

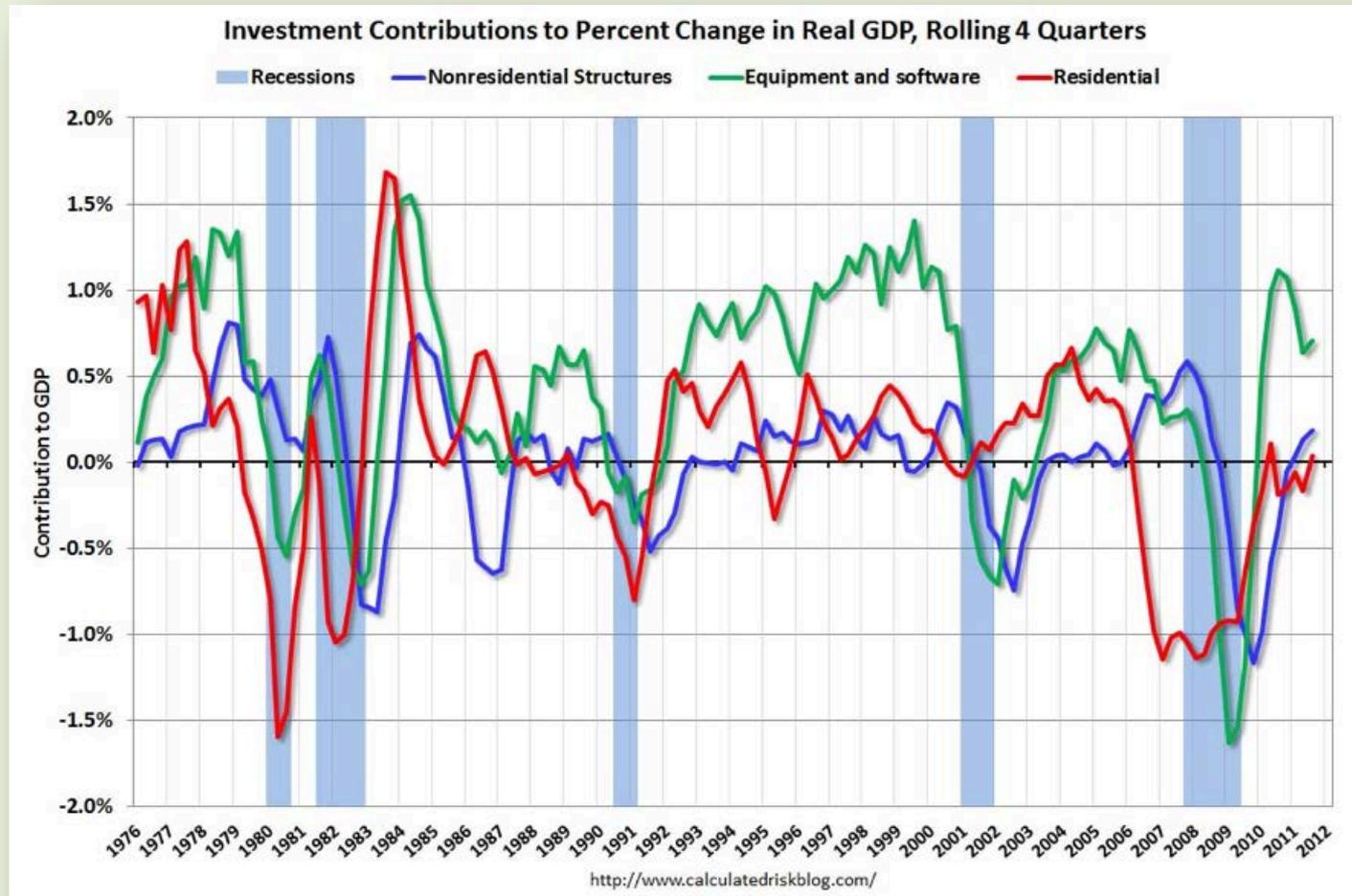
Can Government Prevent the Next Bust? The Rationale for Needs-Based Permitting



