

Why Government Policies Encourage Urban Sprawl and The Alternatives Offered by New Urbanism

Chad Lamer*

I. INTRODUCTION

This article is an examination of urban sprawl, and the political forces and policy decisions that led to its prevalence in most cities throughout the United States. The article argues that current zoning regulations contribute to urban sprawl by limiting the ability of developers to design communities that mix commercial, office, and residential land-uses. A central tenet of the article is that allowing developers to mix land-uses decreases urban sprawl by reducing the amount of roads necessary to connect separated land-uses and by increasing the overall density of neighborhoods.

The article defines zoning, examines the history behind its implementation, and discusses zoning's success in protecting the health of citizens. The article then focuses on the unintentional consequences of adopting zoning policies that separate all land-uses, which is a primary cause of sprawl. Furthermore, the article discusses recent studies concerning the harmful effects associated with sprawl and offers the concept of "New Urbanism" as an alternative to the current method of development.

This article does not contend that mixed-use zoning (the idea that residential, commercial, office, and retail land-uses can be blended together) is appropriate in all areas of a city. Nor does it argue that local governments should mandate how every neighborhood within a community is designed. Instead, the article proposes that the consumer should have a choice between purchasing a home in a sprawling subdivision or purchasing a home in a mixed-use neighborhood. Currently purchasing a new home in a mixed-use neighborhood is often not an option for consumers because under most zoning ordinances mixed-use development requires a developer to obtain special permits from the city and in some instances mixed-use development is illegal under the zoning code. The argument presented in this article is that local governments should rewrite their zoning ordinances so that mixed-use neighborhoods are permitted to compete in a free market against single-use residential neighborhoods.

II. ZONING FOR SEPARATE LAND-USES

The following section provides a brief overview of zoning in the United States. It defines zoning and discusses how it functions in most cities. Additionally, it examines the history of zoning, its implementation in the United States and the early

case law that validated zoning as a form of land-use control. This section is intended to provide informational background on the current state of zoning in the United States.

Zoning is “a police power measure enacted by units of local government under permissive state legislation.”¹ The term “police power” is used to describe a state’s power to enact laws that protect the health, safety, welfare and morals of its citizens.² A local government is often described as a “creature of the state.”³ What this means for zoning purposes is that a local municipal government does not have the power to enact zoning laws unless the state has granted the local government such power.⁴ Under “Dillon’s Rule,” which outlines a state’s role in delegating authority to a local government, any actions taken by a municipal government:

- (1) must be expressly authorized by the state legislature – it must be authorized in words in a state statute; or
- (2) it must be reasonably necessary to the achievement of an activity that is expressly authorized – it must be incidental to an express authorization; or
- (3) it must be essential to the declared objects and purposes of the municipality.⁵

In states that follow Dillon’s Rule, a local government will only have those powers specifically granted to it by the state.⁶

Not all states follow Dillon’s Rule.⁷ The majority of state constitutions provide for “municipal home rule” which allows local governments to enact ordinances “without [specific] statutory authority” from the state.⁸ There are usually some restrictions placed on the type of ordinances a local government may enact using home rule powers but generally as long as the state has not preempted the field of legislation, a local government may enact an ordinance of local concern without specific state authorization.⁹ Home rule power is advantageous to local governments making land-use decisions because they will not have to wait for specific state legislation before enacting land-use controls.¹⁰

Zoning operates by designating different types of allowable land-uses in specific districts of a city or county.¹¹ The local government designates the permitted land-uses within a district before a development application is submitted to the local government for approval.¹² Most zoning ordinances adopt three or four broad land-use categories.¹³ These categories include agricultural, commercial, industrial, and residential districts.¹⁴ Each of these categories can in turn be further divided with increasing restrictions on the type of development allowed.¹⁵ For example, a zone designated as residential could be further divided into single-family attached, single-family detached and multifamily zones.¹⁶ Within the single-family detached zone, only single-family detached homes would be permitted.¹⁷ Currently most cities in the United States handle land-use decisions through some type of zoning ordinance.

A. History of Zoning

Zoning and the current separation of land-uses came about from a desire to improve the quality of life in Europe's major cities.¹⁸ During the 19th century, city planners in Europe began to separate factories and industrial centers from residential development.¹⁹ London and Paris were two European cities that suffered from the ill effects of industry.²⁰ The separation of residential uses from industrial land-uses proved very successful in improving the quality of life for urban residents and in increasing their life span.²¹

In 1916, New York City became the first city in the United States to adopt a comprehensive zoning plan.²² The plan was comprehensive in that it covered the entire city.²³ The plan operated by dividing the city into "residence, business, and unrestricted use districts."²⁴ In addition to these districts, the plan created height and bulk restrictions on buildings.²⁵ The New York City zoning ordinance of 1916 was implemented due to concerns over tenement houses and the possibility of fire spreading throughout closely situated buildings.²⁶ Further, the lack of light and air in many of the tenement buildings was a major health concern for public officials.²⁷ Zoning addressed these safety issues by mandating building height restrictions, window access, and setbacks for buildings.²⁸ While zoning focused on health and safety issues, it also addressed the economic concerns of property owners.²⁹ Merchants were concerned with the ability of customers to shop in a safe environment and zoning was looked upon as a means to achieve this goal.³⁰

B. Other Reasons for the Implementation of Zoning

In the early 20th century, the "city beautiful" and the "garden city" movements helped give rise to the concept of zoning in America.³¹ The city beautiful movement gained momentum because of the Chicago World's Fair of 1893 and the American public's reaction to the Fair's neo-classical "White City" exhibit.³² The city beautiful movement facilitated the adoption of zoning practices because it encouraged designers, planners, architects, and city officials to make their cities more aesthetically appealing.³³

The garden city movement focused on separating neighborhoods from factories through the use of green belts, open spaces, and cul-de-sac street designs.³⁴ The movement started in Europe in the late 19th century and came to the United States where leading planners of the time championed its objectives.³⁵ These planners were able to build a few suburbs and towns that adopted the garden city principles.³⁶ The most notable of these developments was Radburn, New Jersey.³⁷ The essential point concerning the Garden City and City Beautiful movements is that they focused the

Lamer

attention of powerful people on the problems associated with cities. In essence, this attention helped zoning become a reality in the United States.

