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Zoning's Centennial: A Complete Account of the Evolution of Zoning into a Robust System of Land Use Law—1916-2016 (Part II)

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ZONING AND PLANNING LAW REPORT

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ZONING'S CENTENNIAL: A COMPLETE ACCOUNT OF THE EVOLUTION OF ZONING INTO A ROBUST SYSTEM OF LAND USE LAW—1916-2016 (PART II*)

John R. Nolon[1]

I. The Surprising Origins of Smart Growth[2]

The idea that local land use law can intelligently shape settlement patterns was not a familiar concept in the late 1960s when the Town of Ramapo, New York adopted an ordinance that delayed development permits until the Town could provide needed infrastructure.[3] Ramapo was experiencing unprecedented growth as one of the closest northern suburbs of New York City. Developers, who in some cases had to wait years for services to their land, sued; they argued that these phased development controls were intended to prohibit subdivisions and restrict population growth, which is not authorized under the state's zoning enabling legislation.[4]

New York's highest court disagreed, holding that "phased growth is well within the ambit of existing enabling legislation."[5] The court found that Ramapo was not acting to close its borders to growth, but was trying to prevent the negative effects of uncontrolled growth.[6] It found that Ramapo's zoning was not in violation of the Federal or New York State Constitutions because a rational basis for phased growth exists where "the existing physical and financial resources of the community are inadequate to furnish the essential services and facilities which a substantial increase in population requires."[7]

Another form of growth control, a strategy that became known as smart growth, was created 25

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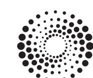

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years later in Maryland, under Governor Parris Glendenning (now President of the Smart Growth Leadership Institute).[8] He radically changed state budget priorities by investing state infrastructure funds in priority growth areas to foster new development and by acquiring open space in conservation areas to preserve natural resources. This approach controlled growth in order to reign in the ill effects of sprawling land use patterns. Such patterns evolve gradually, as the land use blueprint contained in the municipal zoning ordinance is built out, one project at a time.

Maryland did what the *Ramapo* court suggested that the New York State legislature should do. "Of course," the court wrote, "these problems cannot be solved by Ramapo or any single municipality, but depend upon the accommodation of widely disparate interests for their ultimate resolution. To that end, State-wide or regional control of planning would insure that interests broader than that of the municipality underlie various land use policies."[9]

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Glendenning's strategy called for local action. If local governments are to revise their basic blueprint and accomplish smarter growth, how should they proceed? State law provides numerous planning tools for municipalities to use to accomplish growth and conservation objectives. Principal among these, of course, is the comprehensive plan, the ideal document to account for the rational allocation of land use.

Local plans properly drafted to accomplish smart growth call for the use of a host of land use techniques that are capable of creating smarter, less wasteful, and more economically-efficient development patterns. These include, among others, cluster zoning, performance zoning, overlay zoning, floating zones, transit oriented development, traditional neighborhood zoning, planned unit development zoning, the purchase of development rights, the imposition of conservation easements, and the transfer of development rights. In addition, comprehensive plans can guide the creation of capital budgets and the funding of water, sewer, roads, lighting, sidewalks, parks, and education infrastructure in areas where denser development is needed.

Today, priority growth areas are found in cities and urban villages, which are out-competing suburbs for growth and its benefits. Urban neighborhoods are fueling the economy by spiking construction and retail jobs, increasing real estate sales, brokerage commissions, financing, and title insurance as well as providing urban amenities to newly formed households looking for lively places to work and live. These efforts in the cities and villages that host our colleges, hospitals, affordable housing, restaurants, and entertainment venues make both themselves and development in adjacent communities more viable. Workers and residents, for example, are attracted to a transformed mixed-use office park when they can access the shopping, night life, and ser-

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vices available in a nearby, rejuvenating city or village.