Can Government Prevent the Next Bust? The Rationale for Needs-Based Permitting

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- Speakers:
 - Julian C. Juergensmeyer, Professor of Law, Georgia State University
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Real GDP and Recession



The Bubble Problem

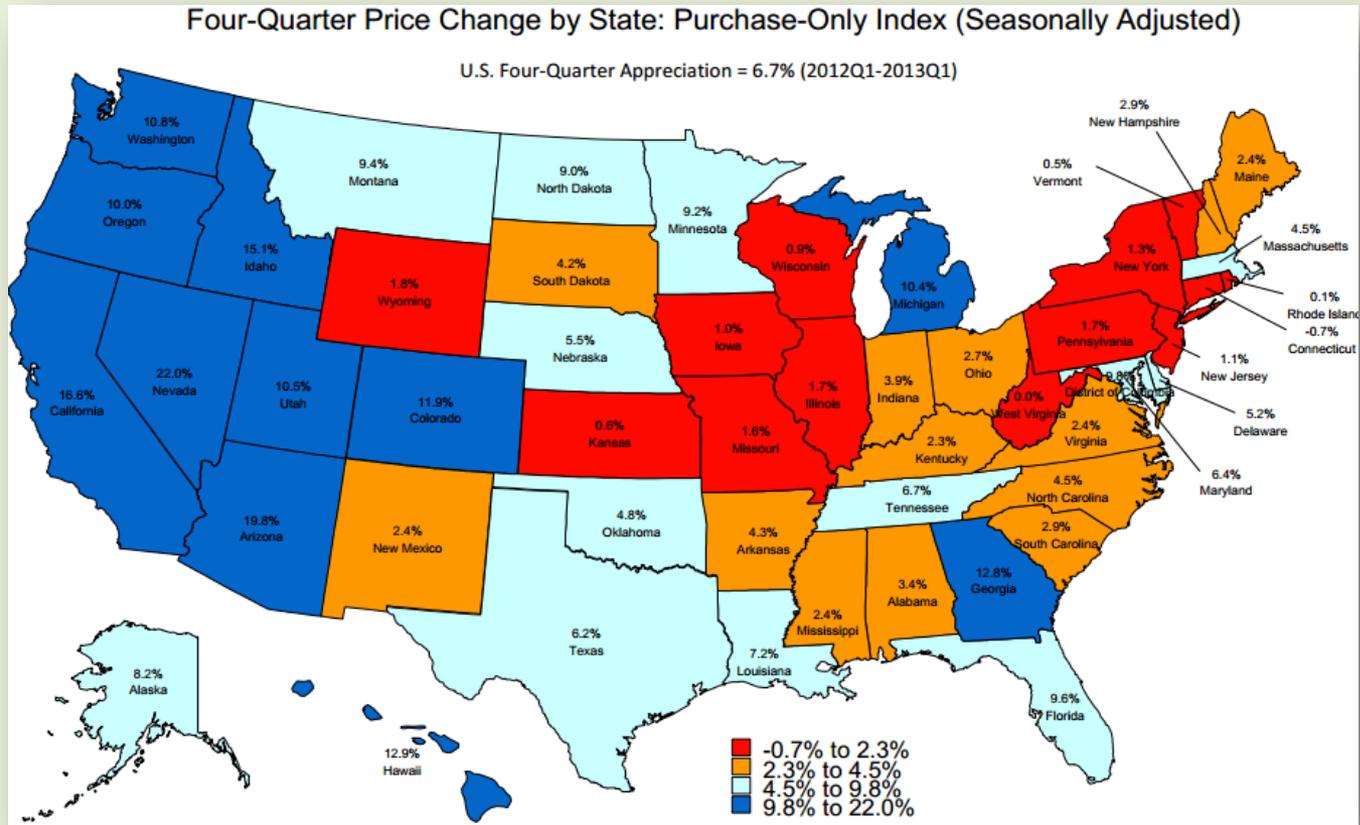
- Housing bubbles become visible when housing prices diverge significantly from rents
- From 2011 through the third quarter of 2013, housing prices grew by 5.83 percent. Rental costs grew by just 2 percent
- Regional real estate markets across the country continue to recover from the bubble of 2004 – 2007
 - Is another bubble on the horizon?

