TIGHTENING THE RING AROUND THE POOR: DISCRIMINATION IN RESIDENTIAL DEVELOPMENT ON THE BASIS OF WEALTH IN SOUTHEASTERN WISCONSIN

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I. INTRODUCTION

Throughout this nation's history, Americans have been plagued with residential development that has been poorly timed, located, and designed. Wisconsin and her southeastern region have also suffered from this myopic residential development planning. In order to curtail the adverse effects which this poor planning has had upon the general health, safety, and welfare of the public, zoning and other land use laws have been enacted to regulate new growth.1 This legal authority, as any,
is subject to misuse. Clearly, this has been the case with the subject of this article — public land use policies which have the effect of excluding individuals from certain residential areas on the basis of wealth.

The focus of this article is upon exclusionary practices which draw lines on the basis of wealth. Although the underlying motivations for exclusionary policies are frequently based on racial, ethnic or religious biases, residential exclusion on the basis of wealth sweeps more broadly. The mechanisms of exclusion are of an economic nature; housing prices are a function of factors such as lot size and availability. Consequently, the impact of residential exclusionary practices on the basis of wealth affect many families occupying the lower economic strata who are not members of a minority group. For this reason, this article places the problem in the framework of residential exclusion on the basis of wealth.


2. It might be noted that in many parts of the United States exclusionary practices have been implemented by local governments to prohibit population growth entirely, or at least to slow its pace. However, a far more serious problem in the southeastern region of Wisconsin is the erection of barriers on the basis of income. Although the two, of course, can be and often are interrelated, the exclusionary practices in the region are not prohibiting growth per se.

In addition, one might consider the fact that a particular land mass may only be capable of sustaining a certain number of individuals because of soil type, water supply, open space needs, etc. In that situation, population limits may well be necessary but exclusionary policies may still operate to ensure, for example, that only the wealthy can get in. The premise of this article is that in some instances the former exclusionary practice based on unique natural resource limitations may well be justified, while the latter, exclusion on the basis of wealth, is not.
The practices employed to exclude would-be residents from a given community on the basis of their wealth grow out of a number of the police powers available to local units of government. They variously include control over land use through zoning, subdivision controls, building code ordinances, taxing powers and others. Through the use of these police powers local communities may, under the guise of promoting the health and welfare of its citizens, effectively deprive low and middle income families of the benefits of better educational and employment opportunities, recreational facilities, and municipal services, as well as the more abstract but nonetheless important benefits of living in a pleasant environment with open space. In addition, the location of an individual’s residence has wide societal implications the importance of which is a question beyond this article’s subject matter.

Although leading commentators have recognized the problem for more than twenty years, it is only in the last several years that legal challenges have been directed against the exclusionary practices used by many communities which ring the large urban centers of the nation. The exclusionary practices under attack promote public policies which attempt to inhibit or prohibit suburban community population growth, making the acquisition of inexpensive housing difficult. Consequently, a debate has surfaced within legal and land use planning circles


4. The phenomenon of excluding certain peoples from a given locale is not new. Prior to the large scale use of the governmental police powers, it was being successfully achieved through private mechanisms, such as restrictions or covenants in deeds. Judicial enforcement of restrictive covenants barring sales on the basis of the purchaser’s race was held unconstitutional in Shelley v. Kraemer, 334 U.S. 1 (1948) and Hurd v. Hodge, 334 U.S. 24 (1948). Suits for breach against the covenantor were held unconstitutional in Barrows v. Jackson, 346 U.S. 249 (1953).
over the propriety of these efforts of local governments to limit growth, and thereby eliminate desirable housing opportunities for people of all economic levels.\(^5\)

If the issue was merely whether a given community could exclude specific groups from living within its boundaries on the basis of wealth, it could perhaps be more easily resolved. There is a conflict, however, between the challenges to exclusionary practices and the legitimate goals being pursued by local communities, including the preservation of open space, the community's "timing" of development over an extended period of time to prevent heavy fiscal burdens, and the desire to maintain property taxes at a reasonable level. The shortage of low and moderate income housing, moreover, is often a regional problem incapable of solution on a piecemeal community-by-community basis. Nevertheless, many local governments (the level of government at which the majority of land use decisions are made) continue to ignore this fact, thereby aggravating the situation. This is certainly the case, as will be seen, in the southeastern region of Wisconsin. The result is a conflict between the advancement of several interests, all ostensibly seeking to promote the general welfare.

This article will first briefly consider the emerging trends of residential exclusionary practices in southeastern Wisconsin, relying principally on studies prepared by the Southeastern Wisconsin Regional Planning Commission.\(^6\) Some of the recent judicial developments in this area will then be examined, and finally, possible solutions to the problem in southeastern Wisconsin will be discussed.

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5. For comments on the recent controversy, see Urban Land Institute, Management and Control of Growth (1975). This publication contains a short but excellent analysis of land use controls which exclude certain individuals or groups from a particular community. The publication also explores certain constitutional challenges to these practices. Another book which deals with the issue is Burchell & Listoken, Future Land Use (1975). The work contains a compilation of papers by leading commentators. Readers might also consult Cutler & Baxter, Highlights of the No Growth/Slow Growth Movement, SEWRPC Newsletter Vol. 15, No. 4.

6. [Hereinafter SEWRPC]. Under Wis. Stat. § 66.945 (1975) local units of government may be joined together under the jurisdiction of a regional planning commission if certain elements of homogeneity exist between the municipalities, including similarity in topography, geographic conformation, and social and economic interests. All regional planning commissions formed under this authority may conduct research studies and formulate plans for the physical, social and economic development of the region.
II. EMERGING PATTERNS OF SANCTIONING RESIDENTIAL DEVELOPMENT ON THE BASIS OF WEALTH IN SOUTHEASTERN WISCONSIN

The southeastern region of Wisconsin, bordering Lake Michigan and lying just north of the Chicago, Illinois metropolitan area, is composed of seven counties, and contains five percent of the state's land mass and forty percent of the state's residents, making it Wisconsin's most populous and urbanized region. Three of the largest and oldest cities of Wisconsin — Milwaukee, Kenosha, and Racine — are located in its southeastern region. As with most of the metropolitan areas in the United States, however, the most significant growth in population and development is currently taking place in the suburban and rural areas surrounding these established urban centers.

A familiar pattern common to many large metropolitan areas of the United States has been occurring in the southeast region; newer suburban and rural communities are seeking to limit development to large spacious lots with expensive homes. These limitations foreclose residential opportunities to lower and moderate income families who in turn are disproportionately made up of the elderly and the minorities. Consequently, these groups are forced to remain in the older and larger cities of the region requiring the devotion of large amounts of revenues to the provision of adequate housing and other fundamental services. Yet, these older cities are finding it increasingly difficult to accommodate those basic needs as a result of their shrinking tax base caused in large part by the migration to the suburbs and rural areas of their middle and upper middle income families together with many commercial enterprises.

The following economic and residential statistics on the region illustrate the difficulties confronting low and moderate income families in obtaining adequate housing within communities of their choice. They are not meant to be comprehensive or conclusive indicators, but they do highlight the magnitude of the existing problem and suggest dim prospects for the future unless ameliorative steps are taken.

7. The statistics are drawn from more complete studies conducted by SEWRPC over the past several years and are available upon request from SEWRPC.

8. A statistical analysis of residential housing trends is particularly important given the persuasive effect which such data can have before the courts. See, e.g.,
A. Population Distribution

As of 1970, ninety-eight percent of the population within the southeastern region of Wisconsin was in an urban setting. The counties with the highest population density are Milwaukee, Kenosha, and Racine, which also contain the older established urban centers of the region. The patterns of growth from 1963 to 1972 reveal a trend of population diffusion from the older and major urban centers to the outlying areas of the region (see Figure 1). Moreover, based on past trends, it is projected that growth from the 1970s to the year 2000 will show this migration to and buildup of the outlying counties continuing at a marked rate (see Figure 2).

Another important demographic indicator which highlights the transformation of the region over the past decade is the distribution patterns of families by income range. Figure 3 illustrates the overall rise in income levels of the region and shows that the lowest household incomes are found in portions of the older cities and in scattered rural areas. The most rapid income growth and the highest average incomes are enjoyed by suburban residents, particularly in Waukesha, Ozaukee, and Washington Counties.

9. The urban population, as defined by the United States Bureau of Census, is all persons living in incorporated or unincorporated places of 2,500 persons or more, and all persons living in other incorporated or unincorporated territories included within “urbanized areas.” 1 SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION, A REGIONAL LAND USE PLAN AND A REGIONAL TRANSPORTATION PLAN FOR SOUTHEEN WISCONSIN — 2000, PLANNING REPORT No. 25, at 54 (April, 1975) [hereinafter PLANNING REPORT No. 25].

10. SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION, THE POPULATION OF SOUTHEEN WISCONSIN, TECHNICAL REPORT No. 11, at 5. Milwaukee County has the largest number of persons per square mile, 4,443.3. Following Milwaukee in descending order are: Racine, 506.9; Kenosha, 433.5; Waukesha, 417.8; Ozaukee, 230.8; Washington, 148.8; and Walworth, 113.9.

11. From 1950 to 1960, Ozaukee, Washington, and Waukesha Counties each experienced more growth from net in-migration than from natural increase, while Kenosha, Milwaukee, Racine, and Walworth Counties experienced more growth from natural increase than from net in-migration. This pattern held from 1960 to 1970, although Walworth later joined the first three counties named in experiencing more growth from net in-migration than from natural increase. Milwaukee County was the only county in the region to experience net out-migration from 1963 to 1972, resulting in an estimated net regional out-migration of over 31,000 persons during this period. PLANNING REPORT No. 25, supra note 9, at 53.
B. Intraregional Shifts in Employment: The Increasing Dispersion of Jobs to the Rural and Suburban Areas

The largest relative job growth within the region has occurred in the outlying counties of Ozaukee, Walworth, Washington, and Waukesha. In 1963, nearly seventy-five percent of the economic activity of the region, as measured by jobs, was located in Milwaukee County with an additional fourteen percent located in Kenosha and Racine Counties combined. Thus, approximately eighty-nine percent of the regional economic activity was located in these three urban counties. By 1972, the proportion of the regional economic activity located in Milwaukee County had declined to sixty-eight percent, while the proportion of the regional economic activity concentrated in the three urban counties of Kenosha, Milwaukee, and Racine combined had decreased to about eighty-two percent. A shift in economic activity towards the suburban and rural areas of the region and away from the older established economic centers is evident (see Figure 4). If this trend continues, as is projected, it will undoubtedly provide an even greater incentive for persons to reside in the suburban and outlying areas, further diminishing the economic vitality of the older cities. But, as will be shown, the residential opportunities will be primarily for those in the upper income brackets, leaving the existing concentrations of lower and moderate income households further from the new job centers and with little opportunity to share in the new economic growth (see Figure 5).

12. An additional factor furthering the erosion of an economic base in the older cities is the fact that a larger portion of the labor force in the suburban areas of Ozaukee, Washington, and Waukesha Counties is employed in Milwaukee County. The reverse, however, is not true; proportionately fewer residents of Milwaukee County travel to jobs in the outlying counties. For example, Milwaukee County has only 1,628 employed in Ozaukee, 886 in Washington, and 13,340 in Waukesha. Travel inventory data on the suburban area labor force indicates that 41 percent of the more than 78,000 average weekday first work trips originate from Waukesha County with work destinations in Milwaukee County; 36 percent of the more than 20,000 average weekday first work trips originate from Ozaukee County and 18 percent of 22,000 average weekday first work trips begin in Washington County. Planning Report No. 25, supra note 9, at 70. This situation typically results in the suburban wage earners spending their income earned in the urban centers in and around the communities where they reside, while also paying property taxes there. The older urban centers, therefore, in most instances will be drained of their potential revenues, resulting in a loss of overall economic activity within their jurisdiction.
C. Housing Patterns

1. Distribution of Households by County

As could be expected from the greater population increases occurring in the outlying counties of the region, the greatest percentage increase in households from 1960 to 1970 occurred in those counties as well, particularly in Ozaukee, Washington, and Waukesha Counties. The lowest growth rate in the number of households among the seven counties between 1960 and 1970 was found in Milwaukee County, with that county's share of the region's total decreasing significantly by four percent (see Figure 6).

