 Clearinghouse Rev. 116 (1989); Florence Wagman Roisman, *The Lawyer as Abolitionist: Ending Homelessness and Poverty in Our Time*, 19 St. Louis U. Pub. L. Rev. 237 (2000).

39. Wong et al., *supra* n. 33, at 292; but see U.S. Dept. Hous. & Urb. Dev., Press Release, *Bush Administration Announces Record \$1.4 Billion to Help Hundreds of Thousands of Homeless Individuals and Families* (D.C., Jan. 25, 2005) (available at <http://www.hud.gov/news/release.cfm?content=pr05-007.cfm>) (identifying the Bush Administration’s goal as “ending chronic homelessness” but noting that “by shifting the federal emphasis toward meeting the needs of the most vulnerable homeless persons, more resources become available for those who experience homelessness as a temporary condition”); see generally Sam Davis, *Designing for the Homeless: Architecture That Works* (U. Cal. Press 2004) (identifying and discussing architectural and design elements which are essential for meeting the needs of homeless individuals); Jonathan M. Bockian, *Shelters for the Homeless and Zoning Use Restrictions*, 74 Mass. L. Rev. 75–76 (1989).

40. U.S. Dept. Hous. & Urb. Dev., *Fiscal Year 2005 Budget Summary*, <http://www.hud.gov/about/budget/fy05/budgetsummary.pdf> (last accessed Aug. 10, 2006); U.S. Dept. Hous. & Urb. Dev., *Fiscal Year 2006 Budget Summary*, <http://www.hud.gov/about/budget/>

subsidies,⁴² food stamps,⁴³ and other programs⁴⁴ essential to community and family stability.

In summary, the problem is not so much a lack of access to America's housing stock due to government codes and regulations, but rather that the housing stock, communities, and neighborhoods are poorly designed to support families. Adequate tax treatment or reformed codes alone will neither improve housing conditions nor strengthen the family. Only a radical rethinking of how we design community, housing, and transport can serve that end. The short-term response must be a dramatic expansion of high-quality transport corridors—subways, light-rail, trams, and buses on dedicated access ways⁴⁵ supported by well designed, higher-density neighborhoods centered around stops and with housing over shops.⁴⁶ The long-term response must include tax base shar-

fy06/fy06budget.pdf (last accessed Aug. 10, 2006) [hereinafter *HUD 2006 Budget*].

41. *HUD 2006 Budget*, *supra* n. 40, at 16 (noting a \$286 million reduction in HOPE VI funding to 2005 levels, and consolidation and elimination of Community Development Block Grants).

42. *Id.*; Am. Fedn. of St., Co. & Mun. Employees (AFSCME), *President Bush's 2006 Budget Plan*, <http://www.afscme.org/action/fy2006.htm> (last accessed Aug. 10, 2006) (zeroing out of the HOPE VI program); Joseph P. Poduska, *CBPP Estimates Budget Will Cut 370,000 Vouchers over Five Years; Advocates Launch Lobbying Effort*, 33 [Current Developments] *Hous. & Dev. Rptr.* (Feb. 28, 2005).

43. AFSCME, *supra* n. 42 (citing \$1 billion in food stamp cuts over ten years).

44. Max B. Sawicky, *Collision Course—The Bush Budget and Social Security*, Econ. Policy Inst., EPI Briefing Paper #156 (Mar. 16, 2005) (available at <http://www.epinet.org/content.cfm/bp156>) (reflecting a nearly two percent cut in proposed budget in funding for "other mandatory programs" including food stamps and unemployment insurance relative to GDP). Transport is not slated for cuts largely due to the earmarked gasoline tax. AFSCME, *supra* n. 42 (noting a slight increase in transport spending for highways and other projects); William Buechner, *Bush Budget: \$284 Billion Tea-21 Reauthorization Bill, Small Increases in 2006 Highway and Transit Investment Levels*, *Transp. Builder* 8 (Feb. 2005) (observing a slight increase for funding of projects under the Transportation Equity Act while eliminating research for high-speed rail).

45. For further discussion of transportation alternatives, see generally Kushner, *supra* note 2; Clay Fong, Student Author, *Taking It to the Streets: Western European and American Sustainable Transportation Policy and the Prospects for Community Level Change*, 7 *Colo. J. Intl. Envtl. L. & Policy* 463 (1996); Trip Pollard, *Follow the Money: Transportation Investments for Smarter Growth*, 22 *Temp. Envtl. L. & Tech. J.* 155, 163–164 (2004); Oliver A. Pollard, III, *Smart Growth and Sustainable Transportation: Can We Get There from Here?* 29 *Fordham Urb. L.J.* 1529, 1541 (2002).

