

CONCURRENT SESSION

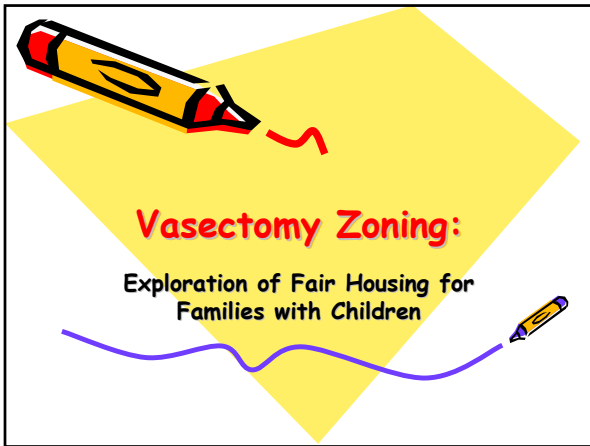
Vasectomy Zoning: Exploration of Fair Housing for Families with Children

11:20 a.m.—12:30 p.m.
Friday, April 22, 2005
Sturm College of Law

Moderator: Don Elliott, Esq., AICP
Vice President
Clarion Associates
Denver, Colorado

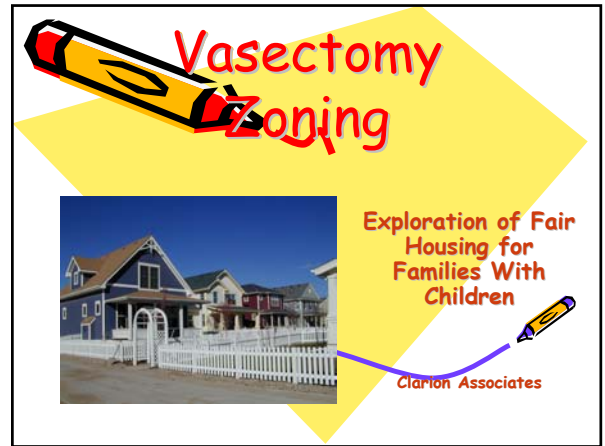
Panelists: Jerome Mapp
Principal
Planning and Facility Management
Boise, Idaho

Jay Graham
Vice President of Development for the SW Region
Erickson Retirement Communities
Dallas, Texas




Vasectomy Zoning:

Exploration of Fair Housing for Families with Children

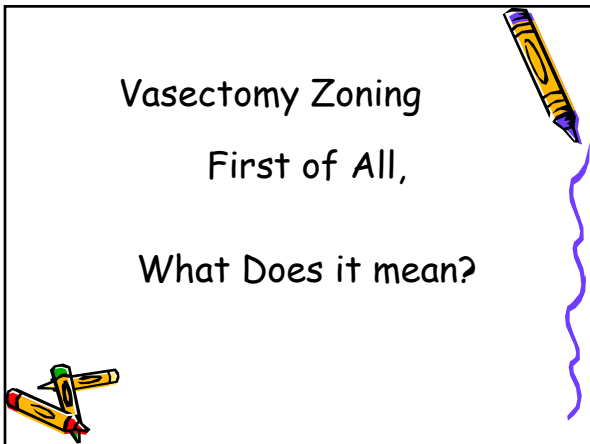


Vasectomy Zoning

Exploration of Fair Housing for Families with Children

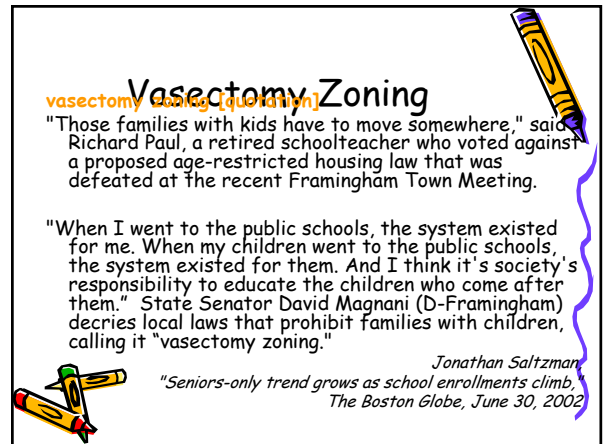


Clarion Associates



Vasectomy Zoning

First of All,
What Does it mean?



