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Housing Market Operations and the Pennsylvania Rent Withholding Act - An Economic Analysis

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HOUSING MARKET OPERATIONS AND THE PENNSYLVANIA RENT WITHHOLDING ACT — AN ECONOMIC ANALYSIS

I. Introduction

A. A Review of National Housing Production 1950–1970

Almost daily in our major cities' newspapers one reads reports on the deteriorating quality of urban neighborhoods and housing throughout the cities and older suburban areas. Large scale housing abandonment, "rent strikes," rat control projects, and lead paint removal projects have all become modern signs of the nation's housing ills.

Ever since President Franklin Roosevelt's "One-third of a Nation" speech in 1933, the federal government has attempted to deal effectively with the nation's housing ills. While there have been some considerable results, much of the nation's population is still ill-housed. In recent years, specifically since 1949, and increasingly during the 1960's, there have been great increases in federal housing programs and expenditures. From 1950 to 1970 an estimated 30 million housing units were built in the United States with 10.1 million substandard units eliminated, thus expanding the net supply of standard housing units by 80.7 per cent (contrasted to a 35 per cent rise in population), an enviable accomplishment for any nation.

Yet, throughout this period substantial variations in the performance of the national housing markets occurred. In the post-war 1940's and early 1950's, average new residential construction starts increased significantly, no doubt to some degree reflecting the low construction rates in the Depression and World War II years. However, the boom in residential construction in the 1950's was also a result of public policy measures of low interest rates, down payment requirements and available mortgage insurance which combined to meet the high latent demand for new housing. Residential construction expenditures in the 1950's, as a percentage of the gross national product, never dropped below 4.5 per cent and peaked in 1955 at 5.8 per

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2. For an excellent history and review of national and local housing policy, see L. Friedman, Government and Slum Housing — A Century of Frustration (1968) [hereinafter cited as L. Friedman].

3. Downs, Moving Toward Realistic Housing Goals, in Agenda for the Nation 141, 143 (K. Gordon ed. 1968) [hereinafter cited as Downs].

4. Comparisons of housing starts per year with 1945-1959 data and 1959-forward data are difficult. In 1959 the Bureau of the Census changed its method of reporting housing start statistics with the new method being far more inclusive than the old.
cent.\textsuperscript{5} Housing starts per thousand existing units in the 1950's averaged 7.8 per cent.\textsuperscript{6} Throughout the early and middle 1950's, therefore, the national outlook was one of a substantial national economic commitment toward reaching the nation's housing goals of "a decent home and a suitable living environment for all Americans."

The years of the late 1950's and 1960's, however, presented a somewhat different picture. In the early 1960's national residential construction rates took a major downturn. In 1960 new construction starts were only approximately 1.3 million units. Furthermore, after an impressive year in 1963 (1.65 million starts), new residential construction rates peaked and leveled off to the 1.5 million range in 1964 and 1965.\textsuperscript{8} The "credit crunch" of 1966 greatly depressed residential construction with starts dropping to 1.2 million units.\textsuperscript{9} From 1967 to 1969 residential starts slowly approached and finally reached 1963 levels as national attention again began to focus sharply on national housing problems. A significant resource allocation away from housing had taken place during the 1960's, and residential construction expenditures as a percentage of the Gross National Product never rose higher than 4.8 per cent and dropped to a low of 3.2 per cent in 1967.\textsuperscript{10} The demand of housing on the dollar as a percentage of all national expenditures also decreased in the 1960's, with residential starts per thousand existing units dropping to 7.5 per cent in this period.\textsuperscript{11}

Moreover, construction costs throughout the 1950–1970 period had greatly increased — by 110 per cent — and at a greater rate than the consumer price index which correspondingly rose 66 per cent.\textsuperscript{12} While material and labor costs for residential construction increased greatly, the production factor of residential construction most responsible for this inflation in costs was the price of residential land. Nationally, from 1950 to 1966, while the average costs of a new house and its site increased from $8,954 to $17,984, the cost of the site itself increased from $1,035 to $3,627 — more than twice as fast as total costs.\textsuperscript{13} Furthermore, the site as a percentage of final costs of a new house increased from 12 per cent to 20.2 per cent.\textsuperscript{14} Recent

\textsuperscript{5} M. Schussheim, Toward a New Housing Policy — The Legacy of the Sixties 63 (1969) [hereinafter cited as M. Schussheim].
\textsuperscript{6} Id. at 19–21.
\textsuperscript{8} M. Schussheim, supra note 5, at 20.
\textsuperscript{9} Id.
\textsuperscript{10} Id. at 19, 63.
\textsuperscript{11} Id.
\textsuperscript{12} Id. at 32. Figures are for the period from 1946–1966.
\textsuperscript{13} Id. at 40.
\textsuperscript{14} Id.
years have seen a continuation of this trend which further increases the purchase price of newly constructed units.\textsuperscript{15}

Increasing civil unrest in the cities, as well as the dismal production and inflation levels in the housing industry, led the Johnson administration in 1966 and 1967 to reexamine national housing policy and the plight of American cities. Reporting in 1968, the Kaiser and Douglas Commissions\textsuperscript{16} each published extensive reports of factors involved in the supply and demand for housing. Of the recommendations of these study groups, one in particular bears special attention for the purpose of this discussion. The Kaiser Committee on Urban Housing recommended the construction of 26.7 million new residential units by 1978.\textsuperscript{17}

This projection of national housing need in the next decade represented a goal almost equal to the previous twenty years' production record. One commentator, Mr. Anthony Downs, estimated the real need at a somewhat higher 27.7 million units.\textsuperscript{18} Either goal would, of course, represent a substantial redirection of national resources toward housing. Congress, in the Housing Act of 1968,\textsuperscript{19} accepted the 26.7 million unit figure as the national policy for the 1970's.

To achieve this goal will be difficult. Residential construction at these levels would require a similar massive investment, with increases in housing manpower and financing, and in other kinds of related residential services, such as highways, parks, public transit, schools, and infrastructure,\textsuperscript{20} to name a few.

By the year 2000 an estimated 45 to 80 million additional Americans will have to be housed with an estimated 80 per cent of all population growth in the United States from 1960–1985 occurring in the suburban ring.\textsuperscript{21} Mr. Downs has determined that 17.9 million units of his estimated 27.7 million units will have to be constructed

\textsuperscript{15} For a survey of median costs for new construction housing in the Delaware Valley region, \textit{see Delaware Valley Regional Planning Comm'\textquotesingle}N, Nos. 4 & 5 (1971).

This continuing problem of escalating costs of new construction was the subject of much recent concern in Montgomery County. \textit{See D. Longmaid \& R. Bingham, Housing in Montgomery County, Pennsylvania 12 (1968).}

\textsuperscript{16} \textit{National Comm'\textquotesingle}N on Urban Problems, Building the American City, 273–75 (1969) [\textit{hereinafter cited as Building the American City}. \textit{See generally The President's Comm. on Urban Housing, A Decent Home} (1968) [\textit{hereinafter cited as A Decent Home}].

\textsuperscript{17} \textit{A Decent Home, supra} note 16, at 39–40.

\textsuperscript{18} \textit{Downs, supra} note 3, at 142.


\textsuperscript{20} The term "infrastructure" as used here includes a wide scope of necessary public facilities such as water, health, police, fire, and sewage treatment services.

in the suburbs. Even if one believes that the need projections of Downs and the Kaiser Committee are unrealistic, high levels of residential construction, around two million per year in the 1970's, would seem necessary to maintain adequate housing and social policy. Despite recent record residential construction starts, it is questionable whether such levels can be long maintained.

The foregoing historical overview of national housing production has been presented for several reasons. First, it is essential to recognize the relationships between the realization of national housing goals and the housing conditions of all American citizens. In order to replace substandard units in the housing stock, it is necessary that rates of residential construction remain substantially above national rates of net household formation. That is, unless we produce housing at a rate at least equal to the growth in households, the growth in demand for housing will exceed the growth in supply, creating housing shortages and "bidding up" rents and sales prices. For the market to operate properly and to replace the supply of substandard and overcrowded housing, residential construction must proceed at high rates, substantially higher in the next decade than in the past. Without such rates of construction, it is submitted that no metropolitan area or large city will likely see substantial improvement in its housing conditions.

Second, to develop sensitive housing policies on a local or regional level, it is essential to appreciate the relation of national or regional housing construction rates to fluctuations in the national economy and in the mortgage market. As interest rates rise (perhaps to control inflation), housing construction usually decreases. Further, as the economy heats up, alternate investment possibilities often make investment in residential mortgages less attractive.

Third, increases in the costs of new construction, particularly in the land component, appear to have reduced significantly that portion of the American public capable of purchasing new construction. As has been explained and will be discussed in more detail later, any decrease in the rates of new construction will prevent any real improvement in national housing conditions. Average new construction prices have been rising quickly over the past several years, further limiting the market for new construction. Recent federal subsidy programs, which attempt to increase the market for new construction, and new

22. Downs, supra note 3, at 146.
23. The price paid for land by a housing developer as well as the intensity of its developed use (units per acre) is a principal determinant of the value or rent of units to be built. If land prices are high and zoning restrictions severely limit density, the developer can build only high price units to recoup his substantial land investment.
24. For descriptions of the purpose and coverage of federal housing subsidy programs, see M. Schussheim, supra note 5, at 1-25.
development techniques such as cluster developments and planned unit developments, which attempt to decrease the sales price of new construction by more efficient land use and construction flexibility, are exemplary of actions taken to reverse this trend. Nevertheless, rising new construction prices will likely remain a serious problem and threaten the ability of the nation to achieve its housing goals.

Local development controls, zoning, subdivision controls and building codes, insofar as they act to unreasonably increase land costs or construction costs, are also serious threats to the relieving of national, regional and local housing problems. Recent interest by planners, lawyers and the general public has resulted in a serious debate on the merits of such unlimited forms of local development controls. While recent court decisions on exclusionary zoning have removed some of the more obvious extremes of land control, the essential problems involved are far from settled and will no doubt continue to be argued.

Finally, the solution to housing problems, however perceived, and whether on a federal, state, or local level, contains certain spatial and economic characteristics which require levels of organization and control essential to the development of successful policy. In considering housing problems, therefore, one is required to contend with a wide variety of related issues, the importance of which can sometimes be viewed only in retrospect. It is only in recent years that economists have systematically attempted to describe the operation of housing markets. It is therefore not surprising that huge gaps exist in our knowledge of housing problems. The following discussion will be an attempt, through the use of concepts which are in a relatively formulative stage, to apply certain concepts of housing market operations to the analysis of a specific housing policy. It is hoped the reader will appreciate the limitations inherent in this approach.