2. Extent of Housing Need

In a recent study, it was estimated that there were 96,100 households within the region in the year 1970 in need of a change in housing. This figure represents eighteen percent of all households in the region. Of this total housing need, 69,600 households were classified as being in economic need only, indicating that they presently occupy decent, safe, and sanitary housing, but must pay more than thirty percent of their adjusted gross income to do so. Furthermore, of the total figure the study estimated that 15,186 are occupying substandard or overcrowded housing and are also in economic need, indicating

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13. Note the distinction between a household and a family as used here. A household is composed of all persons who occupy a single housing unit. A family is composed of two or more persons living in the same housing unit who are related by blood, marriage, or adoption. Thus, a household may consist of a family, a family and unrelated person(s) living in the same housing unit, unrelated persons living in the same housing unit, or persons living alone. SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION, A REGIONAL HOUSING PLAN FOR SOUTHEASTERN WISCONSIN, PLANNING REPORT No. 20, at 29 (1975).

14. Id. at 313. SEWRPC qualitatively defines housing need as "those households which cannot secure decent, safe, and sanitary housing at a cost which is consistent with their household income, as well as those households which are precluded from obtaining decent, safe, and sanitary housing because of noneconomic constraints." Id. at 311.

15. Id. at 313. Thirty percent was a figure chosen by SEWRPC as being a reasonable amount of a monthly household income to secure decent, safe, and sanitary housing. Id. at 311. It was pointed out in that study that certain subgroups of the region's population, such as the elderly, may have more severe problems than the population as a whole. SEWRPC found that 31 percent of all elderly households were in housing need although the major problem was economic need, with only 3 percent of this subgroup occupying substandard or overcrowded housing. Thus, while the elderly can obtain decent housing, they must do so with great financial hardship. Id. at 317.
they are unable to secure adequate housing due to insufficient income.\textsuperscript{16}

\textbf{D. Land Use Patterns}

The housing study mentioned above reveals that residential land is disproportionately zoned for single family use as opposed to multifamily structures, the market to which low and moderate income families may realistically turn.\textsuperscript{17} (See Figure 7 for residentially zoned land classified by density).

Moreover, the 1975 housing study revealed that the majority of land zoned for low density residential use is located in Waukesha County and the southern portion of Ozaukee County, while the majority of land zoned for medium and high density residential use is located in Milwaukee County and the cities of Kenosha and Racine.\textsuperscript{18}

In addition, this study found that upon comparing reasonable minimum floor area standards for housing developed by SEWRPC\textsuperscript{19} against the minimum floor area requirements of various communities, a substantial number of urban communities in the region severely restricted or precluded housing which might be within the financial reach of low and moderate income households. For example, 64 of 87 urban communities in the region precluded modest-sized two-bedroom single family units as a result of their inflated floor area standards (see Figure 8). The two most restrictive counties were Waukesha, where 22 of 25 communities, or 88 percent, exceeded the SEWRPC minimum floor standards, and Ozaukee County with six of eight communities, or 75 percent, exceeding these standards.\textsuperscript{20}

\begin{itemize}
\item 16. \textit{Id.} at 313.
\item 17. Modest sized single family units, as based on minimum standard floor requirements, are also severely restricted in many communities of the region.
\item 18. \textit{Id.} at 222.
\item 19. \textit{Id.} at 297-98. SEWRPC, in conjunction with its Technical and Citizen Advisory Committee on Regional Housing Studies, developed minimum floor area standards for living units. Basically, these standards represent the amount of total floor area needed to assure decent living, sleeping, cooking and dining accommodations, sufficient storage area, and adequate space for privacy so as to permit household members to carry out basic family functions and allow for normal growth and maturation. Minimum floor area standards can be justified when utilized to satisfy these needs. However, it is apparent that a local community may arbitrarily adopt inflated minimum floor area standards and thereby exclude the type of housing which is economically feasible for low and moderate income households.
\item 20. \textit{Id.} at 227.
\end{itemize}
Minimum floor area requirements adopted by communities of the region severely restricted the development of inexpensive multifamily housing, effectively eliminating from the housing market efficiency units in 59 of 87 urban communities, one-bedroom units in 56 communities, two-bedroom units in 42 communities, and three-bedroom units in 26 communities. It was also found that a total of 16 of the 87 communities precluded multifamily housing altogether. \(^{21}\) Racine County, Ozaukee County, and Waukesha County were found to be the most exclusionary (see Figure 9).

Further evidence that present residential patterns within many of the newly developing outlying areas of the region are excluding a viable range of housing for all income levels is indicated by the number of subsidized housing units in a specific community or county. One such program which has been in existence for some time is the federally financed section 235 housing, which is designed to assist low and moderate income families in obtaining their own homes without committing them beyond their means. \(^{22}\) As can be seen by Figure 10, the greatest number of subsidized housing units as of 1973 were located in Milwaukee, Kenosha, and Racine Counties.

A large proportion of those units were concentrated in the larger central cities. That trend is further underscored when it is considered that of the newly constructed units, 588 of 625, or 94 percent, in Kenosha County were located in the City of Kenosha. Similarly, 85 percent of the 1,622 new units constructed in Milwaukee County were in the City of Milwaukee, and the City of Racine had 403 of the 820 new units constructed in the County of Racine. \(^{23}\)

It is not surprising, therefore, that the majority of low income households are disproportionately located in the cities of Milwaukee, Kenosha, and Racine, with one area alone, the

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\(^{21}\) Id. at 230.

\(^{22}\) 12 U.S.C. § 1715z-1 (Supp. IV 1974). The program permits moderate income households to purchase new or rehabilitated houses or condominiums which are valued up to $21,600 for families of five or less and up to $25,200 for larger families. The government insures the mortgages and will pay to the mortgage-lender the difference between the payments at conventional interest rates and those payments if based on one percent loans. The household under this program must pay 20 percent of their incomes towards the mortgage payments, plus the costs of taxes, insurance, and mortgage insurance premiums.

\(^{23}\) Id.
northwest-central area of the City of Milwaukee, containing 21 percent or 24,600 of the low income households in the region. The continued location of new subsidized housing units within these economically segregated areas serves to reinforce these trends.\textsuperscript{24}

\textbf{E. The Problem Synthesized}

The provision of the above statistics and illustrations in no way purports to be a complete picture of an extremely complex and dynamic situation. They were offered in order to provide some indication of the residential segregation within the southeastern Wisconsin region and the strong likelihood that homogeneous communities of affluence will continue to proliferate if current trends and local community objectives prevail. These newer enclaves of wealth have shielded themselves from low and moderate income households primarily through the exercise of police powers. Of those powers, zoning for low density development (large lots), the exclusion of multifamily housing units, and inflated minimum footage requirements for residences have combined to foreclose the availability of adequate housing for a large number of individuals. Assuming that the current trend of economic growth continues to shift more jobs to the outlying areas, the individuals who make up the lower and moderate income levels will be denied the opportunity to share in this shift as well. Moreover, other socioeconomic problems currently plaguing the larger metropolitan areas of the state can be expected to increase, including inadequate health care facilities, inadequate schools and transportation systems, the loss of important job centers, and the likely result that cities, drained of economic vitality, will be unable to provide

\textsuperscript{24} The distribution of black households in the region closely parallels the concentrated pattern of low income households. Of all black households in the region in 1970 about 88 percent resided in housing analysis areas 18 and 20 in the City of Milwaukee (see Figure 7). The only other housing analysis areas with significant numbers of black households were in the City of Racine, included in portions of areas 43 and 44, and the City of Kenosha, included in portions of areas 50 and 51 (see Figure 7). SEWRPC estimates that approximately 50 percent of the black households were in housing need in 1970. \textit{Id.} at 334. For a definition of housing need, see note 17, supra. In a recent article published by the Milwaukee Journal, January 23, 1977, at \__, concerning the black population of selected suburbs of Milwaukee, it was estimated from Wisconsin Department of Public Instruction data and information supplied by local municipal officials that only 2,047 blacks lived in 34 suburban communities in five counties of the southeastern region (Milwaukee, Ozaukee, Racine, Washington and Waukesha).
quality services overall in the face of increasing demands. 25

Finally, balanced against these immediate problems of the low and moderate income households are the legitimate goals of local governments concerned with property values, fiscal burdens, the provision of municipal services, and other such problems. The question, then, becomes whether local governments may promote their own local objectives without also addressing regional problems and concerns associated with the low and moderate income households.

This is the problem currently facing the southeastern region of Wisconsin and its various units of government. Some communities have taken steps to ameliorate the problems, while others perpetuate it, either intentionally or unintentionally, by excluding low and moderate income groups altogether. At the present time neither the Wisconsin Legislature nor the Supreme Court of Wisconsin have squarely addressed the issue. Thus, an examination of the approaches taken in other jurisdictions in dealing with this problem may prove instructive.

III. Recent Case Law Pertaining to Exclusionary Practices: The Split Among Jurisdictions

Within the past several years, a number of communities throughout the United States have attempted to manage or limit their growth through a variety of methods. The majority continue to rely most heavily upon their police powers to accomplish these goals rather than pursuing what usually are the more costly alternatives of outright purchase for public ownership, easements or leaseback arrangements. As the number of these communities attempting to limit their growth increases, the amount of litigation has correspondingly risen. But the courts of the various jurisdictions that have faced the problem of exclusionary practices have been anything but consistent in addressing the problem.

The legal issues in these actions often pit the fundamental rights of individuals and regional problems against a local community's delegated right under the state's police power to regulate the use of land in furtherance of the health, safety, or general welfare of its residents. Thus, the conflicts resemble in

25. For the findings of the Wisconsin Legislature on this matter, see text accompanying notes 139-40, infra.
many respects the problems emerging in southeastern Wisconsin. An analysis of some of the leading cases is provided to illustrate the basic issues involved and to show the current split among the courts in the disposition of these issues.

A. Successful Attacks on Exclusionary Practices

1. Pennsylvania

The Supreme Court of the State of Pennsylvania was one of the first courts in the country to carefully scrutinize local governmental efforts to erect legal barriers to newcomers. In *National Land & Investment Co. v. Easttown Township Board of Adjustment*, the court struck down a zoning ordinance which required a minimum of four acres per building lot in certain residential districts of the township. The court found the township's zoning ordinance was attempting to limit growth for the express purpose of avoiding "further burdens, economic and otherwise," and, therefore, was exclusionary and not in furtherance of the general welfare.

More recently, the Pennsylvania court was again confronted with the problem of a community's unwillingness to accept population growth and its attendant problems in *Appeal of Kit-Mar Builders, Inc.* There the community's technique of zoning for large lots had the effect of maintaining present population levels, a result which the court would not countenance on a community wide basis. Of particular importance in this opinion was the supreme court's ruling that local governments could not insulate themselves from regional or areawide problems. In clarifying this issue the court stated,

Planning considerations and other interests can justify reasonably varying minimum lot sizes in given areas of a community . . . . [But] the implication of our decision in *National Land* is that communities must deal with the problems of population growth. They may not refuse to confront the future by adopting zoning regulations that effectively restrict population to near present levels. It is not for any given

27. Id. at 532-33, 215 A.2d at 612.
29. In this opinion the court did not expressly state another ramification of large lot zoning which it would develop in subsequent opinions; that the few individuals who could get into the community would be those who could afford the greater expense of the increased lot size.
towship to say who may or may not live within its confines while disregarding the interests of the entire area.\textsuperscript{30}

In Township of Willistown v. Chesterdale Farms, Inc.,\textsuperscript{31} the Pennsylvania Supreme Court again reviewed community exclusionary policies. In that case a private corporation had requested a building permit to construct apartments within the township. That request was denied on the grounds that the land in question was zoned RA-1 Residential, a classification which did not permit apartments. But the court, taking notice of the fact that of 11,589 acres in the township only 80 acres were zoned for apartment construction, concluded that the township zoning ordinance was exclusionary and did not provide an adequate amount of land for apartments. In addition, the court noted that while these types of regulatory devices were not totally exclusionary to newcomers, they did have the effect of "selective admission" because they screened out individuals and families who could not afford or who did not wish to live in single family homes.\textsuperscript{32} What was needed instead, the court emphasized, was an affirmative program by the township that provided a variety and choice of housing for all income levels and which would satisfy an equitable share of the regional or metropolitan area housing needs.\textsuperscript{33} Having found this need to exist and the Township of Willistown's ordinance lacking in this respect, the court declared the ordinance unconstitutional and ordered that a permit be issued to construct the apartment dwellings.\textsuperscript{34}

\textsuperscript{30} 439 Pa. at 474, 268 A.2d at 768-69. This emphasis on a regional perspective could also be found in another case decided in the same year as Kit-Mar. In that case, Appeal of Girsh, 437 Pa. 237, 263 A.2d 395 (1970), a township's zoning plan restricted the construction of apartment or multifamily dwellings. Failing to provide for this type of dwelling obviously precluded a number of individuals who could not afford single family detached houses or who did not wish to make that type of investment and the court therefore found the restriction to be unreasonable and therefore unconstitutional. Moreover, the court stated that "[a] restriction does not become any the more reasonable because once in a while a developer may be able to show the hardship necessary to sustain a petition for a variance." Id. at 241, 263 A.2d at 397. The court also emphasized that the question involved was not whether the township must zone all of its land for apartments but whether the township could preclude them entirely.

