THE COUNSELORS
OF REAL ESTATE®

Features | The Jared Shlaes Prize

WINNER of The 2024 Jared Shlaes Prize: Build-to-Rent Homes: A Promising Solution to Chronic Housing Shortages

Affordable Housing | Economics | Housing | U.S. Markets

Volume 48, Number 28 - October 8, 2024 • Written by: **Brian Hodges, Sam Spiegelman**

Brian Hodges

is a senior attorney with Pacific Legal Foundation, where he advocates for liberty-based solutions to the housing crisis and defending the right of individuals to make reasonable use of their property, free of unnecessary and oppressive regulation.

Sam Spiegelman

joined Pacific Legal Foundation's property rights practice in 2022, he labors to fulfill his life's passio protect the Takings Clause's 12 simple

Privacy - Terms

Brandon Bourdages/shutterstock.com

The below is a reprint of the article Build-to-Rent Homes: A Promising Solution to Chronic Housing Shortages, first published in July of 2023 and recently awarded The Jared Shlaes Prize.

Introduction

When homeownership is increasingly out of reach for many, build-to-rent (BTR) housing offers a desirable alternative to traditional homeownership. First, BTRs provide flexibility that traditional homeownership cannot match. By renting rather than owning, tenants are free to move around the city or the country as their jobs, family situations or lifestyle decisions dictate. They can enjoy the benefits of urban or suburban living without being tied down to a particular location or property. Second, BTRs are often built to higher standards than traditional rental properties, with modern amenities and communal spaces that foster a community and belonging. These properties are often professionally managed, meaning that tenants can enjoy the benefits of high-quality maintenance and management without the stress and expense of managing a property themselves. And third, BTRs offer a high-quality home without homeownership mortgage and maintenance obligations.

Where available, BTRs are quickly becoming a preferred option for many young families, empty-nesters, and itinerant retirees. Yet several local governments, especially in Georgia, have enacted laws banning BTR developments, mainly in response to misplaced NIMBY — *not in my backyard* — resistance to living alongside renters.

A recent New Jersey appellate court decision rightly admonished such unjustified anti-renter sentiments. The court in *Tirpak v. Borough of Point Pleasant Beach Board of Adjustment* observed that "the status of a house's occupant as a property-owner rather than as a tenant is no guarantee that he or she will be a law-abiding and considerate neighbor."[1] Thus, although the court sympathized with the community's "desire to maintain a quiet and peaceful environment in this single-family zone," the court concluded that it "cannot accomplish that objective by imposing land use restrictions that discriminate against renters" — a sentiment that often provides cover for class- and race-based bias. The court's enlightened reasoning should resonate with municipal and county officials faced with calls to ban much-needed rental housing. But the proliferation of BTR *bans* shows that the sentiment has not reached as far as it could.

Banning BTRs is harmful both to renters and the community writ large. A ban forecloses one among several innovations that aim to solve the ever-widening gap between the number of households and available homes. BTRs offer one of the best alternatives to outright ownership for those keen to reside in a quiet suburban neighborhood. But these bans impact more than BTRs alone. A functional housing market must resemble a ladder with different housing types

words: "Nor shall private property be taken for public use, without just compensation." Sam contributes his humble talents to the practice's Herculean (though hardly Sisyphean) campaign to reverse the modern, meaningless "interest-balancing" approach to the Clause and replace it with the Framers' original bright-line conception.

Entry Limit Reached

Announcing The Jared Shlaes Prize

$10,000 award

Read more

available at each rung. Under this model, when people upgrade their homes, they leave their former lower-cost unit available for another person. When government outright bans an entire housing category, it removes a crucial rung from the ladder, ensuring it will be more difficult (and costly) to move in and up in a community.

1. Innovative Housing and the Fight for the American Dream

BTRs are a relatively new phenomenon.[2] Borrowing from traditional suburban development, BTRs are often residential subdivisions comprised of detached, single-family dwellings. The only difference? They are built to rent rather than to sell. Beyond this transactional distinction, BTRs and owned homes are virtually indistinguishable. Indeed, there is a reason for recalcitrant neighbors to *prefer* the former. Since BTR developers retain ownership, they also maintain a strong incentive to upkeep the aesthetic quality and structural integrity of such homes and to keep pristine the lawns, common areas, and other facilities provided by BTR communities.[3]