Again, the importance of maintaining a proper perspective in analyzing housing policies must be stressed. Major improvements in housing conditions for Americans (and particularly the poor) can be achieved in the present system only through the effective operation of housing markets. State or local policies designed to improve housing conditions must therefore reflect the realities of the market and mesh with national housing policies, mortgage market conditions, and economic growth if real improvement is to result.

B. Housing Codes as Housing Policy

This Article is concerned essentially with the Pennsylvania Rent Withholding Act. However, since this Act can be best characterized as a housing code enforcement tool, it is proper to consider some of the basic policy principles inherent in housing code programs.

The great growth of interest in housing standards and codes, while following long established historical and legal trends, no doubt reflects the urgency of the problem of urban decay. Furthermore, the slowness and actual failure of past attempts in clearance, redevelopment, and relocation to make major improvements has helped to promote housing code strategies—strategies designed to require existing deteriorated housing to be brought up to specific minimum standards as an alternative to demolishing and replacing such housing and to prevent housing that has not yet begun to deteriorate seriously from becoming slum property.

Housing codes have thus traditionally dealt with the "deterioration process" and, by extension, the habitability of the nation's or area's residential structures. They have emphasized remedial efforts on a local level to preserve the locality's good housing, while attempting to maintain minimum standards in the worst areas.

Space does not permit a full history of the development of housing codes. Several excellent histories already exist. However, some recent developments, insofar as they are pertinent, bear mention. Federal interest in housing codes first appeared in the Housing Act of 1954, where codes became part of the "workable program" re-
requirement localities had to submit, prior to federal approval for any urban renewal funds. The addition of housing codes and "workable program" requirements were intended to broaden the attack on "blight" by adding the concept of conservation of existing housing stock to the clearance or "bulldozer approach" of the Housing Act of 1949.\textsuperscript{33}

The "workable program" requirement forced localities to submit a code enforcement program designed to foster the repair and voluntary rehabilitation of areas and residences.\textsuperscript{34} As the urban renewal program continued to tear down huge quantities of housing, particularly the housing of the poor, and the long delays from project planning to completion left large land parcels cleared and vacant, many began to question the ability of these slow-moving renewal programs to solve "urban blight."\textsuperscript{35} Increasing interest in rehabilitation as a tool to save the cities developed. Such programs as the Neighborhood Renewal Program of 1956\textsuperscript{36} and the Community Renewal Program of 1959\textsuperscript{37} stressed the conservation and rehabilitation of entire areas, with housing codes playing a major role.

However, local housing code programs were generally ineffective in dealing with "blight."\textsuperscript{38} In 1964 and 1965, the federal government decided to become more directly involved, hoping federal money could make conservation and rehabilitation work. The Housing Act of 1965 for the first time established federal assistance for code programs on a two-thirds federal, one-third local basis for planning and municipal service improvement costs.\textsuperscript{39} The program hoped to make quick and visible results over a three to five year period in the housing quality of large, deteriorating, but still standard,\textsuperscript{40} urban neighborhoods.

\begin{enumerate}
\item Housing Act of 1956, ch. 1029, 70 Stat. 1099, as amended, 42 U.S.C. § 1452 (1970). The purpose of the Neighborhood Renewal Plan was to increase the overall planning emphasis of urban renewal legislation. The Neighborhood Renewal Plan was viewed as a more flexible tool involving not only clearance but also rehabilitation. \textit{See L. Friedman, supra note 2, at 163.}
\item \textit{Code Requirements in "Workable Program" Revised, Toughened}, 24 J. Housing 37 (1967).
\item The term "standard" as used here and applied to individual housing units or neighborhoods can be defined as any housing unit or housing units in an area not substandard. Substandard housing is generally defined as all dilapidated housing, plus all sound or deteriorating housing with inadequate plumbing facilities. Sound,
\end{enumerate}
The historical development of housing codes has been uneven. Since the Housing Act of 1949 and its amended versions, however, particularly section 117 of the Act of 1965, the importance of housing codes as a tool in housing policy has increased. This revitalized interest has caused a considerable debate on the value of codes, their administration and enforcement, and their ability to make substantive improvements.

As an application of the police power of the state effectuated through a local ordinance, housing codes are designed to prescribe the minimum conditions under which a building may be lawfully used and occupied as a housing unit. To a large degree, however, housing code standards have been often ambiguous, seldom quantitative, and almost never effective in attaining their goal of minimum housing standards throughout a jurisdiction. The main purpose of housing codes has been to fight physical deterioration under the theory that "blight" is a source of economic and social injury to the community, or as a leading commentator describes it, "a social cost approach" to housing codes. The setting of code standards, however, has often worked against this purpose. Code standards set high enough to deal effectively with deterioration in early stages are often too high to be effective, causing unreasonably high costs of compliance in slum areas. Furthermore, standards high enough to prevent deterioration might be nullified through public disregard or judicial action. Conversely, if standards, as has often been the case, are set too low, they are ineffective in reaching their objective of preventing deterioration and promoting an adequate minimum of conditions necessary for living.

Thus, housing code standards have been beset by two major problems: (1) the difficulty in relating objective and definite standards to violations and the lack of data on the real requirements of residential structures; and (2) the difficulty in establishing a level of standards sufficiently high to prevent massive residential deterioration, yet not so high as to place undue repair burdens on owners.

deteriorating and dilapidated are classifications used by the 1960 Census of Housing to rate housing conditions. H. WOLMAN, supra note 1, at 20 n.11.

41. The objectives of the section 117 program were to restore and rehabilitate sound neighborhoods and to prevent blight by effective code enforcement programs and improvements in public facilities without the use of extensive clearance or relocation. Funds were available for the planning and execution of a code enforcement program, municipal service improvements, technical assistance, and grants and loans to eligible residents for rehabilitation in the selected areas. Funds were on a two-thirds federal, one-third local, matching basis.

42. L. FRIEDMAN, supra note 2, at 51.

43. High standards, sufficient to produce effective results, may be difficult to justify as minimum standards and could be viewed by the courts as an arbitrary and capricious use of the police power or confiscatory, constituting a taking of property without just compensation in violation of due process. For an excellent discussion of these issues, see Comment, supra note 31, at 495–500.
The deterioration process is a complicated phenomenon involving many social as well as economic factors. In many ways, the process is tied up in values and goals explicitly expressed by the society as a whole. In general, the deterioration process (which is natural over time) is accelerated by a major economic or racial change in an area and is characterized by the following events. Financial institutions, predicting a decline in the area’s market value, hesitate to invest. Purchasers are driven off, while present owners are unable to finance improvements. As the process continues, owners, fearing a further decline in value, either sell or do not maintain normal upkeep. The process quickens and deterioration changes the basic character of the neighborhood. It is a downward spiral.44

Housing codes, in theory, are capable of dealing with and halting the deterioration process. By prescribing minimum levels of maintenance, they are assumed to interdict the market downturn and produce results. That they do not succeed in most cases in halting deterioration is not surprising. This discussion will illustrate that, except under the most advantageous conditions, the operation of housing markets will often doom code programs designed to improve housing conditions on a wide scale.

It is useful to view the Pennsylvania Rent Withholding Act within the general framework of housing code development. As a code enforcement tool, the Act contains powerful sanctions to accomplish code compliance.45

In this Article the potential economic effects of the Act on housing markets and, more specifically, the ability of the Act to achieve certain policy goals and objectives will be analyzed. Several special features of the Act, in terms of its general use, bear mention. The Act appears designed to operate primarily upon the low income rental housing market. As such, it directly confronts the slumlord as a means to force code compliance. The literature on housing problems and poverty has always viewed the slumlord as a wretched and unsavory individual making exorbitant profits by overcharging the poor for inferior quality housing. Only recently has this stereotype been examined in any detail. While evidence is currently inconclusive, it appears certain that many of the characteristics of the onerous slumlord of the past are not true.46 No

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44. See Note, Enforcement of Municipal Housing Codes, 78 HARV. L. REV. 801 (1965).


46. For examples of the classic view on slumlords, see L. Friedman, supra note 2, at 39–44; J. Riis, How the Other Half Lives (1957). For a contrary view, see Kahn, Note: Speaking Out: We Need More Slumlords, in A. Casner & W. Leach, CASES & TEXT ON PROPERTY 508–12 (2d ed. 1969).
doubt, within the low income housing market there exists slumlords that fit these classic definitions. However, George Sternlieb in his study of Newark, and other researchers in other cities, have found a much more diverse pattern of landlords in low income areas. Suffice it to say at this juncture, that patterns of ownership in slum property are much more diffuse than previously thought. Furthermore, slum ownership has and must still be considered a real estate investment of high risk. Financing for purchase or rehabilitation of slum property is most expensive (when available) and generally of a short term nature. Vacancy rates are often high and the general weakness of the market aggravates the investment risks. Tenants are often destructive and are unwilling or unable to pay higher rents for improved conditions. High property taxes present large fixed operating expenses which constitute a great burden on the small owner. These factors, taken together, present a far more realistic view of slumlords.

It is imperative that housing policies designed to deal with low income housing markets recognize the problems and diversity of slum ownership. If housing policy is not sensitive to these issues, counter-productive results will likely occur. To properly analyze the economic effects of the rent withholding law on housing markets, a basic description of the operations of these markets, as well as some of the distinctive features resulting from these operations, is necessary.

II. Economic Aspects of Housing Markets

A. The Housing Services Package

A thorough economic analysis of the urban housing market would require a much longer exposition than will be attempted here. Nonetheless, because some concepts are essential to an understanding of the impact of code enforcement and rent withholding upon this market, a few very basic factors will be considered.