Zoning in the United States did not really begin to develop until the early 1920s.³⁸ In 1922, the U.S. Department of Commerce developed a model law by which states could empower local governments with the authority to zone.³⁹ The U.S. Department of Commerce appointed an Advisory Committee on Zoning, which developed the Standard Zoning Enabling Act (“SZE”).⁴⁰ The SZE was eventually adopted by all 50 states, although some states chose to modify the model law.⁴¹

The SZE gave local governments the power to regulate “the density of the population, the location and use of buildings, structures, and land for trade, residence or other purposes.”⁴² The purpose of zoning is outlined in section 3 of the SZE:

[S]ecure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation . . . with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.⁴³

In 1926, the Supreme Court upheld the constitutionality of zoning and the separation of land-uses in *Village of Euclid v. Ambler Realty Co.*⁴⁴ The Village of Euclid, Ohio enacted a zoning ordinance that excluded apartments, hotels, and retail establishments from residential districts.⁴⁵ Additionally, the ordinance put restrictions on the height and size of buildings.⁴⁶ Under the Due Process Clause of the 14th Amendment, Amber Realty challenged the ordinance.⁴⁷

Within the opinion, the Court examined a myriad of reasons why different land-uses should be separated from residential development.⁴⁸ These reasons included preventing fires, promoting safety and security within the home, reducing traffic and establishing a safer environment to rear children.⁴⁹ The Court in reviewing the ordinance used substantive due process analysis to determine its constitutionality.⁵⁰ The Court concluded that as long as the zoning ordinance had a substantial relationship to the “health, safety, morals or general welfare” of the public then it would be construed as constitutional.⁵¹

Substantive due process analysis means that the court will look for a rational basis between the purpose of the ordinance and its provisions.⁵² The Court in *Euclid* was able to dismiss the case because the restrictions outlined in the ordinance were not “clearly arbitrary and unreasonable” and therefore the ordinance did not interfere with the Due Process Clause of the 14th Amendment.⁵³

Euclid is important in any discussion of the history of zoning because it established the groundwork for current zoning law in the United States. After *Euclid*,

most zoning ordinances were presumed to be a valid exercise of a state's police powers.⁵⁴

Many communities adopted a zoning theory that established a hierarchy of land-uses.⁵⁵ This type of zoning, called Euclidian, "pyramid" or "cumulative" zoning, placed residential land-uses at the top of the pyramid.⁵⁶ The residential district was the most restrictive district and only residential land-uses were permitted within this zone.⁵⁷ Single-family residential districts were placed at the top of the pyramid because they were thought of as the "highest and best use" of the property in the sense that they were less dense than other types of land-uses.⁵⁸ Below single-family residential districts, the pyramid placed other residential districts that provided for the establishment of duplexes, town homes, and multi-family dwellings.⁵⁹ Below these residential districts, the pyramid placed commercial and industrial uses with commercial ranking above industrial type uses.⁶⁰

In communities that adopted cumulative zoning, land-uses placed at the top of the pyramid were permitted as of right in any zone with a lower rank.⁶¹ However, land-uses that were lower on the pyramid could not occupy a higher zone. For instance, residential uses were allowed in commercial zones and commercial uses were allowed in industrial zones but a commercial use could not occupy a residential zone nor could an industrial use occupy a commercial zone.⁶²

Today most cities do not have truly cumulative zoning ordinances.⁶³ Many cities' zoning ordinances are exclusive in that they only allow for specifically permitted types of land-use within a given zone.⁶⁴ Most communities that still use cumulative zoning only apply it within single zones.⁶⁵ In these communities, residential uses are not permitted in commercial or industrial zones as of right but there is still a hierarchy of uses.⁶⁶ For example, in a residential zone, single-family residential dwellings are ranked higher than multi-family dwellings.⁶⁷ Because single-family dwellings enjoy a higher ranking, they can be sited anywhere a multi-family dwelling is permitted.⁶⁸ Conversely, multi-family dwellings are only permitted in areas specifically zoned for multi-family development.⁶⁹

Exclusive zoning by district and cumulative zoning within an individual zone only serve to increase the separation of land-uses within the city. Because these zoning policies increase distances between different land-uses, they require the use of an automobile for nearly every trip taken.⁷⁰ What started out as a noble intention to protect the health of citizens and improve the quality of life in the urban environment may have done just the opposite by fostering the sprawling pattern of today's cities.⁷¹

III. WHAT IS SPRAWL?

Sprawl can be defined as “the process in which the spread of development across the landscape far outpaces population growth.”⁷² It is found in most American cities in the “form of low density, single use development, married with strip and auto-orientated commercial land-uses, at the very edges or beyond the fringes of existing urbanization.”⁷³ There are many definitions of sprawl but most include words such as leapfrog development, low-density, strip-development, and separated land-uses.⁷⁴ Sprawl occurs on the fringes of our cities and is the generic land-use pattern we have come to associate with the suburbs. However, sprawl is not just the suburbs. It is the result of planners, developers, and policy makers deciding to locate all facets of our daily lives in different locations within the city.⁷⁵

Sprawl consists of five different components that can be found in most North America cities.⁷⁶ The first element of sprawl is often referred to as “cluster” or “pod” development.⁷⁷

This first element of sprawl can aptly be described as “res-identical” development. Res-identical development consists of single-family residential homes that all look the same and can be found in any city in the United States. These are subdivisions where the same street can run North, South, East, and West.⁷⁸ Typical res-identical development is separated from all other land-uses.⁷⁹ Within this component of sprawl, the use of an automobile is almost a necessity because daily needs are outside of walking or biking distance.⁸⁰ Additionally, these developments have low population densities with average housing units at five or less per acre.⁸¹ The low population density makes the neighborhoods very difficult to serve with public transportation.⁸² Public transportation is not a viable option in these neighborhoods because a transit system generally needs a fixed number of riders to make timely service economically feasible.⁸³

Malls, strip commercial developments, and convenience stores provide the second component of sprawl.⁸⁴ These are shopping destinations where the consumer will likely need an automobile.⁸⁵ Seas of parking surround these institutions, and they are bordered by major arterial roads, all of which make walking difficult and dangerous.⁸⁶

