IN THE SUPREME COURT OF OHIO

B.J. ALAN COMPANY dba PHANTOM FIREWORKS, et al.,	)	SUPREME COURT CASE NO. 08-0306
	)	
Plaintiffs-Appellees,	)	On Appeal from the Wayne County Court of Appeals, Ninth Appellate District
v.	)	
CONGRESS TOWNSHIP BOARD OF ZONING APPEALS, et al.,	)	COURT OF APPEALS CASE NO. 07CA0051
Defendants-Appellants.	)	

BRIEF OF *AMICUS CURIAE* OHIO HOME BUILDERS ASSOCIATION IN SUPPORT OF APPELLEES, B.J. ALAN COMPANY, PHANTOM FIREWORKS OF WEST SALEM, INC., AND ZOLDAN FAMILY PARTNERSHIP, LTD.

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I. STATEMENT OF AMICUS CURIAE INTEREST

The Ohio Home Builders Association ("OHBA") is an 8,000 member trade association representing home builders and their associate vendors in a legislative and regulatory capacity on a statewide basis. OHBA serves its membership by promoting proactive involvement on state issues and legislation impacting the residential building industry. OHBA is an affiliate of the National Association of Home Builders ("NAHB"), whose own stated mission includes securing access for Americans to the housing of their choice and securing an open and competitive environment for the home building sector of the nation's economy.

As data of the last few years have underscored, the home building sector's contribution to the state's and the nation's economies is significant. This sector generates economic activity initially through the residential investment involved in construction, including through the multiple related industries participating in that activity (e.g., architects, engineers, building trades, material suppliers, trucking, lenders, brokers, etc.). But it continues generating economic activity thereafter through, e.g., new household spending activities, as well as rents and services relating to new tenant housing. The NAHB estimates that the direct and ripple effects of building 100 new single family homes in a typical metropolitan area produce $16.0 million in local income, $1.8 million in taxes and other revenue for local government, and 284 local jobs in the first year. *See* NAHB's Local Economic Impact of Home Building model.[1]

Data estimates accessed through the NAHB's website show that at the peak of the 2005 housing boom, residential investment and related housing services accounted for approximately

[1] *See* http://www.nahb.org/generic.aspx?sectionID=784&genericContentID=35601.

13.8% of Ohio's gross state product.[2] But the reports also estimate that the residential fixed investment associated with that activity in Ohio declined by 26% between 2005 and 2007, accounting for a decreased investment of more than $6.9 billion. Natalia Siniavskaia, Ph.D., "The Effect of the Home Building Contraction on State Economies," Special Studies, August 1, 2008.[3]

These data are provided to underscore the breadth of the OHBA's interests relative to this matter. While no single element explains all of the foregoing national and industry trends, local government regulation factors prominently in the home building process. Home building is an investment activity, and the vitality of the home building industry depends on those investments. What affects those investments affects that industry and, consequently, affects the OHBA's members. What affects the OHBA's members broadly affects a considerable segment of Ohio's economy, communities, and residents.

The Ninth District Court of Appeals correctly determined that Congress Township's land use regulations failed R.C. 519.02's unambiguous requirement that they be adopted "in accordance with a comprehensive plan." Having failed to zone any land in the Township for use under its Zoning Resolution's B-Business and Industry regulations, the Township forced every land owner interested in such uses to seek a "business use variance." The Township abdicated its duty to integrate "B" uses into a "comprehensive" land use plan for the Township. Instead, it left its Board of Zoning Appeals to determine administratively, on an *ad hoc* basis, where in the Township land could be developed under its B district's regulations.

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[2] *See* Table 1. "Housing As A Share of Gross State Product (GSP), 2005," Exhibit "A," and http://www.nahb.org/fileUpload_details.aspx?contentTypeID=3&contentID=92268&subaContentID=142313&channelID=311.

[3] *See* Exhibit "B," and http://www.nahb.org/generic.aspx?genericContentID=99676#_edn1. 1

Land owners are entitled to predictability regarding the use as of right of their property. The Ohio Constitution prominently includes among Ohioans' "inalienable rights" the right of "acquiring, possessing, and protecting property...," and states further that "[p]rivate property shall ever be held inviolate, but subservient to the public welfare." Oh. Constitution. Art. I, §§ 1, 19. No just interpretation of R.C. 519.02's "in accordance with a comprehensive plan" requirement can be made without deference to these categorical Constitutional principles. Indeed, the core purpose of the "comprehensive plan" requirement is to prevent the very arbitrariness in administration that *ad hoc* land use regulation begets.