The housing market appears almost to defy economic analysis because it violates practically every assumption fundamental to micro-economic models. Consider the theoretical simplicity of the market for a low-cost consumer commodity readily available in any produce market — for example, oranges. Though the example may seem capricious, it serves to point out fundamental differences between housing and other consumer goods. In the case of oranges, the commodity is a discrete phenomenon, i.e., it comes in small commodity units. A consumer may, therefore, exactly match the amount of

oranges he desires to consume with the number of oranges he can buy. Because oranges are relatively inexpensive, the most avid orange consumer can purchase as many oranges as he can eat without major decrements of his income. He may buy many oranges, and buy them often, easily changing from one orange seller to another in response to price variation. Likewise, oranges have no investment aspects; they are purchased to be consumed within a relatively short time. Finally, the benefits or ill-effects of orange consumption accrue only to the individual consumer. There are, therefore, no economic externalities associated with orange consumption which have positive or negative effects upon society at large.

For all these reasons, it makes fairly good sense to conceptualize the market for oranges and similar consumer commodities as the simple intersection of supply and demand functions. It is a market in which a stable equilibrium price can be established through a rapid iterative bidding mechanism. This is simply not the case with housing. The unit of housing consumption is neither discrete nor inexpensive. Likewise, the product is extremely variable over space, and often variable within a single block, or even a single structure. Further, consumption of the commodity is not easily definable, and such consumption as does occur characteristically exerts external costs upon neighboring tenants and structures.

Many of these features of the housing market become clear upon consideration of what housing is as a commodity. The basic unit of housing is the individual residence which, as a commodity in exchange, is characterized by at least four components. One component is the physical quality of the dwelling unit — its structural soundness, attractiveness, comfort and convenience. The state of repair of paint, plaster, stairs, and hallways, and the essential systems — heating, plumbing, and electrical — are primary features of the physical component. In addition, the quality of equipment, the general layout of rooms, their size and quantity, as well as the amount of storage space, are elements of the physical quality of the unit.

Another component of the housing unit is the neighborhood or environmental setting of the unit. The total environmental setting is composed of two factors: the physical and the sociological environments. The physical environment includes such features as the state

48. The components of housing as a commodity or service package have been discussed at length by many authors. Some discussions have been of a general nature. See, e.g., C. Rapkin, L. Winnick, & D. Blank, Housing Market Analysis — A Study of Theory and Methods 7–8 (1953) [hereinafter cited as C. Rapkin]. Other commentators have attempted to determine the relationship of rent to these components. See Kain & Quigley, Measuring the Value of Housing Quality, J. AM. STATISTICAL ASSN 532–48 (1970).
of repair of neighboring units, their design, age, and attractiveness. Likewise, the general cleanliness of the neighborhood, noise levels, traffic congestion, and the existence of amenities — light, trees, open space, and clean air — or the lack thereof are features of the physical environment. The sociological environment includes such features as the age, income, racial, and ethnic mix of neighborhood residents and their attendant values and life styles. The incidence of crime, drug abuse, and other antisocial activities are also features of the sociological environment.

A third component of the housing unit as a commodity is the quality and quantity of social services which residents of an area enjoy. The extent of fire and police protection, the quality of schools, public health facilities, and public utilities largely define the social service component. The quality of many social services, primarily those of a physical nature such as sewage disposal facilities and water utilities, are determined by the tax base and policies of a political subdivision. Others, such as education and police services, may vary over neighborhoods within political subdivisions as a function of sociological features of the neighborhood environment described above.

The final component primarily includes locational aspects, i.e., the accessibility of the unit or its distance in time, money, or convenience from facilities to which residents desire to travel. The accessibility component is to a great extent a function of the quality, quantity, and mix of transportation facilities within the neighborhood, including not only highway and mass transit facilities, but complementary facilities such as parking garages. Accessibility, however, should not be thought of solely in terms of mechanical transport, for the walking distance of the unit from convenience and community services is clearly a partial determinant of the unit’s accessibility.

B. Some Concepts of Housing Market Operations

The components presented suggest that the dwelling unit is a package commodity consisting of various features which consumers weigh in their decision to buy or rent. The trade-offs consumers are willing to make between the components of the housing package determine who gets what housing, where, and at what cost. The key concept here is that housing, unlike the micro-economic model of the oranges given earlier, is not a uniform commodity; rather, it is a commodity which may vary in all its features from place to place and house to house. It is, therefore, entirely inadequate to view the sum of housing units within a metropolitan area as a single stock of homogeneous units and thus a single undifferentiated market. The sum of
units, rather, consists of separate but interrelated sub-sets, which are segregated into sub-markets through price competition among consumers.

Housing sub-markets may be defined as the set of units which at a given price level are viewed by a set of consumers as economically feasible and equally attractive accommodations. The number of consumers so viewing a given set of units constitutes in sum the demand for the housing sub-set. As casual observation and theoretical considerations suggest, sets of consumers do differentiate themselves to form sub-markets largely on the basis of income levels. Moreover, sub-market variance may also result from differential consumption patterns among persons of varying ages, educations, or ethnic backgrounds. For our immediate purposes, however, such differences can be ignored.

Nonetheless, the supply element of the housing sub-market consists of those units which consumers at given price levels consider to be equally attractive where there exists conformity of choice among consumers of similar income levels. The fact that they find units equally attractive suggests indifference among consumers relative to a set of housing units, i.e., that housing sub-markets are characterized by substitutability among units in terms of consumer utility. However, to say that units are viewed in their entirety as substitutable does not require that there be conformity among the individual components. For example, at given price levels a consumer may view the following alternatives as economically feasible in terms of his income level and, therefore, equally attractive:

(1) small country house, low rent, poor public services, and poor accessibility;
(2) large suburban house, high rent, good public services, and moderate accessibility;
(3) small urban home, moderate rent and public services, and excellent accessibility.

Therefore, such substitutability as characterizes sub-markets suggests that the utility of units relative to the total utility schedules of consumers and prevailing housing and non-housing price levels is the same for all units in the sub-markets.

49. For additional notes on the concept of housing sub-markets, see W. Grigsby, supra note 28, at 30-82.
It is the interaction of the supply and demand for units which results in the differentiation of sub-markets by income level. This occurs as a result of competition for units among consumers subject to variation in income constraints. For example, although low income persons might be indifferent in choosing between an urban and suburban home, the suburban home may enter high into the utility function of a middle income consumer who will outbid the low-income consumer for access to the suburban unit. Thus, through price competition, lower income consumers are successively precluded from housing sub-markets by higher income consumers. A queuing of consumers occurs across the quality spectrum of available housing packages, thus further defining individual sub-markets.

An established queuing structure across a continuum of sub-markets is not a static phenomenon. Indeed, casual observation indicates that there exists a process of housing unit (and neighborhood) transition, whereby units become elements of supply in successively lower income sub-markets. Such movement between sub-markets is called filtering, which here will be defined as the descent of units into successively lower sub-markets as differentiated by income.51

Descent here should be viewed as a secular trend, by no means consistent at each point in time. For example, consider the once widespread phenomenon of “blockbusting.” Blockbusting involved the purchase of homes initially at premiums by realty agents in areas primarily occupied by low income whites. The units were then resold at a substantial mark-up to moderate income blacks who had been precluded from alternative accommodations due to discrimination. Unless the neighborhood stabilizes in terms of the economic means of its residents, these units will again be resold, probably to lower income blacks. The units involved are part of the filtering process despite the fact that at one time they had appreciated in price, and in terms of income levels of the occupants.52 Such periodic price appreciation is probably an integral part of filtering especially where the interfaces of dual sub-markets are being crossed. Similarly, not all units filter. Throughout the south, for example, antebellum mansions and units of similar income level sub-markets are largely occupied by gentlemen of the same social stature as those who oversaw the construction of these homes.53

51. Filtering is perhaps the only concept original to housing studies. For a brief discussion of filtering, see H. Wolman, supra note 1, at 22-25. For a detailed discussion, see W. Gruenberg, supra note 28, at 84-130.

52. Smolensky, Becker & Molotch, The Prisoner’s Dilemma and Ghetto Expansion, 44 LAND ECON. 419, 422 (1968) [hereinafter cited as Smolensky].

53. To name just one example, the Belle Mead area of Nashville, Tennessee.
Filtering occurs as the result of changes within the total stock of housing and relative changes between components in housing packages. The process is largely precipitated by new construction at the upper end of the quality spectrum. Where new housing is introduced, consumers in high income levels are presented with opportunities for improved housing.

As high income consumers leave their previous dwellings to enter new ones, vacancies are created within the premium stock. The effect of vacancies is to increase the supply of premium housing on the market, and thus to decrease its sale price. Consumers within slightly lower income levels now find that they can afford superior housing, and move into premium housing neighborhoods. Again, these consumers create vacancies within the stock they have left, presenting opportunities for consumers at still lower income levels to acquire improved housing. Ideally, the process continues until there is adjustment of units across all sub-markets and every consumer occupies improved housing. At the lowest income levels, vacancies and abandonments increase with the worst units presumably being removed from the stock entirely through demolition.

The process appears straightforward, but in fact may not be operative throughout the entire continuum of sub-markets, and may often have ambiguous results among consumers at low income levels. Much depends upon the linkages between sub-markets, i.e., the activity of consumers operating at the margins of the sub-markets. It is the marginal consumers, the consumers who have only narrowly been excluded from better homes by the pricing structure, who first respond to vacancies and declines in rent within the sub-market immediately above their own. When these marginal consumers are slow to respond, and clearly there are substantial constraints upon their response, filtering is impeded.

Perhaps the major constraint is the simple cost of moving. This cost is substantial both when measured in monetary terms and in terms of the psychological stress of being "up-rooted" from a familiar environment. The decision to move may be viewed as an investment decision concerning utility. The consumer, in making this decision, compares the personal value or utility of his present residence and all its components with the value of alternative housing packages less the monetary and psychological costs of moving. In general, the greater the cost of moving, the more inelastic will be the consumer's demand for housing relative to price changes in sub-markets immediately above his own. As a result, the price of housing in the next sub-market must fall greatly before the marginal consumer will pur-
chase units in that sub-market. Because residents of higher sub-markets usually must be able, or believe that they are able, to sell their own unit before they will purchase a newly constructed or better quality one, the effect of this inelasticity of demand among marginal consumers is eventually to decrease demand for new units, and thus, to slow the filtering process.

Moreover, demographic and income trends may have substantial impact upon the extent of filtering. Suppose rates of new construction are high and vacancies are being created within premium sub-markets. Suppose further that coincidental with this new construction is a marked increase in the rate of family formation among individuals at medium income levels. Potentially, the increase in middle income consumers may take up the slack across the newly created sub-markets by prohibiting any units from filtering down to low income consumers.