The Solution – Market Analysis as a Prerequisite for Development Permits

Read more:

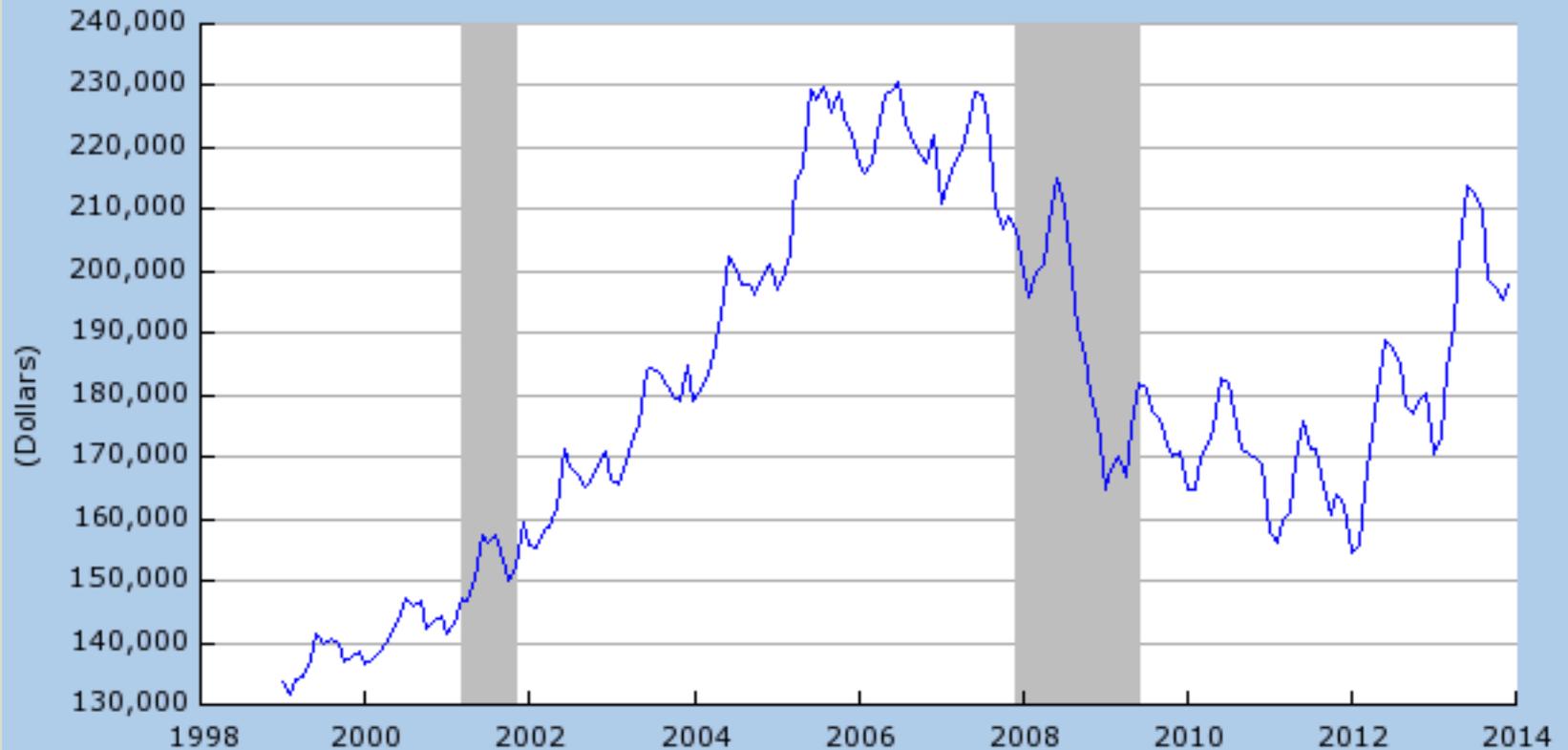
Julian C. Juergensmeyer and James C. Nicholas, *Loving Growth Management in the Time of Recession*, Urban Lawyer, Vol. 42, No. 4-Vol. 43, No. 1, Fall 2010/Winter 2011

Should We Require a Market Analysis?