Once a niche market,[4] BTRs are quickly becoming a popular alternative to homes built for purchase.[5] BTRs offer a quality residential experience without mortgage and maintenance demands of ownership — growing in demand in the current, increasingly mobile economy. The model is particularly attractive to millennials (who prefer flexibility over ownership), families in transition, empty-nesters, and retirees tired of the burdens of ownership.[6] BTRs also appeal to developers who have seen dampened demand for new for-purchased homes in recent years, a decline worsening as outlay costs spike with inflation and mortgage rates continue to climb.[7] Given this rising interest, market experts estimate that developers will add over 300,000 new BTRs in the next couple of years alone, adding much-needed supply to the nation's chronically undersupplied housing market.[8]

But this bright future is hardly cloudless. Like other innovative housing options — *e.g.*, tiny homes,[9] accessory dwelling units,[10] modulars,[11] and printed homes[12] — BTRs face opposition from multiple directions. Some established homeowners voice concerns that renters will not maintain their properties as well as they would, thereby threatening neighborhood aesthetics and property values.[13] Others misguidedly fear that more renters will mean social balkanization, though evidence suggests more rentals yield the *opposite* result.[14] On the political side, certain activists criticize the role that large financial institutions sometimes play in building and managing BTR developments.[15] Upon deeper inspection, these concerns are largely misplaced.[16] Regardless, these anti-BTR voices have had a tremendous impact in Metro Atlanta, for example, where several cities and counties have enacted laws to heavily restrict or outright ban BTRs[17] — a trend that threatens to repeat itself as the BTR model grows nationwide.

1. Innovative Housing and the Broader Housing Market

Fannie Mae recently reported that "*every* American city has a housing supply problem."[18] The only way out of this crisis is to ramp up construction. However, to do so will require local governments across the country to make "hard choices and changes that many communities have a history of resisting."[19] In particular, they must do so when considering options for low- to

moderate-income residents. These choices must, at minimum, include the removal of costly regulatory barriers to the production of housing — an impediment to supply growth that has been recognized across the political spectrum for decades.[20] These barriers, including outright bans on rentals, threaten the provision of so-called "missing middle" housing — that is, any home that isn't an owned, detached single-family dwelling. Even BTRs — physically indistinguishable from typical subdivisions — face stifling regulatory hurdles speaks to the depth of the problem and its role in perpetuating America's chronic housing shortage.[21]

Housing is not a zero-sum enterprise, and it can host many different options that serve as rungs on the same ladder. The lower rungs can include affordable rental properties — often the first step for young families entering the housing market.[22] As a household's income improves and families grow, they may move up the ladder to pricier rentals and then, if they so choose, proceed to homeownership. A healthy market demands sufficient supply at each rung, with a variety of options and price points from which to choose. A shortage of affordable rental properties makes the ladder much harder to climb, placing downward pressure on the entire market and forcing those who would otherwise move up to stay in units far below their means.

This, in turn, squeezes those who need affordable housing out of that rung of the market, forcing them to cram together with other households or, in too many cases, experience homelessness,[23] thereby limiting the number of affordable units that may go vacant for those most in need.

III. Zoning, Bias, and Exclusion

In its most generalized sense, zoning encompasses the government's noncontroversial power to regulate land uses to avoid nuisances and promote the community's health, safety, and welfare. That is, to separate conflicting uses by designating where, for example, heavy industry can be located relative to residential or light commercial neighborhoods.[24] But zoning also, for too long, served as a tool for bad actors to exclude certain groups from their communities.

For almost as long as government land-use controls have existed in the United States, such measures have been used by the politically powerful to exclude the politically weak. Historically, that has primarily meant that the burdens of the government's land-use powers are borne most by marginalized communities — racial and ethnic minorities, immigrants, and the indigent.

Renters still today feel the brunt of biased exclusionary zoning. Indeed, one needs to look no further than one of the Supreme Court's first zoning decisions, *Euclid v Ambler Realty* (1926), to see the exclusionary impulse at play. There, the Court upheld a local ordinance banning apartment buildings by likening the people who live in rentals — people who at that time were more likely to be immigrants or minorities — to "parasites" and common nuisances: "A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard."[25] Fortunately, times have changed regarding such *obviously* exclusionary biases, and the Supreme Court has discovered several constitutional doctrines designed to police against illegitimate uses of zoning power, which are discussed below.[26] But there is still much work to be done.

