ZONINGPRACTICE June 2005

AMERICAN PLANNING ASSOCIATION

ISSUE NUMBER SIX

PRACTICE CONTEXTUAL INFILL

6

Out With the Old, in With the New: The Cost of Teardowns

By Lane Kendig

Teardowns destroy an existing structure to build another.

Usually that replacement building is much larger and often of a different character than the original, affecting both adjacent landowners and the neighborhood—sometimes positively, but most often negatively.

From a regulatory perspective, it is important for planners to know that the economic conditions leading to a teardown result from social issues unrelated to design. Teardowns often occur in desirable neighborhoods where the housing stock is sound, but dated. A variation of the teardown can occur in neighborhoods where the housing stock is deteriorated. Many deteriorating neighborhoods would benefit from teardowns and replacement buildings, especially if the loss is not to buildings with significant historic value.

Obsolescence is a major reason for teardowns. Houses in an aging neighborhood may be a minimum of 30 to 50 years old. Bathrooms, kitchens, bedrooms, and storage areas are too small for modern tastes. Styles, colors, equipment, and materials are also dated. Age-related problems, including cracks, heating, air conditioning, plumbing, and general restoration often need attention. Less frequently, structural problems can lead to a teardown, especially in undesirable areas. The perfect setting for a teardown is where the home is out of sync with the perceived needs of the individuals interested in purchasing the property.

All photos by Michael Davidson

The implications of teardowns are potentially far-reaching, altering both the physical character and economic status of long-established neighborhoods in both cities (top image) and suburbs (bottom image).

ECONOMICS AND TEARDOWNS

Economic conditions differentiate the teardown from a newly built too-big house. A lot with a potential teardown has a very high land value relative to the existing house. For new housing, the general rule is that lot value should be no more than 25 percent of the total value of the property, although this will not necessarily remain constant over time. For teardowns, the lot is likely to be 50 percent or more of the value of the property, and in many cases, the land value will exceed the value of the house. If a purchaser can buy a vacant lot in a similar location, it makes little sense to spend substantially more for a teardown lot. The market must support the teardown as a rational investment because the total cost will include the lot, the initial house, demolition costs, and the cost of the new house.

The economic conditions that lead to teardowns also have an impact on neighboring property owners. As land values inflate and taxes rise (a condition accelerated by teardowns) current residents—many of whom are longtime neighborhood residents—may oppose teardowns if they feel they are being taxed out of their homes. Others may look at the increase as an opportunity to profit and move up to more modern homes. Such disparate views make consensus difficult.

Neighborhood character is reflected in lot size, house size and height, and vegetation. In new subdivisions filled with too-big houses, the community as a whole may react negatively to this characterization, but most residents of those subdivisions will see little threat from the house next door. On the other hand, teardowns alter the existing character of the neighborhood. For planners, this physical alteration, in combination with the resulting eco-

Editor's Note: *Few issues define the modern planning dilemma like residential teardowns. The number of research inquiries on teardowns logged by APA's Planning Advisory Service reflects planners' concerns that teardowns are a clear and present threat to community character, housing affordability, and historic preservation. There is also no shortage of media coverage on this issue as it plagues older suburbs, gentrifying urban neighborhoods, and resort communities. In a sense, communities at risk for teardowns are victims of their own success. But are teardowns a symptom of a throwaway culture or a necessary byproduct of modernization? In this issue of* Zoning Practice*, planning consultant Lane Kendig examines the nature of this land-use phenomenon and provides helpful zoning tools for planners grappling with it. An in-depth analysis of teardowns and similar development patterns is available in* Too Big, Boring, or Ugly: Planning and Design Tools to Combat Monotony, the Too-Big House, and Teardowns, *(PAS Report No. 528).*

nomic impact, makes the problem far more difficult to address.

Teardowns can also mean a mass gentrification of the neighborhood, threatening a community's supply of affordable housing. The most vulnerable neighborhoods are those where housing costs are lowest, because the market considers the neighborhood desirable but the dwellings are not in keeping with modern tastes. Teardowns and gentrification reduce the community's ability to ensure the availability of housing for municipal employees, service workers, and working-class residents.

