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URBAN LAND DEVELOPERS AND THE ORIGINS OF ZONING LAWS: THE CASE OF BERKELEY

Marc A. Weiss

Introduction

In the following paper I present an analysis of the origins of zoning laws and a case study of the beginning of zoning in Berkeley, California. The particular focus of the article is on the role of large-scale land subdividers, or “community builders”, and on their economic and political activities both as entrepreneurs and as members of local real estate boards. The case of Berkeley demonstrates the key actions of one prominent community builder, Duncan McDuffie, as a promoter of local planning and zoning to facilitate the development and marketing of high-income residential subdivisions. The case illustrates both the contribution of zoning as an innovation in land planning and regulation, as well as some of its social implications as practiced in the 1910s and 1920s.¹

The Role of the Community Builders

Within the local real estate boards there existed a special brand of broker who generally was the most important person in advocating the adoption of land-use planning. These were the largest residential subdividers, who developed sizable tracts of land with modern landscaping and improvements, mostly for the higher-income market. In addition to installing numerous subdivision improvements, many of these subdividers also engaged in homebuilding on at least a portion of the tract. Broker-subdividers could be involved with subdivisions in one of four ways: 1) to own, develop, and sell lots; 2) to develop the subdivision and sell lots under contract with a separate owner; 3) to develop a subdivision and hire a separate broker to sell lots; and 4) to sell lots for a separate owner and subdivider. Most brokers who specialized in subdivision sales also engaged in subdivision development, either on their own account or for investor-clients.

The broker-subdividers who specialized in subdivision *development* were the most planning-oriented of the realtors. They were the actual community builders. As one of them stated: “Fundamentally the subdivider is the manufacturer in the field of real estate practice.”² Through their experience with the need to plan for the financing, physical development, and physical and legal control through deed restrictions of large parcels of land for long periods of time until all the lots were sold, community

builders acquired an early appreciation of the potential for public regulation and planning to rationalize private costs, enhance sales prices, and stabilize long-term values. A private subdivider could at best only control the land his or her firm directly owned or was under contract to develop; but the government, through its police power, its power of eminent domain, and its taxing and spending authority, could exercise a much greater degree of control. Community builders understood that public control could be privately influenced through active political mobilization and representation by real estate trade associations, and they organized themselves to exert a great deal of influence over planning issues both within realty boards and within government.

The rise of the community builders was accomplished and facilitated by a host of institutional changes within the real estate industry after 1900, including the simultaneous growth of institutional mortgage finance, title insurance and trust companies, and transportation and utility services. The scale of residential development, particularly during the 1920s, was rapidly becoming larger, more institutionalized, and more economically integrated. The community builders' central role in this process of secular change accounts for their lead position as lobbyists for urban land-use planning.³

Community Builders And Zoning

In 1947 the Executive Director of the National Association of Real Estate Boards (NAREB) stated: "We helped think up the idea of city zoning ordinances thirty years ago. Their purpose was to protect good residence neighborhoods from trade uses that would destroy values."⁴ For community builders and realtors who specialized in developing and selling lots and houses to a relatively high-income market, *protection* was indeed the primary motivation for zoning. Through the use of private deed restrictions, residential subdividers had already market-tested the value of land-use regulations and found them to be most desirable. Residence districts that restricted and segregated land uses and building types had by 1914 already proven their attractiveness to potential buyers. Builders, lenders, insurers, and consumers were all pleased with the sense of stability and predictability provided by this new privately-controlled arrangement.⁵

Private deed restrictions at that time were both flawed and inadequate, however, for seven reasons: 1) They were difficult to establish once land was subdivided and sold to diverse owners. Thus, they could only be easily applied to new subdivisions. 2) They were often difficult to enforce through the civil courts. Property owners could not depend on their future effectiveness with any certainty. 3) They generally were only considered to be legally enforceable for a limited period of years, at which point the

restrictions would completely expire and the area would be officially unprotected. 4) They were inflexible. Once written into the original deeds, they were extremely difficult to change, even where new and unforeseen conditions clearly warranted certain modifications. 5) They only applied to whatever size parcel of land could be controlled by a single owner or subdivider. All land surrounding a restricted subdivision could remain unrestricted, subjecting the subdivision's border areas to the threat of encirclement by "undesirable" uses. 6) Even where deed restrictions were applied to a number of tracts, each subdivider used a different standard, leaving a complete lack of uniformity between each private effort. 7) In addition to the lack of coordination between privately-restricted and unrestricted land uses, restricted subdivisions were not coordinated with public land uses and future public land-use plans.

