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# Deny, Deny, Deny

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# **Zoning and Land Use Planning**

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## **DENY, DENY, DENY**

### I. Introduction

American zoning law allows “Not In My Back Yard” (NIMBY) activists to effectively veto new housing in their neighborhoods. Academic economists often assert that the NIMBY veto raises housing prices, based on the law of supply and demand: less housing supply means higher housing prices. But other commentators respond that the law of supply and demand is somehow irrelevant to housing prices in expensive cities. This article criticizes “supply and demand denialism.”

### II. How NIMBYism Happens, And How It Raises Rents

Although American zoning is designed to segregate housing from other land uses, zoning also segregates types of housing from each other: “low-density housing is segregated from medium-density housing, which is separated from high-density housing.”<sup>1</sup> As a result, when a landowner wants to build more housing than is currently allowed, the landowner must ask the city for a rezoning- even if the property is already located in a residential neighborhood.<sup>2</sup> Rezoning in urban areas tend to provoke NIMBY opposition from people

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<sup>1</sup>Joshua Yellin, *The Intersection Between Urban Agriculture and Form-Based Zoning: A Return to Traditional Planning Techniques*, 19 *Hastings W.-N.W. Envtl. L. & Pol’y J.* 83, 95 (2013).

<sup>2</sup>See Roderick M. Hills and David Schleicher, *The Steep Costs of Using Noncumulative Zoning to Preserve Land for Urban Manufacturing*, 77 *U. Chi. L. Rev.* 249, 269 (2010).

living near the site of the proposed rezoning,<sup>3</sup> because neighbors of a development might suffer from alleged negative externalities caused by the development<sup>4</sup> but might not benefit from the development's positive effects (such as increased housing supply and lower housing prices). City governments tend to defer to such opposition in order to attract the votes of NIMBYs.<sup>5</sup>

Because NIMBYs often veto new housing, housing supply grows more slowly than it would in a free market. According to the law of supply and demand, a low level of housing supply should lead to higher housing costs. In 2006, three Wharton business school scholars sought to measure government-created supply restrictions by creating the Wharton Residential Land Use Regulatory Index.<sup>6</sup> The authors created this index by surveying 2600 municipalities about their land use policies,<sup>7</sup> asking questions about a wide variety of regulations. The most highly regulated communities, for example, tend to have multiple local pressure groups

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<sup>3</sup>See William A. Fischel, *The Homevoter Hypothesis: How Home Values Influence Local Government Taxation, School Finance and Land Use Policies* 230 (2005) (Americans tend to oppose new housing near them, especially "higher-density development."); Roderick M. Hills, Jr. and David Schleicher, *Planning an Affordable City*, 101 *Iowa L. Rev.* 91, 94 (2015) ("incumbent residents . . . vociferously and effectively protest against the reduction of zoning restrictions").

<sup>4</sup>For example, NIMBYs may claim that new development increases traffic, threatens neighborhood character, or affects property values. See Michael Lewyn, *Against the Neighborhood Veto*, 44 *Real Estate L.J.* 82, 86–95 (2015) (criticizing these and other justifications for NIMBYism, on the grounds that restrictive zoning merely shifts such externalities to other neighborhoods or are outweighed by social harms caused by a restricted housing supply).

<sup>5</sup>*Cf.* David Schleicher, *City Unplanning*, 122 *Yale L.J.* 1670, 1709–1711 (2013) (city councilors tend to oppose development in their own districts because NIMBYs within district vocally oppose housing, and system of "councilmanic courtesies" encourages rest of council to defer to a councilor's decisions about zoning in his or her own district).

<sup>6</sup>See Joseph Gyourko, Albert Saiz, and Anita A. Summers, *A New Measure of the Local Regulatory Environment for Housing Markets: The Wharton Residential Land Use Regulatory Index*, 45 *Urban Studies* 693 (2008).

<sup>7</sup>*Id.* at 696.

involved in land use regulation, stringent anti-density zoning, and a relatively slow approval process.<sup>8</sup>

The authors found that highly regulated regions in fact had the highest housing costs; median housing prices in highly regulated places were nearly double those in lightly regulated places.<sup>9</sup> Table 1 below compares highly regulated metropolitan areas to less regulated regions.