Median Sales Price of Existing Homes

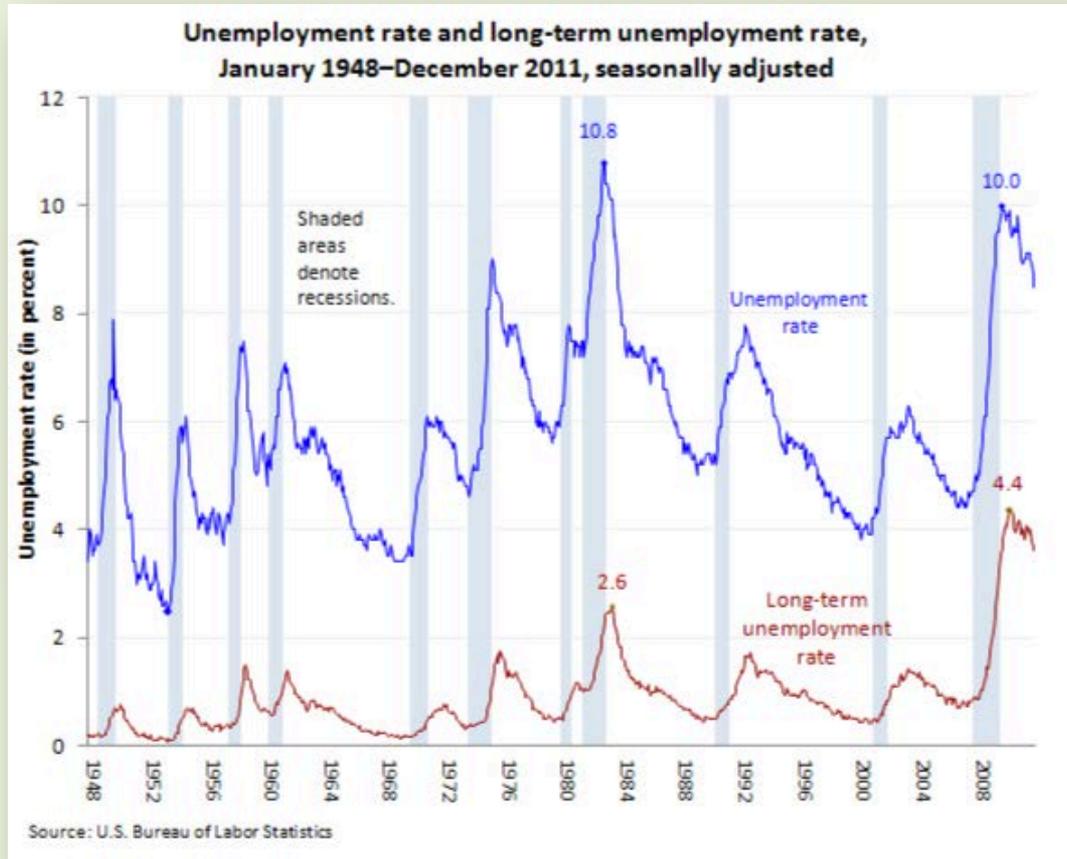
Median Sales Price of Existing Homes (HOSMEDUSM052N)
Source: National Association of Realtors