46. For further discussion of high-density urban planning alternatives, see generally Peter Calthorpe, *The Next American Metropolis: Ecology, Community and the American Dream* (Princeton Architectural Press 1993); Peter Calthorpe & William Fulkton, *The Regional City: Planning for the End of Sprawl* (Island Press 2001); Peter Katz, *The New Urbanism: Toward an Architecture of Community* (McGraw-Hill 1994); Robert Cervero, *Growing Smart by Linking Transportation and Urban Development*, 19 *Va. Envtl. L.J.*

ing to halt suburban pirating and cannibalizing of jobs and retail sales,⁴⁷ urban growth boundaries to halt sprawl,⁴⁸ infrastructure investment to make walking⁴⁹ and bicycling⁵⁰ safe and attractive, and planning that includes a jobs-housing balance⁵¹ within each neighborhood to encourage walking to work and using public transport over automobiles.⁵² Until that redesign occurs, government policies will continue to frustrate the goal of improving quality of life and our communities will remain decidedly anti-family.

357, 365 (2000); James A. Kushner, *Smart Growth, New Urbanism and Diversity: Progressive Planning Movements in America and Their Impact on the Poor and Minority Ethnic Populations*, 21 UCLA J. Envtl. L. & Policy 45, 52 (2002–2003); Edward H. Ziegler, *Urban Sprawl, Growth Management and Sustainable Development in the United States: Thoughts on the Sentimental Quest for a New Middle Landscape*, 11 Va. J. Soc. Policy & L. 26, 56–57 (2003) (noting that without a change in zoning codes, design elements could result in “sprawl with front porches”).

47. Orfield, *supra* n. 3, at 105–108; David Rusk, *Inside Game—Outside Game: Winning Strategies for Saving Urban America* (1999); James F. McElfish, Jr., *Taxation Effects on Land Development and Conservation*, 22 Temp. Envtl. L. & Tech. J. 139, 141 (2004); Robert Puentes, *First Suburbs in the Northeast and Midwest: Assets, Challenges, and Opportunities*, 29 Fordham Urb. L.J. 1469, 1478–1179 (2002); Oliver A. Pollard, III, *Smart Growth: The Promise, Politics, and Potential Pitfalls of Emerging Growth Management Strategies*, 19 Va. Envtl. L.J. 247, 280 (2000); *Making Mixed-Income Communities Possible: Tax Base Sharing and Class Desegregation*, 114 Harv. L. Rev. 1575 (2001).

48. Michael E. Lewyn, *Sprawl, Growth Boundaries and the Rehnquist Court*, 2002 Utah L. Rev. 1, 4–5 (2002); Stephanie Yu, Student Author, *The Smart Growth Revolution: Loudoun County, Virginia and Lessons to Learn*, 7 Envtl. Law. 379, 399–400 (2001); Scott L. Cummings, *Recentralization: Community Economic Development and the Case for Regionalism*, 8 J. Small & Emerging Bus. L. 131, 145 (2004) (describing Portland’s urban growth boundary); *but see* Daniel Brook, *How the West Was Lost*, Leg. Affairs 44 (Mar./Apr. 2005) (describing the impact of Measure 37 on Portland’s urban growth boundary).

49. Kushner, *supra* n. 2, at 110–114, 146–147.

50. *Id.* at 104–106; Jennifer Mena, *Communities Putting Mettle to the Pedal*, L.A. Times Metro 4 (May 28, 2001) (stating that deaths of adult cyclists rose in California and in Los Angeles County by twenty percent over the last five years).

51. James A. Kushner, *Growth for the Twenty-First Century—Tales from Bavaria and the Vienna Woods: Comparative Images of Planning in Munich, Salzburg, Vienna, and the United States*, 29 Urb. Law. 911 (1997), *reprinted in* 6 S. Cal. Interdisc. L.J. 89 (1997); Marc T. Smith & Ruth L. Steiner, *Affordable Housing as an Adequate Public Facility*, 36 Val. U. L. Rev. 443, 452–453 (2002).

52. *See generally* Bullard, *supra* n. 6, at 1191; Kushner, *supra* n. 2; Mann, *supra* n. 29, at 613–614.