Table 1: Most Regulated vs. Least Regulated (out of 47 metropolitan areas surveyed)

Most Regulated <sup>10</sup>	median house price <sup>11</sup> (in thousands)
1. Providence	258
2. Boston	420
3. Philadelphia	234
4. Seattle	386
5. San Francisco	809
Least Regulated	
47. Kansas City	174
46. Indianapolis	157
45. St. Louis	160
44. Cincinnati	150
43. Dayton	129

Although small differences in regulation (such as the difference between regions No. 1 and No. 5, or between regions

<sup>8</sup>*Id.* at 714.

<sup>9</sup>*Id.* at 710.

<sup>10</sup>*Id.* at 713.

<sup>11</sup>See National Association of Realtors, *Median Sales Price of Existing Single-Family Homes for Metropolitan Areas*, <http://www.realtor.org/sites/default/files/reports/2015/embargoes/2015-q3-metro-home-prices/metro-home-prices-q3-2015-single-family-2015-11-12.pdf> (data from third quarter of 2015) (“Realtors”). I note that the third most regulation-intensive region listed by Gyourko, Monmouth-Ocean County, N.J., is not mentioned in my table because the NAR does not list its housing costs. *Cf.* Kim-Mai Cutler, *How Burrowing Owls Lead to Vomiting Anarchists* (Or SF’s Housing Crisis Explained), <http://techcrunch.com/2014/04/14/sf-housing/> (showing chart created by Trulia.com, showing that regions with high rates of housing construction have lower housing prices than regions with less construction).

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No. 43 and 47) do not appear associated with higher housing costs, the difference between the most regulated and least regulated cities is significant: not one of the least regulated regions had a median housing cost as high as that of Philadelphia (the least expensive city among the top five). In fact, regions 34–43 all had lower median housing prices than Philadelphia; the least regulated region to have higher costs was Salt Lake City (No. 33).<sup>12</sup> Conversely, regions 6-15 all had higher median housing prices than any of the least regulated regions listed above.<sup>13</sup> Thus, it seems clear that highly regulated regions have higher housing prices.

The gap between construction prices and housing costs is additional evidence that limited supply increases housing costs. Because construction is a highly competitive industry, in a city without government-induced supply restrictions, housing costs should normally be roughly comparable to construction costs.<sup>14</sup> Yet in the most expensive markets such as Manhattan, housing costs per square foot are triple construction costs.<sup>15</sup> By contrast, in most metropolitan areas, housing costs are only slightly above construction costs, indicating that government regulation is not severe enough

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<sup>12</sup>See Gyourko et. al., *supra* note 6, at 713 (regions No. 34-43 were, in order, Grand Rapids, Cleveland, Rochester, Tampa, Houston, San Antonio, Fort Worth, Dallas, Oklahoma City); Realtors, *supra* note 11. The studies are not completely comparable because the Realtors study merges Fort Worth and Dallas into one region.

<sup>13</sup>See Gyourko et. al., *supra* note 6, at 713 (these regions were San Francisco, Denver, Nassau County, Bergen County, Fort Lauderdale, Phoenix, New York, Riverside, Newark and Springfield, Ma); Realtors, *supra* note 11. The studies are not strictly comparable because the Realtors study does not list Bergen County or Fort Lauderdale as separate metropolitan areas, instead merging them with nearby regions.

<sup>14</sup>See Edward L. Glaeser, Joseph Gyourko, and Raven Saks, *Why is Manhattan So Expensive? Regulation and the Rise in Housing Prices* 4, <http://www.nber.org/papers/w10124.pdf>. It could be argued that land costs are an independent factor justifying high housing costs. This argument lacks merit because a landowner can always increase housing supply (and thus reduce per-unit costs) by building more housing units on the same tract of land. *Id.* at 5 (in the absence of regulation, “builders always can add an extra floor if that would be profitable. Thus, to understand the marginal physical cost of building a new apartment we do not need to consider land purchase or preparation costs, as these are fixed costs which do not influence the marginal cost of building up.”).