Smart Growth is a popular label for a growth strategy that addresses current concerns about traffic congestion, disappearing open space, non-point source pollution, the high cost of housing, increasing local property taxes, longer commutes, excessive fossil fuel and energy consumption, and the diminishing quality of community life. What was barely perceptible in the real estate market 15 years ago is rapidly becoming a booming business. Developers make it clear that they will invest in this new market, but only where local mayors and councils are champions of sustainable development, where a clear local vision and conforming zoning are in place, and where the local land use approval process works efficiently.

States are following Maryland's example, learning how to shape spending policies to influence local action. They are adopting smart-growth infrastructure plans, new energy plans, complete street infrastructure policies, main street programs, climate-smart communities initiatives, brownfield spending budgets, and transit-oriented development policies and programs. Together, these state efforts create a clear target for local governments and developers to address.

What is smart about these policies and the projects they spawn, in addition to being sensitive to powerful new market trends and utilizing existing infrastructure, is that they also greatly reduce, on a per household basis, water consumption, energy use, building materials used, and the impervious coverage that causes storm water runoff and flooding. These developments can also be more affordable, particularly where localities offer bonus densities to developers in exchange for workforce housing, bringing office, research, retail, and service workers closer to where they work.

II. The Advent of Local Environmental Law[10]

As American development progressed into the 1980s, the landscape changed due to the prevalence of sprawl. People became perturbed at the local level, where environmental degradation is painfully obvious. Natural resources were threatened. Open space, wetlands, and habitats—and their obvious local benefits—diminished. Many of these problems were beyond the reach and competence of federal environmental law, with its primary focus on point source pollution of the air and navigable waters.[11] As these worries deepened, local leaders and their lawyers gradually learned to rely on "local environmental law" as an antidote and, in doing so, greatly widened the net of land use law.

As land use regulation matured during the 1950s and 1960s, the line between physical, or infrastructure, planning and natural resource protection blurred. In 1955, for example, rezoning that increased lot sizes in single-family zones to protect drinking water from pollution was upheld in *De Mars v. Zoning Commission of Town of Bolton*.[12] The Connecticut Supreme Court rested its decision, in part, on the fact that one of the purposes of the state zoning enabling act was to promote "the most appropriate use of the land."[13] The National Flood Insurance Program, created in 1968, exerted an early and strong influence on the initiation of local environmental legislation.[14] It required localities to adopt and enforce floodplain zoning restrictions so that local property owners would be eligible for flood disaster insurance and payments.[15] Although originally focused on minimizing property loss and personal injury, flood insurance regulation gradually recognized and, in some cases, protected the ecological services provided by floodplains. This concern for nature gradually grew as local environmental law progressed into the 1990s.

Local land use law, we now understand,

dictates how much of the land is covered with impervious surfaces, causing flooding; how many miles of roads are built, fragmenting habitats and watersheds; how many septic systems, sewer plants, and water systems are created, diminishing ground and surface water quantity and quality; and where buildings and improvements are located, increasing vehicle miles traveled and air pollution, aggravating climate change. Quite obviously, regulating land development and environmental considerations are intimately linked.

As local environmental perturbations increased, more localities adopted laws that protect natural resources and lessen environmental pollution. These local environmental laws take a number of forms and accomplish an array of objectives. They include local comprehensive plans expressing environmental values, zoning districts created to protect critical environmental areas, environmental standards contained in subdivision and site plan regulations, and stand-alone environmental laws adopted to protect particular natural features such as ridgelines, wetlands, floodplains, stream banks, existing vegetative cover, and forests. Local governments have creatively used a variety of traditional and modern powers that their state legislatures have delegated to them to address locally occurring environmental problems.

Much progress has been made under the authority to encourage the appropriate use of the land through zoning. In some states, however state legislatures are more explicit. They authorize local governments, for example, to protect the physical and aesthetic environment, control development in floodplains, prevent soil erosion, or require local governments to conduct environmental impact reviews before approving development proposals.