Community builders looked to public zoning to fill the gaps left by the inadequacies of private restrictions. They believed that their interests would be adequately represented in the public planning process, enabling them to continue to exercise a great deal of private control over development and sales competition. The idea of *protection* in zoning, however, was not intended to be universally applied. It was to be extended mainly to "good residence neighborhoods," as the NAREB statement clearly indicated.

Since good residence neighborhoods were the principal kind that most community builders were in the business of creating, they naturally were strong and early advocates for the zoning concept. "Good" in this case meant the quality of landscape design and improvements, and it also meant it was designed primarily for higher income purchasers. Private restrictions, for example, normally included such provisions as high minimum required costs for home construction, and exclusion of all non-Caucasians from occupancy, except as domestic servants.⁶

In *The Rise of the Community Builders* I describe the Los Angeles "Use of Property" survey and the realty board's campaign against the "overzoning" of certain use categories. Table 1 and similar surveys and debates across America's newly-zoned cities during the 1920s and 1930s revealed that most of the privately-owned land area in large central cities was not zoned for *protection*, even when neighborhoods were already built-up with many single-family houses. Middle-income residential areas were generally zoned for multiple dwellings, and all major streets were zoned for commercial use. Low-income residential areas were usually zoned for either industrial or unrestricted use. As Barbara Flint noted in her case study: "The St. Louis City Planning Commission felt that where property was developed with homes of low value, even though they were single-family homes,

TABLE I

ACTUAL USES OF PROPERTY COMPARED TO USES
DESIGNATED BY ZONING LAW: CHICAGO, 1923

Use	Present		Under Zone Plan	
	Square Miles	Percentage	Square Miles	Percentage
Single-family Dwellings	23.75	11.7	5.91	2.9
Two-family Dwellings	15.66	7.7	38.55	19.1
Multiple-family Dwellings	9.19	4.8	26.00	13.1
Total Dwelling Area	24.2	35.1		
Commercial Areas	9.87	4.9	28.24	14.0
Manufacturing Areas	25.91	12.9	48.64	24.1
Special	4.95	2.4	--	--
Streets and Alleys	46.60	23.3	48.60	23.3
Parks and Playgrounds	7.06	3.5	7.06	3.5
Water and Vacant	58.01	28.8	--	--
Total of All Uses	201.00	100.0	201.00	100.0

Source: Barbara J. Flint, *Zoning and Residential Segregation: A Social and Physical History, 1910-1940*. Unpublished Ph.D. dissertation, Department of History, University of Chicago, 1977, page 205.

multiple-family houses and other uses did not impair the value of these areas."⁷

In all different cases and classes of property use, zoning was normally devoted to stimulating more or less compatible forms of high-value development. Where residential areas were planned for or built-up with expensive single-family houses, *protection* to facilitate or preserve this particular form of high property values was considered to be a worthwhile objective; in middle-income residential areas, *promotion* of higher density, higher value multi-family apartment buildings, hotels, stores, offices, and other residential and commercial uses was combined with the necessary *protection* of these uses from industrial "nuisance" encroachment. In low-income residential areas, *promotion* of industrial uses was the primary objective, with absolutely no *protection* of the local working-class population. Indeed, some of the more sophisticated zoning laws, such as Berkeley's, actually created exclusive industrial use districts to protect factory owners from complaints and lawsuits by low-income residential neighbors.

Community builders frequently came into conflict with the majority of realty agents over zoning, with the community builders generally on the side of imposing greater and more uniform restrictions. Most small realty operators wanted to promote the highest speculative values and fastest possible turnover for each individual property they owned or represented as agents, irrespective of neighborhood-wide or market-wide impacts. With the collapse of the 1920s urban real estate boom and the creation of the Federal Housing Administration (FHA) mortgage insurance program in the 1930s, the three-class model of zoning began to change. Beginning in 1935, *protection* for single-family residences was finally extended to middle-income, though still not low-income, residential neighborhoods.⁸ For the period of the 1920s and early 1930s, however, community builders relied on tightly-drawn and vigilantly-enforced deed restrictions, ownership of very large land parcels with secure developed or protected borders (such as rivers or parklands), and the establishment of independent incorporated suburban government enclaves as their three main lines of defense against the threat of "curbstone" zoning.

