

# **MARKET DEMAND-BASED PLANNING AND PERMITTING**

**Preventing Excessive Development from  
Undermining the Economy while Protecting  
the Property Rights of Existing Development**

**Arthur C. Nelson**

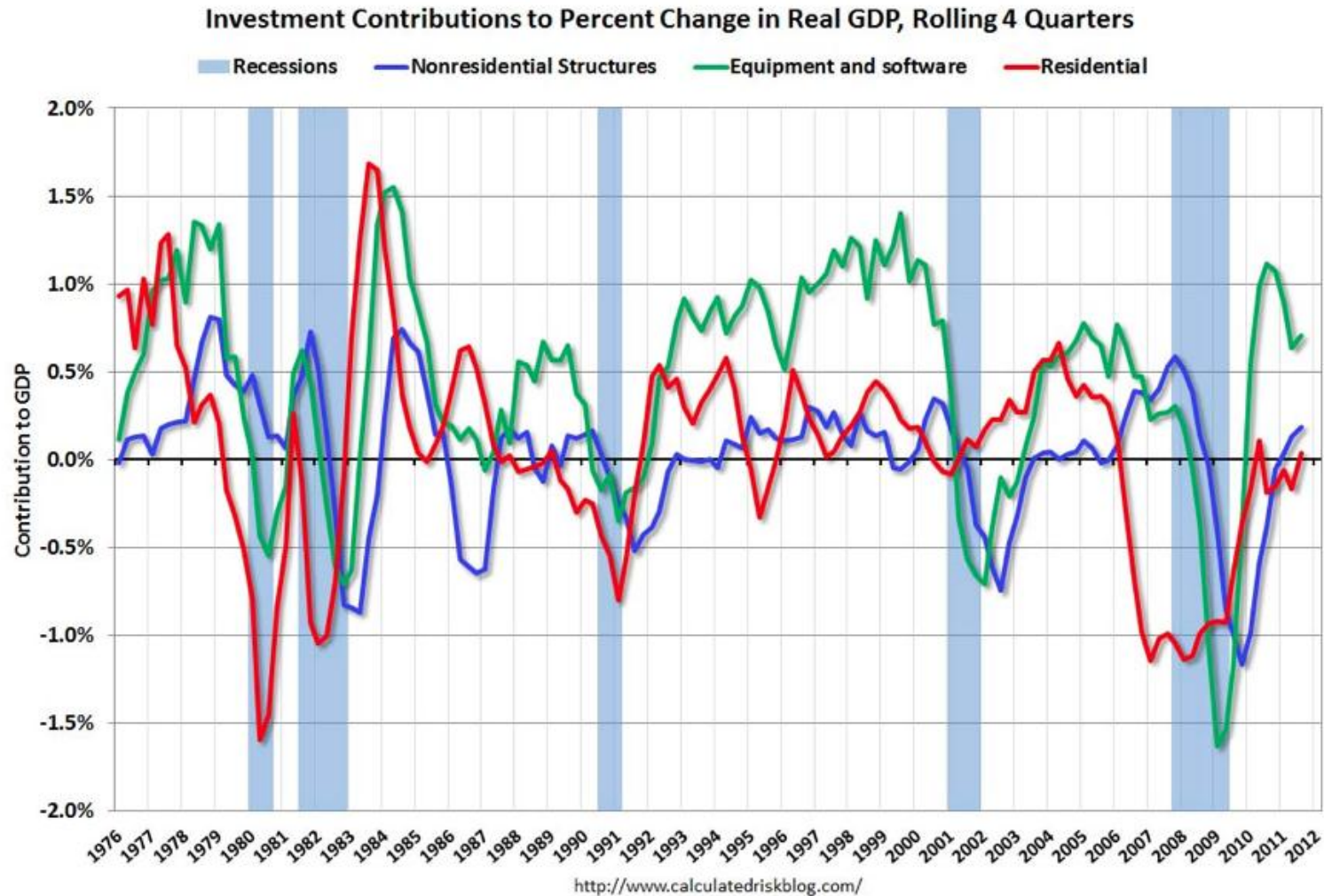
**James C. Nicholas**

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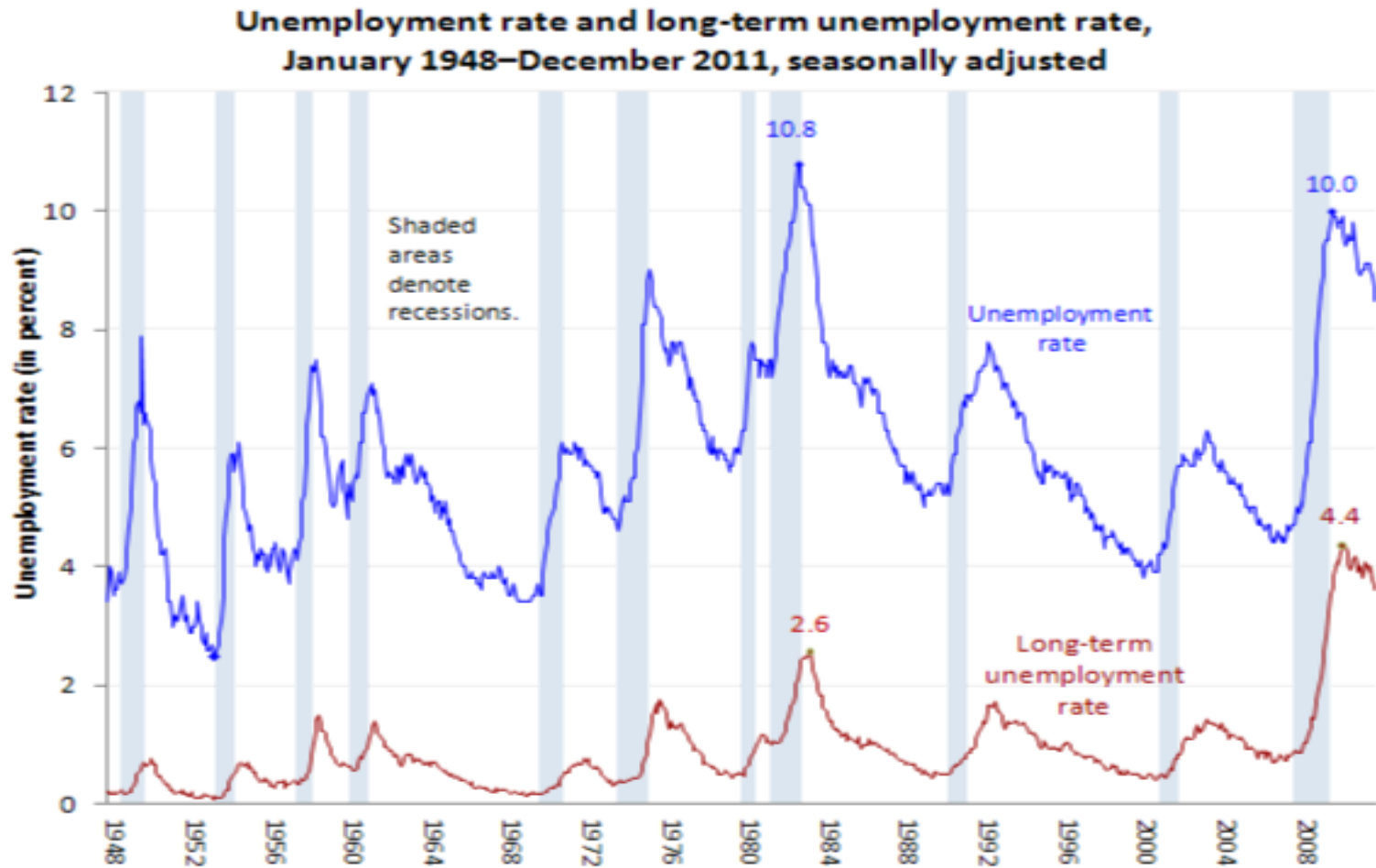