PREDICTING TEARDOWNS

Predicting the potential for teardowns before they occur is an essential first step in combating them. Teardowns are market-driven. The vulnerable neighborhood is a highly desirable one, and market trends help identify a teardown problem in its early stages. In larger cities, neighborhoods must be studied for signs of changing economics (See "The Two Faces of Gentrification: Can Zoning Help?" *Zoning News*, June 2002), while in the suburbs, the whole community is likely to exhibit the change. Access to public transportation, waterfronts, recreational opportunities, and tourist amenities can also help create the shift (See "Short-Term Vacation Rentals: Residential or Commercial Use?" *Zoning News*, March 2002).

Teardowns are typically found in communities where the average size of a new house is well above the national average. Census data about the community and regional comparisons can also reveal a potential for teardowns. For example, a community whose average income is increasing at a faster rate than its neighbor's has a greater potential for teardowns.

Teardown locations are somewhat predictable. First, they occur in neighborhoods where the standard unit is among the smallest in the community. Depression-era homes and those from the late 1940s to 1950s are particularly vulnerable. The 900- to 1,400-square-foot house is at risk because it is about half the size of the average home in 2000. A second indicator of vulnerability is the number of stories. For example, ranch houses are vulnerable in an era when two-story homes are the standard.

Planners can identify at-risk neighborhoods by first driving around town and then looking for a gap between neighborhood house size and zoning district regulations, using a comparison of average house size and footprint with the building pad defined by the setbacks. On small lots, teardowns or major reconstruction (with the same net impact) are likely anywhere the house footprint is less than 60 percent of the building pad.

A late-19th-century working-class "cottage" now abuts a 10,000-square-foot single-family home in this gentrifying Chicago neighborhood.

If community officials can identify at-risk neighborhoods before problems arise, it will be much easier to find solutions. Regulations are far easier to revise when they do not create a burden for buyers or residents who want to upgrade a home.

REGULATING TEARDOWNS

Zoning tools to regulate teardowns include setback, building coverage, floor area ratio, height, and building volume ratio. Once a neighborhood is identified as being at risk for teardowns, the first objective for planners is to create a process that allows for "reasonable" home expansion but also preserves neighborhood character. The realities of modern living require planning efforts to acknowledge and permit the expansions. Without it, long-term residents and potential buyers may look elsewhere to live.

Proper height and bulk regulations would have prevented the construction of this three-story condominium building in Chicago's Bungalow Belt.

Ideally, regulations will allow normal neighborhood upgrades to retain vitality and prevent the infiltration of the too-big house, which turns the neighborhood over to another economic class. A complete study would look at typical floor plans of the neighborhood's dominant housing style, exploring various expansion strategies to provide guidance for homeowners. Such a study is best done by an architect who can understand and handle floor plan revisions. The planner and architect would then work together to evaluate the zoning standards. Making architectural, lot layout, and design concepts available to the public will educate both the community and its builders.

If the neighborhood has a tradition of context-sensitive home additions, planners can determine if they provide a reasonable basis on which to draft new regulations.

Setback. Setbacks that allow for a major expansion of building size should be reduced. The goal is modest expansion, not filling the building pad. This simple and effective tool works for existing neighborhoods where homes are built to the setback line and have similar ground coverage. In such cases, planners must address building height. For example, in neighborhoods with single-story houses, room additions happen on the ground floor, which may mean a less drastic cutback in the building pad and a height reduction to maintain the one-story character of the neighborhood.

Cape Cod-style conversions require a tighter setback range. For example, current zoning might have setbacks permitting a 7,700-square-foot house on a 10,000-square-foot lot, though the neighborhood has homes averaging 1,100 to 1,500 square feet. Revising the setbacks to permit a 3,200-square-foot house is less damaging to the neighborhood's character.