Berkeley

The city of Berkeley in 1900, with a population of 13,214, was primarily a high-income residential suburb of San Francisco. Professionals, managers, and owners of San Francisco businesses commuted to Oakland by electric transit and then across the Bay to San Francisco by ferry boat. Berkeley's most important institution was the University of California, and it was also the home of the California School for the Deaf and Blind. South of

the university campus and in the center of town there was a modest amount of retail activity. The western end of Berkeley, near the Bay and the Southern Pacific and Santa Fe rail lines, was the former town of Oceanview, an industrial settlement consisting of factories, warehouses, and small homes and flats inhabited by working-class families.⁹

Berkeley's modest but steady growth as a suburban enclave was suddenly jolted in 1906 when San Francisco was rocked by an earthquake and fire that destroyed most of the central portion of California's largest city. Survivors of the disaster rushed across the Bay to safer ground, and Berkeley experienced a major influx of temporary and permanent residences and new commercial enterprise. Warren Cheney, one of Berkeley's largest commercial realtors and head of its Chamber of Commerce, reported: "It is not Christian to seek advantage in another's misfortune, but there is nothing to be ashamed of in profiting by such misfortune if it comes unsought."¹⁰ Cheney's prophecy that Berkeley would replace San Francisco as the commercial center of the Bay (Oakland was also competing for this honor) turned out to be greatly mistaken. The businesses that set up temporary headquarters on Berkeley's Shattuck Avenue in 1906 soon relocated back to their newly rebuilt downtown San Francisco sites. But residential growth did undergo a major and lasting spurt. Berkeley's population doubled in 1906-7, and by the end of the decade the city boasted a population of 40,434, a great deal of which was high-income, particularly in the northern and eastern areas of the city. In 1916, according to one source, 90 percent of the existing structures in Berkeley were single-family houses.¹¹

Excellent transit access to San Francisco, the presence of the university, and a view of the Golden Gate proved an irresistible inducement for the developers of first-class residential subdivisions on Berkeley's high ground. One of the city's most distinguished residents was Duncan McDuffie, president of Mason-McDuffie, northern California's largest real estate brokerage and development corporation. Duncan McDuffie was one of California's pioneering community builders, a professional realtor and subdivider of well-designed and expensive residence tracts complete with tightly-drawn deed restrictions, the most famous of which was the 1912 San Francisco development, St. Francis Wood.¹² Mason-McDuffie developed three major deed-restricted subdivisions in Berkeley designed primarily for single-family homes. The first of these subdivisions, the Claremont district, included a very grand hotel and Duncan McDuffie's own famous house and garden.¹³

Duncan McDuffie, in addition to being a substantial realtor, was also very active in politics. At the state level, he worked closely with Mason-McDuffie's vice-president, California Assembly

Speaker C.C. Young, to lobby the California legislature for a tree-planting enabling act to help beautify cities, and for more state parks. (He was later appointed by Governor C.C. Young to be Chairman of the California State Park Commission.)¹⁴ As a leader of the Berkeley Realty Board, Duncan McDuffie was the prime mover behind attempts to create a city planning commission and to institute city zoning in Berkeley.¹⁵

Starting in 1914, Duncan McDuffie initiated and directed the efforts of the private Berkeley City Club to establish a City Planning Committee and raise the money to pay one-fourth of the cost of bringing German architect Werner Hegemann to the East Bay to produce a joint infrastructure and beautification plan for Berkeley and Oakland.¹⁶ McDuffie then played the main role in inducing the Berkeley City Council to establish a Civic Art Commission to pursue city planning activities in 1915. Berkeley's mayor appointed McDuffie as president of the Civic Art Commission. Other members included representatives from the Berkeley Manufacturer's Association and the Berkeley Chamber of Commerce, plus two University of California professors. In establishing a pattern that was to become nearly universal in the succeeding decade, "The Civic Art Commission soon arrived at the conclusion that the matter of zoning was of primary importance and its first efforts were therefore directed toward the passage of a zoning ordinance."¹⁷

Duncan McDuffie's perspective on city planning and zoning derived directly from his experience in subdividing single-family residence tracts. In an address to the City Club in 1916, he emphasized that experience: "Through the use of proper restrictions, a well-designed street plan and suitable improvements, it is possible absolutely to determine in advance the development and character of an entire residence tract,"¹⁸ and thus avoid "the evils of uncontrolled development."¹⁹ In his view, the purpose of the Civic Art Commission was to utilize the precedent of private restrictions to create public zoning: "In Berkeley the value of protective restrictions has been amply demonstrated by their use in private residence tracts. The adoption of a district or zone system by Berkeley will give property outside of restricted sections that protection now enjoyed by a few districts alone and will prevent deterioration and assist in stabilizing values."²⁰ Berkeley's zone plan would not only be an aid to the homeowner, but would also "protect the business districts of the city against the competition created by scattering stores through residence districts."²¹ In addition, it would "protect the manufacturer by giving him a district on the waterfront, convenient to both rail and water transportation, in which he will be free from attack"²² by "unreasonable neighbors."²³



The entrance to Claremont, Duncan McDuffie's first deed-restrictive subdivision, in Berkeley.