Finally, even if filtering were to work well, wherein a sufficient number of better quality units were continually brought into low-income sub-markets so as to alleviate the demand for substandard units, the housing needs of the poor might still not be met. This becomes apparent when one considers that the concept of standard and substandard relates only to the physical component of the housing package, totally disregarding the environmental and locational components.

As one commentator suggests, "a most evident characteristic" of low income housing markets is:

... that the demand is not merely for more space or for better space, but for a package of environmental changes. In other words, those who see filtering as a solution to the housing demands of the underhoused will be disappointed because filtering does not meet all the demand requirements of the underhoused.54

Such disappointment is most likely to arise where the locational patterns of low income families arising from "successful" filtering continue to be characterized by concentration and centralization. The social welfare aspects of "successful" filtering in such an instance would be similar to, and equally as unsatisfactory as, those of public housing. It is universally acknowledged that "public housing projects have merely relocated the slum, not changed it"55 — despite the fact that public housing units are not only of standard quality, but are newly constructed. Though certain of the inadequacies of public housing have arisen from design characteristics (inadequacies which would largely

55. H. Wolman, supra note 1, at 32.
be avoided if filtering were successful), the source of many of the
difficulties of public housing continues to be the concentration of the
poor in the worst social environments of the city. Thus, improved
filtering would not seem to be the final answer to the housing needs
of the poor unless accompanied by a comprehensive government–
initiated program of relocation and other forms of public assistance.

Such a policy would seem to run directly contrary to the needs
of the poor as these have been articulated in recent years by leaders
within low-income areas. An unavoidable consequence of the policy
recommended is the diffusion of the poor over the metropolitan area
which would appear to severely limit the ability of such citizens to
exert any unified political influence. If improvement in the living
conditions of low income families is functionally related to their
capacity to exert political influence, a calculus which would seem
historically valid, then a program of relocation would work a disservice
to the poor by frustrating any potential for greater political power.

Filtering to this point has been discussed primarily in terms of a
market phenomenon precipitated by additions to the total housing
stock through new construction. Yet within the standing stock, quite
apart from new construction, changes in the relationship of units may
occur which are an integral element of filtering: Housing sub–markets
need not be locationally specific, and within any neighborhood all
units need not be an element of supply within the same sub–market.
Nonetheless, there is a tendency toward locationally specific sub–
market homogeneity that occurs because three components of the
housing commodity are inherently locationally specific. These include
the environmental, social service, and accessibility components. This
suggests that heterogeneity of sub–markets within neighborhoods is
primarily a function of variation in the physical component of the
stock. For example, on a single block one might observe a well–kept
garden apartment complex with relatively high rentals, co–existing with
a series of less well–kept units with relatively low rentals. Presumably,
the differentiation of the sub–markets within this block occurs because
the landlord of the apartment complex finds it profitable to invest
heavily in maintenance of the complex to the extent that its physical
superiority to other structures in the area results from maintenance.
Yet the position of the landlord is precarious, for the tenants of the
complex are experiencing the same environmental, social service, and
accessibility benefits as the residents of neighboring structures. Tenants
of the complex are indifferent to making a choice between their
present accommodations and alternative units they can afford because
either the rents are lower, or physical maintenance higher, than could
be acquired elsewhere. It is therefore necessary for the landlord to maintain a ratio of rents to maintenance expenses which is decidedly lower than those of landlords within the same sub-markets, whose properties enjoy greater environmental benefits.

However, it can be anticipated that neighborhood units will become even less well-kept, reducing the environmental amenities in the neighborhood still further, and that the inherent aging process will require greater expenditures to maintain the apartment complex. Thus, over time, the ratio of rents to maintenance expenditures will continue to decline, reducing the return on the landlord’s investment. When this occurs the landlord is faced with several alternatives:

1. Retain the property, increase maintenance expenditures and operate at reduced profit, or at a loss;
2. Sell the building and invest elsewhere; or
3. Reduce maintenance expenses, encouraging present tenants to leave and permit rents to decline such that the complex becomes an element of supply in a lower sub-market.

The first option is probably untenable, and the last two have a similar impact upon the complex — the complex is eased into a lower sub-market, and may even become an element contributing to the general decline of maintenance throughout the neighborhood. This situation will be exacerbated if the landlord subdivides and converts the larger units into smaller, more crowded apartments. At the middle of the quality spectrum, it is through this process that premium housing becomes “worker” housing. At the lower end of the spectrum, this is the process through which the marginal neighborhood becomes a slum, and eventually, a “crisis” ghetto.56

The central dilemma is fairly simple: current tenants cannot or will not pay the rents required by landlords to justify the required level of maintenance investment. Thus, the landlord disinvests, and to the extent tenants are slow to move, or supply conditions are tight, disinvestment may result in exorbitant, albeit short-term profits. Finally, however, the unit will fall to such a state of disrepair that only tenants of the lowest income level, whose only options are the hovel or the street, will occupy the structure. At this point, the landlord will retain the building only so long as expenses are covered and it is worthwhile to collect rents. Beyond this point, the landlord will simply abandon the building.

Inherent in the preceding analysis is the belief that housing is but one of the elements integrally related to what is perhaps the hardest question of our times, why a supposedly “affluent society” continues to lack the capacity or will to confront the needs of its low-income citizens. The process of housing quality deterioration and neighborhood decline are significant factors in providing an answer to this question. Where the element of racial discrimination is considered, another dimension is added to the question.

III. Questions of Location and Discrimination

A. Theories of Residential Location

Having viewed in general some basic concepts involved in the operation of housing markets, attention is now turned to a brief discussion of the elements involved in the consumer’s choice of a dwelling unit, the importance of the location of that unit and the results of certain barriers to free consumer choice on the operations of housing markets.

The decision of a consumer to purchase housing of a given quantity and quality and at a given location is of critical importance to that consumer’s future well-being. Furthermore, there is little doubt that residential location greatly influences the structure of cities and the distribution of activities within urban areas. That is, residential location, to a large degree, determines the location of a wide variety of additional activities in a city, including retail trade, schools, parks, and fire and police services. More important to this discussion, the welfare of a city’s or region’s population is to a great extent influenced and determined by the relation of residential location to the location of jobs, health, recreation, and open space use. No doubt, residential location has a strong effect on the quality of lives people enjoy and the stability of neighborhoods in which they live.

In recent years much effort by city and regional planners and economists has been devoted to attempting to develop a “model” of residential location capable of explaining patterns of urban growth and development. Of special importance to the present discussion

57. The term “model” is generally defined as a somewhat simplified abstraction from the real world but with an additional emphasis in this context. The purpose of these models of residential location is to simulate real world operations, either by the use of a mechanical analogy or, more importantly, by the operation of a computer process. For a more expansive definition, see Harris, New Tools for Planning, 31 J. Am. Inst. Planners 90-94 (1965).

58. For an excellent discussion of the major concepts involved in simulating urban development, see Harris, Quantitative Models of Urban Development: Their Role in Metropolitan Policy-Making, in Issues in Urban Economics 363 (H. Perloff & L. Wingo ed. 1968).
is that group of models which have as their theoretical basis concepts of residential location based on the operations of the land and housing markets. Essentially, this model would attempt to answer two economic questions: (1) What are people’s preference structures for housing and other goods; and (2) How does the market for such goods resolve these preferences and deliver these goods as required.

Many individuals have contributed to this effort to describe and simulate residential location with varying results. Many, however, have used a common conceptual framework only recently developed. Residential location is viewed as a trade-off between the desire for more living space and the desire for easy access to places of employment, shopping, recreation, and services — “[s]pacious living versus easy access,” as the locational decision has been called.

The following is a simplified presentation of this decision: Parcels of land closer to the center or centers of an urban area are more accessible to various places of employment and services. Consequently, since these areas are more desirable, demand is high and site rents for the land is high. Or, stated generally, as distance decreases from the center of a city, accessibility decreases and site rents decrease as a function of decreased accessibility. Similarly, transportation costs increase as the distance increases. Any decision by a housing consumer to locate at a given area is based upon a weighing of the relative utilities of savings in site rents at a given distance from the center of a city versus the transportation costs incurred due to the increased or decreased accessibility of the site.

Individual households acting as above then compete with each other for all sites in the metropolitan area. All households, within a given income and preference structure for location and other goods,


61. J. Kain, Theories of Residential Location and Realities of Race (Harvard University Program on Regional and Urban Economics, No. 47, 1969) [hereinafter cited as J. Kain].


63. “Economic theories of residential location explain the locational choices of urban households by means of a trade-off between savings in location or site rents obtained by commuting further from work and the larger transportation costs thereby incurred.” J. Kain, supra note 61, at 9.
compete for and are located at a given site, having a certain size and transportation cost, as a function of the operation of the market.

Those households which prefer to live in low density areas will be encouraged by larger site rent savings to travel longer distances to and from work. Those sites near workplaces will be inhabited by those who require or desire high accessibility and consequently lower transportation costs. Due to higher site rents, those households which live in higher density areas, while receiving a greater savings in transportation costs, will necessarily purchase smaller quantities of space.

This theory goes far in explaining the present patterns of urban residential location. Those consumers with high income and high space demands live in suburban areas, those with lower incomes in the central part of the cities. Higher income people live in the suburbs because their higher space desires result in a substantial rent savings in the suburbs compared to the center city, which is not sufficiently offset by increased transportation costs. They are willing and able to bid more for suburban land and therefore locate there. Similarly, less affluent persons are more constrained by increased transportation costs and must therefore adjust their space and locational desires accordingly. Only those with very high incomes and a desire for high accessibility will be able to achieve both high space consumption and high accessibility in the center city.64

This theory of residential location also helps illustrate the historical growth of the city.65 Successive waves of suburbanization (first within the city limits, later outside its limits) have characterized the growth of American cities since the 1800's. As transportation technology advanced with trolley, commuter trains, public transit, and later automobiles and super highways, and improved accessibility of "outlying" sites, those who desired more space and could afford to pay increased transportation costs moved out of the "congested city."

The housing left by this more affluent class was occupied by those with lower incomes. Housing units were often converted to meet the new needs and lower incomes of the new residents. In short, housing filtered down throughout the city. Those with low incomes have always occupied the oldest housing in the city, usually at high densities; that was all they could afford. Slowly, neighborhoods changed as residents moved and the city grew. Such patterns of growth and deterioration have operated in the past and will probably continue in the future unless major changes in transportation or communications

64. Id. at 10-20.

technology, or the preference of Americans for more and more space, determine a new urban form.

