You wouldn’t want your grandmother to be trapped in a decrepit nursing home that is headed into bankruptcy because too many companies have developed too many beds. You would demand she receive the care she needs and you expected. You wouldn’t want to see your regional hospitals battling for patients by establishing more open-heart surgery centers than may be needed, because you know that the quality of care and the competency of those providing the treatment is at risk of being substandard if there are too many hospitals and too many surgeons all trying to do the same thing.

No, health care is important enough that we are justifiably concerned about the potential for a highly dysfunctional oversupply of services and equipment. We do not want to leave the decision-making to the private market with independent, self-serving, uncoordinated operators. While competition is often good, and may be so in many instances of medical care, the stakes are too high—it’s life and death, you know—to not consider the need for medical services and equipment before allowing them to come online. Indeed, thirty-seven states have some form of “Certificates of Need” requiring providers of medical services and equipment to demonstrate the need for them before going forward.¹ At least one of these thirty-seven states regulate thirty-plus different services and equipment, ranging alphabetically from acute hospital beds to ultrasound.

From the onset of the Great Recession in 2007, real gross domestic product (GDP) per capita declined from $49,000 to $47,000, not

¹ See www.ahpanet.org/matrix_copn.html.
recovering prerecession levels until 2013. The civilian employment ratio declined 5 percent, from 63 percent to 58 percent. By the middle of 2017, it had not fully recovered, at 60 percent.

Most people have focused on the housing bubble, and rightly so. From 2007 through 2015, lenders commenced over 22 million foreclosure actions. The bursting of the housing bubble not only ruined the lives of tens of millions of Americans, but it also brought down the rest of our economy, as those addressing the asymmetric recovery have noted: “Recent macroeconomic views emphasize the burst of the housing bubble and its effects on financial institutions, firms, and households as the main culprit for these developments [decline in GDP and employment].”

For example, here is how Rognlie, Shleifer, and Simsek characterize what happened:

[There is] a third channel, which we refer to as the investment hangover, which could help explain the asymmetric recovery. Our key observation is that the housing bubble was an investment bubble as much as an asset price bubble. Overbuilding during the bubble years created excess supply of housing capital by 2007, especially certain types of capital such as owner occupied housing. Between 1996 and 2006, the share of US households living in their own homes rose from about 65% to about 69%. The homeownership rate fell back below 65% in 2014, suggesting that the housing capital might have been in excess for many years after 2007. The excess housing capital lowers residential investment and slows down economic activity.

Do you get that? It’s interesting and important, and for me it is a new way of looking at what happened. It was as much an investment bubble as an asset price bubble. We let too much money get over into

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3 Id.

4 See https://fred.stlouisfed.org/series/EMRATIO.

5 See www.statisticbrain.com/home-foreclosure-statistics/.

6 Supra note 2, at 1.

7 Falling to less than 63 percent in mid-2016. See https://fred.stlouisfed.org/series/RHORUSQ156N.

8 Supra note 2, at 2.
residential development. Overbuilding wasn’t just a factor among many in the Great Recession; it was a driving factor profoundly and adversely impacting investment in other sectors, and because residential capital is durable, depreciation is slow to reduce the overbuilt capital, resulting in a long lag time for residential recovery, heaping more pain and suffering on millions of people. It’s all bad, and as a matter of social justice, we can’t stand by idly and let this happen again.

Is preventing this type of damage to people and the economy not as important as the welfare of our grandparents in nursing homes or what care we will get in having open-heart surgery? Of course it is, and the authors of this astonishing book courageously (I say “courageously” because I foresee brickbats from all sides) offer up an approach to land development that has the potential to even out some of the capital allocation and market fluctuations that benefit few and injure many.