Photographs courtesy of the Bancroft Library Collection, University of California, Berkeley.



The industrial district on the Berkeley waterfront, early 1900s, from which Berkeley's zoning law sought to exclude residents.



View of Northbrae subdivision in October 1914. In 1910, this property was a cow pasture.

The immediate concerns in Berkeley with regard to restricted residence tracts were three-fold: 1) some of the tracts' deed restrictions would soon be expiring. In fact, one of the most urgent demands for zoning came from single-family homeowners in Elmwood Park, a neighborhood of tracts subdivided between 1905 and 1910, each tract with five-year restrictions. When the restrictions expired, several apartments and stores were built in the neighborhood, and most of the existing property owners were anxious to stop this "invasion".²⁴

2) Realty agents, lenders, title companies, builders, and home and lot purchasers were concerned because deed restrictions were often not legally enforceable, even if they were nominally still in effect. Public zoning was seen as a solution to the problem of relying exclusively on uncertain private litigation. As another member of the Civil Art Commission stated:

If a man buys property within a restricted tract and wishes to devote it to uses other than those allowed, there is nothing to prevent him from obtaining a building permit from the city to erect any type of building he desires. The only method of preventing such violation is by tedious and costly legal proceedings instituted by a property owner in the restricted tract at his own expense, immediately upon knowledge that a violation is threatened. These occurrences are so numerous that a restriction running with the land is in many cases a nullity.²⁵

3) Community builders like Duncan McDuffie were particularly concerned because deed-restricted residence tracts could not legally control the use of land outside of their boundaries. Only the local government through its police powers could perform such a task. For example, while the Elmwood Park tract was not a Mason-McDuffie subdivision, it touched the western border of the restricted Claremont district, in which McDuffie resided. He was concerned that in the absence of public zoning, Claremont could soon be ringed by "incompatible" uses. McDuffie's report, as president of the Civic Art Commission, recommended to the City Council that Elmwood Park be zoned for exclusive single-family residence use. He also stated that the Commission "sees no reason why the property immediately east of Elmwood park, which has been developed as residential property in much the same manner as Elmwood Park, should not receive the benefits of the regulation proposed."²⁶ The second major residential area to be classified as an exclusive single-family home district under Berkeley's zoning law was Northbrae, one of Mason-McDuffie's biggest East Bay subdivisions.²⁷

Berkeley's City Council adopted its first districting ordinance on March 10, 1916, a full four months before New York City's landmark zoning law was passed.²⁸ While Berkeley's ordinance

was quite openly based on the 1908 Los Angeles law and the subsequent court decisions validating it, there were a number of important differences in the two approaches.²⁹ First, Berkeley's key innovation was to create a separate classification for single-family residence districts. The Los Angeles residence districts did not differentiate between single-family and other types of residential use. Berkeley, foreshadowing modern zoning practice, had five different residential-use districts in the 1916 ordinance.

Second, while the Los Angeles method was to pass a general law that blanketed the city's entire territory, Berkeley created a fine-tuned law with eight different district classifications. However, under the Berkeley law the entire city was not automatically to be zoned. Only when at least 50 property owners or owners of 25 percent of the street frontage petitioned the City Council could a specific geographic district be legally classified. Under this piecemeal voluntary approach, most areas of Berkeley remained totally unrestricted.

Third, the Berkeley law was not necessarily retroactive. Unlike the Los Angeles law, in Berkeley the City Council could order a non-conforming use to vacate a district, but it was not required to do so. Again establishing a more modern standard, the Berkeley law contained a provision that if a non-conforming use was destroyed, altered, or voluntarily vacated at any future time, the new use must conform to the district's zoning restrictions.

Fourth, in addition to an exclusive single-family residence district classification, Berkeley zoning law also included a classification for industrial districts from which residences would be excluded. This particular zoning innovation was unique and did not become common U.S. practice until the 1950s. The provision for exclusive industrial districts was at the specific request of B.J. Bither, director of the Berkeley Manufacturers' Association and a member of the Civic Art Commission. Other industrialists and executives from the Southern Pacific and Santa Fe Railroads made similar requests.³⁰ As Mr. Bither explained:

Factories are often harassed by people who build close to them and then enter upon a course of annoyance and complaint until they are in some way pacified—when the trouble is apt to be renewed by some other similarly situated residents.