B. Market Discrimination and Dual Housing Sub-Markets

While the recently developing concepts of housing market operations and residential location theory have been most valuable in explaining the complexities of housing problems, certain distinctive housing market features have received far less systematic treatment. One factor in particular — racial discrimination in housing — is a major and somewhat neglected feature of the operation of housing markets. This is particularly important when discussing housing code programs, rehabilitation policies, or in general, any program designed to improve existing housing in large American cities.

Any analysis of the effect of racial discrimination on the behavior of housing markets and the patterns of residential location must begin with a clear understanding of the extent and degree of residential segregation in American urban areas. While there has been a major migration of nonwhites into urban areas from the rural South since the Second World War, this nonwhite population has not similarly participated in the major post-war suburbanization of American cities. Nonwhites comprise an ever increasing percentage of the population of most American center cities, while the nonwhite portion of the suburban population has remained relatively unchanged. This pattern of nonwhite segregation is, for the most part, a uniformly established trend throughout the nation and remains a predominant population trend in American cities. "Unfortunately, there is more than a germ of truth to the characterization of an increasingly black central city being strangled by a noose of white suburbs."

Further, racial residential segregation does not end with nonwhite exclusion from suburban areas. Nonwhites are highly segregated in most American central cities. Studies in the 1960's calculated a "segregation index" for the central cities which measured the extent to which observed racial patterns of residence by city blocks differed from a pattern of normal proportional representation without a racial difference. The results showed a remarkable pattern of racial segregation by residence in all the 156 cities studied. Other studies, using different methods, have found quite similar results. It is clear that

66. J. Kain, supra note 61, at 2.
racially segregated housing patterns and location is a major factor in the makeup of American cities.

It is possible, of course, to hypothesize that the segregation of nonwhites was not a function of racial discrimination but more correctly the result of a composite of other socio-economic factors such as lower real incomes, and lower nonwhite preferences for housing. While there is, no doubt, some truth to this socio-economic argument, several individuals have raised serious questions regarding the explanatory value of this hypothesis.69 Others have examined locational patterns of whites and nonwhites to determine if income was a major factor in nonwhite residential segregation, and results indicate that income and expenditure differences alone could not explain the resultant segregated patterns.70 Thus, while it is clear that income and housing expenditure differences between whites and nonwhites have certain effects on locational patterns, it is equally evident that these factors, taken together, have not been proved to be a major cause of segregation.

Another prevalent explanation for the residential segregation of nonwhites in America lies in the desire of nonwhites, as separate racial minorities, to group together in racial enclaves, a pattern similar to that employed by other ethnic minorities in American cities. No doubt, there is considerable emphasis today in black and Puerto Rican areas of the city on community development and solidarity. These factors, however, are quite difficult to measure or analyze. Yet studies have indicated that “[r]acial residential segregation is clearly more pronounced than class or ethnic residential segregation, and it is a universal feature of American urban society.”71

It has also been stated that black and Puerto Rican segregation is “far greater than that documented for any other identifiable subgroup in American history.”72 Thus, while it is difficult to measure completely the effect of racial self-segregation, it seems highly unlikely that nonwhite citizens would so greatly value solidarity that they would limit their residential location choices to the degree present patterns indicate. A clear measure of nonwhite self-segregation will

69. After making substantial adjustment for income and housing expenditure differences between whites and nonwhites, researchers found that, even including these differences, massive segregation resulted. The Taeuber's concluded: "According to the model [referring to segregation indexes adjusted for income], the net effect of economic factors explaining residential segregation is slight." K. TAEUBER, supra note 67, at 94.

70. Using 1960 Bureau of the Census data for population and income for the ten largest standard metropolitan statistical areas in the United States, Kain found that income was not a sufficient explanation for housing segregation of racial minorities. J. KAIN, supra note 61, at 5-6.


72. J. KAIN, supra note 61, at 6.
probably not be possible until more all white areas are open for nonwhite occupancy. Thus, present knowledge strongly suggests that the value of the self-segregation hypothesis in explaining racial segregation in housing is quite less than is widely accepted.

A similar argument is often presented regarding taste or family style variables in the nonwhite housing demand, which basically posits that nonwhite tastes for housing and other goods, and variations in life style, voluntarily restrict nonwhite housing purchases to existing nonwhite areas. However, all of these arguments are incapable in themselves of explaining the existing patterns of national residential segregation. All are, no doubt, important in determining the preference structure of individual families, but in the aggregate, it is difficult to believe that such variations in individual preferences could result in such a clearly segregated locational picture.\(^7\)

A serious question remains. While each of the arguments examined has been rejected as insufficient separately to produce the level of segregation currently existing, could these arguments as an interacting group explain the degree of racial residential segregation in America? While doubtless these arguments have some explanatory value, it is the position of this discussion that low incomes and variations in nonwhite taste, life style and expenditure behavior cannot in themselves explain the widespread patterns of racial segregation existing in American cities. Moreover, it is submitted that racial discrimination is the primary factor in residential segregation by race. Such discrimination is largely beyond the control of the nonwhite population and is in effect an operational outgrowth of white racism. This segregation should be more correctly viewed as the logical extension of housing market discriminatory practices. These practices involve not only the prejudices of a majority of whites in America, but also the collusion of the housing industry, government and other institutions.\(^8\)

These racially discriminatory housing practices of past years are well documented and are today, for the most part, illegal.\(^9\) Racially

73. Id. at 8.

74. Racial discrimination in housing markets is administered largely by the housing industry in conjunction with the actions of individual buyers and sellers in the market. Real estate practices have received special attention on this point. For a recent summary of practices and attitudes, see R. Helper, Racial Policies and Practices of Real Estate Brokers 277-97 (1969).


76. The federal courts have also been instrumental in removing restrictions on the right of an individual to purchase or sell housing because of race. See, e.g., Jones v. Alfred H. Mayer & Co., 392 U.S. 409 (1968); Shelley v. Kraemer, 334 U.S. 1 (1948); Buchanan v. Warley, 245 U.S. 60 (1917).
restrictive covenants, clearly stated racially oriented appraisal practices, and the financing policies of private and public institutions led to a clear program of housing discrimination. Moreover, while recent laws and court decisions have eliminated the most blatant discriminatory practices, the pattern of past segregation resulting from these practices will long be with us. Crucial to this issue is that while the more obvious practices have been eliminated, additional and more subtle methods have often taken their place. The nature and extent of this discrimination has important implications for the operation of housing markets and the growth and development of urban areas.

The most important result of this racial discrimination in housing, for this discussion, are the effects of discrimination on the operation of the housing market and the ability of the consumer to purchase housing. It seems clear that discrimination in housing and the resultant segregated housing patterns it causes, act to supply inferior dwellings to nonwhites at higher rents. Although recent studies have questioned this conclusion, most students of housing accept the view that discrimination in housing does cause nonwhites to pay more than whites for units of similar quality. To examine this question in greater depth it is necessary to more fully discuss the effect of racial discrimination on the operation of the housing market.

To explain it in its simplest form, discrimination forces the creation of dual housing sub-markets, white and nonwhite. Whites are able to purchase housing services anywhere in the urban area, income permitting. Nonwhites can purchase housing services only in neighborhoods that are prescribed by custom and practice for nonwhite occupancy. Additions to the nonwhite housing supply come, not from new construction, but rather from shifts of units from white to nonwhite markets. Units are added to the nonwhite supply only when prices which consumers in the nonwhite housing market are willing to pay exceed those in the white market by an amount sufficient to overcome

76. Further, although the discriminatory practices of federal housing agencies have been eliminated to a large degree, the programs of these agencies often appear to be designed to produce segregated housing patterns. See, e.g., Shannon v. HUD, 436 F.2d 809 (3d Cir. 1970); Norwalk CORE v. Norwalk Rede. Agency, 395 F.2d 920 (2d Cir. 1968).

77. For a more complete discussion of these results, see D. McEntire, RESIDENCE AND RACE 60-65 (1960); Rapkin, Price Discrimination Against Negroes in the Rental Housing Market, in ESSAY IN URBAN LAND ECONOMICS 355 (1966); Langendorf, Residential Desegregation Potential, 35 J. Am. Inst. Planners 90-96 (1969).

78. Richard Muth, in his studies of Chicago, found little support for the hypothesis that Negroes paid higher prices for housing of a given quality as a result of racial segregation. However, it can be argued that Muth's concept of discrimination based on a price mark-up is too limited and does not include such factors as loss of opportunities through discrimination or restriction of housing choice and location. R. Muth, supra note 28, at 238.
white resistance to nonwhite occupancy. This is the basis for what is called the discrimination mark-up.\textsuperscript{79}

Since nonwhites are seldom purchasers of newly constructed homes, either due to discrimination or lack of income, the nonwhite supply of housing, necessary to meet growing population needs and to eliminate substandard housing, can expand only by converting units in a white housing sub-market to a nonwhite sub-market, generally at the fringes of existing nonwhite areas. This enables the white sub-markets to control the supply of nonwhite housing and either channel increasing nonwhite demand into existing nonwhite areas or limit the growth of nonwhite areas to housing primarily on the fringe of nonwhite areas.

Due to this artificial restriction on supply existing in the nonwhite housing market, a pent up demand for housing is built up across the whole nonwhite income distribution. The rapidly increasing nonwhite population in most urban areas creates a tremendous pressure to convert from white to nonwhite occupancy in certain areas. Since very low incomes are more numerous in the nonwhite areas, the demand for low income housing in nonwhite areas is very high. This pressure often acts to convert standard housing into smaller units, which are more affordable to low income consumers.\textsuperscript{80}

Ultimately, nonwhite pressure demands for housing will force the conversion of units from white to nonwhite occupancy. However, since this pressure is usually restricted to a small number of areas due to market discrimination, its effects are usually difficult to predict. The effect of this nonwhite entry on prices depends on two factors: (1) "[T]he degree to which such a shift from white to nonwhite market segments takes place . . .."\textsuperscript{81} and (2) "[T]he] differences between white and nonwhite demand for housing of a given type. The first factor simply determines the degree to which the second factor becomes operative . . . ."\textsuperscript{82}

Notwithstanding, it is likely that the attitudes of whites will determine the final outcome of nonwhite entry on prices, and neighborhood conditions. If white demand remains high and whites do not rush to leave the area, the area may stabilize and prices and conditions will also stabilize and may even increase. On the other hand, if white


\textsuperscript{80} For an excellent theoretical description of the process stated above, see Downs, \textit{An Economic Analysis of Property Values and Race}, 36 \textit{Land Econ.} 181-88 (1960).