The OHBA joins in supporting Appellees here because its members operate at this interface between private property rights and such unbridled governmental land use regulation as is at issue here. By way of example only, OHBA members regularly confront township zoning resolutions expressly written to accommodate residential developments utilizing solely septic systems and well water. These zoning resolutions were often adopted before central services were as widely accessible as they have become, and contain no regulations addressing or adapted to residential development where central sewer and water infrastructure are available. This regulatory gap is significant because land development with central sanitary sewer and water access is virtually freed of the physical (e.g., leach field size minimums) and natural (e.g., water table) constraints limiting land development requiring septic and well systems.

Too often, rather than simply amending the resolutions to accommodate residential developments using central water and sewer, townships relegate OHBA members to the townships' boards of zoning appeals to obtain variances for such developments. But the power of such boards, as with Congress Township's, are constrained by R.C. 519.14 only to deciding "hardship" cases applicable to identified properties under specific variance standards. Although

R.C. 519.14 does not authorize these quasi-judicial bodies to make legislative judgments, the practical effect of what these boards do is to fashion new districts out of whole cloth.[4] In so doing, they often blur the line between the township trustees' legislative and the board's purely administrative roles. In the end, however, the boards are patching land uses into the township piecemeal. And they do so with precious little (if any) systematic and thorough consideration of issues like community-wide land use planning, tax base development, thoroughfare issues, infrastructure needs and funding, etc., which typically guide legislative judgments.

This is a recurring scenario in Ohio, to wit, townships plugging gaps in their "comprehensive planning" with quasi-judicial processes. Townships such as Congress Township are not simply undermining the Legislature's mandate for zoning "in accordance with a comprehensive plan," they are affirmatively ignoring that mandate. They are destroying predictability in land development in the process. The social cost of that destroyed predictability is absorbed first by OHBA members and land owners. But those costs ultimately impact every Ohio resident in terms of, among other things, economic activity, government revenues, public services, infrastructure financing, housing costs, home values, and the availability of alternative housing modes.

The Ninth District Court of Appeals' reversal of the trial court below is nearly unexceptional. What occurred in Congress Township regarding its failure to adopt zoning "in accordance with a comprehensive plan" occurs with alarming frequency throughout Ohio townships. Sound public land use policy requires nothing less than this Court's affirmance of the Court of Appeals, and this Court's solidifying the scope of R.C. 519.02's "comprehensive plan"

[4] They often literally invent anew regulations governing a development's density; front, side, and rear yard setbacks; lot size, width, and coverage dimensions; main and accessory structure height and minimum square footage; housing type, style and mode; etc.

precondition to township zoning. Otherwise, the amorphous contours of that limitation espoused by Appellants will continue to infuse land use in Ohio with unpredictability, cost, and economic inefficiency. Left standing, Appellants' deconstruction of R.C. 519.02's "comprehensive plan" requirement will only continue to compound the other macro-economic factors, both national and local, crippling the vital home building market sector. This case perfectly well instantiates those consequences, and is argument enough for affirmance.

II. STATEMENT OF THE CASE AND FACTS

For purposes of this brief, the OHBA adopts the statement of the case and facts as presented in the Merit Brief of Appellees, B.J. Alan Company, Phantom Fireworks of West Salem, Inc., and Zoldan Family Partnership, Ltd.

III. ARGUMENT

Appellees' Response to Proposition of Law No. 1: Congress Township's zoning resolution is invalid and unenforceable because it fails to follow any comprehensive plan of zoning in determining, in advance, the areas where proposed business uses would be permitted under the "B" Zoning Classification.

The legal argument supporting affirmance of the Court of Appeals below is well articulated in Appellees' merit brief. Townships' zoning powers are expressly preconditioned on their being exercised "in accordance with a comprehensive plan" for land uses. R.C. 519.02. Congress Township's use of an *ad hoc*, administrative, quasi-judicial "business use variance" process to assign such land uses throughout the Township on a property by property basis exposed the absence of such a plan, and the Court of Appeals rightly so concluded. The following is intended to reinforce, and not merely repeat, Appellees' well-stated arguments in support of the Court of Appeals' decision.