The evolution of this authority is seen in South Carolina. The state constitution authorizes the legislature to provide for "the structure and organization, powers, duties, functions and responsibilities of the municipalities."[16] The state constitution says that "[t]he provisions of [the] Constitution and all laws concerning local government shall be liberally construed in their favor," and that any powers granted local governments by the constitution and laws "shall include those fairly implied and not prohibited by [the] Constitution."[17]

The South Carolina Legislature through the South Carolina Local Government Planning Enabling Act, which requires local plans to include natural resource components, statutorily implemented this broad grant of local authority.[18] State law requires that all zoning and land use regulations must be in accordance with the comprehensive plan.[19] The Act also authorizes a variety of Neo-Euclidian techniques to be used, and makes it clear that "any other planning and zoning techniques may be used."[20] Municipalities are authorized by this state law to consider "the protection of . . . ecologically sensitive areas" in adopting their zoning laws.[21]

We learn two key lessons from this continuing progress toward a robust system of local environmental law. The first is that local legislators, driven by residents animated by environmental degradation, have surprisingly broad powers to protect the environment in many states. This springs from the parochial nature of local land use law, where citizens within constrained borders call for their natural resources to be protected. The second is that environmental resources often transcend those borders and require intermunicipal or regional arrangements to be effectively protected.

III. Regionalism and 'Wistful Hoping'[22]

We praise the parochial nature of American land use law because it gives power to local people to cure local problems and take advan-

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tage of local opportunities that deeply affect them. However, in the seminal *Euclid* case, the owners of the property regulated by the Village and an entire regional industry were upset by zoning's interruption of the natural evolution of land development.[23] The U.S. Supreme Court wrote, "It is said that the village of Euclid is a mere suburb of the city of Cleveland; that the industrial development of that city has now reached and in some degree extended into the village, and in the obvious course of things will soon absorb the entire area for industrial enterprises. . .. But the village, though physically a suburb of Cleveland, is politically a separate municipality, with powers of its own and authority to govern itself as it sees fit. . ..."[24]

The flip side of parochial power is that natural resources, nonpoint source pollution, and economic and housing markets transcend local boundaries. They are intermunicipal, regional, and, in some cases, interstate in nature. Critics including industry, environmental, and fair housing advocates have bemoaned local control and called for its preemption by state or federal regulation, where their particular interests are thwarted.

The case that first validated local control of regional growth recognized the irony of its position. New York's highest court, in *Golden v. Planning Board of Town of Ramapo*, wrote that "Statewide or regional control of planning would insure that interests broader than that of the municipality underlie various land use policies."[25] The court further noted, however, that local control should not be struck down "in the wistful hope that the efforts of [regional planning] will soon bear fruit."[26]

The dissonance between the regional nature of land use problems and local control is best explained by former House Speaker, Thomas P. O'Neill Jr., who quipped that "all politics is local."[27] State and Congressional lawmakers stand for election in essentially local districts where control by remote governmental agencies is anathema.

The quandary can be resolved by searching for regional processes that respect the critical role that local governments play in land use decision-making. To be politically palpable, these initiatives must not be perceived as methods of imposing a state or regional body's will on local governments. Rather, they should be viewed as means of communicating effectively about regional and local needs, balancing those interests, and arriving at mutually beneficial decisions over time.

From its inception, the U.S. land use system has encouraged voluntary, grassroots approaches to intermunicipal and regional planning. The Standard City Planning Enabling Act (SCPEA) provided for regional planning by authorizing local planning commissions to petition the governor to establish a regional planning commission and to prepare a master plan for the region's physical development.[28] Provisions were included in the Act for communication between the regional and municipal planning commissions, with the objective of achieving a certain degree of consistency between local and regional plans.[29] Regional consciousness has been with us since the early days of American zoning.