\textsuperscript{31} 462 Pa. 445, 341 A.2d 466 (1975).

\textsuperscript{32} Id. at 449-50, 341 A.2d at 468.

\textsuperscript{33} Id. In this portion of the opinion the Pennsylvania Supreme Court quoted with emphasis from South Burlington County NAACP v. Township of Mount Laurel, 67 N.J. 151, 336 A.2d 713, 724 (1975), the landmark case of its neighboring state, New Jersey. The case is discussed infra, notes 40-43 and accompanying text.

\textsuperscript{34} The court was not convinced by the township's argument that if the permit had
2. New Jersey

In 1975 the New Jersey Supreme Court handed down the landmark decision of *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel*,\(^{35}\) sustaining a constitutional attack on Mount Laurel's policy of maintaining a low density development. The township's objectives in employing the various restrictive measures were to halt the sprawling urbanization of the Philadelphia metropolitan area into the township and to encourage only those land uses which would be beneficial to the local tax rate. To effectuate those objectives it increased the lot sizes and lot frontage requirements. Consequently, the ordinance precluded the construction of multifamily units or even smaller detached single family homes and heavily restricted the occupancy of the limited number of available apartments, thereby making it impossible for low and moderate income families to acquire housing in the community.

The New Jersey Supreme Court, when confronted with these facts, made the observation that the source of local authority to zone lands for the general welfare emanates directly from the state and that all police power enactments must conform to the basic state constitutional requirements of substantive due process and equal protection of the laws.\(^{35}\) And where, as here, the local regulations have a "substantial external impact" on the welfare of state citizens residing outside of the particular community, that welfare must be acknowledged and served.\(^{37}\) On this basis, the court invalidated those portions of the ordinance which did not take into account the welfare of these outlying citizens. In some of the strongest language of any jurisdiction on this matter, the court concluded that Mount


\[^{36}\] The court noted that the N. J. Const. art. 1, par. 1 reads: "All persons are by nature free and independent, and have certain natural unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." 67 N.J. at ___, 336 A.2d at 725. Wis. Const. art. 1, § 1, has similar language.

\[^{37}\] 67 N.J. at ___, 336 A.2d at 726.
Laurel, as well as all municipalities in New Jersey, must, in the
development of their land use regulations,
make realistically possible an appropriate variety and choice
of housing. More specifically, presumptively it cannot fore-
close the opportunity of the classes of people mentioned for
low and moderate income housing and in its regulations must
affirmatively afford that opportunity, at least to the extent
of the municipality’s fair share of the present and prospective
regional need therefor.38

In the most recent development, the New Jersey Supreme
Court in a lengthy opinion reaffirmed the Mount Laurel de-
cision in Oakwood at Madison, Inc. v. Township of Madison.39 It
found that “general welfare” as that term is used in the zoning
enabling legislation “requires the consideration of regional
housing needs.”40 In particular it stated that “[i]t goes with-
out saying that the statutory and constitutional prohibition, by
judicial construction, of zoning to exclude, encompasses exclu-
sion by race as well as by economic circumstances.”41 Finding
that the Madison ordinance did not address these regional
needs the court struck down those portions of the ordinance
which were exclusionary.

In discussing the general considerations underlying housing
allocation, the New Jersey Supreme Court emphasized that it
would be preferable if an administrative planning agency,
rather than the courts, would allocate fair shares of low income
housing among the municipalities. It noted that an administra-
tive planning agency organized for a predetermined region and
operating under authorizing legislation with some presumed

38. Id. at ___, 336 A.2d at 724 (emphasis added). Recently a New Jersey trial court
with the benefit of the Mount Laurel decision has forged a remedy for exclusionary
zoning involving 23 of 25 municipalities of Middlesex County. In Urban League of
Greater New Brunswick v. Mayor of the Borough of Cateret, 142 N.J. Super. 11, 359
A.2d 526 (1976), the court specifically identified a region and the fair share allocation
of low and moderate income housing that must be supplied for that region. It went on
to strike down 11 municipal ordinances for not supplying their fair share of low and
moderate income housing and allocated the respective units among the municipalities
to meet regional needs. As part of its allocation process, it considered the available
acreages in each municipality that were capable of sustaining this type of housing, the
projected growth figures, those lands which were environmentally sensitive, the
amount of land already developed, the provision of sewer utilities, and the amount of
presently overzoned land use categories.
39. Id. at ___, 371 A.2d 1192 (1977).
40. Id. at ___, 371 A.2d at 1225.
41. Id. at ___, 371 A.2d at 1225-26.
expertise would be in a more advantageous position to make
the proper and fair allocation of housing for the municipalities
and subregions within its jurisdiction. A court, on the other
hand, would be dealing only with an isolated attack on the
zoning ordinance of the particular defendant municipality.\textsuperscript{42}
However, since the New Jersey legislature had not acted to
establish an administrative planning agency, and given the
court's earlier interpretation of the state constitution and zon-
ing enabling legislation in \textit{Mount Laurel}, it felt compelled to
provide relief in \textit{Oakwood at Madison}. The court did so by,
first, directing that a permit be issued to the corporate plain-
tiffs to construct a housing project on their property according
to the corporate plans which would guarantee that at least
twenty percent of the constructed units would house low and
moderate income families;\textsuperscript{43} and, secondly, by ordering the
township to submit a revised ordinance that would "create the
opportunity for a fair and reasonable share of the least cost
housing needs of Madison's region..."\textsuperscript{44}

\begin{itemize}
  \item \textsuperscript{42} \textit{Id.} at ---, 371 A.2d at 1218.
  \item \textsuperscript{43} \textit{Id.} at ---, 371 A.2d at 1227. The court specifically provided that the issuance
  of the permit will be executed under the supervision of the trial judge and furthermore
  that the issuance is conditioned upon the lands being ecologically and environmentally
  suited to the degree of density and type of development plaintiffs propose.
  \item \textsuperscript{44} \textit{Id.} at ---, 371 A.2d at 1222. The court defined region as "that general area
  which constitutes, more or less, the housing market area of which the subject municip-
  ality is a part, and from which the prospective population of the municipality would
  substantially be drawn, in the absence of exclusionary zoning." \textit{Id.} at ---, 371 A.2d
  at 1223. It cited as a definition of a "housing market area" the "geographic area in
  which housing units are in competition for the people who are seeking housing." \textit{Id.}
  at ---, 371 A.2d at 1215. The court noted that "[t]he factors which draw most candi-
  dates for residence to a municipality include not only, for employed persons and those
  seeking employment, reasonable proximity thereto of jobs and availability of transpor-
  tation to jobs." \textit{Id.} at ---, 371 A.2d at 1219.

  In determining what constitutes a fair share allocation of lower cost housing, the
  supreme court provided that the trial court could rely on studies submitted into evidence,
  giving them whatever weight they merit, but the trial court itself would not be
  required to adopt quotas of fair shares in housing. \textit{Id.} at ---, 371 A.2d at 1223.

  In its direction to the township to revise its ordinance the New Jersey Supreme
  Court specifically required that the revision should as a minimum allocate substantial
  areas for single family homes on very small lots; that it should reduce those zones
  requiring large lots; that those zoning districts permitting multifamily housing should
  be increased; and the present restriction and requirement on the multifamily housing
  zones and planned unit developments should be modified to eliminate the undue cost
  generating features. \textit{Id.} at ---, 371 A.2d at 1228.
\end{itemize}
3. New York

In the New York case of *Berenson v. Town of New Castle*, the plaintiff sought to have a parcel of land rezoned in order to provide for the construction of a large condominium complex. When the Town of New Castle, in an effort to preserve its "rustic" nature, would not grant the rezoning, plaintiff challenged the constitutionality of the zoning ordinance. But the appellate court formulated the issue as "under what circumstances, if at all, a zoning board may adopt a regulation that would prohibit entirely the construction of any new multiple resident housing within its borders. . . ."

In order to address this issue properly, the New York Court of Appeals noted that certain questions of fact would have to be resolved at the trial level. To assist the lower courts in considering those questions, the court of appeals set forth the following test. First, lower courts should consider whether there exists a properly balanced and well ordered plan for the community. To answer that question, lower courts must ascertain the type, quantity, and quality of the present housing and whether it adequately meets the needs of the local community. In addition, the courts must consider whether new housing must be developed and if so what form it should take.

Having answered those questions, the next step is to consider "regional needs and requirements." Specifically, the court of appeals ruled, "[t]here must be a balancing of the local desire to maintain the status quo within the community and the greater public interest that regional needs be met."

The New York court indicated that it was fully aware that zoning traditionally operates only within the confines of the

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46. Id. at 107, 341 N.E.2d at 240, 378 N.Y.S.2d at 678.
47. Id. at 110, 341 N.E.2d at 242, 378 N.Y.S.2d at 680-81.
48. Id.
50. 38 N.Y.2d at 110, 341 N.E.2d at 242, 378 N.Y.S.2d at 681.
51. Id.
particular jurisdiction exercising the zoning powers, and went on to say that it must be recognized that zoning often has impact beyond the specific jurisdictional boundaries. Therefore, it ruled that the lower courts must consider “not only the general welfare of the residents of the zoning township, but should also consider the effect of the ordinance on the neighboring communities.” In summarizing its ruling, the New York Court of Appeals pointed out that zoning was primarily a legislative tool and that ultimately the achievement of sound regional planning would find its greatest encouragement through programs initiated by the state legislature. Nevertheless, it stressed,

[While the people of New Castle may fervently desire to be left alone by the forces of change, the ultimate determination is not solely theirs. ... Until the day comes when regional, rather than local, governmental units can make such determinations, the courts must assess the reasonableness of what the locality has done.]

It is important to emphasize that the Pennsylvania, New Jersey, and New York courts recognized in their decisions that local governments have a right to promote and protect other interests of their citizens, such as their health and safety, as well as ecological considerations. But the importance of these decisions is that they stand for the proposition that although it is permissible for the local governments to advance these other interests, they must also provide housing for all income levels.  

52. However, the court did say that “a town need not permit a use solely for the sake of the people of the region if regional needs are presently provided for in an adequate manner.” Id. at 111, 341 N.E.2d at 242-43, 378 N.Y.S.2d at 681.

53. Id. at 243 [emphasis added].

54. In addition to the cases analyzed in the main text, a Michigan court has stated that “the strictly local interests of a municipality must yield if such conflict with the overall state interests of the public at large. This is not meant to be complete limitation on zoning powers but rather, where certain uses are concerned, a balancing must be reached between the effect of local considerations, concerns and desires against the greater public interest.” Bristow v. City of Woodhaven, 35 Mich. App. 205, 218, 192 N.W.2d 322, 328 (1971). In searching for that balance, the court said that “general policy considerations must be ascertained before determining whether local enactments adversely affect a wider interest. If such are affected, it remains necessary to weigh those interests against local concerns.” Id. at 219, 192 N.W.2d at 329.
4. Federal Court Decisions

In City of Hartford v. Hills, a federal district court issued an injunction preventing seven towns which surround Hartford from receiving federal community development grants because of their exclusion of low income housing. The importance of this decision is that a federal court interpreted the federal statutes to condition federal grants upon local governments’ consideration of low and moderate income housing needs. Specifically, the court found that there was a clear congressional objective in “providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.” Furthermore, the court cited the plaintiff’s argument that there were specific national priorities governing the granting of community development monies, one of which was to reduce “the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income.”

The method, as the court pointed out, that Congress chose to achieve these national goals was to require the community applying for community development grants to complete a Housing Assistance Plan detailing the community’s present housing stock, identifying its housing needs, and establishing goals for providing publicly assisted housing and the location of that housing. In the City of Hartford case, the Federal District Court of Connecticut found that six of the seven communities surrounding Hartford had failed to estimate the number of low income persons expected to reside within their borders, and the remaining community had underestimated the need. In addition, it

56. The grants would have been available under the Housing and Community Development Act of 1974, 42 U.S.C. §§ 1437 et seq. (Supp. IV 1974).
58. 408 F. Supp. at 898.
59. The court stressed that Congress had intended that these plans play a key role in determining for which communities development monies may be granted “by excluding [them] from the list of application requirements which might be waived by the Secretary [of HUD].” 408 F. Supp. at 898, interpreting 42 U.S.C. §§ 5304(b)(3) and (4) (Supp. IV 1974).
60. 408 F. Supp. at 902. Six of the towns had submitted applications with a zero “expected to reside” figure and this, as the plaintiffs pointed out, “was not an accurate
found that the Secretary of Housing and Urban Development had abused her discretion in approving the applications without requiring that realistic estimates of housing needs be submitted. Consequently, the seven towns were enjoined from drawing federal monies under the Housing and Community Development Act of 1974.61

In the recent case of Hills v. Gautreaux,62 the United States Supreme Court held that where racially segregated housing has been established in violation of federal law with the assistance of governmental agencies, federal court remedial powers are broad and flexible. In Gautreaux the United States Department of Housing and Urban Development was found to have sanctioned and assisted the racially discriminatory public housing program of the Chicago Housing Authority by knowingly funding public housing projects whose sites had been selected to maintain segregated housing patterns in the City of Chicago. Since the relevant housing market over which the two agencies had authority extended beyond Chicago’s city limits into the suburbs, a metropolitan-area remedy could be granted requiring the agencies to consider publicly subsidized housing for Chicago’s suburbs.63 In so holding, the Supreme Court reaf-

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61. The court added that “[t]he towns may seek to obtain a new approval of these grant applications from HUD. This injunction may be lifted upon the filing with the court of such a new approval.” Id. at 907.


