

Zoning is the Culprit

Unless Congress and the Administration extend it, the New Markets Tax Credit will die at year-end. While reprieve is likely, to paraphrase noted investment banker Dr. Samuel Johnson, nothing so concentrates the mind as the knowledge that one might be sunset. Does the NMTC deserve to stand alongside the building-based tax credits (Low Income Housing Tax Credit and Historic Tax Credit) and their counterpoints, the place-based Zones (Empowerment, Promise and Opportunity)? What is the policy case for *this* targeted tax credit?

The answer lies not in statistics however large, nor in case studies however heartwarming, but rather in how cities have evolved for just over a century, the most dramatic transformation of human living the world has ever seen, and the public policy culprit hiding in plain sight.

As long as urban land-use economics was entirely driven by the economic value of developing walkup property, America had no need of zoning. Pre-twentieth-century cities jumbled work, home, retail and recreation together higgledy-piggledy. Starting around 1900, rebar and the elevator enabled skyscrapers, and as buildings skyrocketed, so too did the value of ideally located land. Political backlash soon followed, in 1916 resulting in America's first zoning laws¹ intended as a shield deflecting the tannery and the refinery downwind and downstream. At the same time, the streetcar and the automobile enabled affluent escape to newly platted bedroom suburbs, keeping the factories and their grunge away from the families and their lawns.

By 1930, urban transformation was complete: changing technology, demographics and law had unjumbled cities. Now one lived *here*, worked *there* and commuted between them twice a day – even if that commute was from the roughest urban slum (the Lower East side) to

the 102nd floor of the world's tallest building, the Empire State.² The technology-created abundance of potentially developable land in the sky had been captured and rationed by zoning.

In turn, that politically defined zoning pushed affordable housing neighborhoods away from the central city. For nearly 70 years,



David A. Smith

Realizing LIHTC was use-specific to housing, it would have seemed only natural to limit New Markets to non-housing uses – and once again, zoning was the hidden culprit.

as the cities first lost their manufacturing economic engine, then discovered their new financial and information economic engine, the spatial segregation entrenched itself: live here, work there. Mingle incomes and ethnicities during the work day, separate socioeconomically for vastly different home lives of evenings and weekends.

Soon the cities were surrounded with a green belt preserved not by conservation law but by land-use economics, their housing prices sustained by acre-lot minima, setback requirements and FAR caps. Zoning, the exclusive province of localities, was the culprit. Affluent communities took advantage³ to constrain suburban development and let the market flow the urban working poor either to declining close-in neighborhoods or far-away daily commutes.

Only after the national crisis of the 1960s' urban riots, the inevitable consequence of overcrowding and spatial segregation, did the national government intervene, using the only tools Lyndon Johnson could control: federal production programs, federal housing loans, federal rent subsidies, federal anti-discrimination laws, lawsuits and consent decrees. While these cudgels dented exclusion here and there, a government cannot beat a neighborhood into revitalization, nor squelch the rising price of exclusionary-zoned suburban land.

Enter the urbanization tax credits: Historic, LIHTC and New Markets.

Each incentive roughly counterbalanced an identified

¹ Zoning was not ruled Constitutional until 1926's *Village of Euclid* decision: "If they are not arbitrary or unreasonable, zoning ordinances are constitutional under the police power of local governments as long as they have some relation to public health, safety, morals or general welfare."

² Completed in 1931.

³ Obstruction or diversion of rapid transit was similarly used, with parkways diverted around Long Island enclaves and metro stations prevented from rising amid DC's Georgetown.

and particular non-economic surcharge on integrated and mixed-use urban revitalization: preservation, housing affordability or jump-starting economic development. One begat the next. Realizing LIHTC was use-specific to housing, it would have seemed only natural to limit New Markets to non-housing uses – and once again, zoning was the hidden culprit.

When cities were largely two-dimensional and when urban value-additive work was industrial or manufacturing, insisting that a given parcel of land shall have one and only one use made common sense. Noise, chemicals, pollution and heavy equipment could be kept downstream, downwind, out of sight or out of earshot. Today's cities create urban value by producing intangible products in vertically stacked environments that are air-conditioned, clean and safe. Hence the rise of the co-working space, where the individual is a portable artisan plugging in to an organogram and corporate value chain from wherever he or she wants to be.

Even more of a zoning-buster is the home office. Two centuries after the Industrial Revolution began separating work from leisure, the Information Revolution has brought them back together, leaving policy and law to catch up.

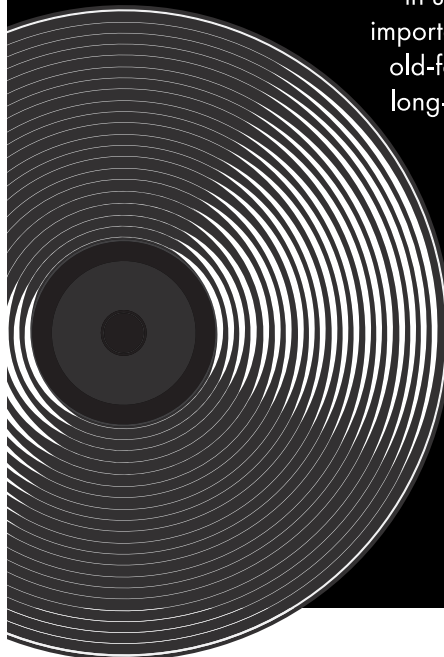
Now 103 years old, zoning has long exhausted its policy utility, its culpability increasingly visible, especially to Millennials and others who shape the future. Change will come, though fierce resistance from zoning's incumbent winners will make it excruciatingly slow.

When zoning embraces full use mixing, then our tax credits should be similarly unified and use-agnostic. Until that happens, we need the New Markets Tax Credit. **TCA**

WE'RE KEEPING IT OLD SCHOOL

Some things are just classic.

At Bellwether Enterprise, we pride ourselves in utilizing data and technology, but more importantly, we believe in doing business the old-fashioned way—human to human, with long-standing relationships, hard work and just plain smarts.



**BELLWETHER
ENTERPRISE**

PHIL MELTON, EVP

National Director of Affordable/FHA Production
469.729.7677 | pmelton@bwecap.com

BELLWETHERENTERPRISE.COM