Office parks and scattered civic institutions are the third and fourth elements of sprawl.⁸⁷ Like the shopping center component, these land-uses are generally only accessible with an automobile.⁸⁸ These institutions by themselves are not responsible for sprawl. Instead, it is the way these institutions are placed within the urban landscape that facilitates sprawling development.⁸⁹ At one time, all these institutions were located in a city’s downtown but they have moved out to the suburbs and consequently are separated from where people live.⁹⁰

“The fifth component of sprawl” is roadways.⁹¹ Because all the other elements of sprawl are separated by Euclidian zoning techniques, an extensive system of roadways is necessary to connect the separate land-uses.⁹² However, because the roadways are not connected in a grid or modified grid system, traffic from residential neighborhoods must funnel out onto collector roads.⁹³ These single collector roads then feed into arterials and highways.⁹⁴ What this means is that generally there is only one road feeding an entire subdivision which makes the whole system susceptible to traffic congestion.⁹⁵ Additionally, because busy arterials separate each component of the city, it is dangerous for people to walk or bike anywhere outside of their subdivision.⁹⁶ Crossing an arterial as a pedestrian or cyclist to go to work, school, or the grocery store is a dangerous activity that most people living in sprawl wish to avoid.⁹⁷ The result is that people opt to drive everywhere instead of walking or cycling, which causes a steady increase in traffic on the arterial streets.⁹⁸

IV. ECONOMIC AND LEGISLATIVE FORCES THAT CONTRIBUTE TO SPRAWL

Planners, politicians, developers, lending institutions, and the federal government may not have intentionally set out to design the current system that facilitates sprawl. Yet, through a combination of judicial decisions, local and federal governmental policies, new developments in building technology, and the practices of lending institutions, this country has created a system that encourages sprawling growth.⁹⁹

Two of the main legislative forces that contributed to the growth of sprawl after World War II were the loans provided by the Federal Housing Administration (FHA) and the Veterans Administration (VA).¹⁰⁰ These programs helped post-World War II Americans purchase an estimated 11 million new homes, most of which were single-family detached dwellings.¹⁰¹ The new loan programs actually made it less expensive for families to own their own home than to rent.¹⁰²

One of the ways the FHA loan program contributed to sprawl is that it was less expensive to borrow money to purchase a single-family home than to borrow money to purchase a home in a multi-family housing development.¹⁰³ Additionally, the FHA loans for the repair of older homes were smaller than those available for the purchase of new homes.¹⁰⁴ Therefore, families opted to leave their older homes within the central city and move to new homes in the suburbs.¹⁰⁵ They bought new homes instead of repairing older ones and opted for single-family dwellings instead of multifamily dwellings.¹⁰⁶

After World War II, Alfred and William Levitt helped Americans move to the suburbs by developing a revolutionary new method of constructing houses.¹⁰⁷ The Levitt brothers modernized housing construction by applying assembly line techniques to the construction of entire subdivisions.¹⁰⁸ Called Levittowns,¹⁰⁹ the first of such

developments was constructed in 1947 and consisted of basically three different styles of homes whose construction style was repeated throughout the subdivision.¹¹⁰ Using economies of scale Levittowns addressed a housing shortage in the post-World War II years and provided the returning GIs with an affordable house that could be expanded as their families grew.¹¹¹ Levittown proved to be an economic success that was emulated across the United States in the design of subdivisions.¹¹² Unfortunately, such a model was perfect in facilitating the growth of sprawl because it provided the construction of large single-use districts that were separate from all other land-uses.

The new suburbanites needed a method of commuting to their jobs within the inner city. The Interstate Highway Act of 1956 added an additional 41,000 miles to our highway systems.¹¹³ Before the creation of these new highways, most suburbs were fairly close to the central city.¹¹⁴ These new highways helped further sprawl by providing an easy commute into the city for the residents of the suburbs.¹¹⁵ The highways fostered the development of industries and services outward along the newly created roadways.¹¹⁶ The creation of highways not only took citizens out of the central city but also led to office parks, shopping centers, and even industry leaving the city in favor of the suburbs.¹¹⁷ With the creation of new highways, citizens could buy a home outside of the central city and easily commute either back into the city for work or to a suburban office park.¹¹⁸

Other policies that currently contribute to sprawl include tax policies that favor home ownership and infrastructure grants by the United States Department of Housing and Urban Development (HUD).¹¹⁹ On a Federal level, tax policies allow home loan mortgage “points” and home loan interest to count towards a deduction from a person’s total taxable income.¹²⁰ Additionally, current tax policy allows homeowners to shelter any profits they make off the sale of their home as long as they use those profits to buy a more expensive home.¹²¹ These policies encourage individuals to sell their homes and move further out into the suburbs.¹²²

The reason people move further out into the suburbs is that newer and better housing is usually created on the fringes of cities.¹²³ In the minds of many people, the fringe has better housing opportunities because of the larger lot sizes and the semi-rural landscape.¹²⁴ Unfortunately, the semi-rural landscape that attracts residents to the rural fringe only lasts until suburbia encroaches and then the whole cycle repeats itself. It is in this manner that housing preferences and federal tax policies drive sprawl.

The Department of Housing and Urban Development typically provides grants to cities to extend sewer and waterlines into the fringe areas of suburbia.¹²⁵ Once the water, sewage, and utility lines are established outside of the city, housing and other developments follow.¹²⁶ The HUD grants act as a subsidy for the construction of new housing developments that in turn contribute to sprawl.¹²⁷

V. THE IMPACTS OF SPRAWL

Sprawl affects the quality of life for a city's residents in a myriad of ways. These impacts include economic costs, environmental costs and quality of life issues.¹²⁸

A. Economic Impacts

Sprawl affects local governments because they must extend services to new developments on the fringes of the city.¹²⁹ These services include not only water and sewer lines but also fire and police protection, libraries, recreational facilities, and schools.¹³⁰ To illustrate this point, a 1995 estimate by Loudoun County, Virginia officials found that a new home sale would need to exceed \$400,000 in order to generate sufficient taxes to cover the services the home would receive from the local government.¹³¹ From this estimate, it is easy to understand why the property taxes paid by the owners of a new suburban home amount to less than it costs a city to provide services to that property.¹³²