63. This decision is notable also for its clarification of the Supreme Court’s earlier ruling in the controversial school desegregation case of Milliken v. Bradley, 418 U.S. 717 (1974), where the Court held that only upon a showing of either an interdistrict violation or a significant segregative effect in suburban school districts may a federal district court equitably decree consolidation of those school districts with those of the city for remedial purposes.

In Hills the Court explained that Milliken “was actually based on fundamental limitations on the remedial powers of the federal courts to restructure the operation of local and state governmental entities. That power is not plenary. It may be exercised ‘only on the basis of a constitutional violation.’” 425 U.S. at 293, quoting Milliken v. Bradley, 418 U.S. at 738, and Swann v. Charlotte-Mecklenburg Bd. of Education, 402 U.S. 1, 16 (1971). But the Court distinguished Milliken, stating: “Nothing in the Milliken decision suggests a per se rule that federal courts lack authority to order parties found to have violated the Constitution to undertake remedial efforts beyond the municipal boundaries of the city where the violation occurred.” 425 U.S. at 298.
firmed the principle that "[o]nce a constitutional violation is found, a federal court is required to tailor ‘the scope of the remedy’ to fit ‘the nature and extent of the constitutional violation.’" 64

The Supreme Court's holding in Gautreaux that federal courts enjoy broad equitable powers to remedy unconstitutional housing systems is certainly welcome. However, it remains quite difficult to establish a violation of the United States Constitution in housing cases not involving patently racially discriminatory conduct. The Connecticut federal district court in City of Hartford v. Hills has broken new ground and it is yet unclear how the other courts in the federal system will treat the issue of exclusionary practices based on wealth. Exclusionary practices have been upheld in a large variety of contexts, as demonstrated by the following cases.

B. Unsuccessful Attacks on Exclusionary Practices

In 1975 the Ninth Circuit Court of Appeals issued the landmark decision of Construction Industry Association v. City of Petaluma. 65 As a result of its location on the fringe of the San Francisco metropolitan area, the city of Petaluma was experiencing substantial growth pressures. In an effort to protect its small town character, low density population, and open space, it adopted a five-year housing and zoning plan which fixed quotas on the number of multiple dwelling units that could be built in any one year. This was done in the face of demands for that type of housing in the region which far exceeded the number of homes allocated under the plan. 66 Even though this de-

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64. Id. at 293-94.
65. 522 F.2d 897 (9th Cir. 1975), cert. denied, 424 U.S. 934 (1976).
66. [Undisputed expert testimony at trial [indicated that if Petaluma’s plan were to be adopted by municipalities throughout the San Francisco region] the impact on the housing market would be substantial. For the decade 1970 to
mand was present and the Petaluma plan failed to address a representative share of this need, the circuit court of appeals in dictum stated that it could not force a local community to look beyond its immediate jurisdiction in providing adequate housing. Rather, it stated,

If the present system of delegated zoning power does not effectively serve the state interest in furthering the general welfare of the region or entire state, it is the state legislature's and not the federal courts' role to intervene and adjust the system. . . . [T]he federal court is not a super zoning board and should not be called upon to mark the point at which legitimate local interests in promoting the welfare of the community are outweighed by legitimate regional interests.\(^7\)

Thus, the court in Petaluma adhered to the traditional and narrow view of abstention from interference with the exercise of local governmental police power in land use zoning and rejected the view of courts in Pennsylvania, New Jersey, and New York that local communities must recognize and assume some of the burden of regional growth.

In several recent cases the United States Supreme Court has dealt with various aspects of local community exclusionary practices based on wealth, but it has never squarely faced the

\(^{1980}\), the shortfall in needed housing in the region would be about 105,000 units (or 25 percent of the units needed). Further, the aggregate effect of a proliferation of the Plan throughout the San Francisco region would be a decline in regional housing stock quality, a loss of the mobility of current and prospective residents and a deterioration in the quality and choice of housing available to income earners with real incomes of $14,000 per year or less.

\(^{67}\) 522 F.2d at 908. Three other constitutional arguments were made. They were:

(1). The right to travel: the court found that individuals within the city have no standing to raise this issue on behalf of parties allegedly excluded from living in Petaluma. \(^{Id.}\) at 902.

(2). Substantive due process: the court found that since the exclusion did not affect a fundamental right or employ a suspect classification (the exclusion affected only types of housing), the city need only show a rational relationship to a legitimate state interest. Advancement of the general welfare by promoting family values, quiet seclusion and clear air was a legitimate state interest. Thus, the plan was neither arbitrary nor unreasonable and the due process rights of the developers were not violated “merely because a local entity exercises in its own self-interest the police power fully delegated to it by the state.” \(^{Id.}\) at 908.

(3). Discrimination against Interstate Commerce: the court stated that the local regulation was “rationally related to the social and environmental welfare of the community and does not discriminate against interstate commerce or operate to disrupt its required uniformity.” \(^{Id.}\) at 908.
legality of such practices. These cases do, however, reveal the Court's attitude that local communities retain broad discretion in allocating land use. Additionally, the access to federal courts for litigating these issues has been narrowed by the Court's interpretation of the standing requirement under the "cases and controversies" component of article III of the United States Constitution. Cases which illustrate these points are discussed below.

In Village of Belle Terre v. Boraas, the Village of Belle Terre, a community located on Long Island, New York, with a population of 700 residing in 220 homes, restricted the use of land within its jurisdiction to one-family dwellings. The ordinance prohibited lodging houses, boarding houses, fraternity houses, or multiple dwelling houses. Furthermore, the village ordinance excluded three or more unrelated persons from living within one household as a family. One practical effect of this restriction was to prevent those individuals who ordinarily could not afford to live in Belle Terre from grouping together to make it economically feasible to reside within the village limits. In this case, it was a group of students who attended a nearby state university and who were renting a house in the village.

These student-tenants along with the owners of the residence challenged the ordinance on the following grounds:

- that it interferes with a person's right to travel;
- that it interferes with the right to migrate to and settle within a State;
- that social homogeneity is not a legitimate interest of government;
- that the restriction of those whom the neighbors

69. "Family," as defined in the ordinance means:

One or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family.

416 U.S. at 2.

In Timberlake v. Kenkel, 369 F. Supp. 456 (E.D. Wis. 1974), a case similar to the facts here, the Village of Shorewood, Wisconsin, adopted an ordinance which precluded four or more persons who were unrelated from occupying the same dwelling unit. The district court found that the definition of family employed by the Village was not supported by any rational basis consistent with the traditional zoning objectives. Thus, it was found to violate the equal protection clause of the fourteenth amendment. Id. at 459. However, after Belle Terre the federal court of appeals vacated and remanded the Timberlake case. 510 F.2d 976 (7th Cir. 1975).
do not like trenches on the newcomers' rights of privacy; that it is of no rightful concern to villagers whether the residents are married or unmarried; that the ordinance is antithetical to the Nation's experience, ideology, and self-perception as an open, egalitarian, and integrated society.\textsuperscript{70}

The majority of the Supreme Court could find nothing in the record which would violate the right to travel, nor did the ordinance, in the Court's opinion, affect any "fundamental" right guaranteed by the Constitution.\textsuperscript{71} Lacking an infringement of fundamental rights, the Court found that the ordinance need merely bear a "rational relationship to a [permissible] state objective."\textsuperscript{72} Such a permissible state objective did exist, and the Court found that "[a] quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs."\textsuperscript{73}

In dissent, Mr. Justice Marshall did not question the majority's recognition of the wide discretion that local zoning authorities enjoy when enacting zoning ordinances. Permissible zoning objectives included "restricting uncontrolled growth, solving traffic problems, keeping rental costs at a reasonable level, and making the community attractive to families."\textsuperscript{74} It was Justice Marshall's conclusion, however, that the concededly legitimate aims of the ordinance could not justify the resultant infringement on the students' fundamental rights of association and privacy under the first and fourteenth amendments.\textsuperscript{75} The ordinance, in his view, went beyond the constitutionally permissible land use restrictions since it "undertakes to regulate the way people choose to associate with each other within the privacy of their homes."\textsuperscript{76} Consequently, he would have found the ordinance unconstitutional.\textsuperscript{77}

\textsuperscript{70} 416 U.S. at 7.
\textsuperscript{71} Specifically the Court found that the ordinance was "not aimed at transients. . . . It involves no procedural disparity inflicted on some but not on others . . . . It involves no 'fundamental' right guaranteed by the Constitution, such as voting . . . the right of association . . . the right of access to the courts . . . or any rights of privacy . . . ." Id. [citations omitted].
\textsuperscript{72} Id. at 8.
\textsuperscript{73} Id. at 9.
\textsuperscript{74} Id. at 13.
\textsuperscript{75} Id.
\textsuperscript{76} Id. at 17.
\textsuperscript{77} On the freedom of association issue, Mr. Justice Marshall argued that constitu-
In another Supreme Court decision, City of Eastlake v. Forest City Enterprises, Inc., a real estate developer challenged a provision in the city charter that required land use changes to be ratified by fifty-five percent of the voters in a city election. The developer had sought to have a parcel of land which he owned rezoned to permit multifamily, high rise apartment buildings. The request was approved by the city council and the developer applied to the planning commission for parking approval. The city planning commission rejected the application on the basis that the request for rezoning had not been submitted to the voters for ratification. The developer then challenged the constitutionality of this “spot” referendum process, arguing that it constituted a delegation of legislative power to the people without appropriate standards to guide their decision, thereby depriving the landowner of property without due process. This challenge had been successful before the Ohio Supreme Court where it was held that “[t]he Eastlake charter provision . . . blatantly delegated legislative authority, with no assurance that the result reached thereby would be reasonable or rational.”

However, the United States Supreme Court reversed, holding that the referendum procedure was “a basic instrument of democratic government” and within the powers reserved to the people under the United States and Ohio Constitutions. The significance of this decision is that it permits the voters of a local community to preclude a particular land use without reference to articulable standards. Consequently, the rezoning

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78. 426 U.S. 668 (1976).
79. Forest City Enterprises, Inc. v. City of Eastlake, 41 Ohio St. 2d 187, 196, 324 N.E.2d 740, 746 (1975). It is important to note that the Ohio Supreme Court’s finding of unconstitutionality was based on the Constitution of the United States and not that of Ohio.
80. 426 U.S. at 679. Compare the view expressed in the concurring opinion of Ohio Supreme Court Justice Stern, where he observed, “There is no subtlety to this; it is simply an attempt to render change difficult and expensive under the guise of popular democracy.” 41 Ohio St. at 200, 324 N.E.2d at 248.
proponent is denied any meaningful opportunity to have its proposal considered on its merits, and the proposal may, in fact, be denied for illegal but undiscoverable purposes.