<sup>15</sup>*Id.*

for landowners to pass the costs of regulation to consumers.<sup>16</sup> Construction costs are in fact only slightly higher in New York than in other markets: overall, construction costs are only 19% higher in New York than in Chicago,<sup>17</sup> yet the median New York-area house is more than twice as expensive as the median Chicago-area house.<sup>18</sup>

This gap, standing alone, does not show that housing price gaps between regions are due to government-imposed supply constraints. For example, unusually high demand might cause housing prices to exceed construction costs. But if demand alone explained high housing costs in expensive cities, increases in housing prices would lead to new construction, as developers decide to build more housing in order to benefit from increased demand. In Manhattan, this was the case in the 1950s and 1960s: increases in housing prices were followed by new construction.<sup>19</sup> Between 1955 and 1964, the city permitted 11,000 new housing units per year in Manhattan.<sup>20</sup> But in the 1980s and 1990s, this correlation disappears: evidence that some other factor (possibly regulation) is preventing housing supply from responding to higher prices.<sup>21</sup> Between 1980 and 1999 permit grants averaged only 3120 per year.<sup>22</sup> This diminution of housing supply began to occur not long after New York City institutionalized NIMBYism by creating neighborhood review boards, which have the right to comment upon new development projects.<sup>23</sup> Thus, it seems that when government uses zoning to limit housing supply, prices do in fact increase.

Similarly, in high-cost San Francisco, only about 30,000

<sup>16</sup>*Id.* at 6.

<sup>17</sup>*Id.* at 16.

<sup>18</sup>See Realtors, *supra* note 11.

<sup>19</sup>Glaeser et. al., *supra* note 14, at 23.

<sup>20</sup>See Cutler, *supra* note 11.

<sup>21</sup>See Glaeser et. al., *supra* note 14, at 23.

<sup>22</sup>*Id.* at 50; *see also* Cutler, *supra* note 11.

<sup>23</sup>See Lewyn, *supra* note 4, at 84 (review boards created in 1976). Of course, the right to comment is not the right to veto- but because community board review makes it clear to councilors which projects are likely to attract NIMBY opposition, the review process may reduce construction. Cf. Richard A. Epstein, *Heller's Gridlock Theory in Perspective: Why There is Too Little, Not Too Much Private Property*, 53 ARIZ. L. REV. 53, 70-71

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units have been built since 2000,<sup>24</sup> although the city's population has grown by 76,000 people.<sup>25</sup> Because the median household contains somewhere between 1 and 2 people,<sup>26</sup> this means that more than 30,000 units may be necessary to accommodate household growth. Obviously, when housing growth lags behind population, rent and housing prices will increase- as in fact happened in San Francisco.<sup>27</sup>

### III. Supply and Demand Denialism

Despite the evidence discussed above, many commentators deny that the law of supply and demand is relevant to high-priced cities. For example, a New York Times article quoted Jaimie Ross of the Florida Housing Coalition<sup>28</sup> as follows: "Increasing the supply is not going to increase the number of affordable units; that is a complete and utter fallacy."<sup>29</sup> After quoting Ross, the Times did not bother to supply a contrasting perspective- presumably because its reporter believed that this statement was so true as to be incontestable.

Supply-and-demand deniers raise several arguments in

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(2011) (noting that New York has numerous "choke points" that reduce new construction, including community board review).

<sup>24</sup>See San Francisco Planning Department, *2014 San Francisco Housing Inventory* at 18, [http://www.sf-planning.org/ftp/files/publications\\_reports/2014\\_housing\\_inventory.pdf](http://www.sf-planning.org/ftp/files/publications_reports/2014_housing_inventory.pdf) (34,866 new units built since 1995, minus 4481 units built between 1995 and 1999).

<sup>25</sup>See U.S. Bureau of the Census, American FactFinder, [http://factfinder.er.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](http://factfinder.er.census.gov/faces/nav/jsf/pages/community_facts.xhtml) (population grew from 776,000 people to 852,000).

<sup>26</sup>*Cf.* City of San Francisco, *General Plan: 2014 Housing Element* at 1.9, [http://www.sf-planning.org/ftp/general\\_plan/Housing\\_Element\\_Part\\_I\\_Data\\_Needs\\_Assmt\\_CPC\\_Adopted.pdf](http://www.sf-planning.org/ftp/general_plan/Housing_Element_Part_I_Data_Needs_Assmt_CPC_Adopted.pdf) (70% of San Francisco households consist of either one or two persons). Moreover, regional income has grown by 45% in nominal terms since 2000. *See* Table 4 *infra*. So if income grows, people with more money to spend will bid up rents and housing prices even if supply *does* keep up with population.