Even Prince William County, which has the highest property tax rate in the state of Virginia, still suffered a "\$1,688 dollar shortfall for every new house built."¹³³ The result of extending services out into the fringe is that residents and businesses of the city must make up the difference in those costs.¹³⁴ In essence, developers and homeowners in sprawling developments are receiving a subsidy from citizens throughout the entire city.¹³⁵ The citizens most adversely affected by this subsidy are those with lower incomes who cannot afford to move into the suburbs but still are taxed to pay for suburban infrastructure.¹³⁶

B. Environmental, Health, and Quality of Life Impacts

Sprawl consumes not only valuable agricultural land but also wetlands, forests, and open space.¹³⁷ In New Jersey between 1950 and 1980 nearly 50 percent of its agricultural land was lost to development.¹³⁸ The U.S. Department of Agriculture estimates that between 1982 and 1992 there was more than a 25 percent increase of urban land in the United States.¹³⁹ It is estimated that sprawl destroys 50 acres of agricultural land during "every hour of every day."¹⁴⁰ This trend could lead to a situation in the very distant future in which the United States becomes forced to import agricultural products.¹⁴¹

In a recent study, researchers from Rutgers and Cornell Universities examined metropolitan statistical areas (MSAs) within the United States and looked at the effect of sprawl on daily quality of life issues.¹⁴² The study was conducted over a three-year period and was peer reviewed by researchers from U.C.L.A., U.C. Davis, U.C.

Berkeley and the University of Michigan.¹⁴³ The study defined sprawl as “low-density development with residential, shopping and office areas that are rigidly separated; a lack of thriving activity centers; and limited choices in travel routes.”¹⁴⁴ The researchers then developed four quantifiable factors that could be measured and analyzed for 83 MSAs within the United States.¹⁴⁵ The four factors measured included: “1) residential density; 2) neighborhood mix of homes, jobs and services; 3) strength of centers, such as business districts; and 4) accessibility via the street network.”¹⁴⁶

The researchers looked at links between “urban sprawl and transportation related measures” which included “vehicle miles traveled, traffic fatalities, the extent of walking and public transit use, roadway congestion and air quality.”¹⁴⁷ Their research indicated that there were significant adverse effects associated with living in a sprawling metropolitan area.¹⁴⁸ The researchers discovered there was a direct relationship between sprawl and an increase in the number of “daily vehicle miles traveled.”¹⁴⁹ In the study, researchers found the number of cars per household rose with increasing levels of sprawl.¹⁵⁰ They concluded, after controlling for income disparities, that in sprawling regions driving may be the only transportation option available and that many “households feel compelled to have a vehicle for each licensed driver.”¹⁵¹

Additionally, the researchers discovered traffic fatality rates increased and the amount of ozone at ground level (smog) rose with increasing levels of sprawl.¹⁵² The traffic fatality rate in the least sprawling MSAs was 20 fatalities per 100,000 people where as in the most sprawling MSAs there were 49 traffic fatalities per 100,000 people.¹⁵³

The results of this study demonstrate that people who live in sprawling areas “drive more, have to own more cars, breathe more polluted air, face a greater risk of traffic fatalities, and walk and use transit less” than people in less sprawling regions.¹⁵⁴ The study is important because it provides empirical evidence that sprawl negatively affects the quality of life for those who live in sprawling regions.

There are other quality of life issues associated with sprawl that were not addressed in the study. In a sprawling landscape, children need to be chauffeured to school, to sporting events, and to entertainment activities.¹⁵⁵ Because walking is generally not an option for children due to dangerous streets and a separation of land-uses, parents are forced to drive their children everywhere.¹⁵⁶ The effect of this is a total dependence on adults for transportation until children reach an age where they can drive.¹⁵⁷

Children are not the only ones who suffer from a total reliance on the automobile in suburbia. Elderly people who live in the suburbs become virtual prisoners once they reach an age where they can no longer drive.¹⁵⁸ They are forced to

either rely on relatives or move into a retirement home merely because they can no longer operate a vehicle for their daily needs.¹⁵⁹

This section has outlined a few of the negative consequences of sprawl as discussed by researchers and other writers within the field of planning. Its purpose was to show that sprawling growth has a variety of negative consequences. The next section proposes an alternative way of designing our cities as an answer to sprawl and suggests that this can only be accomplished by changing the zoning code.

VI. NEW URBANISM AS AN ALTERNATIVE TO SPRAWL

In 1993, about 170 of the nation's premier designers of cities and neighborhoods met to discuss issues concerning life in the suburbs, the decline of America's central cities, the problems associated with race and income, and the environmental consequences of urban development that necessitate the use of an automobile for every task.¹⁶⁰ Leading members of this group would eventually form The Congress for The New Urbanism ("CNU"), with the goal of advocating the principles of New Urbanism and facilitating a "wholesale shift in the way communities are built."¹⁶¹

CNU argues that public policy should be restructured in order to create diverse neighborhoods that are designed for pedestrians as well as the automobile.¹⁶² Neighborhoods should be composed of a mix of land-uses and homes should be within walking distance of stores, entertainment, and work.¹⁶³ Traditional Neighborhood Development ("TND") or New Urbanism, is based on six fundamental principles that separate the goals of New Urbanism from conventional sprawling patterns.¹⁶⁴

The underlying principles for a New Urbanist development are as follows. Each development or neighborhood should have a center where activities such as government, entertainment and commerce are focused.¹⁶⁵ Neighborhood residents should be within a five-minute walk from working, shopping, education, and other daily needs.¹⁶⁶ The street pattern should be a grid system or modified grid system with short blocks that facilitate alternative flows of traffic and pedestrian movement.¹⁶⁷ When possible most streets should be narrow and cater toward the safety of the pedestrian.¹⁶⁸ Some form of public transportation should be available, and its use should not be degrading to anyone using its services.¹⁶⁹ There should be a mix of land-uses and design guidelines should dictate how buildings look and relate to other uses.¹⁷⁰ Finally, land-uses that foster the identity of the community, such as civic buildings, should be sited in special locations.¹⁷¹

New Urbanism offers an alternative to sprawl by providing that daily destinations such as work, entertainment and shopping may all be located within a short walk or commute.¹⁷² The increased housing density associated with a mixed-use New Urbanist development allows for efficient public transportation.¹⁷³ Public

transportation once established can then substitute for automobile trips, which in turn reduces traffic and limits our need for further road construction.¹⁷⁴

New Urbanism does not attempt to do away with the automobile.¹⁷⁵ Instead, it represents a conscious decision to design communities that are more in scale with pedestrians than with automobiles.¹⁷⁶ What follows from such decisions are a host of social, economic, and environmental benefits. New Urbanism does not mandate that all new development adhere to the New Urbanist philosophy, but it does propose that those wishing to construct New Urbanist communities have a level playing field with conventional developers. This can only be accomplished through the reform of conventional Euclidian zoning techniques.