Shaded areas indicate US recessions.
2014 research.stlouisfed.org



Unemployment Rate During Recession

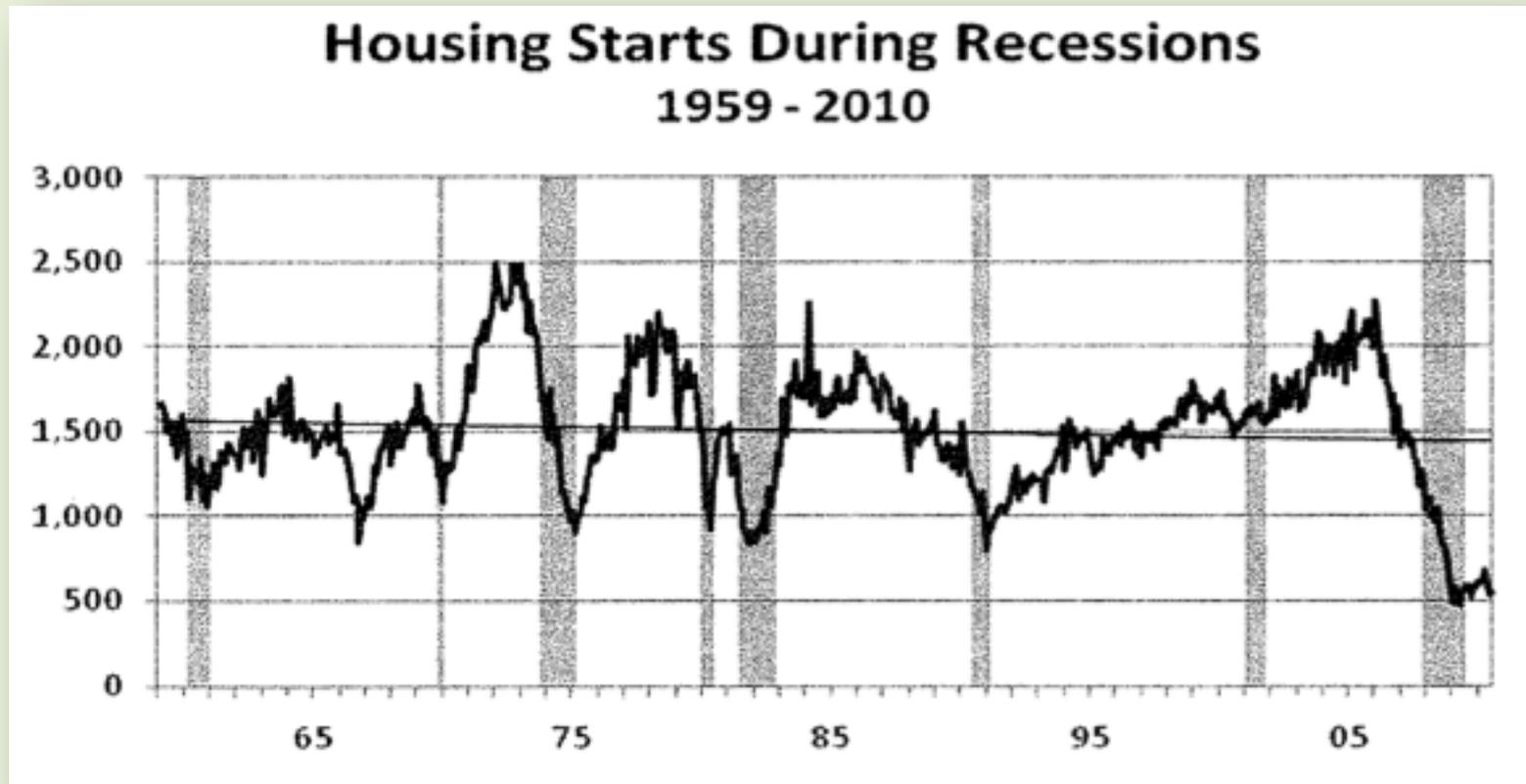


- Housing bubbles are not the only, or even the first symptom of a recession
- However, housing rates do mirror other factors

Consider Housing Starts During Recession

- The housing industry accounts for about 27% of investment spending and 5% of the overall economy
- “Housing starts” are important because sustained declines in *housing starts* slow the economy and can push it into a recession
- Likewise, increases in housing activity triggers economic growth