More, not less, predictability is needed respecting Ohio's statutory preconditions to township zoning. Appellants and their *amici curiae* advocate for an intolerably plastic and nebulous construction of the "in accordance with a comprehensive plan" condition in R.C. 519.02. As a policy matter, adopting Appellants' position would only exacerbate the difficulty of assessing the manifold zoning resolutions criss-crossing Ohio's 1,300+ townships. Further loosening of the Legislature's express "in accordance with a comprehensive plan" precondition imposed on township zoning will only further complicate informed land use and development decisions. Land owners will be forced to proceed virtually at their peril, in the acquisition and development of real property, regarding what uses could be made of their land.

But the constraints on an Ohio township's power to impair Constitutionally guaranteed private property rights are every bit as much legal as they should be practical. Chapter 519 of the Ohio Revised Code does not define "comprehensive plan" or what it means to zone "in accordance with" one. But the Ohio enabling acts (e.g., R.C. Chap. 519) use language promulgated in standardized statutory zoning enabling acts, which have been in use in America since the 1920's. Those standardized acts offer insight into the meaning and scope of terms such as "in accordance with a comprehensive plan," and prove the Court of Appeals correct in concluding as it did that Congress Township's zoning resolution was not so adopted.

Promulgated under Herbert Hoover, then Secretary of the Federal Department of Commerce, the 1926 Standard State Zoning Enabling Act ("SZEA") was the SZEA's second print edition after the first in 1924. The SZEA's purpose was to furnish a substantive and procedural framework for the exercise of municipal zoning powers, including procedures for adoption, amendment, and variance of local zoning regulations. The SZEA rooted zoning authority in the traditional police power formulation: i.e., zoning for the purpose of promoting health, safety, morals, or the general welfare of the community. (1926 SZEA, § 1.)

The Ninth District Court of Appeals' reversal of the trial court reflects a fidelity to both the letter and the spirit of the "in accordance with a comprehensive plan" precondition to township zoning. The incorporation of that precondition into R.C. 519.02 traces back to the mandate in Section 3 of the SZEA that "[s]uch regulations shall be made in accordance with a comprehensive plan...." A footnote to that provision's "comprehensive plan" reference in the SZEA underscored the prophylactic purposes of that requirement:

> This will prevent haphazard or piecemeal zoning. <u>No zoning should be done without such a comprehensive study.</u> (emphasis added)

(1926 SZEA, fn. 22.) The underscored language unmistakably conveys that the "comprehensive plan" limitation was intended affirmatively to delimit the exercise of zoning authority.

<u>Zoning</u> is a legislative function, exercised by Ohio townships' legislative bodies (i.e., boards of trustees) pursuant to their statutorily delegated police powers. *Bd. Of Bainbridge Twp. Trustees v. Funtime, Inc.* (1990), 55 Ohio St.3d 106. "Comprehensive planning" is a precondition to a township's exercise of those delegated police powers. R.C. 519.02. Congress Township's employment of the "business use variance" to zone for "B" uses in the Township exemplifies the very "piecemeal" <u>zoning</u> activity the SZEA and R.C. 519.02 were expressly designed to prevent. Disguised as a "variance" procedure, this <u>zoning</u> activity is also executed by a non-legislative body of the Congress Township, i.e., its board of zoning appeals. In addition to the lack of "comprehensive planning" this reflects, <u>zoning</u> township property is not among the powers of a township board of zoning appeals. R.C. 519.14.

Congress Township's "business use variance" method for zoning property itself substantiates the defect in the Township's "comprehensive planning" for land uses. Fundamentally, a plan is "comprehensive" if it satisfies two critical policy objectives served by the requirement that zoning regulations be adopted in accordance with a comprehensive plan:

> We conclude that the test for comprehensiveness under *Cassel v. Lexington Twp. BZA* (1955), 163 Ohio St. 340] is twofold. The plan must be sufficiently detailed that a potential purchaser might ascertain in advance to what use property might be put. Secondly, the plan must contain criteria to guide the decisions of the board of zoning appeals.

Rumpke Waste, Inc. v. Walter Henderson (S.D. Ohio 1984), 591 F. Supp. 521, 534. The first of these two benchmarks of a plan's comprehensiveness is that it "enumerates the permitted and conditionally permitted uses," so property owners know in advance what can be done with their land. *Midwest Fireworks Mfg. v. Deerfield Twp. BZA* (11th App. Dist.), 2001-Ohio-8834. The Township's approval of business uses in a variance procedure, using a "hardship" standard, provides a property owner no ability to "ascertain in advance" the property's business uses.