In order that factory buildings may be induced to locate in Berkeley, they must be assured that they will be protected against unfair treatment so long as they conform to the municipal regulations.³¹

The issue that precipitated Bither's zoning proposal was the inability of Standard Oil to find an industrial location in Berkeley

without arousing great community opposition. Berkeley Mayor Samuel C. Irving, who was also president of the Chamber of Commerce and owner of a multinational manufacturing corporation, was determined that the city's railroad and waterfront land should be developed for industrial purposes free from protests and lawsuits by nearby working-class residents. Under Berkeley's 1916 zoning law two different industrial district classifications were created, one "in which only unobnoxious factories will be allowed and another classification in which obnoxious as well as unobnoxious factories will be allowed."³²

Berkeley's zoning law was primarily designed to protect the developers and owners of large and expensive homes on the east side of the city, and the developers and owners of factories and railroad property on the west side. Requests for protective restrictions that would benefit residents of "old and dilapidated" houses in the west side industrial areas were rejected by the Berkeley City Council in hopes that "the residences within that zone would gradually be abandoned, and the district would become a purely manufacturing locality."³³ One of the earliest petitions acted upon by the City Council created an industrial district for Cutter Laboratories: "a new manufacturing plant expecting to invest a large sum of money on buildings covering about two acres of ground, was afraid to proceed . . . until the property had been classified as an exclusive manufacturing district."³⁴ The City Council later reported that "at least one industry with international connections has come to Berkeley because of the protection furnished under our zone law."³⁵

The first zoned district created in Berkeley was the single-family residence restriction applied to Elmwood Park. Other zoning actions by the City Council in response to property owner petitions included one which required two Japanese laundries, one Chinese laundry, and a six-horse stable to vacate an older apartment area in the center of town, and another that created a restricted residence district in order to prevent a "negro dance hall" from locating "on a prominent corner."³⁶ That the focus of Berkeley's zoning law should be on racial restrictions is not surprising given the anti-Chinese origins of zoning in California.³⁷ Physical design and building restrictions were a vital aspect of subdivision planning, as Duncan McDuffie frequently articulated, but "wise use of restrictions" by subdivision developers also involved racial exclusion. In 1925 and 1926 the *California Real Estate* magazine reported that one of the most popular examples of "service rendered" by a local real estate board "to members and to the community at large" was the attempt by the Berkeley Realty Board, a strong supporter of city planning and zoning, "to organize a district of some twenty blocks under the covenant plan as protection against invasion of Negroes and Asiatics." The

magazine stated that reaction in Berkeley to the realty board's action "has been one of commendation and praise."³⁸

The most notable omission from Berkeley's initial zoning ordinance was any classification for commercial use districts. The Berkeley Civic Art Commission, city attorney, and others debated the question of whether or not they legally could separate different forms of business and commercial use in order to protect established business and retail centers from certain nuisances. The City Council decided that, under the police power, according to the current state of California court decisions, commercial district restrictions would not be legally valid. Consequently, the Berkeley zoning law only contained residential and industrial district classifications, with all commercial property left in an unrestricted "no man's land."³⁹ This situation was quickly remedied in October 1916 when the City Council amended the landmark zoning ordinance passed just seven months earlier. At the recommendation of the Civic Art Commission, the new amended law created 27 different classifications, including several categories of commercial use districts.⁴⁰

By 1916, Berkeley thus attained the distinction of having the most complicated use-zoning law in the United States, although New York City's height and area formulas added yet another form of complexity to zoning. Berkeley's complicated system existed mostly on paper, however, because under the piecemeal arrangement of creating districts by petition of the property owners, only five percent of Berkeley's land area was zoned in the first four years of the law, and all but one of these districts were for single-family residential use.⁴¹ In 1920 the City Council passed a new streamlined ordinance with just seven classifications, and proceeded to zone the entire city directly, rather than waiting for district petitions.⁴²

Duncan McDuffie's efforts to create a zoning law for Berkeley were greatly aided by the secretary and consultant to the Civic Art Commission, Charles Henry Cheney. Cheney, a young architect of the Beaux Arts school and son of Berkeley's preeminent commercial realtor, Warren Cheney, was an energetic advocate of city planning. His work on behalf of Berkeley's zoning law established him as a major consultant on zoning throughout the Pacific Coast.⁴³ After Berkeley's 1916 ordinance took effect, Cheney and McDuffie both turned their attention to a bigger project—the zoning of San Francisco.⁴⁴

Conclusion

The story of concerned homeowners in Berkeley's Elmwood Park neighborhood in 1915 is typical of the contemporary view of the historic use of zoning laws. What is less well-known, however,

is the role of large residential subdividers like Duncan McDuffie in creating the first zoning laws and applying these laws to districts even before any homeowners resided there. The need for political coalitions and the conflict between different property owners and users demonstrates the difficulty and frustration real estate developers encountered in the zoning process. Today's widespread debate over the appropriate form and scope of private and public land-use regulations, while certainly more widespread and controversial today, can trace its roots back to the very beginnings of zoning in the first three decades of the twentieth century.