VII. SUGGESTED GOALS FOR LEGISLATORS AND URBAN PLANNERS

Zoning laws should be more flexible. In many communities, strict Euclidian zoning regulations do not allow for the creation of TNDs or New Urbanist developments.¹⁷⁷ In these communities, New Urbanism is illegal.¹⁷⁸ However, in some communities it is possible to build a New Urbanist development under a zoning tool called a Planned Unit Development (PUD).¹⁷⁹

The PUD ordinance allows a developer to mix certain types of land-uses such as single-family, multi-family and sometimes commercial land-uses, on one site that is subject to approval by a local planning commission.¹⁸⁰ The problem is that the approval of a PUD is a highly discretionary process, which may involve a lengthy period between submitting the application and final approval for the project.¹⁸¹

The uncertainty in the approval process translates into problems for a developer because the largest cost of a project is usually the holding of land before development.¹⁸² For a developer, time is money. Developers borrow money to fund their projects. The longer it takes a project to be completed, the more interest the developer will have to pay on the loan. While the PUD process allows for New Urbanist development, developers are discouraged financially from attempting such projects due to the uncertainty in the permitting process. By following a conventional method of development, which contributes to sprawl, developers can minimize their land holding costs and ensure their projects are approved with minimum delay.¹⁸³ Without changes in zoning laws developers have little incentive to pursue new and different types of development.

There are variety of ways zoning laws could be changed to foster New Urbanist development and combat sprawl without going through the PUD process. Two of these include making the “live-work unit” and the “garage apartment” or “granny flat” legal.¹⁸⁴ The live-work unit is a home office or an apartment above a store.¹⁸⁵ If a city were to allow for home offices or even apartments above commercial districts they

could increase the overall density of a neighborhood and reduce the number of daily trips by vehicle. Unfortunately, residential uses are often prohibited in industrial districts and many communities even bar residential uses in commercial districts.¹⁸⁶

A strict segregation of land-uses means that some cities prohibit all home businesses in residential districts.¹⁸⁷ In cities that do allow home businesses in residential districts, the type of businesses allowed are often restricted by profession.¹⁸⁸ What this has done is limit the working options of people living in those communities. It increases the amount of traffic on roadways because people must leave their homes if they want to legally conduct business. Furthermore, it denies families the opportunity to have one parent working at home while taking care of children.¹⁸⁹ These are ample reasons why policy makers should reconsider zoning laws that separate businesses from residential districts.

The “granny flat” is another use that is prohibited under most Euclidian zoning.¹⁹⁰ The “granny flat” is a second building behind the main house that can be used as an apartment.¹⁹¹ This allows individuals to house and care for elderly members of their family. The use of the “granny flat” provides an alternative residence for the elderly who may not be able drive anymore. Additionally, it increases the overall population density of a neighborhood, which in turn makes public transportation more feasible.

One of the ways home businesses and “granny flats” could be situated within residential districts and not cause a problem for the community is through the use of “performance standards.”¹⁹² In the case of businesses, these standards could specify limitations on the amount of traffic generated by the business or the amount of noise produced.¹⁹³ A detailed set of standards could be developed through community workshops and implemented after the community decided what kinds of impacts were tolerable. In the case of “granny flats”, performance standards could focus on the number of number of residents or on the square footage of the building.¹⁹⁴ Performance standards offer one possible solution to the fears associated with mixed-use zoning.

Another example of how New Urbanist development is illegal under many city zoning codes involves the width of streets and the construction of intersections.¹⁹⁵ New Urbanist developments are designed with narrow streets that calm traffic and make it safe for pedestrians.¹⁹⁶ However, under zoning codes designed to accommodate large-scale fire trucks and rescue vehicles, narrow streets are not a legal option.¹⁹⁷ Many communities have begun to recognize that traffic accidents and not fire are the greatest threat to personal safety.¹⁹⁸ Before World War II, the average street width was between 28 to 30 feet, but since that time, this width has grown to nearly 36 feet.¹⁹⁹ Communities in Oregon, such as Eugene and Portland, have begun to shrink the street width back down to what it was post-World War II.²⁰⁰ The firemen

within the Portland community have accepted the new street policy.²⁰¹ Studies done in other communities show the “risk of fire injury” did not increase with the adoption of narrow street standards.²⁰²

Seattle provides an excellent example of how effective narrow streets and other kinds of traffic-calming measures are in protecting pedestrians and drivers.²⁰³ In 1998, Seattle installed 119 traffic-calming devices and was able to reduce the number of accidents at these locations by 94 percent.²⁰⁴ Communities should consider changing zoning codes and subdivision ordinances to allow for narrow streets, which promote greater pedestrian safety.

Local zoning authorities need to give developers the opportunity to create New Urbanist developments that can compete freely in the market place. Within a city, there should be a district where developers can develop communities in a mixed-use manner without the permitting delays associated with PUDs. Communities should adopt a New Urbanist or TND ordinance that permits mixed-use communities.²⁰⁵ Within zones specified under the TND ordinance a developer should be able to develop in the same timely manner as a developer in any other type of district.

TND mixed-use development within the TND district should be permitted as a right. However, there should be design guidelines and standards for development that are clearly spelled out with text and illustrations.²⁰⁶ The process for approval of a TND development within these districts should be just as fast as approval for development in the conventional zones.²⁰⁷

By designing a TND ordinance, where the permitting process is equally as fast as approval for conventional developments, a local government will encourage a greater range of housing options. Consumers will have a choice in what kind of community they would like to live in because developers will no longer be required to build conventional suburban development. A properly designed TND ordinance will encourage free market competition between conventional suburban development and the alternatives offered by New Urbanism.