In yet another important development in this area of law, the United States Supreme Court narrowed the avenue for attacking the constitutionality of a zoning ordinance creating residential patterns exclusive of low or moderate income housing in *Warth v. Seldin.* 81 In *Warth,* petitioners claimed that the zoning ordinance enforced by the zoning, planning and town boards of the Town of Penfield, a suburb of Rochester, New York, which allocated 98 percent of the land to single-family detached houses, effectively excluded persons of low and moderate incomes from living in the town. This, the petitioners argued, was in contravention of the first, ninth, and fourteenth amendments of the United States Constitution. The United States Supreme Court never reached the merits of the case, however, finding that each of the various petitioners lacked standing to litigate the questions and affirmed the lower courts’ dismissals. 82

One group of petitioners asserted standing as persons of low or moderate income harmed by respondents’ enforcement of the ordinance against developers and builders with the effect of suitable housing being priced out of the petitioners’ affordable range. The Court held that the group lacked standing because of their failure to establish that the challenged practice harmed them specifically, and that they “personally would benefit in a tangible way from the courts’ intervention;” 83 there was no showing that any particular housing projects which would have been built but for the ordinance would have met petitioners’ needs. The Court declined to specify the precise personal interest which a zoning ordinance challenger must possess, but conceded that a present contractual interest in a proposed housing project was not an indispensible require-

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81. 422 U.S. 490 (1975).
82. Id. at 517-19. In reviewing the elements of standing the Supreme Court ruled that the Constitution requires that a plaintiff must allege “such a personal stake in the outcome of the controversy as to warrant his invocation of federal-court jurisdiction. . . .” Id. at 498 (emphasis in the original). Moreover, petitioners must satisfy the prudential rules of standing, that is, the claim must be based on a constitutional or statutory provision which grants to persons in the plaintiff’s position a right to judicial relief. Id. at 500.
83. Id. at 508-09.
A second group of petitioners asserted standing as taxpayers of Rochester forced to assume the increased tax burden resulting from Penfield's failure to absorb some of the lower tax-based housing concentrated in Rochester. The Court concluded that the group lacked standing, basing its decision on the "prudential standing rule" which generally bars plaintiffs from advancing third person's legal interests (here, the excluded moderate and low income class) in order to obtain relief for injury to themselves. Finding no relationship between the taxpayers and the excluded class, other than an "incidental congruity of interest," the Court found no justification for departing from the general rule.

The Court also held that none of the petitioner housing and building associations had standing. One association argued that some of its members were Penfield residents deprived of the benefits of living in an integrated community. Relying again on its prudential standing rule, the Court held that it would be inappropriate to permit the association to invoke the judicial process by raising the rights of third parties (the excluded low and moderate income class) in order to redress harm suffered by its own members.

The Court also found that the home builder associations lacked standing. The association could not recover damages because individualized proof would be necessary to establish the injury suffered by the individual association's members and an award could not go to the association itself. Further, the Court found the home builder associations lacked standing to obtain prospective injunctive and declaratory relief because there were no allegations that any current projects were precluded by the ordinance or respondents' actions, such allegations being necessary to show ripeness of the injury sufficient to warrant judicial intervention.

84. Id. at 508 n. 18.
85. Id. at 510.
86. Id. at 511. The Court distinguished Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972) on the basis that the plaintiffs there were "persons aggrieved" within the definition of the Civil Rights Act of 1968, 42 U.S.C. § 3610(a) (1970), and were given the actionable right to be free from racially discriminatory practices in the sale or rental of housing. 422 U.S. at 512.
The Court's analysis suggests that *Warth* was simply a case of poor pleading.\(^7\) However, it is more probable that the Court intended to strictly curtail through the standing requirement the groups and individuals who may challenge a community's exclusionary policies.\(^8\) Both group and individual plaintiffs must demonstrate in their pleadings that exclusionary practices have deprived them of specific opportunities to live in or construct low and moderate income housing. Furthermore, standing will always be questionable when the legal rights of third parties are raised to invoke the aid of federal courts, and hence it will be easier to acquire standing if the plaintiff's own legal rights have been infringed.\(^9\)

The formidable wall constructed in *Warth* was breached in the recent case of *Village of Arlington Heights v. Metropolitan Housing Development Corp.*,\(^{10}\) although the case is a source of despair in other respects, discussed in detail below. In *Arlington Heights*, the Supreme Court rejected a community's challenge to the standing of a nonprofit housing developer where a low income project had been planned in detail and was blocked only by a denial of the requested rezoning. The Court dismissed the community's arguments that uncommitted financing for the project rendered plaintiffs' claim too speculative to form the personal stake in the controversy needed to overcome the constitutional limitations on federal court jurisdiction. Furthermore, by joining as a plaintiff an individual who was the subject of the alleged discrimination, plaintiffs succeeded in acquiring the standing necessary to advance arguments which would otherwise be those of third parties prevented by the same prudential standing rule used to keep the

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\(^7\) 422 U.S. at 508. Justice Douglas stated in dissent, "With all respect, I think that the Court reads the complaint with antagonistic eyes." *Id.* at 518.

\(^8\) Mr. Justice Brennan, dissenting, pointed out, "The Court turns the very success of the allegedly unconstitutional scheme into a barrier to a lawsuit seeking its invalidation. In effect, the Court tells the low-income minority and building company plaintiffs they will not be permitted to prove what they have alleged — that they could and would build and live in the town if changes were made in the zoning ordinance and its application — because they have not succeeded in breaching, before the suit was filed, the very barriers which are the subject of the suit." *Id.* at 523.


\(^{10}\) 97 S. Ct. 555 (1977).
plaintiffs out of court in *Warth*.

In *Arlington Heights*, the United States Supreme Court was confronted with the issue of whether a local government’s zoning ordinance which had the “ultimate effect” of disproportionately excluding minorities violated the fourteenth amendment of the United States Constitution.

The Village of Arlington Heights, a northwest suburb of Chicago, had sustained a great deal of population growth during the period of 1960 to 1970. In the 1970 census the village had a population of 64,000; however only 27 residents were black.\(^9\) The evidence which had been developed at trial and reviewed by both the court of appeals and the Supreme Court indicated that the small number of blacks residing in Arlington Heights stood in sharp contrast to the percentages of blacks residing in the metropolitan area of Chicago. In fact, figures from the most recent census revealed that the percentage of blacks in Chicago had increased during 1960-1970 from 14 to 18 percent of the total population.\(^2\)

The record also indicated that Arlington Heights had initially adopted a zoning ordinance which zoned the village lands principally for single family detached housing. This zoning virtually eliminated any opportunity for constructing low and moderate income housing in the community.

In 1971 these zoning restrictions were called into question when an Illinois nonprofit corporation seeking to construct housing within the Village for lower income families had requested that the Village rezone a parcel of land for multifamily units.\(^3\) That request for rezoning, however, was denied by the local board of trustees on the grounds of preserving the integrity of the zoning plan and protecting property values.\(^4\)

Subsequently, a decision was made to file a lawsuit challenging the denial of the request to rezone.\(^5\) The additional and

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9. Id. at 559.
10. Id. at 560.
11. Metropolitan Housing Development Corp. v. Village of Arlington Heights, 517 F.2d 409, 414 (7th Cir. 1975).
12. The corporation was seeking to construct § 236 housing, 12 U.S.C. § 1715z-1 (Supp. IV 1974) which permits construction of housing at favorable interest rates. This in turn would allow the owner to charge rents at a reduced level, thereby encouraging low income renters.
13. 97 S. Ct. at 559.
14. The nonprofit corporation and three black individuals filed the lawsuit seeking declaratory and injunctive relief. Another nonprofit corporation and an individual of Mexican-American descent intervened as plaintiffs. The individual black plaintiffs
important facts which gave rise to this challenge and the issue which was ultimately raised before the Supreme Court were that the refusal to rezone the parcel of property affected a distinct class of individuals who would have been eligible to live in the low income housing and that forty percent of that class was black.

The court of appeals, recognizing the possibility of racial discrimination, felt compelled to analyze the Village’s decision not to rezone and assess it “not only in its immediate objective, but its historical context and ultimate effect.” The court of appeals took judicial notice of the segregated racial housing in Chicago and the fact that Arlington Heights had not sponsored any low income housing development nor did it plan to do so. The court found that because the Village had totally ignored its responsibility in the past and that its present decision would have the “ultimate effect” of perpetuating this trend, the governmental decision was racially discriminatory and could only be upheld if there was a compelling state interest to support it.

The court also found that preserving the integrity of the zoning plan and protecting property values did not meet the stricter scrutiny of the compelling state interest test. The court of appeals concluded therefore that the board’s refusal to rezone violated the equal protection clause of the fourteenth amendment. However, this decision was reversed and remanded on appeal to the United States Supreme Court.

In reversing the court of appeals decision the United States Supreme Court reaffirmed its recent decision in Washington v. Davis, holding that “official action will not be held unconstitutional solely because it results in a racially disproportionate impact. ‘Disproportionate impact is not irrelevant, but it is not

had sought certification of the action as a class action under Fed. R. Civ. P. 23, but the trial court had declined to certify. Id. at 560.


97. 517 F.2d at 413. The suspect classification of race, here created by the zoning ordinance and its subsequent decision not to rezone, gave rise to the court’s invoking the compelling state interest test.

98. 97 S. Ct. at 566. The case was remanded for further consideration of claims of statutory violations.

the sole touchstone of an invidious racial discrimination.’’ In order to ascertain whether an action such as the Village’s denial to rezone was motivated by discriminatory purposes, it would be necessary to conduct a broad inquiry of direct and circumstantial evidence to determine the official intent. Most importantly, this inquiry must be carried out by those persons challenging the official action and its effects.

The Supreme Court noted that “the impact of the official action — whether it ‘bears more heavily on one race than another’ . . . may provide an important starting point . . . but impact alone is not determinative.” Consequently, the Court suggested other areas of inquiry which may shed light on whether the official action was taken for invidious discriminatory purposes. One was the historical background of the decision. Another was the sequence of events leading up to the challenged decision. And, a third was the legislative or administrative history, especially where that history contained statements made by the decisionmakers, minutes of meetings or reports.

In the circumstances of the Arlington Heights case the United States Supreme Court could find no evidence that showed improper discriminatory purposes had motivated the village leaders in their decision to deny the rezoning. The officials had followed “usual procedures” and had adhered to a zoning plan which had been developed years before the controversy. The Supreme Court held therefore that the court of appeals “finding that the Village’s decision carried a discriminatory ‘ultimate effect’ is without independent constitutional significance.”

With the ruling in Arlington Heights the Supreme Court has made it extremely difficult to change the status quo, even though that may very well reinforce class distinctions based on economic status and race. Those who now challenge the exist-

101. 97 S. Ct. at 564 (citations omitted).
102. 97 S. Ct. at 565-66.
103. 97 S. Ct. at 566.
104. At one point the Court stated, “In many instances, to recognize the limited probative value of disproportionate impact is merely to acknowledge the ‘heterogeneity’ of the nation’s population.” 97 S. Ct. at 564 n. 15.
ence of segregated housing patterns must prove that the decisionmakers who created the segregated housing in the first place did so for racially discriminatory purposes. The Supreme Court provides some "subjects of proper inquiry" to determine such intent. But the Court itself admits that it may be a very difficult burden to carry.

What the Court has done in the *Arlington Heights* ruling is educate public officials on how to establish a defensible exclusionary zoning program. As long as the local officials follow their usual procedures and refrain from making crude public statements against permitting minorities within the community, no clear intent will be found. Furthermore, under the less stringent standards, there need not be an explanation of a compelling nature by the local officials of why the community is pursuing a segregationist policy. In sum, *Arlington Heights* says that local communities may continue to tell certain classes and groups of people that they are not wanted so long as this message is communicated through the language of zoning laws.

**C. Summary of Case Law**

The above cases demonstrate the difficulty of striking an equitable balance between local government and regional needs. The local governments justify their exclusionary practices as legitimate means of furthering the general health, safety and welfare of their citizens. Individuals challenging these practices claim that general welfare can only be furthered by taking into account regional needs.

The *Village of Belle Terre* and *City of Eastlake* cases uphold the traditionally sanctioned broad discretion afforded to local governments in controlling land use even where the effect of such control keeps certain segments of society from residing in the community.

*Warth v. Seldin* has made it more difficult to gain access to the federal courts to litigate the constitutional questions which surround zoning ordinances that effectuate wealth discrimination. With the most recent decision of *Arlington Heights*, it is not enough that official action—such as zoning—has resulted in a disproportionate effect upon minorities; a challenge on exclusionary grounds will now be successful only if the practice is tied to a violation of federal statutes as in *City of Hartford v. Hills* or blatant discriminatory actions, such as in *Gautreaux*. Perhaps this is best exemplified in the *Petaluma*
decision where the court was fully cognizant of the arguments of meeting regional needs but, in dictum, responded by saying that only the state legislatures can require local governments to assume these burdens.

In short, the reasoning found in many of the recent federal decisions which sustains exclusionary practices is reminiscent of the late nineteenth century philosophy which produced Plessy v. Ferguson, although the techniques employed are more subtle. On the other hand, several decisions within the state courts indicate a more favorable disposition to granting broad relief from exclusionary practices.

The Town of Willistown case in Pennsylvania and the New Jersey decisions of Mount Laurel and Oakwood at Madison provide clear statements by the highest courts of those states that exclusionary zoning will not be countenanced. Under these opinions local units of government must now assume the responsibility of accommodating their fair share of low and moderate income housing to satisfy present and prospective regional needs. Similarly, the New York decision in Berenson v. Town of New Castle recognized that local governments must consider the effect of their zoning ordinances on neighboring communities and that municipalities must balance their desire for maintaining the local status quo with the broader public interests of the greater region. Significantly, in all of these decisions the state courts were able to find sufficient authority under their own laws and constitutions to strike down exclusionary zoning ordinances. This fact, coupled with the cold reception given by federal courts to these types of claims suggests that plaintiffs will be more successful if they base their claims on state law.