The loosening of the "in accordance with a comprehensive plan" standard for which Appellants' advocate needlessly dilutes this express statutory requirement. Indeed, Ohio township zoning authority will effectively merge with that of Ohio municipalities if Appellants' liberal reading of R.C. 519.02's preconditions is revived. Like all of the township's authority, this zoning authority of townships is expressly limited only to that which the state statute confers. *Bd. Of Bainbridge Twp. Trustees v. Funtime, Inc.* (1990), 55 Ohio St.3d 106. Municipal zoning authority, however, is grounded in the constitutional "home rule" powers established in Art. XVIII, § 3 of the Ohio Constitution. The Ohio Revised Code does not predicate a municipality's zoning powers on its being in accordance with a "comprehensive plan." *Visconsi-Royalton, Ltd. v. City of Strongsville* (8th App. Dist.), 2004-Ohio-4908.

Courts have, however, observed that "[a] city's development and implementation of a comprehensive zoning plan has historically been encouraged by both the state legislature and the Ohio Supreme Court. [citations omitted]" *Visconsi-Royalton, supra,* ¶¶ 13-26.

> All zoning laws and regulations find their justification in the police power and it is well settled that the power to enact zoning regulations can not be exercised in an arbitrary or

> unreasonable manner. *City of Youngstown v. Kahn Bros. Building Co.*, 112 Ohio St., 654, 148 N. E., 842, 43 A. L. R., 662, and *State, ex rel. Synod of Ohio, v. Joseph et al., Village Comm.*, 139 Ohio St., 229, 39 N. E. (2d), 515, 138 A. L. R., 1274. The absence of any comprehensive plan in the regulation involved herein certainly opens the door to an arbitrary and unreasonable administration of the regulation." [citation omitted]

Id. at ¶ 16. Thus, municipal zoning codes, which need not be adopted "in accordance with a comprehensive plan," are nevertheless fortified against challenges to their enforceability when they are based on some evidence of comprehensive planning.

But Township zoning resolutions affirmatively <u>require</u> adoption "in accordance with a comprehensive plan." Thus, the statutory delegation to Ohio townships of their zoning power is not a plenary, but an expressly qualified species of the police power. If Appellants' relaxed reading of R.C. 519.02's precondition to township zoning is adopted, the predicate for a township's exercise of its qualified <u>statutory</u> zoning authority will grow indistinguishable from the predicate for a municipality's exercise of its <u>constitutional</u> zoning authority. In the process, the statutory precondition on township zoning authority will have been effectively read out of the statute. If that is to occur, it must be accomplished by the General Assembly, and not the judiciary.

Affirming the Ninth District Court of Appeals decision will prevent this result, and will restore meaning to the statutory source of Ohio townships' zoning authority. A "comprehensive plan" must mean something more than mere evidence of planning. Indeed, courts have even found cause to distinguish and invalidate zoning in accordance with a "general plan" versus zoning in accordance with the statutorily required "comprehensive plan."

> A further ambiguity is found in the power of the board of trustees to regulate the dimensions of buildings "in accordance with a comprehensive plan." However, the record contains no reference to the existence of a "comprehensive plan." The trial court stated in its judgment entry, "[t]he underlying basis for zoning is to, when need be, enforce conformity to a general plan," but this "general plan," referred to by the trial court, is intangible and does not have the substance called for in a "comprehensive plan."

> The trial court was correct in stating that zoning should conform to a "general plan," but the General Assembly was more specific in its grant of authority to townships to regulate zoning when it conditioned the grant of authority to be in accordance with a "comprehensive plan." A "comprehensive plan" is a specific plan which sets uniform standards in a given district or zone, as opposed to a "general plan" for the entire community, as the subsequent portion of R.C. 519.02 makes clear:
>
>> "All such regulations shall be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones."
>
> * * *
>
> Further, the exercise of its police power by the township must be in accordance with the grant of authority from the General Assembly, which means that it must be in accordance with a "comprehensive plan," as opposed to a "general plan."

Trans Rail Am., Inc. v. Hubbard Twp. (11th App. Dist.), 2007-Ohio-3478, ¶ 33-34. By affirming the Court of Appeals' decision below, this Court is presented with the opportunity to restore predictability to township zoning, and to the development of township properties, and to honor the will of the Ohio Legislature in establishing the conditions to township zoning authority in R.C. 519.02.