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***American Bar Association 2016***

# Real GDP and Recession



# Unemployment Cycles



Source: U.S. Bureau of Labor Statistics

# Housing Starts and Economic Cycles

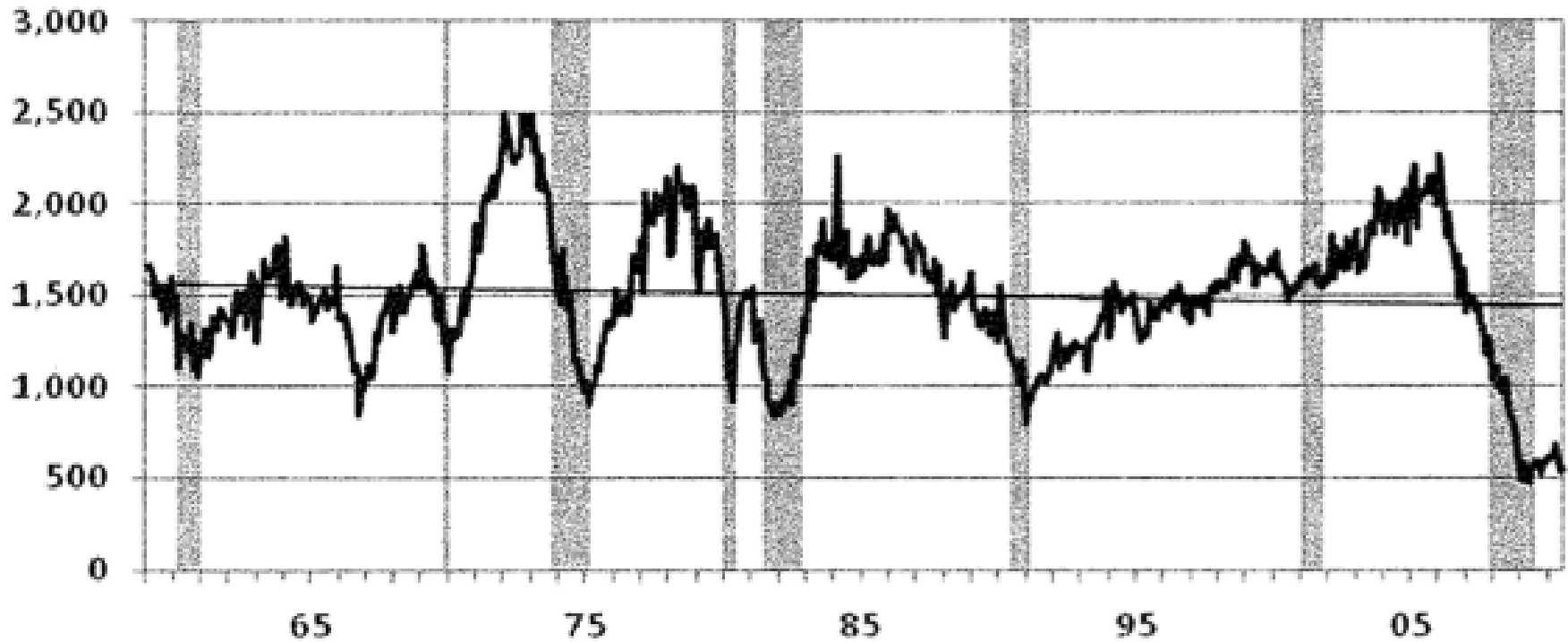
The housing industry accounts for about 27% of investment spending and 5% of the overall economy