IV. ELIMINATING EXCLUSIONARY PRACTICES IN WISCONSIN

The Wisconsin Supreme Court has not yet faced the issue of whether exclusionary practices are legal under state or federal law. There is some basis in Wisconsin case law for arguing that such practices are illegal, but there is no assurance that

105. 163 U.S. 537 (1896).
107. In Town of Hobart v. Collier, 3 Wis. 2d 182, 87 N.W.2d 868 (1958), the court struck down an ordinance which arbitrarily zoned an entire town residential when the town area in its entirety was not adaptable to residential use. It declared,
the Wisconsin court would follow the path of the Pennsylvania, New Jersey and New York courts. Certainly, it is possible for

The purpose of zoning is to set aside areas for specific uses and to protect them from encroachments in the form of other uses inconsistent with the uses to which they are dedicated. In making the classifications necessary to facilitate that purpose, the municipality must recognize the natural reasons and differences suggested by necessity and circumstances existing in the area with which the ordinance deals.

Id. at 189, 87 N.W.2d at 872 [citations omitted]. While the reference here to “areas” is to zoning districts, the Wisconsin court could, by analogy, recognize that conditions outside a district or even a local jurisdiction could necessitate different uses even within a district, e.g., multifamily housing units interspersed with single family residences.

The Hobart case is of further importance to the issue of exclusionary zoning because the court reiterates the standards for classifying zoning districts found in Ford Hopkins Co. v. Mayor, 226 Wis. 215, 222, 276 N.W. 311, 314 (1937):

1. All classifications must be based upon substantial distinctions which make one class really different from another.
2. The classification adopted must be germane to the purpose of the law.
3. The classification must not be based upon existing circumstances only.
4. To whatever class a law may apply, it must apply equally to each member thereof.
5. That the characteristics of each class should be so far different from those of other classes as to reasonably suggest at least the propriety, having regard to the public good, of substantially different legislation.

The most important of these standards is the third, that which negates existing circumstances as the sole basis for classification. This standard could arguably be raised against a community which attempts to preserve the status quo and preclude low and moderate income housing.

In another case, Lake Drive Baptist Church v. Village of Bayside Bd. of Trustees, 12 Wis. 2d 585, 108 N.W.2d 288 (1961), the court dealt with a village ordinance which attempted to exclude churches from particular districts. While this decision is based upon the constitutional protection of freedom of religion, there is in the concurring opinion of Justice Hallows some reasoning which perhaps could have ramifications on the constitutionality of ordinances which exclude low and moderate income residences. Justice Hallows stated,

The various factors considered in excluding churches from a residential area or in determining the priority of granting or refusing a permit under those types of ordinances which permit churches in an area only by permit have been the subject matter of numerous cases. These factors, including traffic problems, traffic conditions, and effect of depreciating property values, loss of tax revenue, noise and other inconveniences, and that churches are detrimental and do not further public morals, have been considered and rejected.

... Churches are not supermarkets, manufacturing-plants, or commercial establishments and should not be restricted to such areas. How can the exclusion of churches from a residential area promote public morals or the general welfare?"
the Wisconsin court to interpret the Wisconsin Constitution\textsuperscript{108} and statutory law\textsuperscript{109} as precluding the exclusion of low and moderate income residential units by local governments.\textsuperscript{110}

Assuming that exclusionary practices were found to be illegal, the selection of a remedy from among the many alternatives would be no easy matter. The Wisconsin court could strike down the ordinances in question and indirectly affect local zoning ordinances in other parts of the state; it could take notice of regional problems and order relief based on a formula which designates the appropriate region and housing market area and allocate a fair share of housing for each municipality; it could require certain revisions in the specific ordinance under challenge, as was done in the New Jersey decision of \textit{Oakwood at Madison}, and approach the problem on a case by case basis; it could call upon planning experts or planning agencies to develop appropriate remedies for specific areas; or, it could take a narrower approach, finding that particular land use regulations are unconstitutional in their application to specific land parcels and order the parcel rezoned for a low or moderate income housing project. However, fashioning narrow relief would make unified housing planning difficult by creating new enclaves of low income and/or minority groups. Alternatively, the Wisconsin Supreme Court might adopt a mixture of these remedies, or choose to ignore the problem altogether, thereby forcing the issue into other forums.\textsuperscript{111}

Nonjudicial approaches should also be considered for dealing with the problem of exclusionary practices in southeastern Wisconsin. Some potential solutions to this complicated problem may rest in administrative agency action or legislation. The Southeastern Wisconsin Regional Planning Commission,\textsuperscript{112} for example, has developed a regional housing plan designed to meet the region's unique characteristics. It requires a strong intergovernmental commitment to plan and provide for a wide range of housing structures with a view toward meeting re-

\textsuperscript{108} See note 41 supra.
\textsuperscript{109} See note 1 supra.
\textsuperscript{110} See also 59 Marq. L. Rev. 211, 223-24 (1976).
\textsuperscript{112} See note 6 supra.
regional needs. The Wisconsin Legislature, in addition, may require that local units of government provide adequate housing for all income levels. Other states, most notably Massachusetts, require by legislative mandate that local units of government provide a certain percentage of their residential development for low and moderate income households. Some of these alternatives are considered below.112.1

A. A Regional Housing Plan for Southeastern Wisconsin

A word of caution is due whenever comprehensive planning on a regional basis is considered. The unique characteristics present at the local level must always be accounted for if planning is to be efficient and successful. The failure to take these characteristics into account may, in fact, compound the problem.113

After making a thorough study of the housing problems in the southeastern region of Wisconsin, SEWRPC has developed a series of alternative plans and strategies designed to meet the housing needs of the region.114 These plans and strategies may be broken down into two broad categories: those which call for subsidized housing and those which do not.115

1. Non-Subsidy Recommendations

The SEWRPC plan recognizes that in southeastern Wiscon-

112.1. See text accompanying notes 137-46, infra.
113. See, e.g., Burchell, Listokin, and James, Exclusionary Zoning Pitfalls of the Regional Remedy, 7 URB. LAW. 262 (1975).
114. PLANNING REPORT NO. 20, supra note 15, at 7. It should be pointed out that the objectives of this report are not only to provide adequate housing for low and moderate income households using specific spatial allocation strategies, "but also to promote the development of a full range of housing costs, types, and styles in the best possible living environment by directing the development of housing to well-serviced locations. The study is thus intended to promote orderly, efficient, areawide development while discouraging premature development and the location of housing in areas poorly suited to residential use." Id.

To recall, 96,000, or 18 percent, of the households in the region were found to be in housing need in 1970. Of this total, 69,000, or 13 percent, were found to be in economic need. These households occupy decent, safe, and sanitary housing but must pay a disproportionate share of their income to do so. The remainder, 26,500 households, were found to occupy housing which was physically deficient. But SEWRPC estimates that if more effective utilization was made of presently overcrowded but otherwise sound housing, only 17,800 would be needed to eliminate the physical housing need. See text accompanying notes 17 & 18 supra.

115. SEWRPC recognized that there is a strong relationship between these two categories; movement in one could well remove several constraints on housing in the other.
sin, economic, institutional and social obstacles prohibit the development of adequate housing for the poor. The economic constraints result from the high cost of houses built on fully improved lots. Although residential housing suppliers can be encouraged to use cost saving innovations in construction, financing and marketing, the costs of producing homes can not be lowered appreciably.

Institutional obstacles hindering adequate housing include the existing property tax structure and local land use controls. A cost-revenue study made by SEWRPC found that the exclusion of moderately priced homes in order to protect the local tax base was not justified. However, the cost-revenue study did indicate that educational costs incurred by areas with moderately priced housing may indeed constitute an undue burden on the local fiscal structure, depending on the size of the school age population generated by such housing. To counter the property tax problem of low income housing, the plan recommends changing the method of generating funds from a property tax to some other form of tax. Land use controls are also significant institutional constraints in meeting housing needs, as the foregoing discussion of the present regional residential trends and the case law indicate.

The SEWRPC plan recommends amending zoning ordinances, building codes, and subdivision controls. The plan suggests that each community incorporate a zoning provision for a full range of housing sizes — single family, two family, and

116. SEWRPC estimates that in 1972 the production cost of a new, conventionally built house on a fully improved city lot was $35,060. The costs were distributed as follows: on-site labor — $6,000, or 17 percent; materials — $13,000, or 37 percent; fully improved lot — $9,100, or 26 percent; overhead and profits — $6,000, or 17 percent; and construction financing — $960, or 3 percent. PLANNING REPORT No. 20, supra note 15, at 423.

117. On the average, for all civil divisions included in the study the tax levy for municipal purposes on a $25,000 house was only $8 per year less than the per household cost of providing municipal sewers. Id. at 424.

118. Id.

119. Another problem created by the present reliance on the property tax as the major source of revenue was also recognized in the rehabilitation of substandard homes. A rehabilitated home would normally be assessed at a higher value and this, coupled with the cost of rehabilitation, would place the home out of reach of many low and moderate income households. SEWRPC recommends, therefore, that local governments take advantage of Wis. STAT. § 70.11(24)(c) (1975) which exempts these physical improvements for five years, the maximum exclusion being $1,000, or 10 percent of the value of the improved property.
multifamily. Zoning ordinances should indicate a full range of lot sizes, such as districts containing lot sizes of 7,200 square feet or less for single family detached housing and 8,000 square feet or less for two family structures. Districts should be established with minimum floor area requirements that approximate the standards for decent housing developed by SEWRPC. Furthermore, to reduce the costs associated with improvements, such as curbs, paved streets, and sanitary sewer mains, it is suggested that planned unit development techniques be employed to allow for more intensive development while still preserving an overall net density. The effect of this later strategy would be to diminish the service requirement and costs associated with sprawling lots.

As to building codes, the major cost center was identified as the differences between community building codes in regulating materials, equipment, and methods. It was felt that the nonuniformity unnecessarily added to the complexity of compliance. Thus, it was proposed that local governments adopt the Wisconsin Uniform Building Code which regulates one and two family residential structures.

With respect to local subdivision control ordinances, it was determined that the improvements frequently required of a developer as a condition to subdivision are often excessively stringent. These costs are invariably passed on by the developer thereby placing the housing out of the affordable range of many individuals. Thus, it was recommended by SEWRPC that communities adopt more realistic requirements.

Finally, SEWRPC also made recommendations for the abatement of social constraints. To counteract community opposition which is based on noneconomic factors, it was suggested that federal, state and local fair housing laws which prohibit housing discrimination on the basis of race, creed, and

120. See note 21, supra.
121. Planned unit development districts permit, with proper planning, the location of all living phases in a designated area, rather than the frequently found segregation of commercial, residential and recreational uses. Cf. Wis. Stat. § 62.23(7)(b) (1975).
122. See Southeastern Wisconsin Regional Planning Commission, Model Zoning Ordinance, Planning Guide No. 3 (1965), which provides suggestions for the use of such techniques.
national origin be expanded to prohibit discrimination in the
sale, rental or financing of housing on the basis of sex, marital
status, source of income, and family size; that developers of
low income housing locate and construct such housing in a
manner which physically integrates the units into the neigh-
borhood to the maximum extent possible; and to further
counter the communities' social constraints, it was proposed
that a state housing appeals board be created that could, upon
review, issue a permit for low and moderate income housing
over the objections of local communities. This latter mecha-
nism is similar in certain aspects to the legislatively mandated
appeals board in Massachusetts which will be analyzed
below.  

2. Subsidy Recommendations

The above recommendations deal only with the nonsubsidy
recommendations of SEWRPC's regional plan. However, the
use of subsidized housing would doubtlessly effectuate the
greatest changes and do so within a shorter period of time.

The subsidized housing plans employ a two-tiered ap-
proach. The first involves the selection of plans for the physical
placement of housing units in the region (housing locational
strategies). The second involves the priority by which the sub-
sidized housing will be constructed according to the housing
location plan chosen. It was necessary to resort to a priority
schedule due to the limited amount of funding expected to be
available.

SEWRPC devised three strategies by which the spatial dis-
tribution of subsidized housing might be provided: (a) an exist-
ing need strategy, (b) a dispersal strategy, and (c) a composite
factor strategy. All three strategies are concerned with the
problem of overcoming an identified physical housing need in
the region. Physical need is determined by those households
which presently occupy substandard and overcrowded housing.