IV. CONCLUSION

Amicus curiae the OHBA respectfully requests that this Court affirm the decision of the Ninth District Court of Appeals. In its employment of the "business use variance" to zone for business uses in the Township, Congress Township's zoning resolution plainly failed R.C. 519.02's express requirement to zone "in accordance with a comprehensive plan." Affirmance of the Court of Appeals would follow and be consistent with Ohio precedent as cited in Appellees' Merit Brief, to wit, *Cassell v. Lexington Twp. Bd. of Zoning Appeals* (1955), 163 Ohio St. 340, *Clegg v. Bd. of Zoning Appeals of Newton Twp.*, 1987 WL 10755 (Ohio App. 11

Dist. 1987), and *Bd. of Twp. Trustees of Ridgefield Twp. v. Ott*, 1994 WL 17542 (Ohio App. 6 Dist. 1994).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing ***Brief of*** **Amicus Curiae** ***Ohio Home Builders Association in Support of Appellees, B.J. Alan Company, Phantom Fireworks of West Salem, Inc., and Zoldan Family Partnership, Ltd.*** is being mailed to all parties entitled to service under Rule 5 of the Ohio Rules of Civil Procedure on the 27th day of August, 2008.

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Table 1. Housing As a Share of Gross State Product (GSP), 2005

State	Residential Investment				Housing Services			Total Housing Share of GSP
	Home Builders/ Remodele	Suppliers	Other	Total	Existing Housing Stock	Other (Accomod ation)	Total	
Nevada	6.1%	2.3%	1.9%	10.2%	11.3%	8.0%	19.2%	29.5%
Hawaii	3.0%	1.3%	2.0%	6.2%	15.1%	3.6%	18.8%	25.0%
Florida	6.0%	2.9%	1.8%	10.7%	12.4%	0.9%	13.4%	24.1%
Arizona	5.3%	2.9%	1.9%	10.1%	11.4%	0.8%	12.1%	22.2%
California	3.5%	3.0%	1.2%	7.7%	14.0%	0.5%	14.5%	22.2%
Maryland	3.5%	1.9%	1.3%	6.6%	12.9%	0.6%	13.5%	20.1%
Colorado	4.1%	2.8%	1.0%	8.0%	10.5%	0.6%	11.1%	19.1%
Idaho	4.4%	3.4%	1.5%	9.3%	9.1%	0.4%	9.6%	18.9%
Montana	3.9%	2.9%	0.8%	7.7%	10.2%	0.8%	10.9%	18.6%
Oregon	2.5%	3.1%	1.5%	7.0%	11.0%	0.4%	11.4%	18.4%
New Jersey	2.4%	2.3%	1.0%	5.7%	11.8%	0.7%	12.5%	18.2%
Virginia	3.0%	2.3%	1.1%	6.5%	10.5%	0.5%	11.0%	17.4%
Washington	2.6%	2.3%	1.1%	5.9%	11.0%	0.4%	11.4%	17.3%
New Hampshire	3.0%	2.8%	1.0%	6.8%	9.8%	0.7%	10.5%	17.3%
Vermont	3.5%	2.8%	0.9%	7.2%	8.3%	1.6%	10.0%	17.1%
Rhode Island	2.8%	2.1%	1.0%	5.8%	10.8%	0.4%	11.2%	17.1%
Utah	3.7%	3.1%	0.8%	7.6%	8.8%	0.5%	9.3%	17.0%
Maine	3.2%	2.6%	1.0%	6.8%	9.5%	0.6%	10.1%	16.9%
South Carolina	3.1%	3.0%	1.3%	7.4%	8.8%	0.7%	9.4%	16.8%
Massachusetts	2.1%	1.8%	1.1%	5.0%	11.1%	0.5%	11.6%	16.6%
United States	2.7%	2.5%	1.0%	6.2%	9.9%	0.6%	10.4%	16.6%
Illinois	2.6%	2.7%	1.0%	6.4%	9.3%	0.4%	9.7%	16.0%
Minnesota	2.5%	2.6%	1.0%	6.1%	9.4%	0.4%	9.7%	15.8%
New York	1.4%	1.6%	0.6%	3.6%	11.3%	0.5%	11.8%	15.4%
Georgia	2.5%	2.2%	1.2%	5.9%	8.9%	0.4%	9.3%	15.3%
North Carolina	2.9%	3.0%	1.1%	7.0%	7.9%	0.3%	8.2%	15.2%
Wisconsin	2.3%	2.9%	1.0%	6.1%	8.7%	0.3%	9.1%	15.2%
Michigan	2.3%	2.7%	0.7%	5.7%	9.1%	0.3%	9.4%	15.1%
Connecticut	1.8%	2.0%	0.9%	4.7%	10.1%	0.2%	10.3%	15.1%
Tennessee	2.1%	2.7%	1.5%	6.2%	8.2%	0.6%	8.8%	15.0%
Pennsylvania	2.4%	2.7%	0.8%	5.9%	8.4%	0.3%	8.7%	14.5%
Missouri	2.3%	2.3%	0.8%	5.4%	8.5%	0.4%	8.9%	14.3%
New Mexico	2.3%	2.3%	0.9%	5.5%	7.8%	0.6%	8.4%	13.9%
Ohio	1.9%	2.8%	0.8%	5.5%	8.1%	0.2%	8.3%	13.8%
Indiana	2.0%	3.0%	1.0%	6.0%	7.5%	0.2%	7.7%	13.7%
Alabama	1.6%	2.0%	1.6%	5.3%	8.0%	0.2%	8.2%	13.4%
Kentucky	1.9%	2.5%	0.8%	5.2%	7.7%	0.4%	8.1%	13.3%
Kansas	2.0%	2.3%	0.9%	5.2%	7.6%	0.3%	7.9%	13.1%
Wyoming	2.0%	2.5%	0.6%	5.0%	7.0%	1.0%	8.0%	13.0%
West Virginia	1.5%	2.3%	0.8%	4.6%	7.6%	0.6%	8.1%	12.7%
Arkansas	1.7%	2.4%	1.1%	5.2%	6.9%	0.3%	7.2%	12.4%
Iowa	1.8%	2.5%	0.8%	5.1%	6.9%	0.4%	7.3%	12.4%
Oklahoma	1.8%	2.5%	0.8%	5.1%	7.1%	0.2%	7.3%	12.4%
Mississippi	1.2%	1.5%	0.9%	3.6%	7.1%	1.4%	8.5%	12.1%
Nebraska	2.0%	1.9%	0.7%	4.6%	7.1%	0.3%	7.3%	11.9%
Texas	2.1%	2.3%	0.7%	5.2%	6.3%	0.4%	6.7%	11.8%
Delaware	2.1%	2.1%	0.6%	4.8%	6.8%	0.2%	7.0%	11.8%
South Dakota	1.7%	1.7%	0.6%	4.0%	7.0%	0.6%	7.6%	11.6%
North Dakota	1.6%	1.5%	0.6%	3.7%	7.1%	0.5%	7.6%	11.3%
District of Columbi	0.6%	1.2%	0.4%	2.3%	7.5%	1.0%	8.6%	10.8%
Alaska	1.2%	1.4%	0.8%	3.5%	6.0%	0.7%	6.7%	10.1%
Louisiana	1.0%	1.9%	0.5%	3.4%	5.4%	0.6%	6.0%	9.4%

