



The Cost of Good Intentions

Michael Schill

Michael H. Schill is Professor of Law and Urban Planning at the New York University School of Law and the Robert F. Wagner School of Public Service, and the Director of the Furman Center for Real Estate and Urban Policy at the New York University School of Law. This is an edited version of remarks he made at a Manhattan Institute Forum on June 4, 2002.

I'd like to talk today about regulatory barriers to housing. Recently, the Millennial Housing Commission issued its long-awaited report on the future of American housing policy. The Commission found, perhaps unsurprisingly, that the gap between the supply and demand of affordable housing had widened over the past ten years. It recommended dozens of proposals, the most important of which were a tax credit for home ownership and a new rental production program. Buried on page sixty-seven of the eighty-two page report was a supporting recommendation urging Congress to "address regulatory barriers that either add to the cost of, or effectively discourage, housing production." In cities and suburbs throughout the country, government officials are pulling their hair out over the cost of housing while at the same time passing laws that are strangling housing production.

The model of the Millennial Housing Commission is the approach we have consistently adopted in the United States. Rather than dealing with the root causes of our housing shortage, we instead use subsidies to paper over the problem and never actually address the issue itself. No American city has been more guilty of this than New York. Over the past fifteen years, we have spent 5.2 billion dollars building or rehabilitating over 180,000 units

of housing. Ingrid Gould Ellen, Amy Ellen Schwartz and I have found that this program has been incredibly impressive in terms of actually rebuilding neighborhoods from the ground up. However, despite the impressiveness of this program, our housing problems continue unabated. Homelessness is growing, with the number of people seeking shelter at near record levels. Nearly one-quarter of all renters in the city are paying over half of their incomes in rent. Over 500,000 households in the city have severe rent burdens.

One of the major reasons for the affordability problems in the city is the high cost of housing. In many ways, this is simply a function of supply and demand. Unlike many other large, older cities in the United States, New York is growing. According to the 2000 Census, over the past ten years we added 680,000 people. In reality, the growth was really closer to 300,000 because the Department of City Planning estimates that a lot of the people enumerated in 2000 were already here in 1990, but were under-counted. Nevertheless, we grew by 300,000 people, or roughly 122,000 households. Over that same period, however, only 81,000 housing units were added to the city's stock; that is not even taking into account the housing that became deteriorated

or the housing that went out of service. Therefore, over the decade, housing supply continued to lose ground to population growth.

In 1999, the Department of Housing Preservation and Development and the New York City Partnership and Chamber of Commerce asked NYU's Furman Center to investigate why the cost of housing was so high in the city, and why production was so low. Jerry Salama, Martha Stark, and I co-authored the study, which identified the high cost of construction as being one of the culprits with respect to the lack of production in the city. The study indicated that the cost of housing construction in New York City was the highest in the nation. According to one estimate, the cost of building a home in New York City was a third higher than it was in twenty-one other cities we examined. More specifically, a second, more detailed analysis compared New York to Dallas, Los Angeles, and Chicago. New York City was 4-9 percent more expensive than Los Angeles, which is a very expensive city, 10-11 percent more expensive than Chicago, and a whopping 22-29 percent more expensive than Dallas.

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In our book we offered a wide range of proposals, and we identified a wide range of causes for why housing development was so much more expensive in the city than elsewhere. We offered seventy recommendations covering government regulation, industry practices, and labor union practices and costs. I'm going to focus on three sets of government regulations today, each of which contributes significantly to the high cost of construction.

The first regulation I will discuss is zoning. One of the key problems in increasing housing production is the relative scarcity of land on which

housing can be built. Much of the land in the city that is zoned for residential use is already being used for housing. The government regulation that allocates land to various uses is the zoning resolution. Toward the end of his tenure as Chair of the City Planning Commission, Joe Rose often expressed his view that the New York City Zoning Resolution was outdated and anachronistic. Clearly, he was correct. The ordinance was enacted in 1961 and is based upon principles to which most of us no longer adhere. This includes the "towers in the park" method of development – massive buildings surrounded by large amounts of open space without relating to the streetscape. It was also informed by rigid separation of uses: particularly that manufacturing uses and residential uses could not and should not coexist with each other. Over time, however, the city's economy has changed; the type and amount of manufacturing in the city has changed; and finally, our attitudes toward the physical environment have also changed.