Building Coverage. Building coverage follows the model of setbacks. Because it regulates ground coverage only, there are no essential differences between it and setback as a useful technique for teardown regulation. Building coverage also requires a height standard. The choice between setbacks and building coverage might be determined by the standard currently in use.

Floor Area Ratio (FAR). The model here is similar but requires more care because floor area is a more precise measure and directly involves the potential of multiple floors. The need to consider height is even more critical because FAR does not distinguish between ground- and upper-floor expansion. Using FAR may be a better tool for regulating teardowns in neighborhoods with a mix of housing styles, where the homes were built by different developers but are similar in size.

Height. Height is an important element in neighborhoods where the number of stories and roof pitches are defining features. Dramatic changes in height can be a problem. It is likely that in neighborhoods with ranch, Cape Cod, or split-level housing styles the maximum height established by zoning district regulations is substantially higher than the height of the existing building stock. The standards should be amended to respect existing character. Even in neighborhoods with two-story houses, the original homes may have low roof pitches—5/12, for example. With end gables, adding 15 feet to the rear of a 24-foot-wide house would raise the roof from five feet to a little more than eight feet. If the remodeling involved a change in roof pitch to 9/12, the roof height would nearly triple, from five feet to more than 14.6 feet. While the three-foot change would be merely noticeable, a 9.6-foot change is similar to adding a story.

Building Volume Ratio (BVR). BVR is the most flexible of the regulations because changes are tracked automatically, forcing the architect to make trade-offs. In general, BVR is not recommended as a primary regulatory tool for teardowns in existing neighborhoods because it requires detailed explanation and a change in the regulation format most familiar to residents.

The one exception is the community where historic development patterns create significant size gradients. For example, in many New England seaport towns, captain's houses transition quickly to small, historic Cape Cods—all within a few blocks. While it is possible to divide the neighborhood into smaller sections with overlays designating areas of varying BVRs, this may result in mapping battles with homeowners wanting to move the overlay boundaries for personal gain. Thus, building volume can be tied to a radius around the lot so overlay district lines need not be drawn.

ADDITIONAL MEASURES

In older neighborhoods with mature trees, house size is by no means the only determinant of community character. The saplings planted during the development of older subdivisions may now be as tall as 60 feet, adding to both the economic and aesthetic value of the neighborhood. Vegetation is equally important in determining character. A strict requirement to preserve front-yard vegetation will help preserve that character.

Communities with at-risk neighborhoods have two additional volume measures where the increase in floor area or BVR is offset by an increase in landscape volume ratio.

Contextual development is possible. A new building (to the right) abuts a much older structure of similar size.

Landscape Volume Ratio (LVR). LVR measures soft vegetative volume. In mature residential communities this is as important as building volume because streets are likely to be lined with mature trees and the lots covered with mature landscaping. In many older neighborhoods landscape volume may be larger than building volume. A teardown is likely to result in a loss of mature vegetation. The LVR provides a means of measuring this element of neighborhood character.

Site Volume Ratio (SVR). SVR combines the two volume measures (BVR and LVR) and is calculated by subtracting the BVR from the LVR. Thus, a positive SVR indicates a landscape volume greater than the building volume. A negative value indicates building volume as the dominant value. The SVR is a means of calculating the existing community character by taking into account both the building and the landscaping.

The SVR offers some flexibility in that it rewards the landowner who preserves existing trees and plants new ones with more volume. Landowners who remove existing trees to make room for expansions are subject to reduced building volumes. Once teardowns begin, teardown proponents value regulatory flexibility. If a community's character can be retained, teardown opponents are less likely to be as adamant.

The precision and flexibility of the SVR makes it easier to demonstrate the impact of various options. For example, a family may want a house with 10-foot ceilings and a 9/12 roof pitch, but the house exceeds the SVR. The relative impact of different ceiling heights or roof pitches can be instantly calculated, making trade-offs between roof, ceilings, and floor areas easier to understand. Perhaps only one room needs the higher ceiling, and the roof pitch can be retained to meet the regulations. Also, adding four 12-foot-high evergreen trees might avoid resizing one room.