“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

# Housing Starts and Economic Cycles

## Housing Starts During Recessions 1959 - 2010



# Over-Construction and Recession

- There are always business cycles
- There will always be recessions
- A key objective of economic policy is to minimize recessions and prevent depressions
- Two of the past three recessions fueled by over-construction
  - ▣ 1990-91
  - ▣ 2008-09 (*Great Recession*)

# The Savings & Loan Collapse

- Tax Simplification Act of 1986 undid unwise real estate incentives of 1981
- New tax treatments caused the tax-based investment house of cards to collapse
- Resolution Trust Corporation formed to bail out failed S&Ls
- \$180B+ in federal bailout (\$2014)
- \$400B+ in total economic losses (\$2014)
- Triggered recession of 1990-91

# Maldistribution of Pain

- Nelson research published in 1995 (*Urban Lawyer*) and 2000 (*J. Urb Pl. & Dev*)
- Growth management (GM) states had more commercial permitting discipline than non-growth management (non-GM) states
- GM states = ~**\$7k**/new HH in bailout subsidies
- Non-GM states = ~**\$22k**/new HH in subsidies
- **Taxpayers in GM states transferred \$50B+** in bailout money **to non-GM states** →  
*Florida subsidized Texas' Moral Hazard*



# Irrational Exuberance of the 2000s

## Loose money

- ▣ Subprime loans
- ▣ Aggressive ARMs
- ▣ Preapprovals for pets

## + Loose regulation of financial institutions

- ▣ Glass Steagall repeal (*e.g. Citibank-Solomon merger*)
- ▣ Greenspan's blind faith in individual self-interest as a protector against Moral Hazard
- ▣ Bush Administration lax enforcement

## = Excessive permitting

## → Great Recession

# Irrational Permitting Exuberance

- Every state projected population and implicitly housing needs from 2000 to 2010.
- Actual populations in 2010 were within tiny percentage differences of state-level projections certified around 2000.
- Residential units permitted in 2000s were **1.8M in excess** of state projections, equal to **70% of the 2.6M foreclosures** between 2006-2011.
- GM states over-permitted by **8%** while non-GM states over-permitted by **17%** (Florida by **19%**).

# Deactivation of Florida's GMA

- Florida's "Growth Management Act" (GMA) 1985-86 created state-local partnership to match housing supply with demand to avoid over-production that tanked the state's economy historically.
- In **1990**, before the GMA took hold, the statewide housing **vacancy rate = 15.3%**.
- In **2000**, the full GMA decade, **vacancy rate = 12.8%**.
- The **2000s** saw Republican governors dismantle the state-local partnership allowing local governments to approve developments in excess of demand.
- In **2010**, Florida's **vacancy rate = 17.4%**. Florida led the nation in foreclosures. Over-production of housing again tanked Florida's economy.
- Florida permitted **350k** more units than its own projections showed were needed → **250k** foreclosures between 2006-2011.

# Theory of Permitting

- Development permitting in accordance with the plan  
Charles M. Haar, 1955
- Plans should include just enough land to meet projected needs and no more  
Marion Clawson, 1971
- Florida urban sprawl rule  
Land supply must meet needs but no more.
- Oregon statewide planning:  
All housing needs must be met but no more.
- Alan Greenspan:  
The competitive market corrects for self interest → **Not**

# Benefits of Needs-Based Permitting



- Prevent premature development of facilities that can tank local government with debt and O&M costs
- Soften downtowns → make state and local fiscal bases more resilient
- **Protect home owner and investor equity**
- Stabilize neighborhoods and local economies