VIII. CONCLUSION

If planners, policy makers and developers had intentionally set out 90 years ago to devise of method of producing sprawl they could not have done a better job. The unintentional consequences of well meaning public policy and judicial decisions have produced an urban landscape that in many regards is more harmful than the situations the policy makers hoped to remedy. It is time for planners and lawmakers to abandon those elements of the current zoning code that do not contribute to the health of cities and citizens. Rewriting current municipal zoning codes and supplementing those codes with TND ordinances will permit the construction of New Urbanist communities

and offer consumers housing options that provide an alternative to sprawl.

Notes

* Chad Lamer received both a Master of Urban Planning (MUP) and Juris Doctor (JD) degrees from the University of Kansas in May 2004. As a second-year law student, he clerked for noted land-use attorney Dr. Robert H. Freilich. Upon graduation, he will practice with King Hershey, P.C. in Kansas City. He would like to thank Professor Sidney Shapiro, University of Kansas School of Law and Assistant Professor Cliff Ellis, Graduate Program in Urban Planning, University of Kansas for their comments and support. Additionally, he would like to thank his loving wife, Stacey Lamer, for all her understanding and support.

1. John Reps, *Pomeroy Memorial Lecture: Requim for Zoning*, PLANNING, 56, 58 (1964).
2. See BARLOW BURKE, UNDERSTANDING THE LAW OF ZONING AND LAND-USE CONTROLS 3 (2002).
3. See *id.* at 5.
4. See *id.* at 5; see also ROBERT H. FREILICH, FROM SPRAWL TO SMART GROWTH: SUCCESSFUL LEGAL, PLANNING AND ENVIRONMENTAL SYSTEMS 58 (1999) (discussing the power of municipalities to enact zoning ordinances).
5. See BURKE, *supra* note 2, at 5 (citing *Smith v. City of New Bern*, 70 N.C. 14, 18-19 (1874)).
6. See generally BURKE, *supra* note 2, at 5.
7. See DANIEL R. MANDELKER, LAND-USE LAW § 4.24, at 114 (4th ed. 1997).
8. See *id.*
9. See generally *id.* at 114-15.
10. See generally *id.*
11. See Reps, *supra* note 1, at 58.
12. See *id.*
13. See MANDELKER, *supra* note 7, § 5.01, at 136; see also ERIC D. KELLY, *Zoning in THE PRACTICE OF LOCAL GOVERNMENT PLANNING* 268 (Frank S. So and Judith Getzels eds., 2nd ed., 1988) (adding an additional category of agriculture).
14. See KELLY, *supra* note 13, at 268.
15. See *id.* at 269.
16. See *id.*; see also BURKE, *supra* note 2, at 88-89.
17. See BURKE, *supra* note 2, at 88.
18. See ANDRES DUANY ET. AL., SUBURBAN NATION: THE RISE OF SUBURBAN SPRAWL AND THE DECLINE OF THE AMERICAN DREAM 10 (2000); see also PETER HALL, CITIES OF TOMORROW 58 (Blackwell Publishers Inc. Updated Ed. 1996) (stating that zoning came to the United States from Germany).
19. See DUANY, *supra* note 18, at 10.
20. See *id.*
21. See *id.*; see also JULIAN C. JUERGENSMEY & THOMAS E. ROBERTS, LAND-USE PLANNING AND CONTROL LAW §2.3, at 17-18 (1998) (discussing early planning success in America with the prevention of diseases such as yellow fever).
22. See KELLY, *supra* note 13, at 252.

23. See FRANK B. WILLIAMS, *THE LAW OF CITY PLANNING AND ZONING* 268 (1922); see also JUERGENSMEY & ROBERTS, *supra* note 21, § 3.3, at 42.
24. See WILLIAMS, *supra* note 23, at 268.
25. See *id.*
26. See KELLY, *supra* note 13, at 251.
27. See *id.*
28. See *id.*
29. See *id.*
30. See *id.*
31. See Nicolas M. Kublicki, *Land-use By, For, And Of The People: Problems With The Application of Initiatives and Referenda To the Zoning Process*, 19 PEPP. L. REV. 99, 106 (1991).
32. See generally ROBERT MUCCIGROSSO, *CELEBRATING THE NEW WORLD: CHICAGO'S COLUMBIAN EXPOSITION OF 1893* 74, 188 (1993).
33. See Kublicki, *supra* note 31, at 105; see also MUCCIGROSSO, *supra* note 32, at 188.
34. See Kublicki, *supra* note 31, at 106; see also HALL, *supra* note 18, at 98-99.
35. See HALL, *supra* note 18, at 112-13,123.
36. See *id.* at 127.
37. See *id.* at 126-27.
38. See Richard Briffault, *Smart Growth and American Land-use Law*, 21 ST. LOUIS U. PUB. L. REV. 253, 255 (2002); see also MANDELKER, *supra* note 7, § 4.15 at 108.
39. See Briffault, *supra* note 38, at 256.
40. See *id.* at 255-56.
41. See KELLY, *supra* note 13, at 252.
42. MANDELKER, *supra* note 7, § 4.16 at 109 *construing* Standard Zoning Enabling Act of 1922.
43. See *id.*
44. See 272 U.S. 365 (1926); see also MANDELKER, *supra* note 7, § 2.41 at 56.
45. See *Village of Euclid*, 272 U.S. at 379-380.
46. See *id.*
47. See *id.* at 384.
48. See *id.* at 394.
49. See *id.*
50. See BURKE, *supra* note 2, at 78 (discussing the decision in *Village of Euclid*).
51. See *Village of Euclid*, 272 U.S. at 395.
52. See *id.*
53. See *Village of Euclid* 272 U.S. at 395.
54. See HALL, *supra* note 18, at 25; see also BURKE, *supra* note 2, at 83; *but see* *Nectow v. City of Cambridge*, 277 U.S. 183, 188-89 (1928) (holding that zoning restriction does not bear a substantial relationship to health, safety, welfare or morals and as such is a violation of the 14th Amendment).
55. See KELLY, *supra* note 13, at 269.
56. See *id.*
57. See *id.*; see also BURKE, *supra* note 2, at 88.
58. See *id.*
59. See *id.*
60. See KELLY, *supra* note 13, at 269.
61. See *id.*; see also BURKE, *supra* note 2, at 88.