HousingEconomics.com
The Economics Publication for America's Housing Industry

The Effect of the Home Building Contraction on State Economies
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A comprehensive measure of home building's effect on national and state economies is the contribution of residential investment to Gross Domestic Product (GDP) and Gross State Product (GSP). At the peak of the housing boom in 2005, home building contributed more than $768 billion to the U.S. economy. In 2007 this contribution shrunk to $641 billion, a 16.6 percent decline, and the slide continued further in the first quarter of 2008. In real terms (i.e., adjusted for inflation) the decline from 2005 to 2007 was an even more dramatic 20.8 percent. When calculated from the peak final quarter of 2005 to the current bottom in the first quarter of 2008 it registers an even more striking 33.9 percent decline. The slump in home building has been and continues to be a major drag on U.S. economic growth. This article presents new estimates showing the contraction in residential investment by state. The contraction and its impact on GSP growth are particularly severe in some states that enjoyed especially strong growth in home building activity during the pre-2006 boom period.

Residential fixed investment (RFI) is a significant component of the US economy, and of GSP in each state. It includes construction of new single-family and multi-family structures, residential remodeling, production of manufactured homes, and brokers' fees. The Bureau of Economic Analysis publishes estimates of the U.S. RFI on a quarterly basis. NAHB periodically produces analogous estimates for all states and the District of Columbia. The most recent NAHB estimates are available for 2005 (see "Housing's Contribution to State Economies at the Peak of the Boom", Housing Economics Online, March 2008). Existing data permit estimating the reduction in state RFI through 2007. This article also assesses what the decline in RFI is likely to be in all states in 2008, based on NAHB's economic and housing forecast.

The contribution of home building to state economies decreased dramatically from 2005 to 2007. The first column of Table 1 highlights the contribution at the peak of the boom and presents NAHB's most recent estimates of state RFI adjusted for inflation[1]. The estimated reduction in each state from 2005 to 2007 is based on the decline in real value of permits in each state.