Many localities have adopted sustainable development strategies because of encouragement, information, or funding provided by the state or federal government. This observation aligns with research results published in Urban Affairs Review, where the authors demonstrate that "more policy making occurs in states with a multilevel governance framework supportive of local sustainability action."[30]

Localities will align their land use plans with common sense state policies if they receive information and support via state assistance offered in the right way, without a heavy top-down emphasis or requirements that

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seem like mandates. Correcting the deficiencies in the hundred-year old zoning system is not about taking away local power, but rather should focus on working with localities to build a better system. This suggests that we need to discover and implement methods of using federal and state policies and resources to support, guide, and sustain local initiatives to coordinate land use policy across municipal and state borders.

Regionalism is not at odds with our land use planning tradition. It need not be "wistful hoping" if approached in the right way. We have not, however, developed a consensus on the proper strategy of weaving local control into the broader fabric of society. It takes a clear understanding by federal and state lawmakers and agencies that parochialism has its place. We are still waiting for this insight to seriously shape their efforts to solve regional land use problems.

IV. Mixed Signals: Exclusionary Zoning and Fairness[31]

After encountering significant NIMBY opposition to the expansion of the Lucasfilm facilities on his land in Marin County, California, George Lucas abandoned his plans and proposed to sell his land to affordable housing developers.[32] The backstory involves the Fair Housing Act, various federal grant-in-aid programs, and a Voluntary Cooperation Agreement entered into between Marin County and the U.S. Department of Housing and Urban Development.[33] After an investigation, HUD required the County to take steps to affirmatively further fair housing opportunities for people of color and other groups that face barriers to housing in the region.[34]

Marin County's minority population is much lower than that of other communities in the Bay Area. As a recipient of federal funding, it has an obligation to Affirmatively Further Fair Housing (AFFH), which includes eliminating impediments to fair housing, such as zoning restrictions that cause segregation.[35] The neighbors of Lucas's property are now contemplating a different change in the neighborhood than the one they initially opposed.

Under the Tenth Amendment, the matter of land use control is left to the states, which have delegated that power to local governments.[36] Exclusionary zoning is, in the first instance, a matter of state law. It is based on the Euclidian notion that zoning's purpose is to segregate different land uses into various districts. Zoning is inherently exclusionary. Yet, since land use authority is delegated to localities by the state, there are constitutional limits to excluding growth and affordable housing.

State courts, however, are relatively shy about intruding into the local legislative realm and mandating solutions to affordable and fair housing. State legislatures, because all politics is local, have been equally reticent. Courts in New Jersey and the state legislatures in California and Connecticut, which have aggressively and clearly defined the obligations of local government regarding housing, are outliers.

New York courts are more engaged in the topic than most state court systems, but their holdings fall far short of providing effective guidance to localities regarding their responsibilities to provide affordable housing. In the seminal case *Berenson v. New Castle,* the state's highest court noted: "[T]he primary goal of a zoning ordinance must be to provide for the development of a balanced, cohesive community which will make efficient use of the town's land. . .. [I]n enacting a zoning ordinance, consideration must be given to regional [housing] needs and requirements. . .. There 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."[37] The state court held that New

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Castle's failure to zone land for multifamily housing was exclusionary.[38] Mr. Berenson's land was then rezoned for condominiums that sold for today's equivalent of $500,000.

These abstract judicial utterances, in the few jurisdictions where state courts have entered the fray—coupled with the absence of state legislative guidance—leave localities wondering what their obligations are under state law. Meanwhile, if they receive federal funding or fail to rezone land proposed for multifamily housing, like Marin County, they may be liable for their failure to AFFH. The Fair Housing Act aims to fight racial segregation and thus implicates the very nature of zoning.[39] How can segregation be eliminated if most land in communities is zoned for single-family housing, the ubiquitous result of Euclidian zoning? But what exactly does this mean? What does federal law require?