Recent scholarship highlights the dramatic negative effect that over-zoning has on housing availability and how land-use laws can significantly change what opportunities (*e.g.*, access to schools, transportation, infrastructure, jobs) are open to whom.[27] Given that the primary

function of zoning is designating what can be built and where is one of the primary causes of the housing shortage and resultant price increases.[28]

Opposition to more diverse neighborhoods — whether targeting minorities or renters — has no place in modern society, let alone under modern precedent. One particularly important case arose out of misuse of zoning in Mount Laurel, New Jersey.[29] In the 1960s and 70s, township officials sought to use their zoning power to keep out "riffraff" — a blowhorn rather than a dog whistle sounded against African-American residents, both recent and established.[30] With limited exceptions, townhouses and apartments could not be built, nor could mobile homes be placed. The few apartments permitted were designed to attract childless couples, as the town imposed severe restrictions on the number of bedrooms and children allowed per bedroom.

Rightfully fed up with the racially-motivated status quo, black residents formed a community group to address the artificially inflated unaffordability crisis. The group obtained a federal grant to build scores of affordable apartments. But the group still needed local approval. And township officials had for years worked overtime to keep working-class, black residents out.

The official addressing the group pitched their legitimate concerns in quite loaded terms, referring to the descendants of black families who had called Mount Laurel home for well over two centuries "you people" — as if they weren't *his* people through and through.[31] Fed up with local intransigence, black residents took their case all the way to the New Jersey Supreme Court.

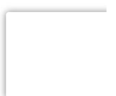
The court recognized that the affordability crisis was hardly inexplicable: "The effect of Mount Laurel's land use regulation has been to prevent various categories of persons from living in the township because of the limited extent of their income and resources."[32] While the justices gave the township every benefit of the doubt as to its motivations, the court nonetheless engaged in a detailed analysis of the impacts of the measure:

This pattern of land use regulation has been adopted for the same purpose in developing municipality after developing municipality. Almost every one acts solely in its own selfish and parochial interest and in effect builds a wall around itself to keep out those people or entities not adding favorably to the tax base, despite the location of the municipality or the demand for varied kinds of housing.[33]

The court accordingly held that the zoning needed to be made more inclusive:

We conclude that every such municipality must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. More specifically, presumptively it cannot foreclose 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.[34]

Thus, even after it gave the township's claimed justifications all due deference, the court *still* held that justice demanded it looks to the facts and circumstances of the case when determining the legitimacy of the town's actions. In the decades since scores of local governments and courts have embraced the so-called "*Mount Laurel* doctrine."[35] While the doctrine is most



certainly flawed in certain respects, especially its tendency to overstep local rule, its policy goal of increasing affordable housing has largely succeeded.[36]

Building on *Mount Laurel's* reasoning, New Jersey's Appellate Court recently called out a local government's anti-renter regulations as a pretext for baseless bias. *Tirpak v. Borough of Point Pleasant Beach Board of Adjustment* correctly observed that "the status of a house's occupant as a property-owner rather than as a tenant is no guarantee that he or she will be a law-abiding and considerate neighbor."[37] Thus, though the court sympathized with a community's claim that its anti-renter regulations sought "to maintain a quiet and peaceful environment in this single-family zone," it concluded that its residents "cannot accomplish that objective by imposing land use restrictions that discriminate against renters."[38] This enlightened reasoning should resonate in any city or county chambers faced with calls to ban much-needed rental housing that is indistinguishable from owned homes save for the residents' rental rather than ownership of the unit. The proliferation of BTR bans shows that *Tirpak*'s message has not fully reached the city and county councils across the nation.

1. **Build-to-Rent In Focus: Metro Atlanta**

Although BTRs are a nationwide phenomenon, Metro Atlanta has been a particular focus for this type of investment and development in recent years. And as a result, Metro Atlanta is currently ground zero for BTR bans.

Atlanta and its environs, with their booming tech and film sectors,[39] have experienced massive population growth in recent years.[40] While this influx has strained the region's already limited housing supply, it has also drawn significant investment from housing developers — particularly those involved in building BTR communities.[41] Indeed, the number of new BTR developments has doubled in recent years.[42] Still, like most housing options, the demand for BTRs vastly outpaces current production; some BTR communities have reported waiting lists exceeding 200 applicants for a single unit.[43] The growth of BTRs — like most novel housing models — has spawned opposition from all points of the political spectrum.[44] Some homeowners oppose them based on unjustified anti-development concerns,[45] including increased traffic and false stereotypes about renters — *e.g.*, that nonowners will take less care of their properties.[46] Others, meanwhile, oppose BTRs based on unfounded fears that their neighborhoods will change; this despite the BTR's specific middle- and upper-middle-class appeal. To say nothing of the constant role veteran management outfits play in upkeeping such housing developments. Most *legitimate* concerns can readily be addressed through reasonable regulation.[47] But several localities around Atlanta have caved to unjustified NIMBY opposition, enacting land use ordinances that outright or substantially prohibit BTRs in single-family residential zones. Again, even though BTRs are almost *always* single-family homes themselves.