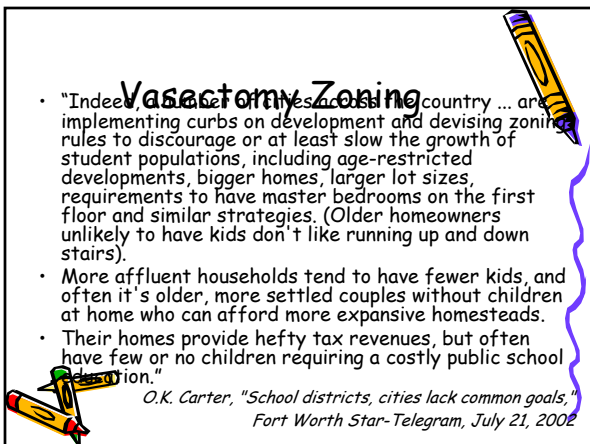
Vasectomy Zoning

vasectomy zoning (quarantining)

"Those families with kids have to move somewhere," said Richard Paul, a retired schoolteacher who voted against a proposed age-restricted housing law that was defeated at the recent Framingham Town Meeting.

"When I went to the public schools, the system existed for me. When my children went to the public schools, the system existed for them. And I think it's society's responsibility to educate the children who come after them." State Senator David Magnani (D-Framingham) decries local laws that prohibit families with children, calling it "vasectomy zoning."

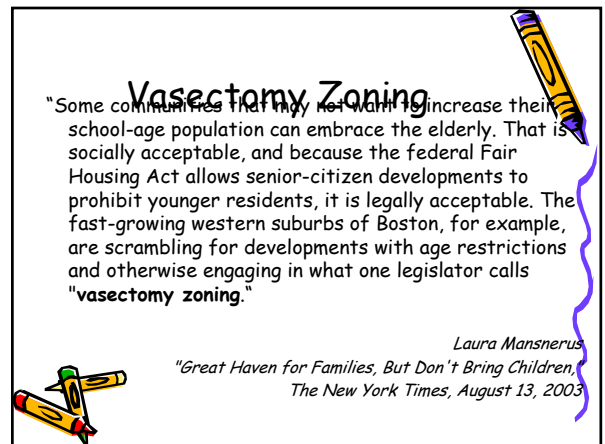
Jonathan Saltzman
"Seniors-only trend grows as school enrollments climb,"
The Boston Globe, June 30, 2002



Vasectomy Zoning

- "Indeed, a number of cities across the country ... are implementing curbs on development and devising zoning rules to discourage or at least slow the growth of student populations, including age-restricted developments, bigger homes, larger lot sizes, requirements to have master bedrooms on the first floor and similar strategies. (Older homeowners unlikely to have kids don't like running up and down stairs).
- More affluent households tend to have fewer kids, and often it's older, more settled couples without children at home who can afford more expansive homesteads.
- Their homes provide hefty tax revenues, but often have few or no children requiring a costly public school education."

O.K. Carter, "School districts, cities lack common goals,"
Fort Worth Star-Telegram, July 21, 2002



Vasectomy Zoning

"Some communities that may not want to increase their school-age population can embrace the elderly. That is socially acceptable, and because the federal Fair Housing Act allows senior-citizen developments to prohibit younger residents, it is legally acceptable. The fast-growing western suburbs of Boston, for example, are scrambling for developments with age restrictions and otherwise engaging in what one legislator calls "vasectomy zoning."

Laura Mansnerus
"Great Haven for Families, But Don't Bring Children,"
The New York Times, August 13, 2003

Vasectomy Zoning

- Age-restricted and child-restricted housing is a BIG trend
- Google produces 915 hits
 - Not including “Vasectomy Housing”
- Headlines everywhere

Atlanticville

Long Branch, NJ
613

Front Page

December 29, 2003

Frank's to be rezoned for age-restricted housing

No plan on table yet; boro eyes two other sites for senior housing

BY SUE M. MORGAN
Staff Writer

West Long Branch officials will do whatever it takes to accommodate any developer who wants to construct new, upscale, age-restricted housing on the spot where the defunct Frank's Nursery and Crafts retail center now sits empty.