What we know is that communities that receive federal housing and community development funding must certify that they have analyzed the impediments to AFFH and acted in good faith to eliminate them.[40] They may be liable if they have not, which implicates the zoning that creates a segregative settlement pattern.[41] We also know that the refusal to rezone specific parcels for multi-family housing may result in municipal liability for discrimination, if such failure results in disparate impacts or disparate treatment. *Huntington Branch, NAACP v. Town of Huntington* held: ". . .[W]e find that the disproportionate harm to blacks and the segregative impact on the entire community resulting from the refusal to rezone create a strong prima facie showing of discriminatory effect."[42]

In *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc*. (2015), the U.S. Supreme Court held that "recognition of disparate-impact claims is consistent with the FHA's central purpose."[43] The Court pointed to "zoning laws and other housing restrictions" that it viewed as "unfairly. . .excluding minorities from certain neighborhoods without any sufficient justification."[44] It went on to say that "[g]overnmental or private policies are not contrary to the disparate-impact requirement unless they are "artificial, arbitrary, and unnecessary barriers. Courts should avoid interpreting disparate impact liability to be so expansive as to inject racial considerations into every housing decision."[45]

Municipalities and their attorneys are getting unclear signals in this area of land use law. They may create zoning districts and specify whatever uses they wish. But they must not craft these districts and uses in a way that excludes households in the state in search of housing. Yet, nowhere is the extent of this responsibility defined. There is no guidance on what constitutes "the region" or "regional needs"; localities' "fair share" or their "duty" to actually make housing for such households affordable; or what combination of zoning techniques and housing subsidies (over which there is no local control) municipalities must use. When precisely, under federal law, are localities responsible to affirmatively further fair housing? Is that liability limited to communities that get federal funding and those that deny housing developers multifamily zoning? Or, does it extend to the entire pattern of development created by local zoning if its districts are not integrated racially? Wouldn't that be injecting racial considerations into every land use decision that affects housing?

Perhaps nowhere in the story of Zoning's Centennial is the legal system more confused than in this area of fair and affordable housing. It is an interjurisdictional mess, begging for sensible reform. But, where should this reform begin? State governments are often the appropriate intermediary between federal and local interests. State constitutions give the police power to their legislatures. They have, in

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turn, delegated it to localities regarding land use without clear guidance as to these critical fairness issues. The resolution of these questions should be a matter of state concern and become state priority, given the importance of these unresolved issues.

V. The Emergence of the Law of Sustainable Development[46]

When we created and named the Land Use Law Center for Sustainable Development in 1993, we had a foggy vision of the contours of Sustainable Development Law. We knew that the advent of local environmental law, the origins of smart growth, and zoning for affordable housing traced the outlines of this field of law and practice. These movements in land use law focused on promoting and regulating economic development to meet present needs, providing for equitable community development, and preserving natural resources to meet the needs of future generations: the essential elements of sustainable development as defined in the Rio Accords of 1992.[47]

We did not know then, however, that land use law would progress rapidly over the next quarter century to include topics as diverse as green infrastructure and biological sequestration; adaptation to sea level rise and storm surges; siting and promoting wind and solar facilities; preserving agricultural land through urban food sheds; creating livable neighborhoods through design controls; and regulating hydrofracking to protect the health of local residents.

In 1993, the technology was either nascent or did not exist for achieving high levels of on-site stormwater infiltration; constructing zero net energy buildings; measuring increases in sequestering vegetation and urban tree canopies; expanding domestic gas and oil exploration through fracking; creating clean energy facilities such as geothermal, combined heat and power, and micro-grids; developing rating systems for sustainable buildings and neighborhoods; identifying neighborhoods where high energy waste occurs; understanding ecosystem services and their values; creating metrics that identify base lines for carbon emission and measure its increases and decreases; and designing models that project the extent of sea level rise in coastal areas.

Over the past 25 years as these technologies developed, the law adapted to put them to effective use in promoting sustainability in all of its dimensions. We now know, through examining advances in technology and local law, how to achieve development that uses less material, avoids destroying wetlands or eroding watersheds, consumes less energy, eliminates or shortens vehicle trips, emits less carbon dioxide, lessens stormwater runoff, reduces ground and surface water pollution, and creates healthier places for living, working, and recreating.