REGULATIONS TO PRESERVE COMMUNITY CHARACTER

Identifying at-risk neighborhoods by calculating the floor area permitted within the setbacks and comparing it with existing and proposed new homes in residential districts around the community also helps planners determine deck placement and the location of other outdoor elements when the building pad is full.

The first step is to do a maximum floor area calculation based on setbacks and then compare it to average buildings on the block. Using old building permits or plans will make the task much easier.

The second step is to compare maximum height regulations with what already exists in the neighborhood. The difference between possible and existing heights represents a potential character problem for the neighborhood if teardowns occur. If the difference is slight, and unless there are unique architectural or historical characteristics involved, the impact from teardowns will be minimal.

The third step is to consider the building possibilities within the setbacks. For example, is there room for decks or other outdoor accessory structures common to the neigh-

borhood? If build-out eliminates such elements, code changes are needed irrespective of the teardown issue. When developers in new neighborhoods pack the site, variance requests come pouring in within a year.

Because teardowns typically occur on smaller, older lots, simple and conventional regulations (see subsections below) are better than complex volume controls because they require adjustments rather than a new generation of regulation. If regulations change slightly—well before the first teardown—residents and homebuilders will likely not take issue with them. New regulations will invariably generate greater suspicion than the modification of old ones. Further, explaining new concepts to existing residents is challenging because new regulations always invoke fear. The exception is when new regulations are done as part of a comprehensive update of the code. When new standards are applied community-wide, and not exclusively to neighborhoods at risk for teardowns, residents feel less singled out and thus less resistant to change.

Setback and Height. Chances are, existing regulations address only setback and height. As a result, regulations need to be revised to conform to the neighborhood's existing houses—old homes are not necessarily built to those standards—to keep the new houses in character with the neighborhood.

The first step is to determine the building coverage of existing homes and then to compare it to the setbacks in the zoning ordinance. This is best done with high-quality aerial photos or GIS data placing the building footprint directly on the lot. Anyone familiar with building practice can gauge height, and a planner and building inspector can make close determinations with minimal measurements. Better yet are floor plans of typical neighborhood units that a jurisdiction may have on file.

The second step is to draft regulations that permit reasonable increases in house size so genuine community improvements remain possible. Home expansions must not destroy community character, and there is no model for appropriate expansion size. Providing a size range and using imaging tools (e.g., build-out scenarios juxtaposing photos of existing units with proposed units) can help residents measure the overall effect of a change.

Adjusting setbacks may create problems for garages or patios. Fortunately, this is easily alleviated. Most ordinances have a section of permitted intrusions into setbacks, including chimneys, roofs, stairs, and other elements. When increasing setbacks to limit house size, the impact on outdoor spaces or secondary buildings is an important consideration.

It may be more difficult to adjust height standards because it is likely that existing homes are substantially below the maximum allowable height predicated by the ordinance. A common maximum height for many communities is 35 feet. Ranch houses built in the 1950s scarcely approach 20 feet. Cape Cods and split- and tri-levels also have heights substantially lower than 35 feet. A height reduction in such neighborhoods limits the possible detrimental impact of teardowns. Even in neighborhoods with two-story houses, roof heights may be well below 35 feet due to shallower roof pitches than those currently popular.

The public process at work in a suburban community inundated with teardowns.

Building Coverage and Floor Area Ratio (FAR). If communities have standards for building coverage and FAR, limiting home size on teardown sites can be accomplished by adjusting the general ordinance standard. If a community is going to use building coverage and FAR with setback and height standards, a careful study of existing houses can determine allowable changes, including increases to the standards.

Overlay Districts. Overlay districts keep replacement houses in character with neighboring properties, permitting the protection of a wide variety of neighborhoods. Once neighborhood standards are identified, the critical element is the purpose statement for the overlay district. The purpose of the overlay is to protect the character of the existing neighborhood, which was built to a standard substantially lower than the one permitted by the district standards. In effect, the neighborhood is over-zoned because out-of-scale buildings are permitted. Planners can explain to citizens that the neighborhood is different in character than areas built to the district standards, and that the overlay's reduced bulk standards are needed to preserve character. The overlay designation offers what other districts do not: preserving lot size and limiting homes to a compatible size. Creating a new zoning category simply clutters the ordinance. The uses in the district will not change. Bulk standards for the overlay add only a line to a table in the code for bulk and lot standards.