THE DAILY NEWS

Great Haven for Families, but Don't Bring Children
August 13, 2003 • [New York Times](#) • Laura Mansnerus

LOPATCONG TOWNSHIP, N.J. — Everyone agrees that this recently rural township, its sleepy streets fringed by old farms, is a fine place to rear children. And in just a few years, hundreds of children have arrived, each like an invoice addressed to taxpayers.

Now the town faces another expense, the legal defense of a new ordinance that will, in effect, keep down the number of families moving in. The courts will decide whether the restriction, limiting new multifamily housing units to two bedrooms, crosses a fine line between zoning meant to slow galloping development and zoning meant to keep out families with children.

And Colorado's out of zoning



DEL WEBB® IS COMING TO COLORADO!

Del Webb and Pulte Homes Announce Colorado's Premier Live - Work - Play Community!

Vasectomy Zoning

Presentation Outline

- Why this is Happening?
- The Law on Age & Child Restrictions
- What are the public policy implications

Why is Vasectomy Zoning Happening?

1. **Aging – Pure and Simple**
 - Developers follow markets
 - A growing part of the market is increasingly child-free
2. **More Choice in the Market**
 - Different types of households choose different amenities
 - Builders increasingly caters to identify “niches”
3. **Fiscal/Political Realities**
 - Government wants housing to pay for itself
 - Child-free developments don't generate school children – easier to approve
4. **Tax Avoidance**
 - Some have been excluded from school taxation – which produces a market advantage.

Vasectomy Zoning

- Focus of this session is NOT on retirement communities
 - Multi-family retirement communities are not new
 - Generally tailored to needs/wants of target age group
- Focus is on growing trend to age-restricted standard developments
 - Increasing trend to create child-restricted single-family detached home communities that appear to be just like unrestricted communities
 - "Spectrum of care" often starts with standard housing



Vasectomy Zoning

Key Public Policy Issues

- Social and community character impacts of segmenting the market in this way
- Potential for political/fiscal pressures to distort the market into producing more "vasectomy housing" than the market demands
- School finance issues if child-restricted communities are excluded from school taxation



Vasectomy Zoning

The Law on Age & Child Restrictions

- Fair Housing Act generally prohibits discrimination on the basis of:
 - Race, Sex, Ancestry, Color, Religion, or National Origin, and
 - Handicap or Disability, Use of a Guide Animal due to Blindness/Deafness, or Handling or Training of Support or Guide Animals, and
 - Age or Familial Status



Vasectomy Zoning

The Law on Age & Child Restrictions

- But there is an exemption – included in FHAA 1988 and clarified in 1995 Housing for Older Persons Act (which amended FHAA 1988) in 42 USC 3607
- "(b)(1) Nothing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. **Nor does any provision in this subchapter regarding familial status apply with respect to housing for older persons.**"



Vasectomy Zoning

The Law on Age & Child Restrictions

- (2) As used in this section, "housing for older persons" means housing:
 - (A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or
 - (B) intended for, and solely occupied by, persons 62 years of age or older; or



Vasectomy Zoning

The Law on Age & Child Restrictions

- (C) intended and operated for occupancy by persons 55 years of age or older, and
 - (i) at least 80 % of the occupied units are occupied by at least 1 person who is 55 years of age or older;
 - (ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and
 - (iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy (which shall provide for verification through affidavits and surveys that are admissible



The Law of Age & Child Restrictions

- (5)(A) A person shall not be held personally liable for monetary damages . . . if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.
- (B) A person may only show good faith reliance on the application of the exemption by showing that (i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and (ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

The Law of Age & Child Restrictions

- Colorado has parallel - in fact, identical -- provisions in CRS § 24-34-502 "Unfair Housing Practices Prohibited"
- Other states probably have similar provisions.