When it comes to managing development permitting, there are two views of thought, it seems. One is headed by Alan Greenspan, former chair of the Federal Reserve Board. In this view, regulation of markets is not needed because they are self-regulating. For instance, lenders would not lend to those who cannot repay home loans because the source of money for those loans—investors—would stop making such investments. In the case of housing, because oversupply would flood the market with excess supply, thereby eroding equity, buyers would retrench and builders would cut back production until prices returned to locally competitive levels. (Of course, one way in which to increase the supply of affordable housing is to destroy home equity by flooding the market with homes that cannot be sold.) Based on this view, advanced especially by Greenspan, the financial sector has been deregulated steadily since the 1970s. And in many ways the remaining regulations were not implemented vigorously. It was on his watch that financial institutions poured trillions of dollars into the American home-building industry and essentially induced otherwise unqualified buyers to buy homes they could not afford. In his now famous mea culpa, Greenspan laments, as reported in the New York Times in 2008:

“Those of us who have looked to the self-interest of lending institutions to protect shareholders’ equity, myself included, are in a state of shocked disbelief. . . .

..."You had the authority to prevent irresponsible lending practices that led to the subprime mortgage crisis. You were advised to do so by many others," said Representative Henry A. Waxman of California, chairman of the committee. "Do you feel that your ideology pushed you to make decisions that you wish you had not made?"

Mr. Greenspan conceded: "Yes, I've found a flaw. I don't know how significant or permanent it is. But I've been very distressed by that fact."10

The rest is history. The U.S. government spent more than $1 trillion to bail out financial institutions that lent more money for the construction of homes ostensibly to be purchased by home buyers than the market could absorb. Homeowners collectively lost trillions of dollars in equity; millions lost their homes through the foreclosure process. Millions of workers lost their jobs as the unemployment rate rose to the highest levels since the Great Depression. Local governments teetered on bankruptcy in part as billions of dollars in infrastructure bonds sold to finance new facilities to accommodate new development in excess of demand became difficult to pay. In part to meet these and other financial obligations, hundreds of thousands of government workers were let go or their jobs not replaced, including teachers and first responders.

The cynical perspective is that markets did regulate themselves, eventually, but only after imposing what could be considered unconscionable damage on the American economy and its people.

The other view, the one that champions social justice and is what this book is all about, is that it is up to local governments through regional collaborations to engage in market demand–based planning and permitting. Market demand–based planning identifies the development needs over a planning horizon and then choreographs land-use allocations along with infrastructure investments to ensure that development occurs when and where needed and at the right scale among other factors consistent with market demand. To ensure that development is in accordance with the plan, local governments would not permit more development than the market could absorb as reflected in it.

Just imagine. Using tools readily available, if local governments and their regions in the 1980s refused to permit more development

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than needed, the savings-and-loan industry might not have collapsed. Moreover, if local governments and their regions refused to permit millions more homes than needed, the Great Recession might never have happened and all the financial damage and personal pain it did would be but a bad storybook.

Some might argue that what the authors of this book propose does not appear to be needed as we assess the continuing recovery. By the time of final editing of this book in 2017, the unemployment rate was near prerecession levels and incomes were rising, though gradually. More to the point: post–Great Recession regulations on financial institutions seemed to prevent excessive lending thereby preventing excessive development. For their part, lenders raised underwriting criteria, meaning that only qualified buyers could buy homes, though resulting in declining home ownership rates. The dollar once again climbed back into the position of being among the planet’s strongest currencies.

But recall that we continue to suffer from an asymmetric recovery as reflected in the lagging improvement in home prices and residential sales in many areas of the country because of the prerecession overallocation of capital to the residential market and the difficulty in reallocating that capital. One unexpected consequence, or maybe it should have been expected, of the postrecession recovery with the reallocation of development capital to commercial real estate is the potential for a commercial real estate bubble that seems to concern Federal Reserve Chair Janet Yellin.11

It is also worth noting that the political party holding the House, Senate, and presidency (as of this writing) appears committed to reducing regulation and that may lead to uncontrolled flows of capital back into both commercial and residential development.

So, for these two reasons—the promise of federal deregulation of the financial sector and the potential for a new real estate bubble—it is essential to consider what action might be taken locally and within regions.

We need to bring what the authors propose to a wide audience and start implementing measures at the local and regional levels to protect all of the stakeholders—lenders, developers, purchasers, investors, and future generations of taxpayers. Tying development approval to what the market demands is critical in promoting social equity and in stabilizing and growing our economy in an orderly manner.

Dwight Merriam, FAICP

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