

Response to “The Effects of Land Use Regulation on the Price of Housing: What Do We Know? What Can We Learn?” by John M. Quigley and Larry A. Rosenthal

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Housing prices in the United States are significantly higher in some regions—notably coastal California, New York City, Hawaii, and New England—than they are elsewhere. Quigley and Rosenthal have commendably collected and analyzed the pertinent studies that explore the possibility that these outcomes are partly attributable to government land use regulations, such as large-lot zoning and growth controls. As the authors repeatedly emphasize, these inquiries are methodologically challenging. In particular, a well-designed regulatory program may make a community more environmentally attractive to consumers. If it does, the upward movement in prices that follows adoption of a regulation may be partly or entirely attributable to a jump in demand, not to constraints on supply.

Most observers bring ideological baggage to the technical question that Quigley and Rosenthal address. Environmentalists, community preservationists, and other devotees of increased land use regulation are predisposed to favor the demand-side story. Home-builders and fans of unfettered markets, by contrast, are naturally warm to the supply-side interpretation. I should reveal at the outset that I come to this issue with strong predispositions. My first year-round job was with the staff of Lyndon Johnson’s President’s Committee on Urban Housing, popularly called the Kaiser Committee. Much of my work in that capacity addressed the issue of effects of technological and legal barriers on the cost of housing. The Committee’s published volumes reflected the view, which I shared then and still embrace now, that supply constraints indeed can significantly harm housing consumers (President’s Committee on Urban Housing, 1968). The Kaiser Committee had few careful academic studies to draw on. I note that the earliest study that Quigley and Rosenthal include in their appendix dates from 1969, while the Committee completed its work in 1968. Events since 1968 are striking: academic studies have proliferated but, in general, so have barriers to housing production. In 1968, no one would have dreamed that density on some San Francisco Bay Area hillsides would soon be limited to one house per 100 acres,¹ or that a county at the rural fringe of Greater Chicago would ban, in some locations, lots of less than 10 acres.²

After I had entered academic life, I wrote a lengthy article on the economic consequences of growth controls (Ellickson, 1977). In that work, I interpreted many antigrowth measures as deliberate attempts by “homeowner cartels” to drive up the value of their houses by lessening competition from new subdivisions.

Coming to the issue with these prior beliefs, I was struck by how guarded the authors are in their assessment. They see only mixed evidence of net consumer harm and are hesitant to draw clear lessons for policy reform. For several reasons, Quigley and Rosenthal do not shake me from my prior views. First, although they are willing to offer cogent criticisms of the various methodologies that different scholars have used, when making their synthetic appraisals, Quigley and Rosenthal seem to resort mainly to a raw tally of the studies on the various sides of the issue, without adjusting for the quality of those studies. The most careful and impressive studies—for example, those by Pollakowski and Wachter (1990), Glaeser and Gyourko (2003a, 2003b), and Seymour Schwartz and his various collaborators (1981, 1982, 1984, 1988)—all support the common sense view that a regulation that restricts supply, in fact, affects the supply curve. In particular, the meticulous Pollakowski & Wachter (1990) study, which found that constraints inflated housing prices beyond the boundaries of the constrained area, strongly supports the view that constraints mainly shift the supply curve, not the demand curve.

Second, Quigley and Rosenthal cite studies, such as those by Landis (1992), that doubt whether growth controls work in practice. All of us who study land use regulations recognize that a municipality may use an apparent legal constraint as a bargaining chip and waive it in the crunch. Plainly, the question before us is how binding constraints, not bluffed constraints, affect housing prices. Had the authors weeded out the studies that focused on what turned out to be bluffed constraints, their scales would have tipped more toward the supply-side view.

Third, Quigley and Rosenthal are more guarded in their conclusions than are many other highly respected economists who have investigated this issue. I am confident that William Fischel, Edward Glaeser, and Susan Wachter, for example, would not be as benign in their assessment of the effects of growth controls on consumer welfare.

In my remarks at the conference, I mentioned the overly guarded tone of this article. John Quigley replied that he did not doubt the sign of the effect of barriers on prices (implying that the sign was positive), but only the magnitude of the effect. In other recent writing, Quigley himself has partly attributed, without qualifications, housing price rises to excessive regulation (Quigley and Raphael, 2004). A danger exists that growth controllers whose policies harm housing consumers will interpret Quigley and Rosenthal’s excessively cautious discussion as exonerating. For the reasons I’ve stated, I think these overly zealous regulators still should have trouble sleeping at night.

The authors’ central recommendation is that an appropriate agency (perhaps the U.S. Department of Housing and Urban Development [HUD] or the Bureau of the Census) periodically underwrite a national survey of local land use regulations. This is a splendid idea. A database of this sort fits the economic definition of a “public good” that should be governmentally funded. Scholars and profit-motivated firms have inadequate incentives to generate this sort of information.³ In addition, because the database is not congestible—that is, one scholar’s use of it would not interfere with another’s use—ideally it should be available without charge. Were HUD to publish the results of a survey of this sort, numerous scholars would quickly plug the data into their regression analyses of the effects of barriers on housing prices.

In closing, I propose several ways of expanding the survey that Quigley and Rosenthal envision. The authors stress collection of data on local government land use practices. As

they certainly would agree, gathering information on state practices also is essential. Hawaii, for example, zones its entire land area itself. California has a Coastal Commission with regulatory powers over its key coastal area. Equally important, states set the rules by which local governments engage in land use regulation. Statutory approaches vary enormously. Oregon imposes notably stiff planning requirements on its local governments. California requires the developer of a major private project to prepare an Environment Impact Report and requires a local government to make decisions consistently with its (state-required) comprehensive plan. These statutory requirements give "not in my backyard" forces powerful ammunition when they attack locally approved projects in court. Some states (but not others) allow initiatives on land use measures, have Anti-SLAPP (Strategic Lawsuits Against Public Participation) statutes to discourage developers from suing opponents of development, and so on. Regression analysis might reveal the effects of these enactments on housing prices.

In addition, a study of restrictions should include analysis of the rulings of the various state supreme courts. As many scholars have documented, in 1967 the Supreme Court of California began ruling in favor of antidevelopment interests in virtually every case it decided (Fischel, 1995; DiMento et al., 1980). Housing prices in California shot upward thereafter. Although virtually all state constitutions include a "takings clause" that conceivably could be interpreted to protect a homebuilder from excessive regulations and exactions, an observer cannot appraise the actual strength of these protections without examining judicial decisions.

Finally, Quigley and Rosenthal suggest that a national survey of land use regulations should include interviews with a sampling of local officials and homebuilders to obtain their overall assessments of the stringency of the local approval process. I agree that this sort of interview data could usefully supplement other measures of regulatory stringency. Two other sorts of experts, however, might be added to the list of interviewees: civil engineers who specialize in designing subdivisions and attorneys who specialize in land use litigation. Members of both these professions also work deeply in the relevant trenches.

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Notes

1. See *Sanfilippo v. County of Santa Cruz*, 415 F. Supp. 1340 (N.D. Cal. 1976).
2. See *Twigg v. County of Will*, 627 N.E. 2d 742 (Ill. App. Ct. 1994).
3. Kudos are owed to Peter Linneman, Stephen Malpezzi, and the others who have striven to compile data of this sort.

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