The Case for Vasectomy Zoning

- **Choice for consumers**
 - Not everyone wants to live around children
 - There is no legal duty to live around children
 - There is no good reason to create a duty to include families with children in all housing developments
- **Choice for local government**
 - No one is forcing local governments to approve child-restricted communities - they want them
 - They are reflecting the preferences of the voters who elected them

The Case for Vasectomy Zoning

- **No different than a retirement community**
 - Society has accepted for years that children do not belong in every community
- **Adequate housing for families is important, but it needs to be met on an area-wide basis - not in each individual project**
 - Like jobs/housing balance, you can achieve it without having jobs and housing in every development

The Case for Vasectomy Zoning

- **If the development pays public school taxes:**
 - We provide a subsidy to help your schools balance their budgets
- **If the development does not pay public school taxes:**
 - Non-consumers of public education should not have to pay for the public school system
 - Just because everyone paid for public schools when you were a kid does not mean there is a right to have the tax system remain unchanged from one generation to the next - the tax system changes all the time

The Case for Vasectomy Zoning

- **And now,
for a contrary point of view . . .**
Jerome Mapp

ARE WE:

**INCLUSIVE
OR
EXCLUSIVE**



**Summary of Civil Rights Laws
The Civil Rights Act of
1964, Title VI:**

Prohibits discrimination on the basis
of race, color or national origin.



**Summary of Civil Rights Laws
The Civil Rights Act of 1968,
Title VIII:**

The Fair Housing Act:

- Prohibits discrimination in housing on the basis of race, color, religion, sex or national origin.



- The Fair Housing Act of 1988 establishes an administrative enforcement mechanism, provides stiffer penalties than before and expands coverage to include persons with disabilities and families with children.



In the Sale and Rental of Housing: No one may take any of the following actions based upon race, color, national origin, religion, sex, familial status or disability:

- Deny entry, set different terms, conditions or privileges for sale or rental of a dwelling;



- Refuse to negotiate for housing;
- Make housing unavailable;
- Set different housing services or facilities.







In the Sale and Rental of Housing:

No one may take any of the following actions based upon race, color, national origin, religion, sex, familial status or disability:



- 
- Falsely deny that housing is available for inspection, sale or rental;
 - For profit, persuade owners to sell or rent (blockbusting) or




- 
- Deny anyone access to or membership in a facility or service (such as multiple listing service) related to the sale or rental of housing




In Mortgage Lending:

No one may take any of the following actions based upon race, color, national origin, religion, sex, familial status or disability:



- 
- Refuse to make a mortgage loan;
 - Refuse to provide information regarding loans;
 - Impose different terms or conditions on a loan, such as different interest rates, points or fees;



- 
- Discriminate in appraising property;
 - Refuse to purchase a loan or
 - Set different terms or conditions for purchasing a loan.



Summary of Civil Rights Laws

The **Fair Housing Act**, with some exceptions, prohibits discrimination in housing against families with children under 18.

- In addition to prohibiting an outright denial of housing to families with children, the Act also prevents housing providers from imposing any special requirements or conditions on tenants with custody of children.

- For example, landlords may not locate families with children in any single portion of a complex, place an unreasonable restriction on the total number of persons who may reside in a dwelling, or limit their access to recreational services provided to other tenants.

- Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under 18 live with:

- A parent;
- A person who has legal custody of the child or children or
- The designee of the parent or legal custodian, with the parent or custodian's written permission.

- Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

- **Exemption:**

Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program or



- It is occupied solely by persons who are 62 or older or



- It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older.



Significant Recent Changes to Exemption - The Housing for Older Persons Act of 1995 (HOPA)

- The Housing for Older Persons Act of 1995 (HOPA) makes several changes to the 55 and older exemption.



- Since the 1988 Amendments, the Fair Housing Act has exempted from its familial status provisions properties that satisfy the Act's 55 and older housing condition.



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- First, it eliminates the requirement that 55 and older housing have "significant facilities and services" designed for the elderly.

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- Second, HOPA establishes "good faith reliance" immunity from damages for persons who in good faith believe that the 55 and older exemption applies to a particular property,



if they do not actually know that the property is not eligible for the exemption and if the property has formally stated in writing that it qualifies for the exemption.

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- HOPA retains the requirement that senior housing must have one person who is 55 years of age or older living in at least 80 percent of its occupied units.

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- It also still requires that senior housing publish and follow policies and procedures that demonstrate an intent to be housing for persons 55 and older.



vasectomy zoning

(vas.EK.tuh.mee zoh.ning) *n.* Zoning laws and other restrictions that aim to keep children out of an area or neighborhood.

NO Kids, Please

They don't want to have children, they don't want to be bothered by children, and they'd just as soon not live near children. It's the child-free movement, and it's growing.



vasectomy zoning comments

- Some communities that may not want to increase their school-age population can embrace the elderly. That is socially acceptable, and because the federal Fair Housing Act allows senior-citizen developments to prohibit younger residents, it is legally acceptable.