This body of law is being created mainly by municipalities, which have the principal legal authority to regulate building construction, land use, and the conservation of natural resources at the local level. Increasingly, however, positive federal and state influences are speeding local adoption of sustainable law techniques.

This is evident in federal and state tax credit, spending programs, and technical assistance that promote solar and other clean energy facilities.[48] Similarly, the Sustainable Communities Initiative—a partnership between HUD, the Department of Transportation, and EPA—has aided local efforts to achieve transit oriented development and reduce vehicle miles travelled.[49] HUD's recent efforts to affirmatively further fair housing guide localities in identifying the impediments to fair and affordable housing.[50] With coastal protection and disaster planning, federal and state efforts are helping localities, as first responders, deal with climate-induced

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hazards.[51] Federal and state transportation spending is directed by federally-required Metropolitan Planning Organizations, creating one model of regional planning that involves local elected officials.[52] In the environmental field, EPA's stormwater management program and aligned state efforts have greatly assisted localities to reduce stormwater runoff.[53] EPA has experimented with efforts to cooperate with local land use authorities to reduce nonpoint source pollution to achieve its Total Maximum Daily Load objectives for federally-impaired waters.[54] These initiatives that exhibit a clear-eyed view of the importance of local land use provide a basis for a fuller integration of local, state, and federal efforts to create rational land use, transportation, and environmental patterns.

The challenge ahead is to scale up the most exemplary of these integration efforts. The patterns of a more coherent framework of sustainable development law can be observed in the operations of each level of government and the close connections between economic development, environmental protection, and the promotion of equitable development.

As these patterns become better understood, the prospect brightens for a robust and integrated system of federal, state, and local laws dedicated to sustainable development and climate change management. The law has always evolved in this way to serve the needs of society. Expect as much progress in law and technology over the next quarter century as we have witnessed in the last.

ENDNOTES:

[1]Distinguished Professor of Law, Counsel, Land Use Law Center, Elisabeth Haub School of Law. The author acknowledges the significant work of his research assistants, Allison Sloto, Kara Paulsen, and Ollia Pappas.

[2]*See* John R. Nolon, *Golden and Its Emanations: The Surprising Origins of Smart Growth*, The Urb. Law., Winter 2003 at 15.

[3]*Golden v. Planning Bd. of Town of Ramapo*, 285 N.E.2d 291, 293-96 (N.Y. 1972).

[4]*Id.*

[5]*Id.* at 300.

[6]*Id.* at 304-05.

[7]*Id.*

[8]*Leadership Institute*, Smart Growth America, http://www.smartgrowthamerica.org/leadership-institute/about (last visited Jul. 8, 2016).

[9]*Golden*, 285 N.E.2d at 300.

[10]*See* John R. Nolon, *In Praise of Parochialism: The Advent of Local Environmental Law*, 26 Harvard Envtl. L. Rev. 365 (2002).

[11]*See* Clean Air Act §§ 101-618, 42 U.S.C. §§ 7401-8018 (2012); Clean Water Act §§ 101-607, 33 U.S.C. § 1251-1857 (2012).

[12]*De Mars v. Zoning Comm'n of Town of Bolton*, 115 A.2d 653 (Conn. 1955).

[13]*Id.* at 654.

[14]42 U.S.C. §§ 4001-4128 (2012).

[15]42 U.S.C. § 4102 (2012).

[16]S.C. Const. art. VIII, § 9.

[17]S.C. Const. art. VIII, § 17.

[18]S.C. Code Ann. § 6-29-510(D)(3).

[19]S.C. Code Ann. § 6-29-720(B).

[20]S.C. Code Ann. § 6-29-720(C).

[21]S.C. Code Ann. § 6-29-510(D)(4).

[22]*See* John R. Nolon, *Grassroots Regionalism Through Intermunicipal Land Use Compacts*, 73 St. John's L. Rev. 1011 (1999).