126. SEWRPC suggested criteria that could be used in reviewing a community's
denial of low income housing: the existing need for, or shortage of, low and moderate
income housing in the area; employment opportunities; transportation facilities; avail-
ability of necessary public services and facilities; and the fiscal capability of the area
to absorb such housing in terms of levels of personal income and property values.
Under this plan determinations made by an appeals board would be subject to judicial
It is estimated there is a physical housing need of 17,800 units in the region.\textsuperscript{127}

The existing need strategy would allocate housing according to the present expressed need in the region. This strategy, therefore, would concentrate the housing units in the region's older urban centers. It would perpetuate and reinforce the existing geographical distribution of low and moderate income households.

The exact opposite strategy, the dispersal strategy, would allocate housing to areas where the lowest incidence of housing need presently exists. Under this alternative the suburban and outlying rural areas of the region would receive the subsidized housing.

The last strategy, the composite factor strategy, represents a middle position between the first two. It relies on three indicators for the distribution ratio of the housing units. The first indicator is the existing need in the area for publicly assisted housing.\textsuperscript{128} The second indicator, and the most critical one, is the area's suitability for the housing. Particular emphasis is placed upon land availability, employment opportunities, availability of mass transit, and fiscal suitability. The third indicator is the past performance of the area in providing such housing. In this respect, the ratio of the allocation decreases as the percentage of subsidized housing presently existing increases. These three alternative housing locational strategies are compared in Figure 11.

As part of its regional housing plan, SEWRPC has adopted the composite factor allocation strategy for the geographical distribution of subsidized housing. However, in recognition of the fact that not enough public monies are now available to subsidize the needed housing, SEWRPC developed a schedule of priorities for disposing of the housing subsidy funds. For those programs involving rehabilitation of substandard housing, SEWRPC recommended expending the greatest effort in the large central cities of the region where large concentrations of substandard housing currently exist. It was felt that by rehabilitating many of these existing homes, it would not only add

\textsuperscript{127} See note 17 \textit{supra} for further explanation of how this figure was obtained.

\textsuperscript{128} Using this indicator, the number of units allocated would be distributed primarily to the large central cities. The effect is very similar to that of the first strategy, and for that reason it would perpetuate many existing trends.
an equivalent number of units to the stock of decent, safe, and sanitary housing, but would also arrest the cycle of neighborhood deterioration which creates additional substandard housing.\textsuperscript{129} In those programs which subsidize new housing construction, the designated priority areas were determined by employment opportunities and developable land. If implemented, this priority for constructing new low and moderate income housing would result in dispersing the new dwellings throughout the suburban and outlying areas of the region (see Figure 12).\textsuperscript{130}

The vehicle which SEWRPC felt was the most logical entity to analyze local housing needs and to administer programs for the abatement of the identified problems was a county housing agency. Wisconsin Statute section 59.075 grants to a county housing authority the powers to prepare, carry out, acquire, lease, and operate housing projects; to arrange or contract for the furnishing of services, privileges, works, or facilities; to lease or rent any dwellings; to acquire by eminent domain any real property; to own, hold, clear, and improve property.\textsuperscript{131} The county housing authority may exercise these powers in all unincorporated parts of the county and may undertake housing projects within the boundaries of cities or villages if a resolution has been adopted by the municipality permitting the county to exercise its authority within its jurisdiction.\textsuperscript{132}

SEWRPC's regional housing plan offers several possible solutions to residential exclusionary practices. However, state law does not require local communities to adopt any of SEWRPC's recommendations. Given the severity of the problem and assuming continued local community intransigence, legislative action would be most appropriate.

\textsuperscript{129} Planing Report No. 20, supra note 15, at 428.

\textsuperscript{130} A third priority area for programs involving utilization of the existing stock of standard housing was identified. Programs of this type usually involve direct or indirect subsidies to the households themselves so that they would then be able to compete in the marketplace. As pointed out by SEWRPC, the problem is that this form of direct subsidy may create inflationary pressures on sale prices and rents in the area. Therefore, it was recommended that administrators of such programs give priority to applications which offer evidence of sufficient vacancy rates for housing of the type and price range desired by eligible applicants: 1.5 percent for homeowner housing, and 5 percent for rental housing. \textit{Id.} at 431.

\textsuperscript{131} These and other enumerated powers are provided to cities and villages under Wis. Stat. §§ 66.40-66.404 (1975). Counties have these powers by legislative reference. Wis. Stat. § 59.075 (1975).

\textsuperscript{132} Wis. Stat. § 59.075(3) (1975).
B. Legislative Action Against Exclusionary Zoning

1. Existing Wisconsin Legislation Dealing With the Problems of Low and Moderate Income Housing and Discrimination

As early as 1939, the Wisconsin Legislature found,

[T]here exist in the State insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the state there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities . . . .

Moreover, under the Wisconsin Bill of Human Rights, the Legislature has provided that any municipality, including counties and school boards, may form or join in the formation of community relations-social development commissions. One of the main functions of the commissions would be to recommend solutions to the problem of discrimination in housing and to conduct studies on the "inciting or fomenting of class, race, or religious hatred and prejudice."

Furthermore, under the fair housing statute of Wisconsin, the Legislature set forth the following policy:

It is the intent of this section to render unlawful discrimination in housing. It is the declared policy of this State that all persons shall have an equal opportunity for housing regardless of sex, race, color, physical condition, developmental disability . . . , religion, national origin, or ancestry and it is the duty of the local units of government to assist in the orderly prevention or removal of all discrimination in housing through the powers granted under s. 66.433. . . . This section

shall be deemed an exercise of the police powers of the State 
for the protection of the welfare, health, peace, dignity, and 
human rights of the people of this State.\textsuperscript{134}

It is clear from the above statutory enactments that the 
State legislature has been aware of the housing problems in 
Wisconsin for several decades. In particular, it has been aware 
of the problems which beset low and moderate income families. 
However, it has not placed the state affirmatively behind the 
provision of low income housing by mandating their inclusion 
within local communities, even though the problems that it 
cites in earlier legislation continue to mount. Legislation which 
mandates the opening up of local communities to accommodate low and moderate income households is long overdue. 
Some precedent already exists in other states for this approach.

2. The Massachusetts Experience

In the late 1960s the Massachusetts Legislature commis-
sioned a study to be conducted on exclusionary zoning by local 
governments.\textsuperscript{137} That report surveyed 113 selected towns in the 
commonwealth to analyze the use of zoning powers by local 
governments to ascertain whether restrictions were placed on 
residential development for lower income groups. The report 
found a substantial use of large lot zoning involving thirty percent or more of the local territory in at least 21 towns of those 
surveyed, almost all of which were suburban.\textsuperscript{138} As a result of 
this study, the Massachusetts Legislature enacted into law the 
Low and Moderate Income Housing Act, more commonly 
known as the Anti-snob Zoning Act.\textsuperscript{139} The Massachusetts 
Anti-snob Zoning statute enables any public agency, nonprofit 
or limited dividend organization which has had a proposal to 
build low or moderate income housing denied by a local zoning 
board of appeals, to obtain review of that decision by a State 
Housing Appeals Committee.\textsuperscript{140} The same review procedure is 
available if certain prohibited conditions are placed on the

\textsuperscript{134} Wis. STAT. § 101.22 (1975). The legislature has also recognized the need for 
housing for the elderly. See Wis. STAT. § 66.395 (1975).

\textsuperscript{137} LEGISLATIVE RESEARCH COUNCIL, COMMONWEALTH OF MASSACHUSETTS, REPORT 
RELATIVE TO RESTRICTING THE ZONING POWER TO CITY AND COUNTY GOVERNMENTS, SENATE 
No. 1133 (June 1968).

\textsuperscript{138} Id. at 98.

\textsuperscript{139} MASS. GEN. LAWS ANN. ch. 40B, §§ 20-23 (West Supp. 1976).

\textsuperscript{140} Id. § 22.
approval of the proposal. The law establishes a Housing Appeals Committee within the Massachusetts State Department of Community Affairs.

When a review of the decision is sought, the Housing Appeals Committee holds a hearing to determine,

(a) In the case of a denial of application, whether the decision of the local Board of Appeals was reasonable and consistent with local needs;\footnote{141} or

(b) In the case of approval of an application with conditions, whether such conditions and requirements make the construction or operation of such housing uneconomic\footnote{142} and whether they are consistent with local needs.\footnote{143}

Of greatest importance is the provision of the Act which states that in order to be consistent with local needs, there must exist within each community enough low and moderate income housing to exceed ten percent of the total number of housing units reported in the latest decennial census. In the alternative, the amount of low and moderate income housing present in a community must exceed a certain percentage of the local land base in the community.\footnote{144}

If the Housing Appeals Committee finds that the decision

\footnote{141} The Act provides, Requirements or regulations shall be consistent with local needs when imposed by a board of zoning appeals after \[it has conducted a\] comprehensive hearing in a city or town where (1) low or moderate income housing exists which is in excess of ten per cent of the housing units reported in the latest decennial census of the city or town or on sites comprising one and one half percent or more of the total land area zoned for residential, commercial or industrial use or (2) the application before the board would result in the commencement of construction of such housing on sites comprising more than three tenths of one per cent of such land area or ten acres, whichever is larger, in any one calendar year. . . .

\footnote{142} "Uneconomic" is defined in the Act to mean, \[A\] ny condition brought about by any single factor or combination of factors to the extent that it makes it impossible for a public agency or nonprofit organization to proceed in building or operating low or moderate income housing without financial loss, or for a limited dividend organization to proceed and still realize a reasonable return in building or operating such housing within the limitations set by the subsidizing agency of government on the size or character of the development or on the amount or nature of the subsidy or on the tenants, rentals and income permissible, and without substantially changing the rent levels and unit sizes proposed by the public, nonprofit or limited dividend organizations.

\footnote{143} Id. § 23.

\footnote{144} Id. See note 98 supra.
of the board to deny an application was unreasonable and not consistent with local needs, it shall vacate the decision and direct the board to issue a comprehensive permit of approval to the applicant.\textsuperscript{145} If the Committee determines in the case of approval with conditions that those conditions are uneconomic and not consistent with local needs, it will order the board to modify or remove the conditions in order to make the project economical.\textsuperscript{146}

\textit{Board of Appeals of Hanover v. Housing Appeals Committee}\textsuperscript{147} was the first constitutional challenge to the Act to reach the Massachusetts Supreme Judicial Court. There, the court sustained the Legislature's enactment, which superseded local land use regulations for the purpose of promoting the development of low and moderate income housing, finding that it was "a constitutionally valid exercise of the Legislature's zoning power . . . ."\textsuperscript{148} In a subsequent decision, \textit{Mahoney v. Board of Appeals of Winchester},\textsuperscript{149} the Supreme Judicial Court reaffirmed its position in \textit{Hanover}. The court ruled that the delegation of this authority to the Housing Appeals Committee was proper and that the exercise of that authorization and the necessity of providing low and moderate income housing in this statutory manner did not constitute spot zoning.\textsuperscript{150}

The Anti-snob Zoning Act, however, has not met with widespread success. Due to local intransigence, and a variety of procedural delays, local governments have been successful in preventing the construction of large numbers of housing units under the provisions of the Act.\textsuperscript{151} The result is that many

\begin{footnotes}
\item[145] Id. § 23.
\item[146] Id. However, the Committee is barred from ordering the removal of a condition that would make the project unsafe under site plan requirements of either the Federal Housing Administration or the Massachusetts Housing Finance Agency, whichever is financially assisting the project. See note 99 supra.
\item[148] Id. at 341, 294 N.E.2d at 424.
\item[150] Spot zoning exists where a single lot or area is granted privileges which are not granted or extended to other lands in the vicinity and in the same use district. See Board of Appeals of Hanover v. Housing Appeals Committee, 363 Mass. 339, 294 N.E.2d 393 (1973).
\item[151] As of late 1975, 27 decisions have been made by the Housing Appeals Committee; in 21 instances, local decisions were overruled and comprehensive permits granted. These decisions have involved 3,756 units for low and moderate income housing. However, only 216 units are completed and ready for occupancy, 1,553 are in the planning
\end{footnotes}
potential developers, especially the private ones, see the possibility of large sums of money being tied up over an extended period of time which they can ill afford. At this time, therefore, there is a great hesitancy on their part to pursue projects for low and moderate income housing.

3. The New York Experience

Another state which took some affirmative action towards meeting the housing needs of low and moderate income households is New York. That state, however, has since backed away from its originally strong position.

The approach that New York took was to form a State Urban Development Corporation, granting it the authority to construct or rehabilitate housing for persons and families of low income. If the Corporation found that a need for such housing did exist in a particular locality and that private enterprise could not meet that need, then the Corporation was authorized to do so through its own projects. Moreover, if the Corporation determined that it could not comply with local ordinances and regulations, it was authorized to override them. In the ensuing years, this authority was challenged as being a violation of home rule powers, but it was upheld on several occasions.