62. *See* KELLY, *supra* note 13, at 269.
63. *See* MANDELKER, *supra* note 7, § 1.05 at 4.
64. *See id.*; *see also* BURKE, *supra* note 2, at 88.
65. *See* KELLY, *supra* note 13, at 269.
66. *See id.*
67. *See id.*
68. *See id.*
69. *See id.*
70. *See generally* DUANY, *supra* note 18, at 25 (discussing how even when different land-uses are adjacent to each other the use of an automobile is still necessary).
71. *See generally* Reid Ewing, et al., *Measuring Sprawl and Its Impacts*, SMART GROWTH AMERICA: BETTER CHOICES FOR OUR COMMUNITIES 17, available at <http://www.smartgrowthamerica.com/sprawlindex/sprawlindex.html> (last accessed Oct. 28, 2002).
72. *See id.* at 3.
73. Lee R. Epstein, *Where Yards Are Wide: Have Land-use Planning and Law Gone Astray?* 21 WM. & MARY ENVTL. L. & POL'Y REV. 345, 349 (1997); *see also* Reid Ewing, *Is Los Angeles Style Sprawl Desirable*, APA JOURNAL, Winter 1997, at 108.
74. *See* Rolf Pendall, *Do Land-Use Controls Cause Sprawl?*, ENVIRONMENT AND PLANNING B. PLANNING AND DESIGN, Vol. 26, 555-517 at 556; *see also* Ewing, *supra* note 73, at 109.
75. *See generally* Ewing, *supra* note 73, at 108 (discussing how an important “indicator of sprawl is poor accessibility” for “out-of-home activities”).
76. *See* DUANY, *supra* note 18, at 5 (outlining how sprawl can be broken down into five different components).
77. *See id.*
78. *See id.* at 35.
79. *See generally id.* at 6-7.
80. *See id.*; *see also* TOM DANIELS, *WHEN CITY AND COUNTRY COLLIDE: MANAGING GROWTH IN THE METROPOLITAN FRINGE* 140 (Island Press 1999).
81. *See* Pendall, *supra* note 74, at 567.
82. *See* Ewing, *supra* note 71, at 9.
83. *See generally id.*
84. *See* DUANY, *supra* note 18, at 6.
85. *See generally id.*
86. *See generally id.*
87. *See id.*
88. *See id.*
89. *See generally* Ewing, *supra* note 73, at 109.
90. *See* JOEL GARREAU, *EDGE CITY* 4 (1991).
91. *See* DUANY, *supra* note 18, at 7.
92. *See id.*
93. *See id.* at 23; *see also* ANTON C. NELESSEN, *VISIONS FOR A NEW AMERICAN DREAM: PROCESS PRINCIPLES, AND AN ORDINANCE TO PLAN AND DESIGN SMALL COMMUNITIES* 39 (1994).
94. *See* DUANY, *supra* note 18, at 23; *see also* NELESSEN, *supra* note 93, at 39.
95. *See* DUANY, *supra* note 18, at 23; *see also* NELESSEN, *supra* note 93, at 39.
96. *See generally* DUANY, *supra* note 18, at 7.

97. *See generally* Cliff Ellis, *The New Urbanism: Critiques and Rebuttals*, JOURNAL OF URBAN DESIGN, Vol. 7, No. 3, 264 (2002).
98. *See generally* DUANY, *supra* note 18, at 7
99. *See* DANIELS, *supra* note 80, at 107; *see also* Pendall, *supra* note 74, at 555.
100. *See* DUANY, *supra* note 18, at 7-8; *see also* DANIELS, *supra* note 80, at 34-35.
101. *See* DUANY, *supra* note 18, at 8.
102. *See id.* at 8; KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 206 (Oxford 1985).
103. *See* JACKSON, *supra* note 102, at 206.
104. *See id.*
105. *See id.*
106. *See id.*
107. *See History of Levittown at* <http://www.levittownpa.org/levittown.html> (last accessed Nov. 5, 2002); *see also* Daniels, *supra* note 80, at 35.
108. *See History of Levittown, supra* note 107; *see also* DANIELS, *supra* note 80, at 35.
109. *See History of Levittown, supra* note 107.
110. *See id.*
111. *See* Peter Hales, *Building Levittown: A Rudimentary Primer at* <http://tigger.uic.edu/~pbhales/Levittown/building.html> (last accessed Nov. 5, 2002).
112. *See* NELESSEN, *supra* note 93, at 32.
113. *See* JACKSON, *supra* note 102, at 249.
114. DANIELS, *supra* note 80 at 112.
115. *See* DUANY, *supra* note 18, at 9; *see also* JACKSON, *supra* note 102, at 249-50.
116. *See* JACKSON, *supra* note 102, at 250.
117. *See* DANIELS, *supra* note 80, at 112.
118. *See id.*
119. *See id.* at 111.
120. *See id.* at 109.
121. *See id.* at 110.
122. *See id.* at 111.
123. *See generally id.* at 110-11.
124. *See generally id.* at 14.
125. *See id.* at 111.
126. *See generally id.* at 111, 147-48.
127. *See id.* at 111.
128. *See*, Robert H. Freilich, *Urban Sprawl, "Smart Growth," and Sustainable Development* SE11 ALI-ABA 137, 149-152; *see also* Ann Brown et. al. *Sprawl: The Dark Side of the American Dream* Sierra Club 3-5, available at <http://www.sierraclub.org/sprawl/report98/report.asp> (last accessed Nov. 5, 2002).
129. *See* DUANY, *supra* note 18, at 127.
130. *See* Pendall, *supra* note 74, at 558.
131. *See* DANIELS, *supra* note 80, at 44 (*citing* ROBERT FISHMAN, *BOURGEOIS UTOPIAS: THE RISE AND FALL OF SUBURBIA* 145 (1987)).
132. *See* DUANY, *supra* note 18, at 127.
133. *See* Brown et. al, *supra* note 128; *see generally*, Patrick Gallagher, *The Environmental, Social and*