NOTES

1. Many of the ideas in this paper are drawn from my forthcoming book, *The Rise of the Community Builders: The American Real Estate Industry and Urban Land Planning* (New York: Columbia University Press, 1987), Columbia History of Urban Life, Kenneth T. Jackson, General Editor.
2. Harrison R. Baker, "Subdivision Practices," in Harrison R. Baker, ed., *Subdivision Principles and Practices* (Los Angeles: California Real Estate Association, 1936), p. 7.
3. On institutional changes in real estate development and finance, see *The Rise of the Community Builders, op. cit.*, Chapter Two.
4. Herbert U. Nelson, "How Good is Zoning," *Headlines*, 14, 37, September 15, 1947 (Chicago: National Association of Real Estate Boards, 1947), p. 1.

The standard interpretation of zoning fits Herbert U. Nelson's statement. See Seymour I. Toll, *Zoned American* (New York: Grossman, 1969); John Delafons, *Land-Use Controls in the United States* (Cambridge: MIT Press, 1969); Richard F. Babcock, *The Zoning Game*, (Madison: University of Wisconsin Press, 1966); Constance Perin, *Everything in its Place* (Princeton: Princeton University Press, 1977).

5. On the crucial importance of deed restrictions as the basic tool of private planning and the innovative precedent for public regulation, see Helen C. Monchow, *The Use of Deed Restrictions in Subdivision Development* (Chicago: Institute for Research in Land Economics and Public Utilities, 1928); and *The Rise of the Community Builders, op. cit.*, Chapter Three.

6. For example, urban planner Charles H. Cheney, in a letter describing the deed restrictions of the famous Palos Verdes Estates subdivision he designed with Frederick Law Olmsted, Jr., says, "The type of protective restrictions and the high class scheme of layout which we have provided tends to guide and automatically regulate the class of citizens who are settling here. The restrictions prohibit occupation of land by Negroes or Asiatics. The minimum cost of house restrictions tends to group the people of more or less like income together as far as it is reasonable and advisable to do so." Quoted in Robert Fogelson, *The Fragmented Metropolis: Los Angeles, 1850-1930* (Cambridge: Harvard University Press, 1967), p. 324 footnote.

On race restrictions, see Clement E. Vose, *Caucasians Only* (Berkeley and Los Angeles: University of California Press, 1959); Thomas L. Philpott, *The Slum and the Ghetto* (New York: Oxford University Press, 1978); Herman H. Long and Charles S. Johnson, *People vs. Property* (Nashville: Fisk University Press, 1947); Charles Abrams, *Forbidden Neighbors* (New York: Harper Brothers, 1955).

7. Barbara J. Flint, "Zoning and Residential Segregation: A Social and Physical History, 1910-1940," unpublished Ph.D. dissertation, Department of History, University of Chicago, 1977, p. 215. On the national debate about "overzoning" see also Harland Bartholomew, *Urban Land Uses*, Volume IV, Harvard City Planning Studies (Cambridge: Harvard University Press, 1932); Coleman Woodbury, "The Size of Retail Business Districts in the Chicago Metropolitan Region," and Orman S. Fink and Coleman Woodbury, "Area Requirements of Cities in the Region of Chicago," in *Journal of Land and Public Utility Economics*, 4:1, February 1928, and 4:3, August 1928; Gordon Whitnall, "Supply and Demand in Business Zoning," *The Community Builder*, 1, 3, February 1928; George LeRoy Schmutz, "Economic Effects of Zoning," and Harry H. Culver, "A Realtor's Viewpoint on Zoning, Present and Future," in W.L. Pollard, ed., "Zoning in the United States," *Annals of the American Academy of Political and Social Science*, 155, II, May 1931; George H. Coffin, Jr., *Zoning and its Relation to Property Values* (Los Angeles: California Real Estate Association, 1936); *Proceedings of the National Zoning Conference*, Chicago, December 12-14, 1937 (Washington, D.C.: U.S. National Resources Committee, 1938); Weiss, *The Rise of the Community Builders*, *op. cit.*, Chapter Four.
8. On the FHA Land Planning Division, see *The Rise of the Community Builders*, *op. cit.*, Chapter Six.
9. WPA Writers' Program, *Berkeley: The First Seventy-Five Years* (Berkeley: The Gillick Press, 1941); Arthur Harris, *City Manager Government in Berkeley* (Chicago: Public Administration Service,