The outdated nature of today's zoning resolution is reflected in many examples. One is the manufacturing zone. Despite the fact that the city has lost much of its manufacturing base since enacting the 1961 zoning ordinance, the proportion of land in M-zones has not been correspondingly reduced. This land remains either vacant or underutilized. Not all land zoned for manufacturing would be appropriate for housing. Some of it is contaminated. Some of it needs brownfield remediation. Nevertheless, a significant portion of the land, such as tracts on the Brooklyn water front, would be appropriate and desirable for housing. But before this can be done, the area needs to be rezoned, which, given the City's land-use review process, could take years.

The previous administration began this process, most notably in the Lady's Mile section of Chelsea. If there are any doubts about how regulation can

choke off development, walk up Sixth Avenue between 18th and 26th Streets. One can see building after building, housing unit after housing unit, which has been miraculously added to our supply. Amanda Burden, Chair of the City Planning Commission, also recently announced a more aggressive approach to M-zones. Many areas are under study by the City Planning Department, and it is likely that plans will be announced shortly for rezoning portions of the Brooklyn water front.

The second set of issues involves increasing densities. Although much of New York's infrastructure is aging, it is still among the best in the nation and maybe the world. Many areas in the city are currently zoned inappropriately and could absorb higher density development. However, the process of rezoning is time-consuming and filled with uncertainty. Rather than being able to quickly meet market demand, housing developers have to run the gauntlet of City Planning certification, possibly including the preparation of expensive environmental impact statements. Housing developers, particularly those who build affordable housing, often operate on thin profit margins and don't have the wherewithal to undergo huge delays laden with risk. These delays can take many years, and many developers end up throwing in the towel before beginning their projects.

A further problem concerns those developers who do go forward. Many developers seek a variance; they go to the Board of Standards and Appeals. Because it is so hard to get a rezoning, they try to fit into a hardship exemption or obtain some other some sort of dispensation by the Board of Standards and Appeals, which is a useful safety valve for anachronistic zoning ordinances. However, it is bad practice to bring projects that should involve comprehensive rezoning to a particularized adjudication process such as the Board of Standards and Appeals because the

decisions are typically not supported by sound planning principles and are open to abuse.

Instead, it is time for the City to begin the process of comprehensive rezoning. This means reviewing and redrafting our zoning resolution. I understand that such a process will be lengthy and potentially fraught with political difficulties. Very few neighborhoods are saying, "yes, upzone me. We'd like more development right around where we live." That does not tend to happen in New York. There's a risk in going from the ground up with regard to the zoning ordinance; we could actually see areas such as Staten Island that want to down-zone. Nevertheless, it is a cost that we must bear. This city is the capital of the world. If we are going to retain our position, we must move into the 21st century with a zoning ordinance appropriate for the 21st century, not one rooted firmly in the middle of the 20th century.

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The second set of regulations I want to talk about are those involving land use and environmental review. This set of regulations mandates review of certain land use decisions by government. These regulations are part of the reason why rezoning has become so cumbersome. When the City rezones land, or as is often the case with regard to subsidized housing, when it disposes of City-owned property for housing development, typically two review processes begin. The first is the Uniform Land Use Review Procedure (ULURP). Under ULURP, discretionary City actions, such as rezonings, are reviewed according to fairly strict time limits by the Community Board, the Borough President, the City Planning Commission, the City Council, and finally the

Mayor. The state legislature carved out a special, accelerated process for disposition of land called the Urban Development Action Area Project (UDAAP), which is useful only for very small developments.

ULURP typically takes seven or eight months, which is neither good nor the end of the world. However, before you can begin ULURP, the City Planning Commission has to go through an application and certify that it is ready. This can take quite a bit of time because of the resources available at the City Planning Commission, because of the press of other business, and because of difficult issues that might be involved.