VII. Example BTR Ban

Municipal bans on BTRs have taken many forms, but perhaps the most obvious one is the ban recently adopted by the City of South Fulton, Georgia. The law's recitals state that it is intended to promote the "health, safety, welfare, comfort and well-being of the inhabitants of the City" by "ensur[ing] that newly developed single family residential homes are not converted into rental property." The ordinance achieves this goal by amending its subdivision regulations as follows:

As a condition of plat approval, no developer or builder shall develop or construct a new attached or detached residential lot/house in a subdivision for rental or lease purposes by the developer, builder or any entity having a business relationship with the developer or builder. The subdivision plat shall be annotated on the cover sheet stating:

"No rental or lease of lots or houses by _________ with the insertion of the developer and builder's name in the blank line.

. . .

"This shall be a condition to receive a certificate of occupancy."[48]

VIII. Outright Build-to-Rent Bans Are Unconstitutional

Banning BTRs is harmful to both renters *and* established homeowners, and it also poses grievous constitutional concerns. Despite this, local governments persist in enacting BTR bans, harming their communities and exposing themselves to litigation (for which their constituents will have to foot the bill). And so, avoiding bans on BTR developments is not only good policy,[49] it is a constitutional necessity.

Regulatory Taking

The Takings Clause of the Fifth Amendment to the U.S. Constitution guarantees that the government will not take private property for a public use without payment of just compensation.[50] This basic constitutional guarantee protects those fundamental property rights — including the rights of possession, use, exclusion, and alienation — from being destroyed or appropriated without compensation.[51]

Over the years, the Supreme Court has developed several distinct tests designed to address the countless ways property rights are taken.[52] One such test is the "fundamental attribute" test, which holds the government categorically liable for a constitutional violation when a regulation takes a right that is considered "fundamental" to property.[53] Among the fundamental rights this test protects is the "right to control the[] disposition" of one's property.[54] Thus a regulation that outright prohibits an owner from renting her house deprives her of the right to decide how to dispose of the property and effects a *per se* taking of that fundamental right to use one's property in whatever harmless ways one chooses.

Unconstitutional Conditions Doctrine

The government cannot impose a mandatory permit condition requiring developers to surrender their right to rent as a mandatory condition of permit approval. The right to rent — like the right to sell one's property — is a fundamental right secured by the Fifth Amendment to the U.S. Constitution.[55] The ordinance is, therefore, subject to the doctrine of "unconstitutional conditions."[56]

The unconstitutional-conditions doctrine requires that an exaction of a property interest in exchange for a land-use permit must be directly and proportionately related to an identified impact of the proposed use.[57] While officials may impose conditions that mitigate the negative externalities of a proposed use, they may not employ conditions as a means to coerce owners

into surrendering their property rights without just compensation for the conditions extracted.[58] The doctrine aims to police against a municipality abusing its permitting authority by using it as an opportunity to seize or destroy property rights.

Most governments cannot make the required showing under the doctrine's heightened scrutiny nexus and proportionality tests, nor can the other counties and cities. Towns that have imposed or proposed outright BTR bans have done so in response to generalized and unsubstantiated fears and anti-development sentiments — not any actual identified impacts. The enacting ordinance contains no findings that rental homes will have any different impact on the community than "for sale" ones. All homes, whether build-to-rent or for sale, are otherwise subject to the same laws pertaining to occupancy, parking, setbacks, aesthetics, etc. And both will have the same impact on public infrastructure. Simply put, while a local government may address community concerns with rental homes via reasonable regulation, it may not demand that developers surrender the right to rent as a condition for building a new home.[59]

Substantive Due Process

Substantive due process guarantees government exercises its authority over the life, liberty, and property of individuals in good faith by enacting laws that are actually calculated to achieve proper ends — *i.e.*, that the government's actions constitute law. The U.S. Supreme Court defines substantive rights as "the fundamental liberties protected by" the Due Process Clause; "so fundamental," in fact, that "that the State must accord them its respect" — *i.e.*, only interfere with them for very good reasons (like to save the public from immediate harm).[60]

Although the language of Georgia's Due Process Clause is substantially similar to that of the Federal Constitution's Fourteenth Amendment, the state's substantive-due-process jurisprudence has adopted an even more searching, fact-intensive standard of review for property owners than the test the U.S. Supreme Court employed in *Euclid* (which, as discussed above, took a hands-off approach when reviewing obvious community bias). According to the Georgia Supreme Court, a zoning restriction comports with due process of law only if it bears a "substantial relationship" to the public health, safety, or general welfare.[61]

