A COMMENT ON MAKING SUSTAINABLE LAND-USE PLANNING WORK

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Many models exist for creating better communities: for example, smart growth, new urbanism, and sustainable development. City planners have at their disposal a number of model ordinances and policies that could help communities meet the challenges of climate change and looming changes in transport and energy supply. The problem is not the lack of tools, but other policy issues that stymie their effective application. The localized nature of community planning, the inability to overcome local opposition to redevelopment within existing city boundaries, the lack of rigor in assigning costs to new development, the local competition for taxes, and the legacy of pre-existing discretionary reviews hamper our ability to apply the land-use planning tools that have been created.

Land-use planning and regulation is typically a very local function. Regional collaboration among many local governments provides an opportunity to tackle larger scale issues around land use and transportation. Likewise, collaborative area planning involving multiple stakeholders can be used to overcome resistance to mixed-use, higher-density, and transit-oriented development. Implementing cost recovery systems that make new growth pay its own way can help mitigate resistance to new growth by ensuring that current

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> *levels of government services are maintained. Spreading tax revenues among local governments rather than allowing for the local capture of sales and property tax revenues would result in a land-use pattern less skewed toward commercial development and help to incentivize workforce housing. Local discretionary review processes that encouraged flexible land-use patterns have ironically created an inflexible regulatory system that is in need of reform.*
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> "The question we ask today is not whether our government is too big or too small, but whether it works . . . ."[1]

INTRODUCTION

Developing for sustainability is not primarily a problem of a lack of land-use planning tools or regulations but rather of other policy issues that limit the effective application of planning tools we already have. In order to foster sustainable forms of urban development, and especially to effectively deal with climate change, land-use planning tools are essential.[2] These tools, for the most part, already exist—and many models have been and are being created for implementation. They have been packaged and promoted under various labels, such as smart growth, new urbanism, and sustainable development. However, even if local governments implement all of these tools, regulations, and policies, our ability to effectively manage land use to achieve more sustainable development and subsequent reductions in greenhouse gas ("GHG") emissions would still be hampered by governance issues, economic factors, and planning practice.

I am interested in what works. I will point to some issues that currently limit the effective implementation of land-use policies and to some solutions that can be used at the local governmental level to better manage land use to achieve a variety of positive outcomes, among them the reduction of GHG emissions.

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1. Barack Obama, President of the United States, Inauguration Speech, January 20, 2009.

2. *See generally* REID EWING ET AL., GROWING COOLER: THE EVIDENCE ON URBAN DEVELOPMENT AND CLIMATE CHANGE (2008).

This Essay is based on my personal experience of more than two decades of work as a city planner in a very progressive city: Boulder, Colorado. In addition to its liberal reputation, Boulder is a "home rule" city in a state with weak land-use controls. This legal arrangement translates to a local government with wide latitude in its land-use planning decisions.[3] Boulder also has a storied history of using a variety of different land-use planning tools in order to achieve the community's vision: a compact city surrounded by vast open space. There is much to both praise and criticize about these efforts and their outcomes but also a lot to learn. It is in the spirit of Boulder's example that I posit these barriers to effective implementation of local land-use planning tools for sustainable development.

Part I of this Essay addresses issues related to governance. While land-use decisions traditionally have been delegated to the local government, the scale of the problems and opportunities to develop more sustainable patterns of land use are increasingly found at the regional level. This mismatch between local control and regional planning ultimately hinders effective land-use planning. Moreover, good infill and redevelopment projects are often difficult to promote at the narrowest local level because of the concern that immediate neighbors have an undue influence on the outcome of the political process.

Part II addresses economic factors with respect to their influence on the pursuit of more sustainable development. For example, local governments often subsidize the costs of new growth by not charging the true marginal cost of new services. The resulting impact on existing taxpayers and levels of service creates a lack of political support for new growth. Also, the significant effect that locally collected tax revenues have on local government services may cause particular types of land use to be favored over others. For instance, in Colorado, the local capture of retail sales tax drives communities to favor new re-

3. In Colorado, cities and counties are classified as either statutory or home rule. Statutory units of government can implement zoning, subdivision, and other planning tools only as specified by state statutes. Home rule units of government have wider latitude and are limited only by the state or federal constitution. While the tradition of strong home rule has worked against efforts to encourage regional scale planning, it has allowed local governments to be creative in approaches to local land-use problems. *See* COLO. CONST. art. XX, § 6; *see also* COLO. CONST. art. XIV, § 16.

tail development at the expense of new housing, thus adding to GHG emissions by increasing the need for workers to commute.

Finally, Part III addresses the local land-use planning process. Development proceeds either through standard zoning regulations or through some kind of flexible discretionary review process. In our rush to provide flexibility, local governments have neglected the use of zoning as a more expeditious route to quality development. The result may turn out to be a very inflexible basis for adaptive redevelopment.