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The second review process that I want to discuss is mandated by the State Environmental Quality Review Act (SEQRA). SEQRA is also triggered by public action – such as rezonings or dispositions of property. Certain types of property, typically very small housing projects such as three-family homes, are designated as Type II. Type II designations don't have to go through the full SEQRA process. They are presumed not to have a significant environmental impact. Most housing developments of any magnitude, however, are either unlisted actions, which require some level of analysis, or Type I actions, which require a very extensive and expensive environmental review process. SEQRA is largely procedural; it is not substantive. It requires the City government to weigh carefully the environmental consequences of discretionary government actions.

The purposes served by SEQRA and ULURP are laudable. In its own way, each serves to provide information to policy makers and promote

community participation in government decision making. These are good objectives, up to a point. That point is exceeded when complying with the laws' rules generates huge costs or when the regulations are abused. Both of these two things happen currently. SEQRA and ULURP can generate substantial costs that can inhibit affordable housing development. A lengthy review can easily be an eternity for a housing development with the owner bearing the carrying costs and the risk that market conditions will change.

Costs are magnified when abuse occurs. In many instances, after the SEQRA process is concluded with a favorable resolution, lawsuits will then be filed, challenging not the substance, but the procedure. Many of these lawsuits will have little merit. They are designed instead to delay the project until the exhausted developer either gives up or gives in to the demands of residents for changes or amenities to which they otherwise would not be entitled. Time and uncertainty adds to the cost of the housing that is built, ultimately dissuading many developers from proposing projects in the first place. The uncertainty is the problem because if everybody knew what the cost was going to be, it would be easier. Instead, the litigation can go on indefinitely.

Perhaps most perniciously, SEQRA also applies to citywide rezoning. Thus, if the City were to completely redo its zoning resolution as suggested above, it would have to pay for and complete an expensive environmental impact statement for the whole city. Many people think one of the reasons we have not had a comprehensive rezoning since 1961 is because the review procedure keeps us from doing it.

In my view, SEQRA and ULURP can be reformed without losing the benefits of community input, consultation, and information production. First, the state should pass legislation making

comprehensive rezonings of the city exempt from SEQRA. Unlike a garden variety rezoning, these types of actions already are guaranteed to generate substantial information and participation through the political process. ULURP would still require an airing of the issues. There would be the ability to learn about the project and to communicate views to decision makers. Additional procedural requirements would merely add costs without significant benefits. Importantly, if the City were to comprehensively rezone, most of the costs and abuses of SEQRA and ULURP would disappear. If land were appropriately zoned for housing or for other uses, then the discretionary change, the rezoning, and a ULURP and a SEQRA process would all be unnecessary. So, in many ways, we have a chicken and an egg story. If we could get the rezoning done, then we would not have to worry about SEQRA and ULURP. In a world without comprehensive rezoning, however, we do have to reform SEQRA and ULURP.

In the short run, there are a number of reforms that could be made. First, current exemptions could be expanded. We should allow the Urban Development Action Area Project (UDAAP) to be used for larger developments. We should also expand Type II actions, actions which don't require environmental review, to include developments of up to ninety apartments. This is not a small city, and a ninety-unit building is not going to have a huge environmental impact on most neighborhoods it would likely locate in. Second, non-meritorious litigation can and should be curbed by a shorter statute of limitations. Instead of 120 days, thirty days is enough time for people to file a law suit. Also, more stringent standing requirements would limit the number of people who can bring the suits in the first place. Third, information should be available through the Mayor's new citywide accountability program that shows how long applications take to be acted upon by the City Planning Commission. We need to put

the City's feet to the fire to expedite these applications, and this is a good way to do it.