As the individual's right to use his property confronts the police power under which zoning is authorized, the balance the law strikes is that a zoning classification may only be constitutionally justified if it bears a substantial relation to a legitimate health, safety, welfare justification. Lacking such justification, the zoning may be set aside as arbitrary or unreasonable.[62]

Banning BTRs based on anti-renter sentiment alone bears no substantial relation to the public's health, safety, or general welfare. Such bans violate the Due Process Clauses of the Georgia and U.S. Constitutions. Whether a single-family home is sold or rented has no impact on the character of the neighborhood. BTRs are subject to the same building codes and occupancy, use, and traffic requirements as homes built for sale. As for fears that renters leave their homes in disrepair, BTR communities generally are maintained by professional management companies with a vested interest in taking care of their properties — to preserve their investment and to attract new tenants.

****

Existing ordinances are sufficient to protect public health, safety, and general welfare. The only purpose of banning rental-home communities is to abridge such owners' right to decide what type of home they want to build and how they plan harmlessly to use it — rights fully secured by the Georgia and U.S. Constitutions. Ultimately, all a ban on housing does is stymie the construction of much-needed housing, including quality rentals. As such, bans on BTR communities operate to exclude hardworking residents who cannot afford to (or have chosen not to) purchase homes in their desired neighborhoods.

Conclusion

Housing is a fundamental human need *and* right; access to adequate and affordable homes is essential for maintaining a healthy and prosperous society. Banning BTRs and other missing-middle housing is not just constitutionally suspect—it is simply bad policy. Recent market trends indicate that build-to-rent has become a viable and in-demand alternative to ownership.[63] Bans on build-to-rent stymie natural supply and demand,[64] and consumers are drawn to the idea.[65] Without bans on build-to-rents, we can expect BTR rents — in some cases now outstripping their non-BTR counterparts — to decline as supply increases.[66]

First, bans on certain housing types limit the supply of housing, which can lead to increased prices and decreased affordability. For example, in certain neighborhoods, many cities have banned the construction of multifamily housing, such as apartments and townhouses. This has the effect of limiting the number of available housing units in these areas, driving up prices and making it harder for low- and moderate-income families to find affordable housing. By restricting the supply of housing, these bans make it harder for people to find homes that meet their needs and create economic and social segregation.

Second, prohibiting BTRs and other alternative housing options perpetuate systemic racism and discrimination. In many cases, these bans have been put in place to maintain the segregation and exclusion of certain groups, particularly people of color and lower-income individuals. It is akin to soft redlining — the old practice of banks refusing loans to certain ethnic, racial, and economic cohorts in white, middle- and upper-class neighborhoods.

This practice effectively banned the construction of multifamily housing in these areas, contributing to the concentration of poverty and racial segregation in discrete areas, perpetuating systemic access to housing and other resources. Bans on BTRs will almost certainly produce similar effects, even if the modern NIMBY impulse is driven more by anti-renter bias than racial animus. While nothing like the semi-official racial segregationism of the past, today's socio-economic exclusionism is no doubt perfidious.

Third, BTR and similar bans limit the ability of cities and regions to attract and retain talent and economic growth. In today's economy, talented workers and innovative businesses are drawn to places that offer a high quality of life and a diverse range of housing options. By limiting the availability of housing, bans on certain housing types can make it harder for cities to attract and retain these individuals and businesses. This can have negative economic and social consequences for the entire region and exacerbate existing inequities in access to housing.

In short, bans on certain housing options are bad for the broader society — not just for those they exclude. They limit supply, perpetuate systemic discrimination on both racial and socioeconomic grounds, and limit the ability of cities to attract and retain talent and economic

growth. To address these challenges, policymakers must take a more holistic and equitable approach to housing policy, focusing on increasing the supply of housing, promoting inclusive zoning, and addressing systemic inequalities in access to housing. Only through these efforts can we ensure that everyone has access to adequate and affordable housing, regardless of income, race, or background.

Brian Hodges and Sam Spiegelman are attorneys at Pacific Legal Foundation, a nonprofit legal organization that defends Americans' liberties when threatened by government overreach and abuse. PLF has fought government efforts to stifle housing and is prepared to fight local officials who want to keep renters — whether you, your parents, siblings, or children — from living in and positively contributing to their chosen community.

[1] *Tirpak v. Borough of Pt. Pleasant Bd. of Adj.*, 200 A.3d 921, 924 (N.J. Super. Ct. 2019).