- 1940); Mel Scott, *The San Francisco Bay Area* (Berkeley and Los Angeles: University of California Press, 1959); James E. Vance, Jr., *Geography and Urban Evolution in the San Francisco Bay Area* (University of California, Berkeley: Institute of Governmental Studies, 1964); Marybeth Branaman, *Growth of the San Francisco Bay Area Urban Core* (University of California, Berkeley: Bureau of Business and Economic Research, 1956).
10. Warren Cheney, "Commercial Berkeley," *Sunset Magazine*, November 1906, p. 74; WPA, *op. cit.*, p. 84.
 11. Charles H. Cheney, "Zoning in Practice," *Proceedings of the Eleventh National Conference on City Planning* (Cambridge: Harvard University Press, 1919), p. 171; Berkeley City Planning Commission (Civic Art Commission) *Proposed Comprehensive Zone Ordinance for the City of Berkeley*, California, May 6, 1919, p. 4; City planner Ernest P. Goodrich, in his summary report on the study by the NCCP Committee on Land Subdivision, called Berkeley "a typical high class residence town". See *Proceedings of the Seventh National Conference on City Planning* (Cambridge: Harvard University Press, 1915) p. 46.
 12. *Real Estate*, III, 5, April 1914, p. 128; *California Real Estate*, VIII, 8, May 1928, p. 61; *California Real Estate IX*, 4, January 1929, p. 58; The San Francisco Real Estate Board called Duncan McDuffie "one of the foremost subdivision operators on the Pacific Coast." See *San Francisco Real Estate Board Bulletin*, I, 2, October 1915, p. 2.
 13. WPA, *op. cit.* p. 120. The other two large subdivisions were Northbrae and Thousand Oaks.
 14. *California Real Estate VII*, 1, October 1926, p. 16; VII, 7, April 1927, p. 13; *California Real Estate Directory-Bulletin* (Sacramento: California State Printing Office, 1920) I, 1, April 1, 1920, pp. 15, 240; Duncan McDuffie used the 1913 California Tree Planting and Parking District Act as a means of levying special assessments to develop one of his biggest subdivisions, Northbrae. See Charles Henry Cheney, *Procedure for Zoning or Districting Cities* (San Francisco: California Conference on City Planning, September, 1917), p. 15 (footnote). In 1930 the American Scenic and Historic Preservation Society awarded Duncan McDuffie a national medal for having "greatly advanced the cause of scenic preservation." *California Real Estate*, X, 5, February 1930, p. 34. Duncan McDuffie was also the founding Vice-President in 1914 of the California Conference on City Planning. See *Transactions of the Commonwealth Club of California*, IX, 14, January 1915, pp. 746-8; *Pacific Municipalities*, 28, 10, October 1914, pp. 503, 511, 513-15. Duncan McDuffie was also a founding member in 1914 of the City Planning Committee of the National Association of Real Estate Boards. See *The Rise of the Community Builders*, *op. cit.*

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15. *California Real Estate V*, 8, May 1925, pp. 20, 40; Duncan McDuffie. "The Planning of Cities." *Pacific Municipalities*, 29, 12, December 1915, pp. 618-19; "McDuffie Lectures on Needs of City." *Berkeley Daily Gazette*, March 25, 1914, p. 6.
16. Duncan McDuffie, "City Planning in Berkeley." *Berkeley Civic Bulletin IV*, 5, March 15, 1916, pp. 106-07; Werner Hegemann, *Report on a City Plan for the Municipalities of Oakland and Berkeley* (the City Club and Civic Art Commission of Berkeley and the Chamber of Commerce and Commercial Club of Oakland, 1915); McDuffie was a member of the City Planning Committee of the Berkeley City Club. On the beginnings of a real estate recession in Berkeley in 1914, see *Real Estate*, III, 11, October 1914, p. 324.
17. J.R. Douglas, "The City Planning Movement in Berkeley." *Berkeley Civic Bulletin V*, 1, August 22, 1916, p. 4; Frank D. Stringham, "City Planning Progress in Berkeley," *The Architect and Engineer of California* 52, 3, June 1918.
18. Duncan McDuffie, March 15, 1916, op. cit., p. 106. As early as March 24, 1914, McDuffie delivered a lecture at the University of California on "The Development of Residence Districts under Wise Restrictions." See *Berkeley Civic Bulletin II*, 8, March 14, 1914, p. 2.
19. *Ibid.*, pp. 115-6.
20. *Ibid.*, p. 117.
21. *Ibid.*, p. 116.
22. *Ibid.*, p. 116.
23. *Ibid.*, p. 112.
24. Charles Henry Cheney. "The Necessity for a Zone Ordinance in Berkeley." *Berkeley Civic Bulletin III*, 10, May 18, 1915, p. 165; Duncan McDuffie. "A Practical Application of the Zone Ordinance." *Berkeley Civic Bulletin V*, 1, August 22, 1916, pp. 10-17; Charles Henry Cheney, "Districting Progress and Procedure in California." *Proceedings of the Ninth National Conference on City Planning* (New York: Douglas C. McMurtrie, 1917) pp. 186-7; *Pacific Municipalities*, 32, 3, March 1918, p. 136; the original Elmwood Park tracts were subdivided by Senator Arthur H. Breed, President pro tem of the California Senate and, like McDuffie, a prominent realtor and community builder. See Berkeley City Engineer's office, Elmwood Park tract maps.
25. B.D.M. Greene, "Legal Aspects of the Zone Ordinance," *Berkeley Civic Bulletin V*, 1, August 22, 1916, p. 6.