<sup>27</sup>*See* Cutler, *supra* note 11.

<sup>28</sup>The Florida Housing Coalition is a group formed to advocate for more affordable housing. *See* Florida Housing Coalition, <http://www.flhousing.org>.

<sup>29</sup>Shaila Dewan, In Many Cities, Rent Is Rising Out of Reach of Middle Class, *New York Times*, April 14, 2014, <http://www.nytimes.com/2014/04/15/business/more-renters-find-30-affordability-ratio-unattainable.html>. *See also* Cutler, *supra* note 11 (citing numerous commentators with similar views).

support of their view that economic laws are irrelevant to housing. In particular, they argue that (1) new supply is mostly quite expensive and thus does nothing to make housing more affordable, (2) demand for urban housing in high-cost cities is so overwhelming that new supply can never keep rents down, and (3) new housing actually creates demand and thus increases housing prices. Each of these arguments will be addressed in turn.

#### A. Do Landlords Only Build for the Rich?

The Times article asserts that “as long as there are plenty of upper-income renters looking for apartments, there is little incentive to build anything other than expensive units”<sup>30</sup>—in other words, that the benefit of increased supply only goes to the wealthiest renters and homebuyers.

This argument overlooks the role of “filtering”—that is, the impact of new housing upon the cost of older housing. When there is enough new housing to accommodate the demand of affluent customers, the demand for some older buildings declines (because some well-off people now prefer the newer buildings, and are unwilling to settle for the older ones). As a result, the price of such older housing declines, which makes that housing affordable to people of lesser means.<sup>31</sup> So in a free market, new housing for the rich means cheaper housing for everyone else.

But when NIMBY-oriented zoning restricts housing supply, filtering fails to occur. In this situation, there is not enough new housing to satisfy all the affluent renters, so this group bids up not only the prices of the newest buildings, but the prices of older buildings as well, causing those buildings to become more expensive. In other words, the use

<sup>30</sup>Dewan, *supra* note 29.

<sup>31</sup>See Daniel Meyler, *Is Growth Share Working for New Jersey?*, 13 N.Y.U. J. Legis. & Pub. Pol’y 219, 230–31 (2010) (explaining concept). I note that in the poorest areas, filtering may work too well: the market price of housing may be so low that the market rent is lower than the price of maintaining an apartment, causing widespread abandonment of housing by landlords. Cf. David Reiss, *Housing Abandonment and New York City’s Response*, 22 N.Y.U. Rev. L. & Soc. Change 783, 786–87 (1991) (under certain circumstances, abandonment may be cheaper than renting to low-income tenants). It logically follows that even in the least expensive cities, government subsidies may be necessary to provide housing for the very poorest.



of high housing costs to justify restrictive zoning creates a vicious circle: NIMBYs use zoning to restrict the housing supply, thus preventing filtering, thus causing housing costs to rise, thus causing NIMBYs to argue that the market can never be trusted to deliver affordable housing, thus justifying additional regulation, thus causing additional price hikes.

Moreover, even new apartments are limited by the law of supply and demand. If new apartments were always reserved for the rich, new apartments would be equally expensive everywhere. But in fact, new apartments are far more expensive in high-cost, overregulated cities. For example, new one-bedroom apartments (that is, apartments built in 2014 or 2015) in San Francisco rent at between \$2,100 and \$4,000, while equally new *two-bedroom* apartments in Kansas City (the least regulated real estate market in America)<sup>32</sup> rent for between \$1,200 and \$1,500.<sup>33</sup> Presumably, owners of older apartments who wish to underprice the new apartments can charge as much as \$2,000 in San Francisco, but must charge far less in Kansas City.

#### B. Unlimited Demand?

It has been argued that the law of supply and demand does not apply to San Francisco as it does to Kansas City, because in San Francisco (and other expensive cities), demand for housing is virtually unlimited.<sup>34</sup> If this argument made sense, the fastest-growing cities would have the highest housing prices, since population growth increases demand for housing. But in fact this is not the case. Table 2 compares the most expensive metropolitan areas with the fastest-growing regions.