Consider Housing Starts During Recession



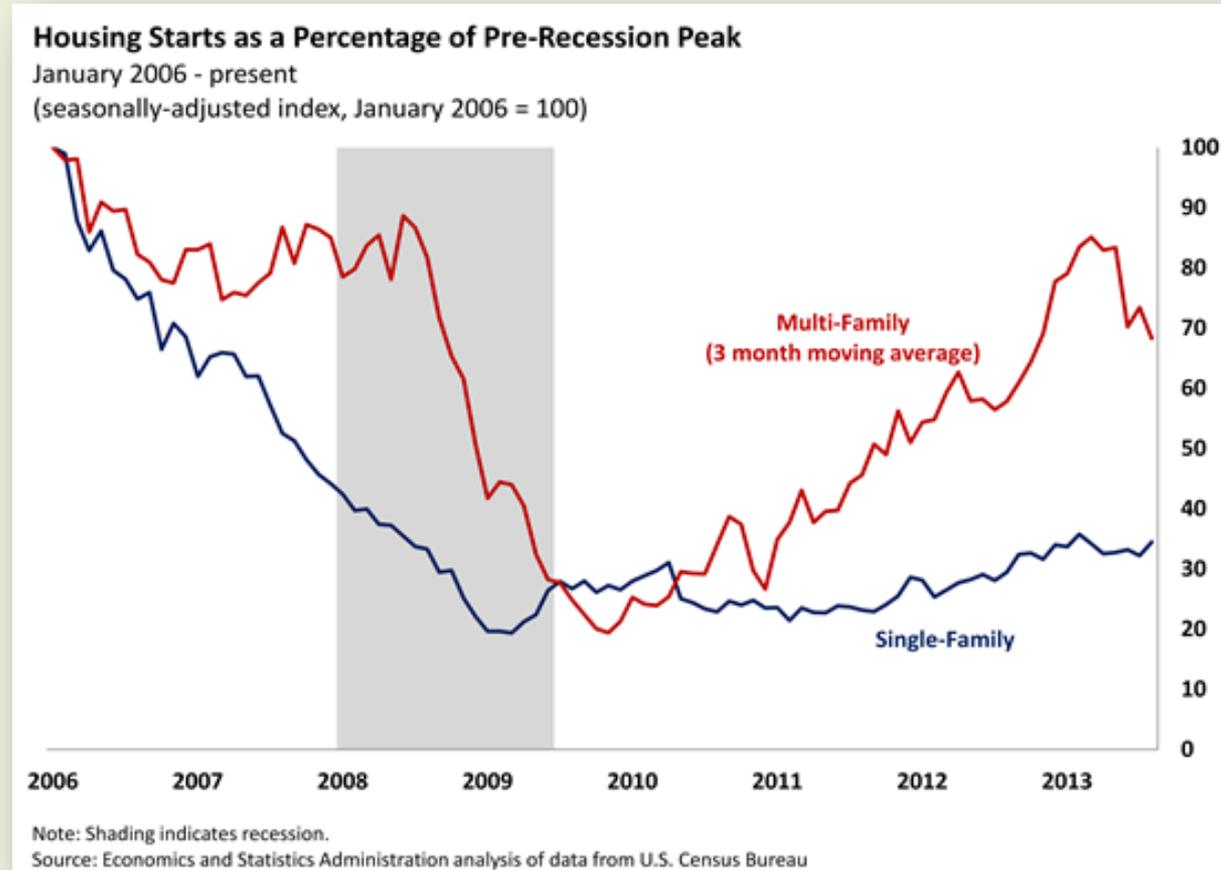
Simple? But....