Changes in value of permits serve as a good indicator of what is going to happen to RFI. A decline in value of permits eventually translates into a combination of fewer and less expensive homes under construction, and consequently, into a decline in residential fixed investment. However, there is a lag between the time a building permit is issued and the time construction begins. In addition, there is a lag between a decline in starts and a decline in RFI. RFI captures value over the life of the project, so starts can drop precipitously but RFI lingers another quarter or two as the construction project runs its course. This largely explains why U.S. real value of permits dropped by 35.0 percent from 2005 to 2007 and at the same time U.S. RFI fell by only 20.8 percent in real terms. It is expected that these large declines in value of permits will eventually register as steeper losses in RFI.

The U.S. Census Bureau releases statistics on value of permits issued in each state on a monthly basis. The estimated percent change in state RFI from 2005 to 2007 is based on the change in permit value in each state, with the results scaled by the national ratio of change in permit value to RFI to reflect the typical delayed impact of permits on RFI. The second and third columns of Table 1 show the results.

All states, with the exception of Wyoming and Katrina-struck Louisiana and Mississippi, registered significant declines in residential fixed investment between 2005 and 2007. Some of the biggest declines showed up in previously overheated states like Florida, California and Arizona. Florida showed the steepest fall of all states, 38.1 percent. Declines like this translate into multibillion dollar losses for state economies. In California, shrinking residential construction subtracted more than $38 billion from the growth of state output over two years. In Florida, the decline exceeded $29 billion, and in Arizona it reached $6.5 billion. Michigan, Minnesota, Ohio – structurally weak parts of the industrial Midwest - also registered steep declines in home building, 35.1, 29.5, and 26.0 percent respectively, by far exceeding the national average of 20.8 percent.

Unfortunately, available data and forecasts indicate that the contraction in home building activity will not only persist but get worse in 2008, thus suppressing growth of state and national economies even further. NAHB forecasts that a residential construction decline will continue at a faster pace with housing starts falling 28.6 percent and U.S. RFI dropping 20.3 percent. The forecast shows a reduction in housing starts in all states in 2008, with no exceptions.

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The last two columns of Table 1 present forecasted changes in GSP due to the further decline in homebuilding activity anticipated in 2008. Since permit data are not yet available for 2008, these estimates are based on NAHB's state housing starts forecasts[2]. Once again it is worth noting that there are lag effects between changes in housing starts and changes in residential fixed investment. To account for these lags, percent declines in housing starts are adjusted proportionally across states to match a national ratio of changes in starts to changes in U.S. RFI.

The results show that residential fixed investment in Arizona, Utah and Florida are expected to shrink by more than a third during the course of 2008. Arizona is predicted to post the largest percent decline of all states, 35.4 percent. In the case of Utah, the decline is expected to be not only large, 34.2 percent, but also precipitous, exceeding the two-year 2005-07 drop more than three times and subtracting roughly $2.3 billions from the growth of the Utah economy.

There are three states where losses are expected to slow down in 2008 compared to the last two years. Home building in New York, Alaska and New Jersey is expected to continue contracting but at a slower pace.

It is worth mentioning that, even though the contribution of RFI is a reasonably comprehensive measure of the effect of home building, it does not capture all channels through which residential construction affects the economy of a particular state. A contraction in home building will also eliminate jobs in industries that are linked to home building, such as real estate, finance and insurance, lumber, wood, paint, cement, metal and other product manufacturing. Families that would have moved into these new homes will now not be spending money on new furniture and appliances. In addition, unemployed or underemployed workers will cut their spending on a broad range of goods and services produced within the state, triggering production cuts across various industries. The reduced economic activity means that state and local governments within the state will be collecting less in taxes and fees.

NAHB's Local Economic Impact of Home Building model (http://www.nahb.org/generic.aspx?sectionID=784&genericContentID=35601) estimates that building 100 new single family homes in a typical U.S metropolitan area generates $16.0 million in local income, $1.8 million in taxes and other revenue for local government, and 284 local jobs in the first year. This includes direct effects of construction activity, many of which are captured in the reduction of RFI shown in this paper, but also includes ripple effects that occur when income earned from construction activity is spent and recycles in the local economy. Of the local impacts of building 100 homes mentioned above, $5.4 million in local income, $465,000 in local government revenue, and an even 100 local jobs are due to these local ripple effects which are not captured in the RFI calculations. This highlights the fact that the reduction in home building will tend to cause economic losses within states even beyond the ones shown in Table 1.