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<sup>32</sup>See Table 1, *supra*.

<sup>33</sup>This information is based on easily replicated searches at Zillow.com. I note that the newest one-bedroom unit I found for rent in Kansas City, built in 2008, also rented for \$1,200, perhaps because it was in the heart of downtown Kansas City.

<sup>34</sup>See, e.g., Tim Redmond, *Editor's Notes*, San Francisco Bay Guardian Online, Feb. 21, 2012, <http://www.sfbg.com/2012/02/21/editors-notes> ("in a city that has limited space and nearly unlimited demand . . . There's no way to build enough new affordable rental housing, or housing that middle-class families can buy, to keep up with the demand.").

Table 2: Most Expensive Regions vs. Fastest Growing Regions

Most Expensive Major Metropolitan Areas	Median house prices (in thousands) <sup>35</sup>	Population percentage growth, 2000-12 <sup>36</sup>
San Jose	965	9.1
San Francisco	809	8.0
Honolulu	714	12.2
San Diego	554	12.9
Los Angeles	506	5.6
Fastest Growing Major Metropolitan Areas <sup>37</sup>		
Raleigh	241	49.1
Austin	264	46.8
Las Vegas	221	45.4
Orlando	201	35.2
Charlotte	203	33.7

Table 2 shows that the most expensive regions all gained population- but not at a particularly rapid pace. In fact, most of the expensive regions grew less rapidly than the U.S. as a whole; the national population grew by 11.6% between 2000 and 2012,<sup>38</sup> more rapidly than three of the five high-cost regions in Table 2. By this measurement, it appears that housing demand in the most expensive regions might actually be *lower* than demand in the cheaper high-growth regions.

Population growth alone may not be the most appropriate measurement of housing demand, because high-cost cities have more wealth, and their inhabitants can thus bid up the price of housing to higher levels. If the wealth of the high-cost regions was sufficient to explain their higher housing costs, those regions would be far wealthier than the low-cost

<sup>35</sup>See Realtors, *supra* note 11 (median price for single-family houses).

<sup>36</sup>See Sarah Janssen, ed., *The World Almanac and Book of Facts 2014* at 613 (population statistics).

<sup>37</sup>This table only refers to regions that are among the seventy largest metropolitan areas. *Id.* (listing areas by population).

<sup>38</sup>See Worldometers, *U.S. Population*, <http://www.worldometers.info/world-population/us-population/> (U.S. population was 284.6 million in 2000, 317.5 million in 2012).

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cities. Table 3 compares per capita income in the highest-cost regions to income in the fast-growing regions.

Table 3: Per Capita Personal Income, 2012.<sup>39</sup>

High-cost regions	Income (in thousands)
San Jose	65.6
San Francisco	66.5
Honolulu	48.5
San Diego	49.7
Los Angeles	46.3
High-growth regions	
Raleigh	42.7
Austin	42.9
Las Vegas	36.6
Orlando	36.4
Charlotte	40.4

Admittedly, the expensive metropolitan areas have higher per capita income than the fast-growing regions. However, this gap is far more modest than the gap between housing costs and income. For example, San Jose's per capita income is 80% higher than that of Orlando—but its average house costs more than four times as much as Orlando's average house. So even if San Jose's population was growing as fast as that of Orlando (which as noted above is not the case) San Jose's wealth is insufficient to justify its higher housing costs, let alone suggest that San Jose's demand for housing is unlimited.

Moreover, housing demand is not related solely to per capita income. As noted above, population growth is also relevant, because 1,000 wealthy buyers will affect housing prices more than 500 wealthy buyers. Thus, a better way to ascertain housing demand would be to find a statistic that combines population growth with income. One such statistic is total regional personal income. Table 4 shows personal income growth for the regions listed above.

<sup>39</sup>See ProQuest, Statistical Abstract of the United States 2015 at 468.