\textsuperscript{81} Id. at 184.

\textsuperscript{82} Id.
demand substantially decreases and a substantial number of white occupants sell, prices may rise or fall in response to a variety of factors.\textsuperscript{83}

The conversion of housing units from the white to nonwhite sub-markets generally occurs in a recurring pattern:

Two principle factors conducive to racial transition in neighborhoods are the restricted supply of housing available to nonwhites and the pressure of a growing population for more living space. When a particular area is open to nonwhites, they tend to crowd into it because of their need and lack of alternatives . . . \textsuperscript{84} Middle income nonwhites, seeking more space, better housing and environment, purchase housing in previously all white areas, usually at a substantial discrimination price mark-up.\textsuperscript{85} This almost always results in a decrease in white demand in that area for housing.

Since nonwhite middle income demand is usually quite intense (due to increasing real incomes and denial of housing opportunities in other areas), nonwhites will usually quickly purchase housing in changing areas. As nonwhite immigration increases in an area, white demand decreases. Additionally, whites, fearing the massive influx of nonwhites and the ultimate lowering of property values, sell out and move to other white areas. Due to generally lower nonwhite incomes, however, the nonwhite middle income demand for housing, though intense, is not as expansive as the white market. The corresponding decreased white demand and outmigration from the area dictates that the supply of available units on the market be primarily converted to nonwhite occupancy. But, since nonwhite middle income demand is not so widespread, the market is initially glutted with units. As prices fall and overall property values decrease, lower income nonwhites are drawn to the area by the lower prices. Often housing units must be converted to more intensive use to meet this new lower income demand with its corresponding demand for lower effective space. The neighborhood then begins to rapidly deteriorate, more whites leave, and a panic ensues. There is little doubt that the future of a neighborhood is determined by the ability of the white market to sustain the high white demand for housing in a transitional neighborhood. The


\textsuperscript{84} \textit{Where Shall We Live}, supra note 75, at 21.

\textsuperscript{85} \textit{For case studies, see L. Laurenti, Property Values and Race — Studies in Seven Cities} (1960).
white market has long believed that nonwhite entry will eventually decrease property values. This belief has further been the justification for both past and present discriminatory practices by the housing industry. Initially, whites appear to believe that nonwhite entry converts low density, high maintenance neighborhoods into high density, low maintenance slums. Additionally, most whites would rather move than live with nonwhites, which results in “panic” selling. In a real sense such attitudes become self-fulfilling prophesy.

The effects of racial discrimination on housing market operations are most important to this discussion. Traditional concepts, such as “filtering,” are greatly affected by the existence of dual sub-markets. Since the supply of nonwhite housing is often restricted in size and location, code programs, urban renewal or highway demolitions, indeed any program that threatens to further decrease the nonwhite supply of housing, both standard and substandard, must be cautiously viewed. To further restrict the nonwhite supply of housing through public programs may drive up prices and rents, force nonwhite demand into other areas, or force the conversion of units into more intensive use.

In recapitulation, housing policy questions have been viewed from a variety of perspectives, with an eye toward the importance of federal housing policy upon state and local housing goals and programs. The effects of the operations of housing markets and several special parameters of low income housing sub-markets have been seen. Moreover, it has been indicated that racial discrimination retards the normal market operations and presents special problems in dealing with inner city housing questions. This discussion now undertakes to apply the various policy considerations to a specific economic analysis of the Pennsylvania Rent Withholding Act.

IV. AN ECONOMIC ANALYSIS OF THE RENT WITHHOLDING ACT

A. Policy Objectives

There exists a rather diverse set of goals which either have been, or potentially could be attributed to rent withholding. Some of these goals could be served in a like manner by any form of code enforcement, while others are unique to rent withholding. Some specific goals posited and which will be considered here include the following:

(1) Expansion of the stock of standard housing;

(2) Provision of consumer protection;

(3) Redistribution of national wealth;
(4) Enhancement of the political and social efficacy of the poor;  
(5) Provision of an insurance mechanism for private investment.

It will be demonstrated that in the long run the capacity of rent withholding to provide increased consumer protection is dependent upon how effectively the first goal, expansion of the standard stock, is met. It will likewise be shown that the usefulness of rent withholding as a redistributive mechanism is quite limited, not only because very little redistribution occurs, but because much of what does occur is essentially between inappropriate groups — the lower middle class and the poor. Rent withholding, as the analysis will indicate, could enhance the political and social efficacy of the poor if that were perceived as a source of power. It is difficult, however, to estimate how significant a factor rent withholding could be when applied to this purpose. Finally, the insurance aspects of rent withholding, and the protection it might afford homeowners, will be considered.

B. Economic Evaluation

1. Expansion of the Standard Stock

The immediate and obvious effect of a successful rent withholding effort would seem to be the rehabilitation of a substandard dwelling such that it could be classified as standard. This is not, however, the only means by which rent withholding can increase the stock of standard units in low-income sub-markets. Indeed, if other of the goals described above were met, the stock of standard housing might well increase. Likewise, if the standard stock were increased, several of the above goals might also be achieved.

The ability of rent withholding and other enforcement tools to increase the number of standard units — presumably the fundamental goal of all housing policy — is an issue of no small importance. Rent withholding, like every other means of code enforcement over the quality of structures, is directed specifically toward initiating changes in the physical quality of individual units. Wherever code enforcement is widespread the environmental component of housing within neighborhoods may be greatly affected. Moreover, the chain of causation between code enforcement and all the diverse effects which issue therefrom begins with alteration of the physical quality of the unit.

The relationship of rent withholding to the supply of standard housing can be seen upon investigation of the possible outcomes of efforts by tenants to obtain improvement of the units they occupy. Given that the tenant–landlord relationship has deteriorated to the
extent that the tenant has successfully brought to bear the power of government to effectuate rehabilitation of the unit, the future of the unit is limited to two options: it will be improved, or it will be abandoned.

The choice between these outcomes is made by the landlord whose decision relates to a single question: will investment in the unit produce greater profit or personal benefit than abandonment? In a purely monetary analysis this decision involves consideration of the following variables, and functional relationships: the income stream the unit can be anticipated to generate, the relationship of the income stream to investment, the cost of capital, and alternative investment opportunities which may be available.

The landlord’s decision involving these variables may be structured within any one of several investment decision equations, one of which is presented below:

\[
\sum_{j=1}^{n} \frac{(R_j - C_j - O_j - A_n)}{(1+r)^j} - A_1
\]

In this equation, if the numerical quantity obtained by the summation formula is greater than zero, then the landlord should invest the sum of \( C_j \) in housing improvements. The terms of the formula are as follows:

- \( C_j \) = the capital improvement expenditure for year \( j \)
- \( R_j \) = the annual rent for year \( j \)
- \( A_1 \) = the cost of immediate abandonment (i.e., in year 1)
- \( A_n \) = the cost of abandonment at some future year, \( n \)
- \( O_j \) = the operating expenditures for year \( j \)
- \( r \) = the prevailing market rate of interest, or the highest anticipated rate of return on an alternate investment of \( C_j \)
- \( j = 1, 2, 3, \ldots, n \), which equals the time periods from the present year to year \( n \); year \( n \) is defined as the end of the economic life of the unit, given the rates of improvement and maintenance expenditures, \( C_j \) & \( O_j \)

The above equation is a net present value formula for evaluating alternative options in rental housing capital investments and may be read as follows: the summation from year 1 to \( n \), of \( R \) minus \( C \) minus \( O \) minus \( A_n \) divided by the quantity \((1+r)^j\) to the power of year 1 to \( n \), all minus the cost of abandonment, \( A_1 \), in year 1 only. The
equation specifies that, if the aggregate of the anticipated return on the investment (summation of $R_j$) minus the costs (summation of $C_j$, $O_j$, and $A_n$), after having been discounted by the operator $(1+r)^j$, all minus the cost of present abandonment ($A_1$), is greater than zero, then the landlord should invest the sum $C_j$ and not abandon the unit. The operator $(1+r)^j$ is the discount mechanism necessary to calculate the present value of the terms in the formula, $R_j$, $C_j$, $O_j$, $A_n$, at a given rate of return, $r$. This is a standard economic operator which enables comparisons to be made between income streams of varying lengths of time. The formula enables a landlord to determine the maximum dollar value of the capital expenditure he may utilize without realizing a loss. Moreover, the capital investment sum, $C_j$, may be a lump sum investment, accruing as a cost to the landlord in a single year, or over a number of years. 

By way of further amplification, the operating expenses, $O_j$, are largely a recurring cost, and vary as a function of the number of tenants using the structure, their life style, and the amount of earlier capital expenditures, if any. The abandonment values, which can be either positive or negative, are the costs or benefits which accrue to the landlord upon giving up the structure presently, or at some future time. The value $r$ is the prevailing rate of interest or a desired rate of return (adjusted for risk) which the landlord could obtain by investing the same sum, $C_j$, in some alternative investment.

$R_j$, the yearly rent received by the landlord, is a function of the total prevailing rent structure across the sub-markets. That rent structure, as has been noted, is determined by the supply and demand schedules within the sub-markets, across the components of the housing supply package. The landlord can determine, to a limited extent, the sub-market in which the unit is sold (and thereby the rent received) through variation in the physical component of his units. Thus, the landlord, forced to make a decision to invest in the unit, has the option of making improvements beyond those required by law, on the hope of entering the unit into a sub-market in which higher rents prevail. This is to say that though $C_j$ has a minimum value (that amount required to bring the unit up to standard), it need not be limited to a minimum value only. However, the landlord's ability to enter a higher sub-market is severely limited by the environmental component, and it is the landlord's prognosis of the trend in this environmental component — "where the neighborhood is going" — which largely, if not entirely, determines rent expectations and thereby whether the landlord invests or abandons.