However, in 1973 the New York Legislature amended the original grant of authority to the Corporation. The amendment prohibits approval of a residential project in a town or incorporated village as long as formal objections by the local government have been submitted to the Corporation. The amendment does not require the local unit of government to offer any justification for its objections, thereby permitting the
local communities to exclude housing for low income persons and families. In this respect, the New York legislation now resembles that of Wisconsin’s County Housing Authority which may not undertake any project within a village or city without its permission, no matter how justified it may be.\(^5\) Presently, therefore, the New York and Wisconsin legislation clearly lack the remedial strength of the Massachusetts Anti-snob Zoning enactment.

4. A Proposal for Wisconsin Legislation

If the local governments of southeastern Wisconsin persist in excluding low and moderate income households from their midst, the Wisconsin Legislature should act on behalf of the general welfare of its citizens. Legislation should be enacted that will require local communities to consider regional and statewide needs for the housing of low and moderate income individuals. It could achieve this objective through a variety of methods. One would be to require that all local units of government adopt and adhere to the housing plans developed by their respective regional planning commissions. In the event that a regional housing plan does not exist, a plan could be developed for the area by a designated state agency. Another possibility which would permit greater local flexibility would be to incorporate some aspects of the Massachusetts Low and Moderate Income Housing Act dealing with the administrative and judicial state review processes. However, it would be desirable to adopt the Act with the following modifications:

(a) Local communities should be required to establish plans which set forth the location and timing of development of the low and moderate income housing within certain prescribed state or regional standards and which must be accomplished within prescribed time periods.

(b) A requirement that police powers (including zoning and subdivision control ordinances) be exercised in conformity with the local plan.

\(^5\) Wis. Stat. § 59.075 (1975). Wisconsin law also provides that two or more municipalities may act jointly to control or operate housing for low and moderate income households. Wis. Stat. §§ 66.40 et seq. (1975). Also, the Department of Local Affairs and Development is permitted to make loans to sponsors of low and moderate income housing projects, but only if “the secretary may reasonably anticipate that a federally aided mortgage or grant may be obtained for permanent financing of the project.” Wis. Stat. § 22.13(3)(b) (1975).
(c) Actual plans developed by a local community should be made subject to state or regional review to ensure compliance with the state or regional standards, and to

1. Ensure that the most undesirable locations are not chosen;
2. Require that the local plans provide a mixing of low and moderate income housing throughout its various residential zones so as to preclude enclaves consisting solely of low and moderate income individuals; and
3. Interrelate the local plans with other state, regional, and local plans to ensure the provision of basic services, such as public transportation, schools, open spaces, employment, and health facilities, in order to provide a viable setting for the residences.

V. CONCLUSION

Many of the communities which ring the major urban centers in the southeastern region of Wisconsin are excluding prospective households on the basis of wealth. While many of these communities claim that they are attempting to further the health, safety and general welfare of their citizens, in many instances the use of these exclusionary practices has its source in parochial and narrow minded interests. The result is that members of low and moderate income households are foreclosed from looking outside of the urban centers in choosing a residence.

This article has explored some of the alternatives available for challenging exclusionary practices. Where their legality has been challenged, decisions have been rendered both for and against a community's right to indirectly shut off certain groups from their midst. As a result of some federal decisions, challengers might be advised to pursue their attacks in state courts under state law. The Wisconsin Supreme Court as of this date has not had the opportunity to address the issue.

A second alternative is the use of regional planning commissions. In its regional plan, SEWRPC offers possible solutions to the present housing needs of the citizens of the region. The strategies it has formulated are designed specifically for the region, taking into account many of its unique characteristics. However, the plans that it proposes do not have the force of law and therefore need not be adopted by the local units of government of the southeastern region of Wisconsin.

If the local communities persist in their exclusionary prac-
tices, the Wisconsin Legislature should act. If it does, it could require that local units of government in the southeastern region, as well as those throughout the state, affirmatively act to eliminate current residential exclusionary practices. Clearly, if the ever tightening ring around Wisconsin’s major cities is not lifted, a significant portion of the state's residents will be deprived of sharing in the benefits of new growth and confined to the deteriorating urban centers of the state. Moreover, the demarcation of classes within society will become even more pronounced.
FIGURE 2


<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Kenosha</td>
<td>117,917</td>
<td>133,200</td>
<td>152,300</td>
<td>156,400</td>
</tr>
<tr>
<td>Milwaukee</td>
<td>1,674,000</td>
<td>1,876,000</td>
<td>2,109,000</td>
<td>2,352,000</td>
</tr>
<tr>
<td>Waukesha</td>
<td>54,400</td>
<td>70,000</td>
<td>85,000</td>
<td>95,000</td>
</tr>
<tr>
<td>Dane</td>
<td>357,000</td>
<td>427,000</td>
<td>497,000</td>
<td>575,000</td>
</tr>
<tr>
<td>Outagamie</td>
<td>62,400</td>
<td>75,000</td>
<td>90,000</td>
<td>106,000</td>
</tr>
<tr>
<td>Washington</td>
<td>65,000</td>
<td>80,000</td>
<td>95,000</td>
<td>115,000</td>
</tr>
<tr>
<td>Walworth</td>
<td>131,000</td>
<td>158,000</td>
<td>186,000</td>
<td>215,000</td>
</tr>
<tr>
<td>其它</td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

FIGURE 4

DISTRIBUTION OF JOBS IN THE REGION BY COUNTY: SELECTED YEARS 1960-1972


FIGURE 3

MEDIAN HOUSEHOLD INCOME IN THE REGION: 1960 and 1972

FIGURE 6
DISTRIBUTION OF HOUSEHOLDS IN THE REGION BY COUNTY: 1960 AND 1970

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percent of Total</td>
<td>Number</td>
</tr>
<tr>
<td>Kenosha</td>
<td>35,455</td>
<td>6.2</td>
<td>35,455</td>
</tr>
<tr>
<td>Milwaukee</td>
<td>315,875</td>
<td>67.8</td>
<td>333,605</td>
</tr>
<tr>
<td>Ozaukee</td>
<td>10,417</td>
<td>2.2</td>
<td>14,793</td>
</tr>
<tr>
<td>Racine</td>
<td>49,738</td>
<td>9.8</td>
<td>49,705</td>
</tr>
<tr>
<td>Waukesha</td>
<td>15,414</td>
<td>3.3</td>
<td>19,544</td>
</tr>
<tr>
<td>Washington</td>
<td>12,557</td>
<td>2.7</td>
<td>17,385</td>
</tr>
<tr>
<td>Waukesha</td>
<td>42,354</td>
<td>9.1</td>
<td>61,928</td>
</tr>
<tr>
<td>Region</td>
<td>465,913</td>
<td>100.0</td>
<td>525,466</td>
</tr>
</tbody>
</table>

FIGURE 7
RESIDENTIALLY ZONED LAND IN THE REGION BY DENSITY CLASSIFICATION: 1971

<table>
<thead>
<tr>
<th>Type of Community</th>
<th>Total Area (Acres)</th>
<th>Residentially Zoned Land</th>
<th>Low Density</th>
<th>Medium Density</th>
<th>High Density</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Percent of Community Area</td>
<td>Percent of Residential Area</td>
<td>Percent of Residential Area</td>
<td>Percent of Residential Area</td>
</tr>
<tr>
<td>Urban</td>
<td>494,390</td>
<td>262,878</td>
<td>53</td>
<td>95,798</td>
<td>37</td>
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<tr>
<td>Rural</td>
<td>1,226,720</td>
<td>640,377</td>
<td>26</td>
<td>141,786</td>
<td>32</td>
</tr>
<tr>
<td>Region</td>
<td>1,721,100</td>
<td>903,255</td>
<td>52</td>
<td>238,821</td>
<td>31</td>
</tr>
</tbody>
</table>

Low-density residential development consists of 0.2 to 2.2 dwelling units per net residential acre, or residential lots ranging from 20,000 square feet to five acres per dwelling unit.

Medium-density residential development consists of 2.3 to 6.9 dwelling units per residential acre or residential lots ranging from 6,000 square feet to 19,999 square feet per dwelling unit.

High-density residential development consists of 7.0 to 17.9 dwelling units per residential acre or residential lots ranging from 1,000 to 5,999 square feet per dwelling unit.

Less than 1 percent

Source: SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION, A REGIONAL HOUSING PLAN FOR SOUTHEASTERN WISCONSIN, PLANNING REPORT No. 20, at 220 (1975).

FIGURE 8
COMMUNITIES IN THE REGION WHICH RESTRICT THE PROVISION OF MODEST-SIZED, SINGLE-FAMILY HOUSING BASED ON MINIMUM FLOOR AREA STANDARDS: 1971

Legend

Modest-sized, two-bedroom single-family units are precluded in 64 of the 87 urban communities in the Region, based on adopted minimum floor area standards. Communities which are considered to restrict provision of modest-sized two-bedroom units are concentrated in Waukesha County, where 22 of 25 urban communities, or 88 percent, exceed recommended minimum floor area standards; and Ozaukee County, where six of eight urban communities, or 75 percent, exceed the standard. Provision of modest-sized three- and four-bedroom units is restricted by floor area requirements most often in these same two counties.

Source: SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION, A REGIONAL HOUSING PLAN FOR SOUTHEASTERN WISCONSIN, PLANNING REPORT No. 20, at 227 (1975).
FIGURE 9
COMMUNITIES IN THE REGION WHICH SEVERELY RESTRICT THE PROVISION OF MODEST-SIZED MULTIFAMILY HOUSING BASED ON ADJUSTED MINIMUM FLOOR AREA STANDARDS 1971

Provision of moisture, multifamily housing is considered to be severely restricted by floor area requirements which exceed adjusted standards in 59 of the 87 urban communities in the Region for efficiency units, 56 communities for one-bedroom units, 42 communities for two-bedroom units, and in 29 communities for three-bedroom units. A total of 16 of the 87 urban communities preclude multifamily housing altogether. Modest-sized efficiency or one-bedroom units are precluded in seven of eight urban communities in Ozaukee County, in eight of 11 urban communities in Racine County, and in 10 of 25 urban communities in Waukesha County.

Source: SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION, A REGIONAL HOUSING PLAN FOR SOUTHEASTERN WISCONSIN, PLANNING REPORT No. 20, at 233 (1975).

FIGURE 10
NUMBER AND DISTRIBUTION OF SECTION 235 HOUSING UNITS IN THE REGION BY COUNTY: JUNE 1973

<table>
<thead>
<tr>
<th>County</th>
<th>Existing</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td></td>
</tr>
<tr>
<td>Kenosha</td>
<td>43</td>
<td>625</td>
</tr>
<tr>
<td>Milwaukee</td>
<td>1,367</td>
<td>1,622</td>
</tr>
<tr>
<td>Ozaukee</td>
<td>23</td>
<td>23</td>
</tr>
<tr>
<td>Racine</td>
<td>418</td>
<td>620</td>
</tr>
<tr>
<td>Waukesha</td>
<td>1</td>
<td>53</td>
</tr>
<tr>
<td>Washington</td>
<td>3</td>
<td>23</td>
</tr>
<tr>
<td>Waukesha</td>
<td>10</td>
<td>310</td>
</tr>
<tr>
<td>Region</td>
<td>1,842</td>
<td>3,716</td>
</tr>
</tbody>
</table>

Source: SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION, A REGIONAL HOUSING PLAN FOR SOUTHEASTERN WISCONSIN, PLANNING REPORT No. 20, at 250 (1975).
The existing need strategy allocates almost 74 percent of the 17,640 total units needed to the Cities of Milwaukee, Racine, and Kenosha. While much of the existing need may be located in these urban areas, this strategy may severely restrict the locational choice of households. The dispersal strategy, on the other hand, allocates more units to the suburban and outlying rural fringe housing analysis area. The composite factor strategy attempts to recognize each area's housing need, its ability to absorb additional publicly assisted housing units, and its past efforts in meeting the housing needs of low- and moderate-income households in its area, and thereby provide a more balanced distribution of units, thus affording greater locational choice of housing for households in need.

Source: SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION, A REGIONAL HOUSING PLAN FOR SOUTHEASTERN WISCONSIN, PLANNING REPORT No. 20, at 414 (1979).
FIGURE 12
PRIORITY HOUSING ANALYSIS AREAS IN THE REGION FOR NEW SUBSIDIZED HOUSING CONSTRUCTION BASED ON EMPLOYMENT OPPORTUNITIES AND DEVELOPABLE LAND