[2] Brian Hodges, Sam Spiegelman, Tyler Webb, *With the Prospects for Home Ownership Dimming, Build-to-Rent Offers a Promising Alternative*, Ga. Pub. Pol'y Found. (last visited Feb. 23, 2023), https://bit.ly/3Z45KLG.

[3] Erik Sherman, *Experts Offer Some Important Lessons in Build-to-Rent*, Sep. 9, 2022, ALM | Globest, https://bit.ly/3KzNcyj.

[4] As of 2021, there were around 90,000 BTRs and 720 such communities across the nation, with another 14,000 expected to be built in 2022. Alexandra Ciuntu, *Built-to-Rent Homes Expected to Hit All-Time High in 2022, Fueled by Need for Space and Privacy*, RentCafe.com, Jan. 20, 2022, https://bit.ly/3GkuszO.

[5] Meera Pal, *Those Who Can't Afford a Single-Family House Are Increasingly Turning to Build-to-Rent Communities*, Realtor.com, Dec. 27, 2022, https://bit.ly/41lyJMo.

[6] Shelly Brisbin, *When That Dream Home Turns Out to Be a Rental*, Tex. Standard, Oct. 5, 2022, https://bit.ly/40LrfRZ; Will Parker, *Build-to-Rent Suburbs are Poised to Spread Across the U.S.*, Wall St. J., June 7, 2021, https://on.wsj.com/41nXMhN.

[7] Kristi Waterworth, *The Rise of Build-for-Rent*, U.S. News & World Report, Feb. 10, 2023, https://bit.ly/41mFsoH.

[8] *Built-for-Rent Single Family: The Strongest Niche in Real Estate*, Hunter Hous. Econ., https://bit.ly/43cDhFV (last visited Apr. 5, 2023).

[9] CDN Newswire, *Tiny Homes Market Witness Widespread Expansion of Industry Growth, Regional Analysis, and Forecast [Until] 2029*, Digital J., July 14, 2022, https://bit.ly/3ZNO7iv.

[10] Haisten Willis, *Accessory Dwellings Offer One Solution to the Affordable Housing Problem*, Wash. Post, Jan. 7, 2021, https://wapo.st/3KgOCfo.

[11] Alana Semuels et al., *A Solution to the Housing Shortage?*, NPR, Dec. 19, 2022, https://n.pr/3GoxBiI.

[12] Jesse Chase-Lubitz, *Are We on the Cusp of a 3D-Printed Housing Revolution?*, Yahoo! News, Dec. 12, 2022, https://yhoo.it/415q53v.

[13] Ilya Somin, *NIMBYism and Economic Ignorance*, Reason, Nov. 11, 2022, https://bit.ly/3ZRJB2u.

[14] Georgiana McNee & Dorina Pojani, *NIMBYism as a Barrier to Housing and Social Mix in San Francisco*, 37 J. Hous. & Built Envt. 553 (2022), https://bit.ly/3zDN5Lm.

[15] Abha Bhattarai, *It's the Perfect Starter Home. But It's Only for Rent*, Wash. Post, Oct. 2, 2022, https://wapo.st/438Hfza.

[16] Jerusalem Demsas, *Meet the Latest Housing-Crisis Scapegoat*, The Atlantic, Jan. 26, 2023, https://bit.ly/3KGhZt5.

[17] Salim Furth, *Build-to-Rent Housing Bans: A Case of Zoning Overreach*, Mercatus Ctr. at George Mason Univ., Aug. 23, 2022, https://bit.ly/40KTb8O.

[18] Jeffrey Hayward, "U.S. Housing Shortage: Everything, Everywhere, All at Once," Fannie Mae *Perspectives* (Blog), Oct. 31, 2022 (emphasis added) (https://www.fanniemae.com/research-and-insights/perspectives/us-housing-shortage)

[19] *Id.*

[20] *See* White House, *Housing Development Toolkit* at 4–5, 9 (2016) (noting that restrictive zoning has resulted in home prices far higher than the costs of construction); *see also* White House, *Report of the President's Commission on Housing* at 177–82 (1982) (discussing the significant costs that zoning and land-use regulation places on the production of housing).

[21] Steven Greenhut, *Antiquated Zoning Laws Are Worsening the Housing Crisis*, Reason, July 9, 2021, https://bit.ly/3nMOuMZ.

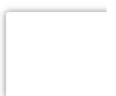
[22] Lori Ioannou, *As Mortgage Rates Rise, More People Choose to Rent Single-Family Homes*, Wall St. J., Nov. 27, 2022, https://on.wsj.com/3KFly2D.