Table 4: regional personal income, 2000-12 (income in billions).<sup>40</sup>

	2000 Income	2012 income	percent growth
High cost regions			
San Jose	93.8	124.4	32.6
San Francisco	203.6	296.7	45.7
Honolulu	27.1	47.3	74.5
San Diego	96.3	157.6	63.6
Los Angeles	392.7	604.8	54.0
High-growth regions			
Raleigh	27.7	50.7	83.0
Austin	41.5	78.7	89.6
Las Vegas	42.1	73.3	74.1
Orlando	46.2	80.9	75.1
Charlotte	53.5	92.9	73.6

On balance, personal income actually grew *faster* in the high-growth regions than in the high-cost regions. In every single one of the high-growth regions, personal income grew by over 73%—a figure matched by only one of the high-cost regions. Thus, regional demand for goods and services (presumably including real estate) grew faster in the lower-cost, higher-growth regions. Nevertheless, housing prices are far lower in the high-growth group: a factor suggesting that supply is more important than demand.

Of course, it could also be argued that if housing costs are lower, the demand for housing in high-cost cities *would* be unlimited. But this argument is just as plausible in low-cost markets: if we assume that demand for \$200,000 houses in San Jose would be unlimited if such houses existed, why would it not be equally true that demand for \$50,000 houses in Raleigh would be unlimited if such houses existed?

Moreover, there is some evidence that even in expensive areas, new housing cuts costs. For example, in Brooklyn,

<sup>40</sup>*Id.* at 468. I note, however, that I have been unable to find strictly comparable data for housing prices between those years.

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New York, the median asking rent is \$2,600,<sup>41</sup> more than twice the regional median.<sup>42</sup> Yet as Table 5 shows, even in Brooklyn, a spike in construction can hold down rents.

Table 5: Brooklyn vs. Manhattan<sup>43</sup>

	Rental inventory growth, 2014–15	Asking rent growth, 2014–15
Studio apartments, Brooklyn	27.1	-5.1%
Studio apartments, Manhattan	5.2	6.5
One-bedroom apartments, Brooklyn	39.3	0.0%
One-bedroom apartments, Manhattan	8.2	10.7
Two-bedroom apartments, Brooklyn	54.5	-1.9%
Two-bedroom apartments, Manhattan	15.1	9.7

In Brooklyn, inventory rose dramatically, and rents stayed the same or declined. In Manhattan, inventory grew but much more slowly: not surprisingly, rents increased. Thus, the Brooklyn/Manhattan experience suggests that even in a red-hot rental market, construction affects rents.

### C. The Foreign Buyer Scare

A subset of the “unlimited demand” argument is that the growth of foreign real estate investment has accelerated demand in high-cost cities to such an enormous extent that supply is simply irrelevant. This argument may have a grain of truth: in particular, there has been a surge in Chinese

<sup>41</sup>Streeteasy, *Quarterly Market Report*, Q3 2015 at 17, [http://cdn2.blog-media.zillowstatic.com/streeteasy/2/2015Q3\\_StreetEasy-Market-Reports\\_MN-BK-5355fe.pdf](http://cdn2.blog-media.zillowstatic.com/streeteasy/2/2015Q3_StreetEasy-Market-Reports_MN-BK-5355fe.pdf) (“Quarterly Market”) (data for third quarter of 2015).

<sup>42</sup>See Proximity One, *Rental Market Conditions by Metro Area: 2014 Update*, [http://proximityone.com/metro\\_rentalmarket\\_2014.htm](http://proximityone.com/metro_rentalmarket_2014.htm) (regional median \$1209).

<sup>43</sup>See Quarterly Market, *supra* note 41, at 9 (Manhattan data), 17 (Brooklyn data).

real estate investment in some North American markets.<sup>44</sup> But foreign investment is a drop in the bucket, even in some expensive markets. For example, in 2014 Chinese investors spent \$3.3 billion in New York City real estate (presumably including not just co-ops and condominiums, but houses and commercial real estate of all types).<sup>45</sup> However, commercial real estate sales were just over \$55 billion,<sup>46</sup> and Manhattan apartment sales were just over \$21 billion.<sup>47</sup> So even if all Chinese investment were in these two categories, they would be only 4% of total investment.<sup>48</sup>