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[1] All adjustments for inflation from 2005 to 2007 are based on the RFI deflator from the Bureau of Economic Analysis. Since the 2008 RFI deflator is not yet available, future inflation adjustments are based on the NAHB forecast of CPI.

[2] NAHB's state housing starts forecasts are available to executive level subscribers at Housing Economics.com.

Table 1. Home Building Contraction in GSP

State	RFI 2005, mil 2008$	RFI Change			
		2005-07, %	2005-07, mil. 2008$	2008 Forecast, %	2008 Forecast, mil 2008$
Alabama	8,661	-15.7%	-1,356	-19.8%	-1,447
Alaska	1,485	-24.3%	-362	-5.9%	-66
Arizona	23,291	-27.7%	-6,459	-35.4%	-5,981
Arkansas	4,959	-23.8%	-1,178	-17.4%	-659
California	135,040	-28.4%	-38,285	-31.3%	-30,401
Colorado	18,576	-20.3%	-3,778	-14.3%	-2,125
Connecticut	9,977	-15.1%	-1,503	-12.3%	-1,043
Delaware	2,952	-23.4%	-689	-26.4%	-598
District of Columbia	2,041	-5.8%	-119	-18.0%	-346
Florida	77,508	-38.1%	-29,559	-33.1%	-15,965
Georgia	23,140	-17.8%	-4,109	-23.8%	-4,547
Hawaii	3,713	-12.1%	-449	-17.5%	-572
Idaho	4,638	-25.8%	-1,196	-26.0%	-899
Illinois	38,460	-24.0%	-9,223	-13.3%	-3,893
Indiana	15,398	-21.8%	-3,360	-14.1%	-1,698
Iowa	6,561	-18.3%	-1,198	-15.0%	-804
Kansas	5,982	-11.5%	-685	-11.6%	-618
Kentucky	7,826	-17.0%	-1,331	-17.0%	-1,104
Louisiana	6,746	5.5%	371	-20.1%	-1,426
Maine	3,318	-20.9%	-695	-20.8%	-548
Maryland	17,568	-14.2%	-2,495	-18.5%	-2,795
Massachusetts	17,532	-19.0%	-3,338	-15.7%	-2,232
Michigan	23,188	-35.1%	-8,138	-18.8%	-2,841
Minnesota	15,329	-29.5%	-4,516	-20.5%	-2,229
Mississippi	3,166	7.4%	235	-26.5%	-900
Missouri	12,610	-22.1%	-2,789	-14.8%	-1,463
Montana	2,502	-8.6%	-215	-21.1%	-484
Nebraska	3,613	-16.7%	-605	-14.9%	-450
Nevada	12,258	-23.9%	-2,931	-22.6%	-2,119
New Hampshire	4,009	-24.0%	-960	-17.7%	-540
New Jersey	26,667	-18.1%	-4,822	-7.8%	-1,708
New Mexico	4,194	-15.5%	-651	-29.1%	-1,033
New York	37,743	-8.4%	-3,167	-3.2%	-1,108
North Carolina	26,753	-5.0%	-1,338	-16.0%	-4,060
North Dakota	1,006	-4.5%	-45	-3.5%	-34
Ohio	26,617	-26.0%	-6,913	-19.3%	-3,822
Oklahoma	6,769	-11.1%	-752	-14.7%	-887
Oregon	10,794	-18.4%	-1,991	-22.7%	-2,004
Pennsylvania	31,045	-14.9%	-4,635	-16.0%	-4,223
Rhode Island	2,781	-11.1%	-310	-14.4%	-356
South Carolina	11,298	-13.6%	-1,539	-22.3%	-2,181
South Dakota	1,334	-7.5%	-101	-12.4%	-153
Tennessee	15,228	-13.9%	-2,124	-20.6%	-2,701
Texas	55,771	-7.4%	-4,116	-15.2%	-7,842
Utah	7,368	-10.4%	-764	-34.2%	-2,258
Vermont	1,799	-14.8%	-267	-17.6%	-271
Virginia	24,812	-19.7%	-4,893	-16.7%	-3,326
Washington	17,592	-7.0%	-1,233	-19.7%	-3,233
West Virginia	2,662	-18.8%	-501	-17.4%	-376
Wisconsin	14,408	-22.8%	-3,292	-16.1%	-1,795
Wyoming	1,481	10.5%	155	-21.7%	-355
United States	836,875	-20.8%	-174,215	-20.3%	-134,520