- The fast-growing western suburbs of Boston, for example, are scrambling for developments with age restrictions and otherwise engaging in what one legislator calls "**vasectomy zoning**."

—Laura Mansnerus, "Great Haven for Families, But Don't Bring Children,"
The New York Times, August 13, 2003



- Indeed, a number of cities across the country ... are implementing curbs on development and devising zoning rules to discourage or at least slow the growth of student populations, including age-restricted developments, bigger homes, larger lot sizes, requirements to have master bedrooms on the first floor and similar strategies.





- (Older homeowners unlikely to have kids don't like running up and down stairs). More affluent households tend to have fewer kids, and often it's older, more settled couples without children at home who can afford more expansive homesteads.







- Their homes provide hefty tax revenues, but often have few or no children requiring a costly public school education.





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- The latest catch phrase for this kind of development strategy is "**vasectomy zoning**." It's crude, but pretty much telegraphs intent.



—O.K. Carter, "School districts, cities lack common goals," *Fort Worth Star-Telegram*, July 21, 2002



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- federal discrimination laws prohibit developers from establishing "kid-free" buildings unless they're designated to sell only to people 55 or older.

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- So developers, spurred on by cash-crunched community officials, have a new plan: go into suburban towns and build one- and two-bedroom units that are too small for families but too expensive for recent college grads.

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- Lest anyone think the child-free nature of these developments is a coincidence, consider the pet name given to the phenomenon: "**vasectomy housing**."

—Carlene Hempel, "No kids, please," *The Boston Globe*, February 22, 2004

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- Those families with kids have to move somewhere," said Richard Paul, a retired schoolteacher who voted against a proposed age-restricted housing law that was defeated at the recent Framingham Town Meeting.

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- "When I went to the public schools, the system existed for me. When my children went to the public schools, the system existed for them. And I think it's society's responsibility to educate the children who come after them."

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—Jonathan Saltzman, "Seniors-only trend grows as school enrollments climb." *The Boston Globe*, June 30, 2002

- Some Boston suburbs are trying to keep out families with children, a practice one state senator refers to as "vasectomy zoning." Why? Because school children are expensive. In Plymouth, PA, city officials figure a house must be valued at \$475,000 to produce enough property taxes to educate a child.

- How are they keeping them away? By requiring larger lots, refusing *multi-family and limiting housing permits.* The idea is to push up the cost housing so only families with no small children can afford them. It is a foolish policy, observers say, and will simply result in young professionals moving to other states.

Greater Philadelphia Regional Review Fall 2002



From: Kevin O'Keeffe, citizen



- At one point, the author of this disgusting article describes what its like on a Saturday morning in the hallways of one of these "vasectomy" buildings: "Quiet." I'm sure it is quiet, too, much like a graveyard is quiet....



Fair Housing Resolution



- WHEREAS, April 2005 marks the 37th anniversary of the passage of Title VIII of the Civil Rights Act of 1968, commonly known as the Federal Fair Housing Act; and



- WHEREAS, the Idaho Human Rights Commission Act has prohibited discrimination in housing since 1969; and



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- 
- WHEREAS, equal opportunity for all - regardless of race, color, religion, sex, disability, familial status or national origin - is a fundamental goal of our nation, state and (city/county); and



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- 
- WHEREAS, equal access to housing is an important component of this goal - as fundamental as the right to equal education and employment; and



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- WHEREAS, housing is a critical component of family and community health and stability; and

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- WHEREAS, housing choice impacts our children's access to education, our ability to seek and retain employment options, the cultural benefits we enjoy, the extent of our exposure to crime and drugs, and the quality of health care we receive in emergencies; and

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- WHEREAS, the laws of this nation and our state seek to ensure such equality of choice for all transactions involving housing; and

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- WHEREAS, ongoing education, outreach and monitoring are key to raising awareness of fair housing principals, practices, rights and responsibilities; and

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- 
- WHEREAS, only through continued cooperation, commitment and support of all Idahoans can barriers to fair housing be removed;

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- 
- NOW, THEREFORE, I, (name of chief elected official), (mayor/county commissioner) of the (city/county), do hereby proclaim April 2005, to be Fair Housing Month



"LEAVE NO CHILD
BEHIND"