#### D. Induced Demand and Housing Costs

Another variation of the “unlimited demand” argument is the “induced demand” theory: if government allows new housing to be built in a neighborhood, the housing will be more desirable than the existing housing stock, causing gentrification, which in turn causes higher housing costs. For example, imagine the neighborhood of Slumville, full of dilapidated shacks renting for \$500 per month. A developer builds a well-maintained apartment building, for which residents of other parts of the city will gladly pay \$3,000 per month. Because Slumville’s new residents have more disposable income, new shops and other amenities raise to serve them, which in turn makes Slumville more desirable to affluent renters. In turn, the increased demand for Slumville

<sup>44</sup>Cf. Mary Szto, *Representing Chinese Real Estate Investors in the United States*, 23 Minn. J. Int’l L. 173 (2014) (describing Chinese investment as “unprecedented”); Jenny Cunningham, *How Foreign Investment is Changing our Neighborhoods*, <http://www.seattlemag.com/article/how-foreign-investment-changing-our-neighborhoods> (suggesting that foreign investment responsible for high rents in Vancouver, Canada and Seattle).

<sup>45</sup>See E.B. Solomont, *The Year of the Chinese Investor, The Real Deal: New York Real Estate News*, [http://therealdeal.com/issues\\_articles/the-year-of-the-chinese-investor/](http://therealdeal.com/issues_articles/the-year-of-the-chinese-investor/).

<sup>46</sup>See Ivan Pereira, *NYC sees huge sales for commercial real estate properties*, AM New York, Feb. 1, 2015, <http://www.amny.com/real-estate/nyc-real-estate-huge-sales-for-commercial-properties-1.9891314>.

<sup>47</sup>See Miller Samuel Inc. *Elliman Report: Manhattan Decade 2005–14* at 5, <https://www.elliman.com/pdf/4293ea628840eb2b0ffe86400b40346cc346aacf> (average sales price just over \$1.7 million, and 12,695 sales).

<sup>48</sup>Actually, less than 4%, since this number excludes sales of houses as well as non-Manhattan sales.

causes even the shacks to become dramatically more expensive.<sup>49</sup>

Within a neighborhood, this theory may be persuasive. But on a citywide basis, demand is not unlimited, because a city has only so many affluent residents at one time. For example, suppose that Slumville is in a city with 1,000 people and two neighborhoods: Slumville and Richville. If 100 people suddenly move from Slumville to Richville because of the new apartments, suddenly Richville will have 100 vacant apartments. As a result, Richville landlords will have to lower rents in order to retain residents or bring in new ones.

In a city where NIMBYism limits housing construction, rents may never actually decline— but even in a high-rent city, rent in rapidly gentrifying neighborhoods may rise more rapidly than in other neighborhoods. For example, between 2000 and 2012, rents rose by 76.1% in Greenpoint/Willemburg (one of New York’s most rapidly gentrifying neighborhoods)<sup>50</sup> but increased by only 7.3% in the Upper East Side.<sup>51</sup> And as noted above, rent increases may have finally halted in some New York neighborhoods.<sup>52</sup>

Moreover, if this argument was generally true, the least restrictive regions would have the highest rents and housing prices: new supply in low-regulation, low-cost cities would create demand for housing, thus causing sky-high housing prices—a result both absurd and inconsistent with data.<sup>53</sup>

#### IV. So what?

Supply-and-demand denialism is a tool used to support restrictive zoning that constrains the housing supply. Because the arguments for such denialism are meritless, it follows

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<sup>49</sup>*Cf.* *Chinese Staff and Workers Ass’n v. City of New York*, 68 N.Y.2d 359, 509 N.Y.S.2d 499, 502 N.E.2d 176 (1986) (plaintiffs argued that introducing new housing in neighborhood would lead to displacement of existing residents).

<sup>50</sup>*See* Scott M. Stringer, *The Growing Gap: New York’s Housing Affordability Challenge* 16, [http://comptroller.nyc.gov/wp-content/uploads/documents/Growing\\_Gap.pdf](http://comptroller.nyc.gov/wp-content/uploads/documents/Growing_Gap.pdf) (adding that number of households with incomes over \$100,000 more than doubled in this area).

<sup>51</sup>*Id.* at 17.

<sup>52</sup>*See supra* notes 41–43 and accompanying text.

<sup>53</sup>*See* Table 1 *supra*.

that the law of supply and demand matters: that is, that restrictive zoning that limits housing supply will in fact lead to higher housing prices. In sum, less government regulation means lower housing costs.