[23]*Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

[24]*Id.* at 389.

[25]*Golden v. Planning Bd. of Town of Ramapo*, 285 N.E.2d 291, 300 (N.Y. 1972).

[26]*Id.*

[27]*See* Thomas O. Sargentich, *The Future of the Item Veto*, 83 Iowa L. Rev. 79, 135 n.245 (1997) (quoting Thomas P. O'Neill Jr., Man of the House 26 (1987)).

[28]U.S. Dep't. of Commerce, A Standard City Planning Enabling Act (1928).

[29]*Id.*

[30] George C. Homsy & Mildred E. Warner, *Cities and Sustainability Polycentric Action*

and Multilevel Governance, Urban Affairs Review, Jan. 2015.

[31]*See* John R. Nolon & Tiffany Zezula, *Affirmatively Furthering Fair Housing: The Search for Solutions that are Just Right*, Zoning & Plan. L. Rep., July 2012, at 1; John R. Nolon & Jessica Bacher, *Affordable Housing in the New York Courts: A Case for Legislative Action*, N.Y. Plan. & Prac. Rep., Nov./Dec. 2008 at 1.

[32]Norimitsu Onishi, *Lucas and Rich Neighbors Agree to Disagree: Part II*, N.Y.Times, May 22, 2012, at A13.

[33]*Affordable Housing in the New York Courts*, *supra* note 107.

[34]*Id.*

[35]*Id.*

[36]U.S. Const. amend. X.

[37]*Berenson v. Town of New Castle*, 341 N.E.2d 236, 241 (N.Y. 1975).

[38]*Id.* at 236-43.

[39]42 U.S.C. § 3601.

[40]42 U.S.C. § 3608. *See also* Affirmatively Furthering Fair Housing, 24 C.F.R. §§ 5, 91, 92 (2015).

[41]§ 3608.

[42]*Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 938 (2d Cir. 1988).

[43]*Texas Dep't of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S.Ct. 2507, 2511 (2015).

[44]*Id.*

[45]*Id.* at 2524.

[46]*See* John R. Nolon, *Shifting Paradigms Transform Environmental and Land Use Law: The Emergence of the Law of Sustainable Development*, 24 Fordham Envtl. L. Rev. 242 (2013); *Keeping Pace*, *supra* note 46.

[47]U.N. Conference on Environment & Development, *Agenda 21*, § 5.3 (June 3-14, 1992).

[48]*See, e.g.*, 26 C.F.R. § 1.23-1 (1987).

[49]*Sustainable Communities Initiative*, HUD, http://portal.hud.gov/hudportal/HUD?src=/hudprograms/sci (last visited Mar. 16, 2016).

[50]*See* Affirmatively Furthering Fair Housing Assessment Tool for States and Insular Areas, 81 Fed. Reg. 12,921 (proposed Mar. 11, 2016).

[51]*See e.g.*, Coastal Zone Management Act §§ 302-319, 16 U.S.C. §§ 1451-1465 (2012).

[52]23 U.S.C. § 134 (2012).

[53]Stormwater Management, EPA, https://www.epa.gov/greeningepa/stormwater-management (last updated Feb. 29, 2016).

[54]*See* Chesapeake Bay Total Maximum Daily Load (TMDL), EPA, https://www.epa.gov/chesapeake-bay-tmdl (last updated Mar. 2, 2016).

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13. Publication Title	14. Issue Date for Circulation Data Below	
THOMSON REUTERS/ZONING AND PLANNING LAW REPORT	07/01/2016	

15. Extend and Nature of Circulation			Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Numbers of Copies *(Net press run)*			388	371
b. Paid Circulation *(By Mail and Outside the Mail)*	(1)	Mailed Outside County Paid Subscriptions Stated on PS Form 3541*(include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)*	266	232
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h. Total *(Sum of 15f and 15g)*			388	371
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