86. Note that alternative levels of $C_j$ must be used to determine the optimal level of investment.
May 1972]

Comments

For purposes of simplification, assume that the rental value which the landlord can obtain for a unit within a given neighborhood is primarily determined by the physical and environmental components of housing supply. Similarly, the physical component is determined by the amount of capital invested by the landlord in the unit. Thus, the relationship of rents to the physical and environmental components can be stated by the following function:

\[ R = f(C,E) \]

The terms of this formula are as follows:

- \( R \) = Rents
- \( C \) = Capital investment
- \( E \) = Neighborhood environmental quality

Solving for the differentials indicates the changes in rents which are caused by changes in capital investments and neighborhood quality, thus:

\[ DR = \frac{df_1}{dC} \cdot dC + \frac{df_2}{dE} \cdot dE \quad \text{Note: the symbol "\( \cdot \)" denotes a multiplication} \]

The above differential formula, \( \text{ceteris paribus} \),\(^{87}\) portrays the rental value of a unit across stable sub-markets for changes in \( C \) and \( E \). The landlord may determine whether there will be any increase in capital expenditures, and concomitantly, any change in the physical component of his unit. It is more difficult, however, to determine whether any change in the environmental component will ensue. One may speculate that, along with accessibility, investment by landlords in the housing stock within a neighborhood largely determines environmental quality: first, by establishing the physical quality of the stock within the neighborhood; and second, by determining the type of residents — low, medium, or high income — who can afford to dwell within the neighborhood. It would seem that all previous investment will have some effect over present environmental quality, though the more distant the previous investment is in time, the less will be its present effects. These effects may be represented by the following double integral equation:

\[ E_t = \sum_{i=1}^{u} \int_{j=-n}^{O} e^{-r(t+j)}I_j(t+j) \]

\(^{87}\) \( \text{Ceteris paribus} \) can be popularly translated as "all other things equal or all other things held constant."
The equation terms are defined as follows:

\[ E_t = \text{the neighborhood environmental quality at time } t \]

\[ I_j(t+j) = \text{some investment in a unit, } I, \text{ at a previous time } (t+j), \text{ where } t+j \text{ is the present time when } j=O \]

\[ e^{r(t+j)} = \text{some rate of decay of investment (and consequently of housing quality) as a function of time } (t+j) \]

\[ i = 1, 2, 3, \ldots, u, \text{ which are the units in the neighborhood} \]

\[ j = -n, -n+1, -n+2, \ldots, O, \text{ which equals the time period in which the investment in housing in the neighborhood has occurred at some time } n \text{ years previous to the present}. \]

This equation specifies that the quality of the neighborhood environment at the present time \((E_t)\), is determined by previous investment which has been made in housing within the neighborhood, \((I_j(t+j))\), and the rate at which such previous investment decays, that is, the rate at which a structure will deteriorate, \((e^{r(t+j)})\).

\(E_t\) is obtained by summing over all the units in the neighborhood, \((1 \text{ through } u)\), and by summing over the time period, \((t+j)\), from the time of the original investment in the past, \((j=-n)\), through the present, \((j=O)\). The formula indicates that the environmental component of housing is largely a function of both prior investment in the unit and a rate of decay of that unit which is related to the passage of time.

The quality of the neighborhood environment at any future point in time may also be estimated by the use of a similar double integration formula:

\[ E_{t+n} = \int_{i=1}^{u} \int_{j=-n}^{n} e^{r(t+j)}I_i(t+j) \]

The formula operates in much the same fashion as the preceding one, except that it solves for \(E_{t+n}\), which denotes some future time. The summation over time runs from the past \((j=-n)\) to the future \((j=n)\).

Finally, the difference between the solutions for \(E_t\) and \(E_{t+n}\) in the two preceding integral equations is multiplied by the environment differential of the rent function \(\left(\frac{df_2}{dE}\right)\) as found in the differ-

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88. The term \(e^{r(t+j)}\) specifies an undetermined internal rate of decay that takes the form of a constantly decreasing logarithmic function. The term indicates that the value of investment property, independent of other factors, functions over time at a decreasing rate. See J. Forrester, Urban Dynamics 34-35 (1969).
ential equation on page 918 supra. The product determines the decrement or increment to the rental value of a unit accruing to the landlord as the result of a change in the environment. Presumably, the landlord will realize this relationship in terms of practicalities, thus the values of \( R \) used in the original discount formula largely reflect the landlord's subjective evaluation of the activities of other investors, and thus can be of crucial importance.

From this analysis emerges a pattern which suggests the possible ill-effects of rent withholding and other forms of code enforcement upon the standard stock. For those units within the stock against which code proceedings have been brought but in which landlords do not believe further investment to be justified, code enforcement simply hastens the day of abandonment and removal. Abandonment wreaks an immediate decrement to the quality of the neighborhood environment by reducing the rental revenues which can be realized from nearby structures. Although this makes investment less profitable, the effects do not stop there. If the presence of abandoned buildings within the community reduces the individual landlord's anticipation of the investment which other landlords will undertake, then there is brought into effect the basic "prisoner's dilemma" whereby landlords, anticipating each other's mutual action, reduce investment, thereby precipitating the very decline in the community property values that all wished to avoid.

To speculate further, it seems that the externalities of disinvestment may be substantially greater than those of investment. This is to suggest that abandonment of a unit may have a greater impact upon community decline, than rehabilitation of the unit would have an impact upon reversing decline. This would occur if abandonments, as seems probable, are physically and psychologically decisive. Only in the rarest instances can an abandoned building be reclaimed, and then only by public as opposed to private investment. Moreover, public investment has its own ill-effects, for such investment has considerable symbolic importance, signaling to many investors the utter collapse of the private market.

The fundamental objection to rent withholding and all other forms of code enforcement as measures to increase the supply of standard low-cost housing is that these methods simply do not relate to the central feature characterizing the low-income housing market: a lack of effective demand among low-income consumers which consequently cannot support investment of the magnitude necessary to bring sufficient standard units on the market. Code enforcement does nothing to increase the buying power of the poor and nothing to
reduce the cost of capital; thus, it has no direct influence on supply. Further, if code enforcement or rent withholding results in a substantial number of abandonments, as is likely, then investment in large measure will be discouraged.

Is there not, however, some indirect way enforcement could stimulate investment by increasing the rents of low income units, or perhaps, of all housing? The answer is affirmative, if rents in low income housing markets are significantly and negatively correlated with vacancy rates (the percentage of the stock unoccupied), and if the supply elasticity of low income housing relative to rents is high. This would imply that where substandard units are removed from the stock, renters are squeezed into the housing that remains. This in turn reduces the number of vacant units, and increases rents bringing more (and presumably standard) units onto the low cost housing market.

When this proposition is put to an empirical test the results are somewhat ambiguous. The supply elasticity of housing is as yet basically unknown. No empirical tests have been developed which have successfully estimated this elasticity and this is perhaps the most serious gap in our knowledge of housing. Additionally, though vacancies would seem to have a significant impact upon rents, a recent study suggests that these effects are almost entirely overshadowed by income considerations. This study suggests that changes in rents can be explained primarily by changes in the income levels of tenants, and that changes in the number of vacancies within the stock have little effect upon the level of rents. If vacancies have little impact upon rent, then removals and abandonments induced by code enforcement would likewise appear to have an equally small effect upon rents. Thus, though it is an extremely tenuous proposition, it would seem that the effect of vacancies upon the investment in housing and upon the supply of low income housing may be much less than has been assumed.

Moreover, advocacy of code enforcement as a method to induce investment in the stock by reducing supply and thus increasing rental values has some absurd implications. Such advocacy implies that low income families should in the short-run be forced to spend a greater proportion of their income upon housing than they do at present without any appreciable improvement in housing quality. This is not to suggest that code enforcement and rent withholding might not increase this standard stock by preventing the decline of units in otherwise sound neighborhoods (i.e., those which are predominantly

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89. C. Rapkin, supra note 48, at 35-36.
middle income occupied). While this is probably the task for which rent withholding is best suited, it is not the task for which it was specifically designed, namely that of addressing the problems of low income tenants occupying the worst units in the stock. Moreover, the success of rent withholding in achieving this result is dependent upon the prevention of a decline in construction. Whether, or at what rates, these units would eventually become elements of supply on low income housing markets is conjecture. In any event, the process would be a long one. In the short-run, the primary benefit of code enforcement in sound but aging communities could be to stabilize housing quality and thus to revitalize these communities. Even this, however, may be a tenuous proposition.

2. Redistribution of National Wealth

In theory, landlords who have been found in violation of housing codes are prohibited from passing on to the tenants the cost of any improvements made. If landlords are effectively prohibited from passing on these costs, then short-run redistribution of income from landlords to tenants does in fact occur. There exists no empirical evidence which indicates to what extent landlords may pass along the cost of improvements to renters. There is, however, evidence which indicates that landlords believe they can substantially, though not completely, shift the cost of improvements to their tenants. In a survey of 41 rental agents conducted in Chicago, 39 per cent believed they could pass a substantial amount of the increased maintenance costs along to poor tenants as opposed to 31 per cent who believed it was impossible to shift costs. Of an additional 124 agents studied, 31 per cent believed that cost could be shifted, whereas only 14 per cent believed that the landlord could in no way avoid rising costs.

Thus, without superior information, it does not seem entirely reasonable to assume as some writers have, that rent withholding can lead to a substantial redistribution of income in the short-run. In the long-run it would seem that the threat of increased code enforcement could be a factor tending to increase rents generally by shifting

92. For an excellent theoretical example of this principle, see Ackerman, Regulating Slum Housing Markets on Behalf of the Poor: Of Housing Codes, Housing Subsidies and Income Redistribution Policy, 80 Yale L.J. 1093 (1971). Moreover, a proposed amendment to the Pennsylvania Rent Withholding Act would make it impossible for a landlord to increase the rent for one year after the repairs have been made. Pa. Stat. tit. 35, § 1700-1 (Supp. 1971).
93. Smolensky, supra note 52, at 427.
94. Id.
95. Ackerman, supra note 92.
supply functions through changes in the cost structure of ownership. Likewise, if in the short-run rent withholding results in abandonments and a shrinking of supply, then the effects of withholding are to redistribute income among landlords, rather than between landlords and tenants.

Furthermore, in terms of desirability, income redistribution between so narrow a group of persons as are landlords and the poor, generally, is somewhat dubious. If George Sternlieb's description of landlords in Newark may be generalized, then landlords are a rather diverse group, many of whom are small property holders of no great means. Though their net wealth may exceed that of their tenants, the yearly incomes of landlords in many cases may not be substantially greater than those of tenants, especially where retired landholders are concerned.