I. GOVERNANCE

Land-use and transportation issues have become increasingly regional, transcending local political boundaries. Yet, the ability to effectively create sustainable regions is hampered by a strong tradition of local land-use regulation. Fostering collaboration across political and economic sectors is a promising strategy to deal with these issues. Likewise, within local jurisdictions, infill and redevelopment can be hampered by the strong objections of neighboring residents and property owners. Both using comprehensive planning and involving multiple stakeholders in collaborative processes to define the physical planning of whole neighborhoods are effective approaches to combat this "not in my backyard" ("NIMBY") viewpoint.

A. Local Versus Regional Land-Use Planning

In the federal system of land-use governance, each of the fifty states holds the power to regulate the private use of land. The states in turn set up the parameters of land-use governance at the local level.[4] Some states, such as Oregon, retain significant power to guide the actions of their local governments, but generally land-use decisions are left to local government bodies.

The result is a highly decentralized approach to land-use planning. For instance, Colorado contains sixty-four counties

4. *See* INT'L CITY MGMT. ASS'N, LOCAL PLANNING: CONTEMPORARY PRINCIPLES AND PRACTICE 3–22, 180 (Gary Hack et al. eds., 2009).

and 271 municipalities.[5] Each local unit of government pursues its own vision of community development, some employing sophisticated systems of land-use management and others having no zoning rules at all. An economist might note that this system results in a high degree of choice for individual consumers who can use their personal resources to maximize their preferred community characteristics. But under this model, there are missed opportunities that would otherwise accrue if land-use planning, for at least some significant issues, was managed at a regional scale. For example, individual communities' land-use decisions can increase transportation costs and associated GHGs. If community Z establishes itself as a base for employment, manufacturing, or professional offices but does not provide for workforce housing, then that housing will be found in more distant communities. The resulting commute will mean an increase in miles traveled and a subsequent increase in GHG emissions.

America is increasingly urban, and its population is increasingly concentrated within megapolitan areas, which aggregated together make up "megaregions."[6] Yet, we have not evolved our system of governance to account for a scale of development in which each megaregion may cover many cities, towns, counties, or even states. When planning occurs at the regional rather than local scale, it is easier to achieve a better balance of jobs and housing, to provide regional systems of

5. Div. of Local Gov't, Colo. Dep't of Local Affairs, Colorado Counties as of August 25, 2009 (64 Counties), http://dola.colorado.gov/dlg/local_governments/counties.html (last visited Aug. 25, 2009); Div. of Local Gov't, Colo. Dep't of Local Affairs, Active Colorado Municipalities as of August 25, 2009 (271 Municipalities), http://dola.colorado.gov/dlg/local_governments/municipalities.html (last visited Aug. 25, 2009).

6. America 2050 defines megaregions as:

> [L]arge networks of metropolitan areas, where most of the population growth by mid-century will take place. Examples of megaregions are the Northeast Megaregion, from Boston to Washington, or Southern California, from Los Angeles to Tijuana, Mexico. They comprise multiple, adjacent metropolitan areas connected by overlapping commuting patterns, business travel, environmental landscapes and watersheds, linked economies, and social networks.

See About America 2050, http://www.america2050.org/about.html (last visited June 21, 2009). There are 11 defined megaregions in the United States, including the Front Range of Colorado. *Id.*

transit and open space, and to focus higher-density, mixed-use development near transportation nodes.

Because local jurisdictions are ill equipped to deal with issues at this larger scale, regional government would be one solution. But other than in the Twin Cities of Minnesota and metropolitan Portland, this approach is rarely seen or desired. Local governments are generally reluctant to give up their autonomy, and citizens view these entities as just one more needless layer of government. Councils of government ("COGs") and metropolitan planning organizations ("MPOs") could serve some of these planning functions, but they lack the necessary implementation tools to effectively carry out land-use plans.[7] Moreover, COGs are only voluntary associations, and as such they lack the regulatory authority to manage land use. MPOs, on the other hand, deal with transportation funding and, therefore, only indirectly deal with land use. Indeed, due to rapid growth at the fringes of metropolitan areas, the political boundaries of COGs and MPOs may not even include the most rapidly growing parts of their region. For instance, the Denver Regional Council of Governments does not include Weld County to the north of Denver. Yet, the American City Business Journals, Inc. predicts that Weld County will be the seventeenth fastest-growing county in the United States over the next fifteen years.[8]

One solution that does hold promise is a collaborative effort involving MPOs, local governments, and other stakeholders, such as business interests, environmentalists, and those engaged in human welfare and health.[9] In the Denver area,

7. COGs are voluntary regional organizations that represent member local governments and that provide cooperative planning, coordination, and technical assistance on issues of mutual concern that cross jurisdictional boundaries. *See* 23 U.S.C. § 134 (2008). MPOs are transportation policy-making organizations that represent local governments and transportation authorities. *Id.* Federal transportation funding is based on plans developed by MPOs in urbanized areas with populations greater than 50,000. *Id.* Statewide and metropolitan transportation planning processes are governed by federal law. *See* 23 U.S.C. §§ 134–135 (2008).