A direct comparison of Home Price Index to Rent Index neglects to consider owner-equivalent rent, interest rates, and population preferences for rental versus ownership



Traditional Indicators are Impacted by Demographic Changes

- Multi-family housing starts have returned to more than 70 percent of their pre-recession peak, while single-family housing starts have only recovered a small amount from their recession low
- Moreover, multi-family housing has grown in most major metropolitan areas over the last few years, not just a few large cities



Economic Foundations

- Growth Management programs are based on assumptions about future growth
 - Include estimates of the place and type of growth that will occur
- In this way infrastructure costs can be equitably passed to new developments without lowering the level of service for existing ones
- But if you have no growth > no revenue > bonds are not repaid
- Further, post recession the decline in median sales prices of existing home and anti-tax sentiment has resulted in declines in revenue for many state and local governments
- How do we reign in excessive exuberance without stopping recovery?

Trends of Economic Valuation

Financial analysis

DEVELOPMENT COSTS

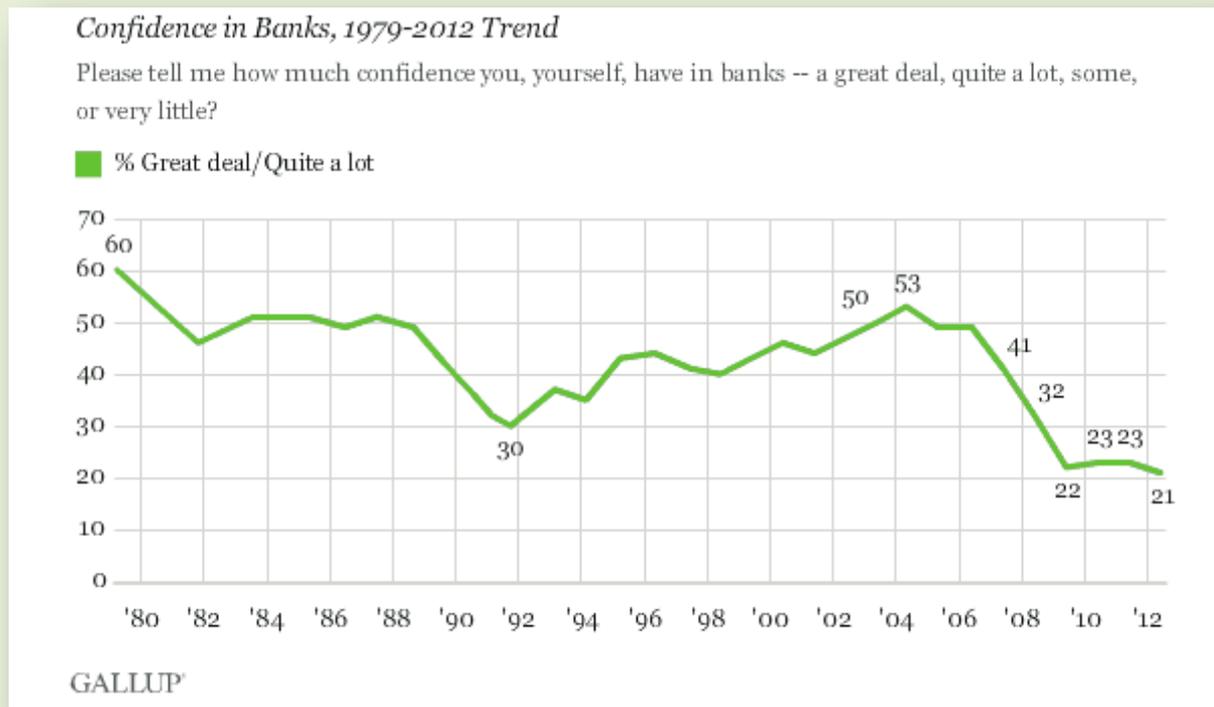


SOURCES OF FUNDS



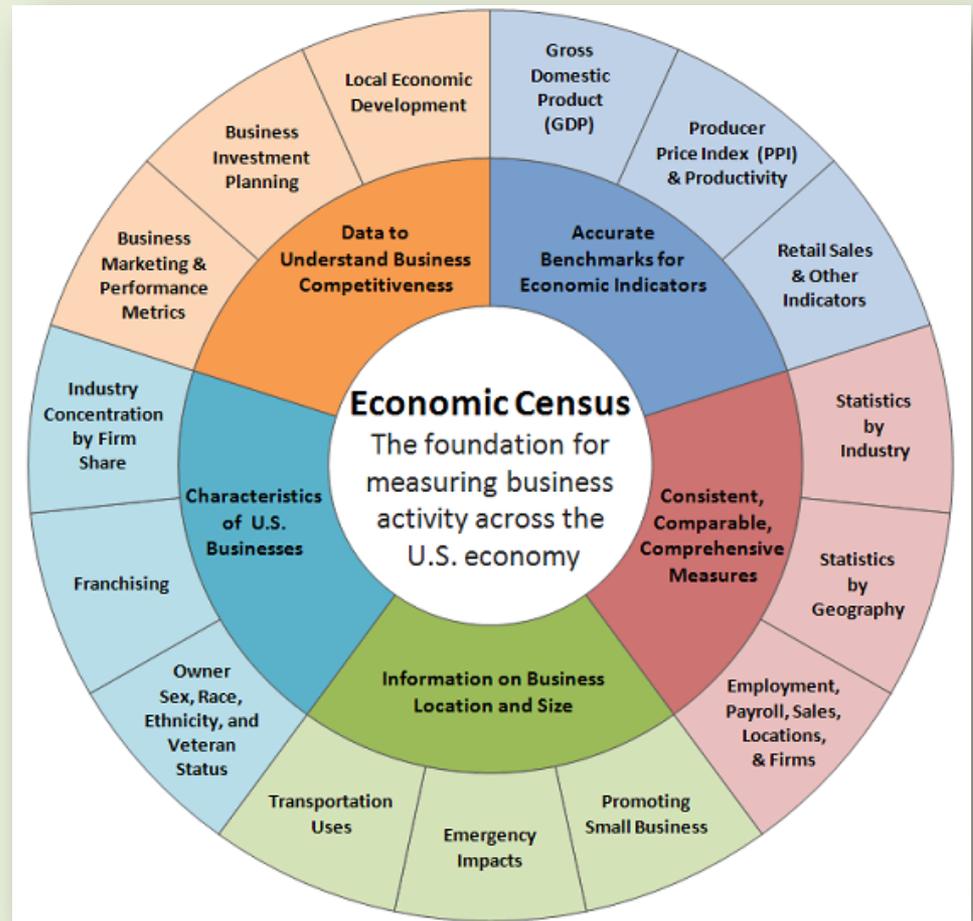
Bank/Market Lack of Foresight

- Market Analysis is not currently required by regulatory authorities
- Relying on a static model of cost calculation and funding resources refuses to acknowledge the now real possibility that housing demand will not continue to increase