[23] Jerusalem Demsas, *The Obvious Answer to Homelessness*, The Atlantic, Dec. 12, 2022, https://bit.ly/3zFNsVG.

[24] *See, e.g.*, *Hadacheck v. Sebastian*, 239 U.S. 394 (1915).

[25] 272 U.S. 365 (1926).

[26] *See, e.g.*, *Moore v. City of E. Cleveland*, 431 U.S. 494, 515 n.4 (1977) (Stevens, J., concurring in the judgment); *Kropf v. City of Sterling Heights*, 215 N.W.2d 179, 187 (Mich. 1974); *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 79 n.1 (Minn. 2015) (Anderson, J., concurring); *Yanow v. Seven Oaks Park, Inc.*, 94 A.2d 482, 488 (N. J. 1953).



[27] *See, e.g.*, Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (2017); Ilya Somin, A Cross-Ideological Case for Ending Exclusionary Zoning, Reason, Apr. 28, 2021, https://bit.ly/3lSlEK8.

[28] *See* White House, *Housing Development Toolkit* 4–5, 9 (2016) (noting that restrictive zoning has resulted in home prices far higher than the costs of construction); *see also* White House, *Report of the President's Commission on Housing* 177–82 (1982) (discussing the significant costs that zoning and land-use regulation places on the production of housing).

[29] *S. Burlington Cnty. NAACP v. Mt. Laurel Twp.*, 336 A.2d 713 (N.J. 1975)

[30] The story of Mount Laurel described here is summarized as retold in David L. Kirp et al., Our Town: Race, Housing and the Soul of Suburbia (1997).

[31] *Id.*

[32] *Mt. Laurel*, 336 A.2d at 717.

[33] *Id.*

[34] *Id.*

[35] Robert C. Holmes, *The Clash of Home Rule and Affordable Housing: The* Mount Laurel *Story Continues*, 12 Conn. Pub. Int. L.J. 325 (2013).

[36] Editorial, *The Mount Laurel Doctrine*, N.Y. Times, Jan. 28, 2013, https://nyti.ms/3KBONTU.

[37] *Tirpak*, 200 A.3d at 924. For similar conclusions, *see Moore*, 431 U.S. at 515 n.4 (Stevens, J., concurring in the judgment); *Kropf*, 215 N.W.2d at 187; *RDNT, LLC*, 861 N.W.2d at 79 n.1 (Anderson, J., concurring); *Yanow*, 94 A.2d at 488.

[38] *Tirpak*, 200 A.3d at 924.

[39] *Atlanta's Thriving Economy: Growth & Development in Metro Atlanta*, ChooseATL, https://bit.ly/3Gn9MqV (last visited Apr. 5, 2023).

[40] Itoro N. Umonyuen, "Economic development in ATL's South Metro areas are main focus of conference in College Park," The Atlanta Voice (March 8, 2023) (https://theatlantavoice.com/smdo-2023/).

[41] Hunter Boyce, *Here's Where the Atlanta Housing Market Stands in 2022*, Atl. J. Const., Aug. 10, 2022, https://bit.ly/3KtHJZU.

[42] Bob Bahr, *Real Estate Developers Pivot to Build-to-Rent*, Atl. Jewish Times, Feb. 17, 2022. https://bit.ly/3YWFnqV.

[43] Tyler Wilkins, *For Rent: The American Dream*, Atl. J. Const., Nov 26, 2021, https://bit.ly/3ZfzOnc.

[44] Olivia Lueckemeyer, *The BTR Boom Is Colliding With NIMBY Pushback. Local Planners Are Caught in the Middle*, Bisnow, July 10, 2022, https://bit.ly/3kpJk8s; Clay Schuldt, *Attack of the NIMBYs: Neighboring Homeowners Oppose Rental Properties*, New Ulm (Minn.) J., Aug. 26, 2022, https://bit.ly/3IRBfD1.

[45] Brad Hunter, *The Built-for-Rent Land Rush Is Intensifying; Here Are Five Drivers*, Forbes, Sep. 9, 2021, https://bit.ly/3lvezGW.

[46] Concerns about next-door spillovers (like property neglect) are not at issue in a BTR subdivision where a single management company maintains the properties and has in its own interest to provide well-kept properties and common areas.

[47] For example, Snellville, Georgia recently enacted a BTR ordinance permitting such developments subject to reasonable conditions, including pre-submittal application review, wider roads within subdivisions, and larger culs-de-sac to account for more concentrated parking. Karen Huppertz, *Snellville Strengthens Parameters for Build-to-Rent Homes*, Atl. J. Const., Jan. 31, 2023, https://bit.ly/3Ziyyzz.