Neighborhood Conservation Districts. Neighborhood conservation districts are variations of overlay districts. They apply additional setback, floor area, or height standards for neighborhoods built well below the maximum intensity of the zoning district. These are areas where the character would be damaged or destroyed by homes built to the maximum standards of the district. Such district designation is also useful where the zoning has changed over the years so that lots built under the old zoning became nonconforming under the new regulations.

Downzoning. Downzoning is necessary in many older cities and some older suburbs. Milwaukee and Chicago underwent comprehensive rezoning in recent years. Those cities found blocks or sections of neighborhoods zoned far more intensively than was necessary given the existing building stock. Suburban landowners often oppose downzoning, but in cities, protecting the character of an existing neighborhood of similar buildings is likely to garner support.

Waiting Period. This approach gets to the heart of the teardown phenomenon—the economic conditions that create it. In Lake Forest, Illinois, an old and affluent Chicago rail suburb, most new housing and much old housing is very large, but a portion of the town dating back to its earliest period contains small lots with modest homes. Though many are protected by a historic district designation, some were prime candidates for teardowns.

Lake Forest's code requires a two-year waiting period if a demolition permit is refused. The prospect of a two-year delay before tearing down a recently purchased

building, and then subsequent delay in getting approval, gives the city great negotiating strength to get architects to comply with its concerns about the future new building. The city has had regulations addressing the too-big house for many years.

CONCLUSION

A major challenge to new and old communities across the nation is to maintain the character of the community or neighborhood. Teardowns are largely linked to an overheated economic condition that can render a neighborhood obsolete. Communities with small houses and charming neighborhoods can anticipate this problem. Planning can provide a way to upgrade existing homes without teardowns that totally alter the neighborhood's character, but the time to act is before economic conditions create a demand for those teardowns. The tools described in this issue of *Zoning Practice* will help you achieve that end.

A packet of information on zoning options for teardowns is available to *Zoning Practice* subscribers by contacting Michael Davidson, editor, *Zoning Practice*, at the American Planning Association, 122 South Michigan Avenue, Suite 1600, Chicago, IL 60603, or by sending an e-mail to mdavidson@planning.org.

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NEWS BRIEFS

LINGLE

By Stuart Meck, FAICP

The United States Supreme Court has overturned a 25-year-old ruling on what constitutional test should be applied in determining a taking, narrowing the grounds for landowner challenges.

In the case, *Lingle v. Chevron*, decided in May, the Court, in a unanimous opinion written by Justice Sandra Day O'Connor, abandoned the long-standing two-prong takings test of its 1980 decision, *Agins v. City of Tiburon*. The *Agins* Court had held that application of a general zoning law to a particular property results in a taking if the ordinance does not "substantially advance legitimate state interests . . . or denies an owner economically viable use of its property." A takings claim could be brought under either prong.

Reconsidering the *Agins* rule, the Court said that the "substantially advances" language is not an appropriate test for determining a taking because "it prescribes an inquiry in the nature of due process"—whether a regulation fails to serve any legitimate governmental objective because it was arbitrary or irrational. The *Agins* language, the Court said, was "regrettably imprecise" and resulted in an ambiguous overlap between takings and due process claims. An additional problem was the practical problem of requiring courts to "scrutinize the efficacy of a vast array of state and federal regulations—a task for which courts are not well suited."

> The *Agins* language, the Court said, was "regrettably imprecise" and resulted in an ambiguous overlap between takings and due process claims.

Lingle was not a land-use case. Instead, it involved an attack on the constitutionality of a Hawaii statute that limited the rent that oil companies may charge dealers leasing company-owned stations. The statute's purpose was to prevent concentration of the retail gasoline market and the potential for high prices for consumers by maintaining the viability of independent lessee-dealers.