8. *See* Chris Casey, *Study: Weld to Lead State in Growth Pace*, GREELEY TRIBUNE, June 4, 2009, http://www.greeleytribune.com/article/20090604/NEWS/906049994/1001.

9. *See, e.g.*, Kathryn Foster, *Regionalism on Purpose*, LINCOLN INST. OF LAND POL'Y 33 (2001); Matthew J. McKinney & Shawn Johnson, *Working Across-Boundaries: People, Nature, and Regions*, LINCOLN INST. OF LAND POL'Y 1–9

the regional planning efforts of the Denver Regional COG became more "real" because of the efforts of the Metro Mayors Caucus, a cooperative alliance of the mayors of thirty-seven cities and towns in the Denver metropolitan region. The Caucus developed a consensus document called the Mile High Compact, which binds local jurisdictions to the goals of the plan.[10] Such a collaborative effort, not mandated by any higher authority, was able to bind together a variety of interests around a common future for this region.

B. NIMBY

NIMBYism is a term used to describe the attitudes of individuals who are affected by development that they would prefer to see go elsewhere—anywhere else. This attitude is a very human response. We spend a lot of energy trying to control our environment so as to maximize our quality of life, and once we have attained a desired level of quality, we seek to protect it against change that could diminish that quality. Not many people equate high population density with a higher quality of life. NIMBYism can, therefore, be a significant barrier to appropriate infill and redevelopment projects that foster affordability, a sustainable job-housing balance, and transit-oriented development. However, when NIMBYism blocks sustainable projects, the alternative is more automobile-dependent sprawl and corresponding GHG emissions.

To take the Boulder example: a very suitable, vacant lot sat at the edge of downtown Boulder, defying development. A succession of developers proposed hotels and mixed-use projects but failed to win approval from the city. One developer even went so far as to translate the myriad goals of the Boulder Valley Comprehensive Plan into a development proposal so that, in theory, the development matched exactly what the community said it wanted. However, NIMBYism played a

(2009); Douglas Porter & Allan Wallis, *Exploring Ad Hoc Regionalism*, LINCOLN INST. OF LAND POL'Y 3–5 (2002).

10. *See* Kathleen McCormick, *Regional Thinking*, URB. LAND, Sept. 2006, at 88–98. *See generally* Metro Mayors Caucus, Mile High Compact, Aug. 10, 2000, *available at* http://www.metromayors.org/Downloads/MHC.pdf.

large role in the proposal's eventual defeat. People who lived in neighborhoods directly affected by the proposal were fearful of issues like traffic impacts. However, other Boulder residents were worried about the implications that approving a large-scale project might have on their own neighborhoods, since similar development regulations governed properties closer to them. Ultimately, it took an area-wide planning process that dealt with the potential future development of the entire downtown to set the stage for successful development of this site.

There are very good arguments that population growth in the aggregate may lead to decreased quality of life and threaten the quality of water, air, land, and food. Still, experts predict significant increases in the U.S. population. The U.S. Census Bureau projects that the country's population will grow by about seventy million people by 2030.[11] Thus, city planners and the jurisdictions they work for must decide how best to accommodate this growth: more sprawl or more compact cities, more highways or more transit, more single-use development or more mixed-use development, and more market-rate housing or more affordable housing.

When the choice is posed in this way, the answers seem simple. But actually delivering compact cities, public transit, mixed-use living, and affordable housing is much more difficult. Maintaining compact communities and developing passed-over sites or intensifying the use of existing land through redevelopment sets up a fundamental conflict with those individuals who live near the land at issue. In my experience, only political leadership that looks at the impact of the project on the whole community, rather than just the local impact, combined with a process where the affected individuals have a say in the project, can overcome this conflict. As with the Boulder example, the willingness of political leaders to focus on the important role that a particular area, such as the downtown, plays in the community and to do the hard work of hammering out the details with the affected stakeholders leads to more successful outcomes.

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11. *See* Robert Bernstein & Tom Edwards, *An Older and More Diverse Nation by Midcentury*, U.S. CENSUS BUREAU, Aug. 14, 2008, *available at* http://www.census.gov/Press-Release/www/releases/archives/population/012496.html.