Last but not least is the Building Code. New York City's Building Code is outdated and archaic. The current code is over 2,000 pages long; it has not been overhauled since 1968; it requires building technologies that are woefully out of date; and it doesn't permit cost-saving technologies that have recently come into being. Certainly, after the World Trade Center disaster, none of us would recommend changes in building construction that would compromise public safety. Nevertheless, we need to thoroughly review the current code to eliminate requirements that do little but add cost. By now, everybody knows the story of plastic pipes. In New York, for a lot of construction, plastic pipes are prohibited because metal pipes are heavier and the labor unions prefer them. That's just one example, and there is example after example that one could find in the code. What we need is a careful analysis and review of the current code and a top to bottom revision.

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Virtually every city in the country uses a model code. Though we are an extraordinarily special city, this does not justify our failure to adopt some form of the model code. Just as with a zoning resolution, the time for reform is now. The Mayor should appoint a commission or panel of architects and civil engineers to examine which of the model code's provisions need to be changed given the high density of New York City. Then the commission should propose those changes, and we should implement the code. One of the advantages of having a model code is that it could be regularly updated, though not automatically. The code administrators would update the model code, and the City Council would enact the updates.

Thus far, I've been silent about the Buildings Department. This isn't because I believe that the department is not one of the principal causes of housing cost problems in the City of New York—far from it. The Buildings Department that Mayor Bloomberg inherited was a disgrace. If any Mayor can bring good management principles and automation to bear on this department, it is Michael Bloomberg. His abilities, his understanding of good management, his desire for automation are all things that are necessary in the Buildings Department, and we're hearing very good things about the current commissioner. Hopefully problems in that department will get worked out over the next few months or over the next year. However, in case that effort doesn't succeed completely, one of the advantages of a simplified building code is that there would be less room for discretion by building department employees, greater clarity in rules, and hopefully less room for corruption.

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What impact would all of these reforms have on new housing affordability in the city? After sitting down with real estate developers, we estimate, conservatively speaking, that if all seventy of our recommendations were adopted, the cost of construction in New York could be reduced by twenty-five percent. One of the most sobering aspects of our study was this conclusion. Even if both the public and private sectors were to adopt all of our proposals, the cost of new construction would nonetheless be out of the reach of many households in the city. Using a thirty percent affordability standard, we estimate that new construction is currently affordable only to households who earn over \$103,000. If our proposals were adopted, we could bring this down

to \$74,000. The new housing constructed would be available to families earning \$74,000. The good news is that an additional 130,000 households who earn incomes between \$74,000 and \$103,000 would be able to afford housing. The bad news is that many middle-income families in the city, not to mention low- and moderate-income families, would still not be able to afford this housing.

Nevertheless, those 130,000 households who would now be able to afford new housing would move out of their existing housing, thereby allowing progressively lower income people to move into the older housing. This is the filtering mechanism that houses most of us in this country. Interestingly, sixty percent of the group that could hypothetically move into the newly constructed housing are living in rent-regulated housing. If they were to move, it would free up considerable rent-regulated housing for people with lower incomes who may need the housing more.

Of course, the poor are still going to require subsidies. We should not look at these proposals as ways for us to say, "well, once we do all this the housing problem will be solved." The incomes of many of the city's poor are too low to allow them to afford maintenance, let alone a mortgage, or debt repayment. We are still going to need housing subsidies, but we can improve the situation tremendously. We can spend housing subsidies—in many instances wasted on the types of regulatory expenses described above—more wisely.

In conclusion, throughout much of the past ten years, we have had the seeming luxury of not needing to address the roots of our chronic housing problem. With Wall Street booming, with the City racking up surpluses year after year, we could afford the subsidies that were necessary to get all but the most expensive housing in the city built. Today we face a different reality. With budget deficits projected to increase and government

spending cuts on the horizon, we will no longer be able to afford the level of subsidies necessary to paper over the problems that we have created for ourselves. We have created this problem for ourselves, and we must remove the regulatory barriers that drive up the cost of housing production. If we fail, the failure will not just be felt by low-income families.

Housing is the Achilles heel of the City of New York's economy. As we struggle to maintain our competitive edge in an era of slower growth and potential reductions in services, we need to remain attractive to employers and to their workers. Without affordable housing for our middle class, for our policemen, for our teachers, and for our accountants, the City's economic future will be at risk.

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