Chevron's complaint included a takings claim that the statute did not substantially advance the state's asserted interest in controlling retail gas prices. Trial evidence failed to demonstrate that, even if the rent cap did reduce lessee-dealer's costs, they would not pass on savings to consumers and it was likely that the rent cap would discourage oil companies from building new stations for lease. Applying the first prong of the *Agins* test, a federal district court had held the statute constituted an uncompensated taking, and the Ninth Circuit Court of Appeals affirmed.

Justice Anthony Kennedy filed a concurring opinion in which he emphasized that *Lingle* "does not foreclose the possibility that a regulation might be so arbitrary or irrational as to violate due process," and that the failure of a regulation to substantially advance a government objective is relevant to that inquiry.

Land-use attorneys and law and planning professors contacted by *Zoning Practice* expressed mixed views about the ruling. Professor Daniel R. Mandelker, FAICP, of the Washington University School of Law declared that *Lingle* is "one more step toward the end of the property rights era in takings law." He predicted that "if takings based on partial economic loss will be few and far between, then takings law will have a diminished role in zoning litigation."

Nancy Stroud, AICP, a partner with the law firm of Weiss Serota Helfman Pastoriza Cole & Boniske in Fort Lauderdale, Florida, commented that land-use challenges under a substantive due process theory have "been very difficult for plaintiffs to win in the last several decades, especially in certain federal circuits that require that the government action 'shock the conscience' of the court or that limit such claims to those involving legislative (versus administrative or quasi-judicial) actions." The analysis in *Lingle*, said Stroud, a member of APA's Amicus Curiae Committee, "confirms the folly of using the substantive due process clause to interfere with legislative decisions in the regulatory field. I would look instead to more litigation based on the equal protection clause, or even the First Amendment, with claims based on alleged discriminatory motive because of the plaintiff's exercise of political speech or based on other improper motives."

Edward Sullivan, a partner with the law firm of Garvey Schubert and Barer in Portland, Oregon, and a member of APA's Amicus Curiae Committee, called Lingle "a significant case which clarifies takings law considerably. No longer will landowners be able to threaten state or local governments with a costly battle of experts over whether a regulation is effective in meeting its stated purposes as a taking issue."

"In taking away *Agins*' 'substantially advances' prong as a stand-alone takings test that had inadvertently 'found its way into our case law,'" says Brian W. Blaesser, a partner with Robinson & Cole in Boston. "The Supreme Court

has perhaps added a measure of strength to that 'diluted constitutional clause' known as substantive due process." But Blaesser added that substantive due process claims are not easy to bring because of another test that federal courts employ: "This test, derived from an *employment* law case, states that before a court may reach the alleged substantive due process violation, a landowner denied an approval must first prove a legitimate claim of 'entitlement' to that approval so as to establish a protected property interest. This test has created an almost insurmountable threshold for plaintiffs whenever land-use approvals are deemed discretionary. Until the Supreme Court clarifies or eliminates this test, substantive due process will never operate at full strength as a remedy for arbitrary or irrational regulation by government."

What remains to be seen, says Alan Weinstein, professor of law at Cleveland State University, "is whether *Lingle* will apply a brake to state courts, such as those in Ohio, which all too often second-guess the substantive correctness of local government's land-use policies in 'as applied' challenges. While there must still be some room for such challenges in states like Ohio, where legislative land-use decisions can be, and routinely are, overturned by popular referendum, hopefully, *Lingle* has sent a clear signal that courts should defer to the legislative policy judgments embodied in land-use regulations."

Jesse J. Richardson Jr., an associate professor in Urban Affairs and Planning at Virginia Tech in Blacksburg, believes that *Lingle*'s implications "will be slim to none. The case may foretell of added validity of substantive due process claims, but substantive due process has been slowly gaining steam for years now."