Appropriate Allocation of Resources

- Statistics
 - Housing
 - Census Numbers
 - Trends in Development



Constitutional Basis - Police Power

- The question arises what the “need” in needs based permitting is
 - Health?
 - Safety?
 - Welfare?
- Protect home and business owners whose properties lose value or become foreclosed
- Protect citizens from decreases in quantity and quality of public services as local government revenue decreases

Legal Concerns

- Baseline in Code?
- Without a firm standard for market study analysis and methodology, a lawsuit could arise
- Standards for market studies must be developed

Legal Concerns

- *Regulatory Taking* – a situation in which a government regulates a property to such a degree that the regulation effectively amounts to an exercise of the government's eminent domain power without actually divesting the property's owner of title to the property
- Does requiring a market analysis rise to this level?

Legal/Political Concerns

- Economic Development Takings after *Kelo*
- Public use as public purpose could extend to withholding development permits without a taking challenge, but at what cost?
- May cause further politicization of development permitting process
- Variability in adhering to economic strategies and comprehensive plans will raise questions of due process and fairness

Land Use Regulation – Evolution of Police Power

Zoning - Use
as
prerequisite
of
development

Growth
Management
- Time as
prerequisite
of
development

Smart
Growth -
Design as
prerequisite
of
development

Needs Based -
Market demand
as prerequisite
of
development