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26. Duncan McDuffie, August 22, 1916, *op. cit.*, p. 13.
27. Berkeley City Ordinance Number 526 N.S., June 19, 1917. On Northbrae, see *Real Estate*, III, 7, June 1914, p. 182.
28. Berkeley City Ordinance Number 452 N.S., March 10, 1916.
29. On the 1908 Los Angeles zoning law, see *The Rise of the Community Builders*, *op. cit.*, Chapter Four.
30. "Industrial Development in Berkeley," *Berkeley Civic Bulletin* III, 10, May 18, 1915, pp. 167-173; Charles Henry Cheney, CCCP, 1917, *op. cit.*, p. 4 (footnote). The Berkeley Manufacturer's Association represented 20 large industrial firms with factories located in west Berkeley.
31. B.J. Bither, *op. cit.*, p. 168.
32. B.D.M. Greene, *op. cit.*, p. 9.
33. B.J. Bither, *op. cit.*, p. 168.
34. Charles Henry Cheney (NCCP) 1917, *op. cit.*, p. 189. Berkeley City Ordinance Number 514 N.S., April 27, 1917, created an "exclusive obnoxious industrial district" for Cutter Laboratories. See also remarks by Berkeley City Attorney Frank D. Stringham in *Proceedings of the Ninth National Conference on City Planning*, 1917, *op. cit.*, p. 224.
35. Cited in Edward Glass, "A Non-Technical Discussion of the City Planning Movement," *Pacific Municipalities* 36, 3, March 1922, p. 86.
36. Charles Henry Cheney, 1917, *op. cit.*, pp. 187-90. The Berkeley City Council passed a law requiring all laundries in residence areas to vacate within one year, restricting their location to certain "Laundry Districts". See Berkeley City Ordinance Number 575 N.S., May 31, 1918.
37. On the anti-oriental origins of zoning in California, see W.L. Pollard, "Outline of the Law of Zoning in the United States," and Gordon Whitnall, "History of Zoning," in W.L. Pollard, ed., *op. cit.*: Paul Ong, "An Ethnic Trade: The Chinese Laundries in Early California," *The Journal of Ethnic Studies*, 8, 4, Winter 1981.
38. *California Real Estate* VI, 5, February, 1926, p. 45; VII, 1, October 1926, p. 60.
39. B.D.M. Greene, *op. cit.*, pp. 8-9.
40. Berkeley City Ordinance Number 485 N.S., October 31, 1916.
41. Louis Bartlett, "The Importance of Zoning a Municipality," *Pacific Municipalities* 34, 3, March, 1920, p. 104. Bartlett was Mayor of Berkeley at the time.

42. Berkeley city Ordinance Number 666 N.S., June 1, 1920. On Berkeley realtors promoting homeownership at this time, see *California Real Estate*, II, 2, November 1921, p. 17.
43. On Charles Cheney's reputation as a city planner, see the special issue of *The Architect and Engineer of California* 52, 3, June, 1918; see also *The Rise of the Community Builders, op. cit.*, Chapters Four and Five; Mel Scott, *op. cit.*; and Carl Abbott, *Portland: Planning, Politics, and Growth in a Twentieth-Century City* (Lincoln: University of Nebraska Press, 1983). Charles Cheney's father, Warren Cheney, was a prominent member of both the Berkeley Realty Board and the California Real Estate Association (CREA). See the *California Real Estate Directory-Bulletin* II, 2, October 15, 1921, p. 5 and p. 21, and *California Real Estate*, I, 6, April 1921, p. 10.
44. On San Francisco, see my forthcoming article to be published in an historical journal.