Ben Ockner, an attorney with Berns, Ockner & Greenberger in Cleveland, Ohio, contends that *Lingle* "should not have a significant impact on takings claims arising from a city's unconstitutional application of zoning regulations to a particular property. Where a court determines that the prohibition of a property owner's proposed use of property fails to substantially advance a legitimate governmental interest (a 'substantive due process taking'), the court will be hard-pressed to determine that the property owner did not have a reasonable investment-backed expectation in pursuing that use of the property." Ockner questions whether the Court's comments in *Lingle* regarding the proper standard of review by trial courts in facial constitutional challenges of municipal ordinances will cause confusion over the proper standard of review in applied constitutional challenges. "Nowhere in *Lingle* does the Court differentiate between the two standards of review, and it may not be clear that *Lingle* was a facial challenge, as was *Euclid v. Ambler Realty Company* [the 1926 U.S. Supreme Court decision that first upheld the constitutionality of zoning] upon which the Court relied. It is clear from Euclid that zoning regulations which are constitutional on their face may be unconstitutional as applied to specific property under certain circumstances, and that a heightened level of scrutiny is required in an applied challenge."

Michael Berger, a partner with Manatt, Phelps & Phillips in Los Angeles, who has argued several major takings cases before the Supreme Court, is also concerned about the standard of review of government action on due process grounds in the post-*Lingle* environment. "If the standard is an 'anything goes,' or an affirmance if any rationale can be conjured by a court after the fact to support the regulation, then the government will benefit from a laissez-faire type of review." Like Nancy Stroud, he notes that some federal courts of appeal have adopted a "shocks the conscience" test for due process violations, drawing from extreme police misconduct cases that involve involuntary stomach pumping and high-speed chases through residential areas. "But is that what will, or should, happen in land regulation cases?" Berger asks. "Given that the land-use process typically involves lengthy studies and multiple public hearings and decisions, a more apt model would examine the decision and judge it against the Constitution on a less 'shocking' level."

Concerned about how the decision might impact the planning profession, as well as state and local governments, the APA Amicus Curiae Committee filed an amicus brief drafted by Professor Tom Roberts of Wake Forest University Law School and Edward Sullivan. APA urged the court to jettison the "substantially advances" test and argued that courts should not substitute their views of the wisdom or efficacy of state economic legislation under the guise of the Takings Clause. APA's brief pointed out, in part, that "[t]he question of the validity of governmental action is not a part of the takings inquiry, and it ought not become so based on the historical confusion between due process and takings. The adoption of legislation, particularly at the local government level, aided by the planning process, involves the participation of all segments of the community working to define the public interest. Allowing judges to second guess legislation will undermine the public's role in the democratic process. Intermediate judicial scrutiny is neither needed nor justified to protect those who are well represented in legislative halls."

Stuart Meck, FAICP, is a senior research fellow in APA's research department.

Editor's Note: *Zoning Practice* will cover the entire recent series of four U.S. Supreme Court cases (*Kelo v. City of New London, San Remo Hotel v. City and County of San Francisco, Lingle v. Chevon*, and *City of Rancho Palos Verdes v. Abrams*) in the August issue, addressing various aspects of land-use planning in an article by Lora Lucero, a land-use attorney in New Mexico and the former and current interim editor of *Planning & Environmental Law*.

Cover photo by Michael Davidson. Photo shows the changes in density in a former working-class Chicago neighborhood.

VOL. 22, NO. 6

***Zoning Practice* is a monthly publication of the American Planning Association. Subscriptions are available for $65 (U.S.) and $90 (foreign). W. Paul Farmer, AICP, Executive Director; William R. Klein, AICP, Director of Research.**

Zoning Practice (ISSN 1548–0135) is produced at APA. Jim Schwab, AICP, and Michael Davidson, Editors; Barry Bain, AICP, Fay Dolnick, Megan Lewis, AICP, Marya Morris, AICP, Rebecca Retzlaff, AICP, Lynn M. Ross, AICP, Sarah K. Wiebenson, Reporters; Julie Von Bergen, Assistant Editor; Lisa Barton, Design and Production.