3. Provision of Consumer Protection

Protection of the rights of the poor and of minorities is a fundamental tenet of democratic ideology, if not always a characteristic of democratic governments themselves. Within recent years, this tenet has been expanded and articulated largely by calls for increased "consumer protection." Though the need for consumer protection exists across all income groups within society, it is the poor who have traditionally suffered the most blatant, recursive and severe exploitation in the purchase of even those few goods and services of minimal quality which they can afford. Perhaps nowhere does such exploitation cause greater injury or have more lasting effects than in the area of housing. Though it is certainly untrue that every landlord-tenant relationship is characterized by exploitation, relatively little success has been encountered in efforts to insure that the "exploitive landlords" exercise greater responsibility in their obligations to tenants.

A primary goal of rent withholding is to provide a mechanism by which an aggrieved tenant can initiate action in his own behalf against exploitive, or irresponsible landlords without incurring great cost. Clearly, rent withholding does offer potential as a mechanism for affording greater protection to the low-income consumer. It must, however, be recognized that this potential can be realized only in those instances where withholding results in the required rehabilitation of a unit, or where, if the unit is abandoned, a standard unit is available to which the tenant may gain access without being penalized by substantial moving costs or increased rents. This suggests that rent withholding protects the low-income consumer only where the low-income consumer only where the low-

cost housing market is working well, wherein sufficient vacancies exist among standard units to accommodate those who must leave abandoned units, at rents the poor can afford. Thus, where rent withholding may protect consumers against extraordinary abuses in extreme instances, it provides consumers no general protection that would guarantee housing of a minimal quality.

4. Enhancement of the Political and Social Efficacy of the Poor

In theory, rent withholding is unique among code enforcement tools primarily because it could substantially increase the ability of tenants to initiate improvements in the units they occupy. Not only could this enhance the role of individual tenants in their relationships with landlords, but this capability to initiate change would amount to a redistribution of power between the poor and the holders of wealth.

The individual’s possession of the right to withhold suggests that individuals may band or be banded together to take action against landlords throughout a neighborhood. Whereas groups once may have requested action from public authorities to improve housing conditions, they now, along with their individual members, may insist upon it. The legal obligation of the public authority to respond to such demands provides local organizations with a new leverage which can be exercised against both public authorities and landlords. If it is indeed true that increased political power by low-income persons is a necessary prerequisite for improvements in community welfare (a proposition as yet ill-defined and on some points debatable), then rent withholding must rank high among potentially useful forms of social policy.

5. Social Insurance Aspects

Whereas many forms of public control of land use and construction quality have specifically been geared to the protection of property values, housing codes have rarely been cast in this role. This is somewhat odd, if indeed there are substantial externalities generated by disinvestment in housing and given that in recent years proposals have been made that support the creation of property owners’ insurance agencies which would protect property from declines in value associated with locational factors.97

It would seem that code-enforcement could serve much the same function as insurance by protecting property owners against declines in value associated with disinvestment in nearby units below some minimal standard. Such enforcement would decrease the risk of holding

property in neighborhoods that are perceived to be marginal. Of necessity, such an enforcement program would need to be accompanied by an investment subsidy to owners or a program whereby the public sector could assume ownership of properties whose owners could not afford to maintain them at minimum quality. Nonetheless, the attributes of property value protection associated with zoning may generally be attributed to code enforcement as well where substantial abandonment is prohibited.

The attempt herein has been to present an overview of the societal goals which rent withholding might serve. The analysis presented suggests that rent withholding in isolation will prove an ineffective means of expanding the stock of standard low-income housing. Where this goal is not served, rent withholding can afford little protection to low-income consumers except in extreme instances of malfeasance. Likewise, income redistribution would not seem to be an appropriate goal of rent withholding, unless it were the case that residential property owners as a group were of the highest income levels of society. Moreover, in the absence of rent controls and forced investment, it would be difficult to either prevent landlords from shifting costs to the consumer or to prevent investors from withholding funds from housing markets.

The goal which rent withholding seems to serve best is that of providing a mechanism whereby there is an opportunity for low-income residents to assume greater control of their neighborhoods. Rent withholding could help to achieve this goal in combination with growing dissatisfaction tempered with increased social entrepreneurship. Perhaps the least significant of the goals which rent withholding might serve is that of an insurance mechanism. This is, however, a goal which in the long-run might become of increased importance, but which at present cannot be analyzed.

The performance of rent withholding might be significantly improved if it were made the complement of housing subsidy and investment programs.

V. Conclusion

At this stage it is desirable to take the analysis one step further and view the prospects of rent withholding in terms of: (1) its present overall impact in light of its varied policy goals; (2) its effectiveness in terms of a broader rehabilitation strategy; and (3) its importance and impact as a part of a more comprehensive regional and local housing strategy, meshed with national housing policy and economic trends.
On balance, the Pennsylvania Rent Withholding Act, viewed in relation to regional and local market operations and housing supply has only minor importance. While the Act is most probably, as has been shown, incapable of effectively increasing the supply of low cost standard housing units and may, in fact, help to slightly decrease the supply of housing available to the poor, the level of its present use, as well as the Act's granting to poor individuals certain rights and powers vis-à-vis landlords, would appear to make its continuation desirable. Further, since similar provisions in other states,98 as well as recent court decisions,99 have increased tenant rights, any decision to eliminate or restrict rent withholding might unduly effect the climate of reform in tenant–landlord rights and responsibilities, an area of so recent reform. In any event, unless more unfavorable economic effects from the imposition of rent withholding on the operation of housing markets can be clearly proven by empirical data, one is inclined to view the Act as an acceptable, if somewhat ineffective, housing policy tool.

In recent years there has been considerable interest expressed, primarily by nonprofit and community groups in low income areas, in more generalized rehabilitation strategies for deteriorating areas. There have been suggested such concepts as turning large slum properties into community or tenant owned cooperative units and using profits for rehabilitation, rehabilitation of units by nonprofit development corporations, government guaranteed property values to encourage investment, and a variety of other “non market” solutions. What role rent withholding could have in such efforts is debatable. However, the analysis suggests that low income housing rehabilitation is at best a questionable strategy and, at worst, may represent an investment from low income individuals or communities in deteriorating, if not lost, neighborhoods. Since area rehabilitation is quite difficult even in middle and upper income areas, it is even more likely to fail in most low income neighborhoods.100

Such facts should not necessarily doom housing policy to continual failure. On the contrary, progress is possible even though quite difficult to achieve. Effective housing policy requires the successful interrelation of federal, regional, and local efforts as well as a major


100. For an excellent discussion of the many problems inherent in low cost rehabilitation, see P. Niebank & J. Pope, Residential Rehabilitation: The Pitfalls of Non-Profit Sponsorship (1968).
economic commitment by all sectors of the economy. There is still much debate among housing experts over the requirements for progress in housing problems, and while our present effort can not effectively deal with such complicated issues, some mention of the general components of such a strategy bear mention.

At the foundation of any successful housing strategy must also be a federal, regional, and local commitment to maintain high levels of new residential construction. Further, a policy of high rates of residential construction must effectively deal with both the supply and demand sides of the housing equation. Programs to increase housing production must remove any constraints to that production. Local development controls which function artificially to reduce the supply of available land, or unnecessarily reduce the intensity of its use, must be eliminated.\(^\text{101}\) Regulations, building codes, and subdivision regulations which unnecessarily raise development costs or housing costs must be re-examined.\(^\text{102}\) Building, labor practices, or methods that unnecessarily increase housing production costs or retard the development of innovative housing production techniques must be discouraged.\(^\text{103}\) Increased financial investment in residential real estate by institutional and individual investors must be encouraged by well coordinated federal and local policies.\(^\text{104}\) Finally, realistic determination of regional housing needs must be encouraged by federal housing policies so that the controls exercised by local governments over development may be effectively viewed in terms of the region's general welfare.\(^\text{105}\)

To complement policies designed to increase the supply of housing, programs capable of increasing the effective demand for housing would also be necessary. Subsidies to enable moderate income persons to bargain effectively in the housing market, as well as income supports for low income families, might significantly increase housing demand.\(^\text{106}\)

\(^{101}\) The importance of land supply to housing production, as well as the effects of local development controls on the price of raw land, is discussed in A Decent Home, supra note 16, at 135-47 and in BUILDING THE AMERICAN CITY, supra note 16, at 417-28.

\(^{102}\) Id.

\(^{103}\) This program was recommended by the President's Committee on Urban Housing to decrease housing costs and boost research and development programs in the housing field. See A Decent Home, supra note 16, at 187-205. For similar recommendations, see BUILDING THE AMERICAN CITY, supra note 16, at 481-87.

\(^{104}\) For a thorough description of past federal efforts to promote private investments in housing and to coordinate public programs with private market development, see A Decent Home, supra note 16, at 54-91.

\(^{105}\) Two recent plans have attempted to estimate and allocate regional housing needs to local governments. See METROPOLITAN WASHINGTON COUNCIL OF GOV'TS, FAIR SHARE HOUSING FORMULA (1972); MIAMI VALLEY [OHIO] REGIONAL PLANNING COMM'M', A HOUSING PLAN FOR THE MIAMI VALLEY REGION (1970).

\(^{106}\) The long run effect of increased family incomes on the low income housing market is a matter of much concern. For an excellent discussion of the important
Moreover, more generous interest and downpayment requirements for all housing consumers would greatly increase housing demand. Additionally, policies, specifically designed and rigorously enforced, to provide equal opportunity in housing for all citizens regardless of race, are essential. Without these programs, attempts to deal with the crisis in nonwhite housing problems are doomed to failure.

High levels of new residential construction, on national, regional, and local levels, would permit greater flexibility for local governments to achieve local housing policies. Housing codes and perhaps even traditional renewal programs could achieve desired results without the massive dislocations caused in the past. Local policy could deal, particularly in center city areas, with a flexible market instead of one virtually in isolation. Within this context, rent withholding could be a significant tool in improving housing conditions. With an adequate supply of housing and an open housing market, rent withholding, as a code enforcement tool, could be successful in forcing compliance with minimum standards.

Of course, such a strategy is expensive. It is also important. Without such a comprehensive approach, housing codes and rent withholding, as a code enforcement tool, will likely continue to fail. The housing market will force the failure, and there is little that public action can do to reverse the result.

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