- Cultural Impacts of Sprawl*, 15 NAT'L RESOURCES & ENV'T, SPRING 2001, 219, 267 (stating that in Pima County, Arizona "each home in a wildcat subdivision cost the county \$23,000, while contributing only \$1,700 in tax revenues").
134. See DUANY, *supra* note 18, at 128.
135. See Shelly D. Green, *The Search for A National Land-use Policy: For the Cities' Sake*, 26 FORDHAM URB. L.J. 69, 76 (1998).
136. See *id.*
137. See Freilich, *supra* note 128, at 152.
138. See NELEESSEN, *supra* note 93, at 39.
139. See Pendall, *supra* note 74, at 555 *citing* U.S. Department of Agriculture 1995.
140. See Freilich, *supra* note 128, at 152 *citing* FARMING ON THE EDGE, AMERICAN FARM LAND TRUST (1997); *see also* Gallagher, *supra* note 133, at 220.
141. See Freilich, *supra* note 128, at 152.
142. See Ewing, *supra* note 71, at 17.
143. See *id.* at 2.
144. See *id.* at 7.
145. See *id.*
146. See *id.*
147. See *id.*
148. See *id.* at 17.
149. See *id.*
150. See *id.* at 18.
151. See *id.*
152. See *id.* at 17.
153. See *id.* at 20.
154. See *id.* at 22.
155. See DUANY, *supra* note 18, at 116.
156. See *id.*
157. See *id.* at 117-19.
158. See *id.* at 122-23.
159. See *id.*
160. See CHARTER OF THE NEW URBANISM: CONGRESS FOR THE NEW URBANISM I (Michael Leccese and Kathleen McCormick eds., 1996) [hereinafter CHARTER].
161. See *id.* at 2; *see also* Ellis, *supra* note 97, at 262.
162. See CHARTER, *supra* note 160, at v.
163. See Nicole S. Garnett, *On Castles and Commerce: Zoning Law and The Home-Business Dilemma*, 42 WM. & MARY L. REV. 1191, 1223 (2001).
164. See DUANY, *supra* note 18, at 15; *see also* Mark R. Rielly, *Neo-Traditional Neighborhood Development: Community by Design*, 24 ZONING & PLAN. L. REP. 57, 2 (2001).
165. See DUANY, *supra* note 18, 15-17; *see also* Elizabeth Plater-Zyberk *Neighborhood, District, and Corridor* chapter 11, in CHARTER, *supra* note 160, at 79 (discussing the importance of a center in the development of a neighborhood).
166. See DUANY, *supra* note 18, 15-17; *see also* Jonathan Barnett, *Neighborhood, District, and Corridor* chapter 10, in CHARTER, *supra* note 160, at 74 (discussing how the five-minute walk was important to Clarence Perry who designed the New York City Regional Plan of 1929 and that for New

- Urbanism a 10-minute may be the appropriate distance for a neighborhood design).
167. *See id.* DUANY, *supra* note 18, 15-17.
168. *See id.*
169. *See generally*, G.B. Arrington, *The Region: Metropolis, City, and Town* chapter 8, in *CHARTER*, *supra* note 160, at 63.
170. *See* DUANY, *supra* note 18, at 16-17; *see also* Nelessen, *supra* note 93, at 325-329 (outlining a model code illustrating how a neighborhood should be designed).
171. *See* DUANY, *supra* note 18, at 17.
172. *See* Rielly, *supra* note 164, at 2.
173. *See id.*
174. *See id.*
175. *See* Charles C. Bohl, *Controversy: To What Extent and in What Ways Should Government Bodies Regulate Urban Planning?*, *Markets & Morality*, Vol. 6, Number 1, 2 (Spring 2003), available at <http://www.acton.org/print.php>.
176. *See* G.B. Arrington, *The Region: Metropolis, City, and Town* chapter 8, in *CHARTER* *supra*, note 160, at 63; *see generally* Nelessen, *supra* note 93, at 186 (discussing street design and how pedestrians move at a much slower pace than automobiles).
177. *See* NELESSEN, *supra* note 93, at xiv; *see also* Bohl, *supra* note 175, at 9.
178. *See* DUANY, *supra* note 18, at xi.
179. *See generally*, MANDELKER, *supra* note 7, § 9.26 at 412.
180. *See id.* at 411.
181. *See generally, id.* §§ 9.25-9.26 at 410-11 (discussing the process for approval, the discretion of reviewing agency and problems of bargaining and negotiation a PUD).
182. *See* L. W. Lyles, *Legalizing Mayberry: TND Ordinance Compliance Picks Up*, 1000 Friends of Wisconsin and The Land Institute Newsletter 1, available at <http://www.1000friendsofwisconsin.com/nesletters/Vol6Num2p1.shtml> (last accessed Nov. 5, 2002).
183. *See id.*
184. *See* DUANY, *supra* note 18, at 50-51.
185. *See id.* at 51; *see also* Garnett, *supra* note 163, at 1207-09.
186. *See* KELLY, *supra* note 13, at 269.
187. *See* Garnett, *supra* note 163, at 1207.
188. *See id.*
189. *See id.* at 1211.
190. *See* DUANY, *supra* note 18, at 51.
191. *See id.*
192. *See* Reys, *supra* note 1, at 64.
193. *See generally*, DUANY, *supra* note 18, at 51.
194. *See id.*
195. *See id.* at 65-69.
196. *See id.*; *see also* Bohl, *supra* note 175, at 2.
197. *See* DUANY, *supra* note 18, at 66-67.
198. *See id.* at 67.
199. *See* Alan B. Cohen, *Narrow Street Database: Congress for the New Urbanism, Transportation Task Force Initiative* (June 2000), available at <http://www.sonic.net/abcaia/narrow.htm> (last accessed

- Nov. 5, 2002).
- 200.*See id.*
- 201.*See* DUANY, *supra* note 18, at 69.
- 202.*See id.* at 68.
- 203.*See* Douglas Farr, *Block, Street, and Building* chapter 22, in *CHARTER supra*, note 160, at 142.
- 204.*See id.*
- 205.*See* Lyles, *supra* note 182 (discussing how Wisconsin passed a smart growth law (W.S.A. 66.1027) that mandated cities over 12,500 to enact a TND ordinance before January 2002).
- 206.*See generally* NELESSEN, *supra* note 93, at 263-327 (discussing how to design a model ordinance that includes text and illustrations).
- 207.*See id.* at 349.