[48] City of S. Fulton Ord., Appx. C, Zoning, Article 8, Procedures and Permits, § 807, Certificate of Occupancy, https://bit.ly/3xRQGER.

[49] Kriston Capps, *NIMBYism Is a Huge Drag on America's Economic Growth*, Bloomberg, June 5, 2015, https://bloom.bg/3KzGok5.

[50] U.S. Const. amends. V, XIV; *see also Cedar Point*, 141 S.Ct. at 2071 ("The Founders recognized that the protection of private property is indispensable to the promotion of individual freedom" and "is necessary to preserve freedom and empowers persons to shape and to plan their own destiny in a world where governments are always eager to do so for them.").

[51] *See United States v. Gen. Motors Corp.*, 323 U.S. 373, 378 (1945) (the term "property" refers to the collection of protected rights inhering in an individual's relationship to his or her land or chattels).

[52] *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 31 (2012) (recognizing "the nearly infinite variety of ways in which government actions or regulations can affect property interests").

[53] *Cedar Point*, 141 S.Ct. at 2072–76.

[54] *Horne v. Dep't of Agric.*, 576 U.S. 350, 364 (2015). Other examples include a regulation that effects a physical occupation of property, depriving the property owner of the right to exclude trespassers. *Cedar Point*, 141 S.Ct. at 2072–76; *Kaiser Aetna v. United States,* 444 U.S. 164, 179–80 (1979), and the right to transfer one's property. *Hodel v. Irving,* 481 U.S. 704, 716 (1987) (holding that a taking occurred where statute effected a "total abrogation" of the right to devise one's property, which is "one of the most essential sticks in the bundle of rights that are commonly characterized as property"). These core attributes of ownership cannot be taken without just compensation, *Kaiser Aetna,* 444 U.S. at 179–80, even if the economic impact is minimal, *see Horne,* 576 U.S. at 363 ("[I]n *Loretto,* we held that the installation of a cable box on a small corner of Loretto's rooftop was a per se taking, even though she could of course still sell and economically benefit from the property.").

[55] *Horne*, 135 S.Ct. at 2428–29 (a law effected a taking where the owners "lose any right to control the[] disposition" of their property).

[56] *Koontz*, 570 U.S. at 604–05.

[57] *Nollan*, 483 U.S. at 837; *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994).

[58] *Koontz*, 570 U.S. at 604–05.

[59] *Id*.

[60] *Obergefell v. Hodges*, 135 S.Ct. 2584, 2597–98 (2015).

[61] *Barrett v. Hamby*, 235 Ga. 262, 265 (1975)

[62] *Id*. (citing *Nectow v. Cambridge*, 277 U.S. 183 (1928)).

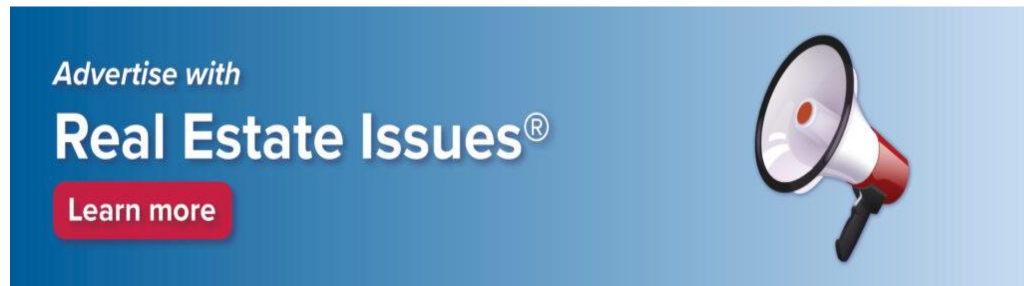
[63] Waterworth, *supra* note [7].

[64] Furth, *supra* note [17].

[65] Pal, *supra* note [5].

[66] Waterworth, *supra* note [7].

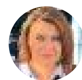
Edit



Related stories

Balancing Leadership: The Power of Professional Partnerships

Introduction Starting something new is often ex



Value Estimates With The Sales Comparison Approach Need More Transparency

Abstract The popular sales comparison approach

Zombie Malls – Part 3: Bringing Dead Shopping Venues Back to Life Through M...

Abstract As more retail activity goes online wi

The professional organization for the most trusted advisors in real estate.

© 2024 The Counselors of Real Estate