Unfortunately, by the time a development project gets in front of a decision-making body—be it a planning commission or elected officials—it is too late in the process to make meaningful changes. As Hans Bleiker comments in his training on public participation, "There is not much hearing that takes place at a public hearing."[12] On-the-spot attempts to satisfy the claims of various stakeholders by redesigning a project are rarely productive and often lead to unintended consequences. Developments are complicated—they involve a balance between building, open space, circulation, and utilities, and adjusting even one of these elements can adversely affect another. For example, creating an open-space buffer between a proposed development and an affected neighbor as a condition of project approval at a public hearing might push the building onto land needed for water and sewer lines. Thus, projects need to be carefully reviewed in a holistic way to solve a wide variety of development issues simultaneously. One way to get early feedback on development proposals from stakeholders and decision-making authorities would be to utilize a "sketch plan" review process for significant projects prior to the start of the formal development review process.

Local governments already have tools to help them incorporate broader growth concerns and combat NIMBYism. First, if a community establishes a vision for its future that not only expresses its goals and aspirations but also makes a declaration of future land use for the entire community, decision makers then have something tangible to guide their decisions on individual projects. This community vision, often called the general or comprehensive plan, clarifies the community's priorities and helps with decisions concerning the trade-offs between the various competing goods involved in any given decision.

Comprehensive plans usually combine broad policy statements with specific references to more detailed plans for specific areas and functions of a community. They function as an umbrella statement of the intended future of the community. Of course, plans themselves do not make decisions, but they

12. Hans Bleiker, Remarks at the Systematic Development of Informed Consent Training in Boulder, Colorado (June 13–16, 1995). *See generally About IPMP*, INSTITUTE FOR PARTICIPATORY MANAGEMENT & PLANNING, http://www.ipmp.com/index.php/about/ (last visited June 21, 2009).

can make decision making easier. For instance, in Boulder's downtown planning effort, the comprehensive plan goals of neighborhood livability, preservation of historic buildings, and economic development all had to be balanced in the context of a particular time and place. The comprehensive plan can provide an expression of the broader goals of the community so that when decision makers are confronted by the parochial concerns of a specific neighborhood, everyone can be reminded of why a particular proposal may serve the broader interests of the community as a whole.

Another useful approach is to undertake physical planning for areas that are likely to undergo extensive change, thus specifying where new streets, paths, parks, schools, and other public facilities should go and the character of the private development. This type of planning can create a "bridge" between the broader community goals expressed in a comprehensive plan and the detailed review of a specific development project. These physical plans can provide the necessary consensus for the following kinds of questions: Within a defined area, what is the mix of land uses? What are the circulation patterns of pedestrians and bicyclists and the traffic patterns for cars and transit? What are the various amenities needed to make a livable neighborhood, and what is the plan to secure them?

Ultimately, these specific area plans can be formally adopted and used to guide decisions concerning capital improvements, zoning, development review, and similar processes. The development of the plan usually involves a stakeholder process and a variety of community-engagement techniques, including workshops, charrettes, and open houses. A good way to start this exercise is to have the various stakeholders consider the likely physical outcome of current regulations and development standards. If the current zoning and development regulations are not consistent with the direction in which the community wants to go, changes can be made to achieve a more desirable outcome.

The subsequent development projects that come forward after the adoption of these plans will be much easier to review because the plans create a specific context within which the development proposal either does or does not fit. Landowners and developers benefit from this certainty. While development is an inherently speculative venture, developers gain confi-

dence when a community has made clear its desire for a particular brand of development. Additionally, the directly affected parties benefit from tailored development standards that both protect their interests and create community benefits from additional development.

In the downtown Boulder example, a wide variety of stakeholders—property owners, developers, business owners, neighborhood representatives, and historic preservationists—came together and reviewed the then-current plan for development of the downtown. No one liked the future anticipated by the regulations: the build-out was too great, the edges with the neighborhood were too abrupt, development opportunities were missed, and the preservation of the special character of older buildings was not ensured. An advisory committee met with city staff and representatives of various city advisory boards over the course of several months to develop a better plan that accounted for the various values represented within the group. The committee's efforts resulted in a physical plan of the future development of the downtown area, which was then incorporated into revised zoning and development standards. Development proposals following the adoption of the physical plan were embraced by the stakeholders and sailed through the review process. Now, ten years later, old and new players representing different values in the community are beginning to question the projects that developed under the plan. This new sentiment suggests that such planning efforts have a "shelf life" and must be renewed periodically to reflect changing opinions.

In sum, encouraging planning and implementation for sustainable development at the regional scale will help capture some of the benefits of new growth that cannot effectively be secured at the local level. Engaging in long-range planning for the entire community through comprehensive planning and for specific neighborhoods through physical area plans will help develop broader agreement around community goals and clearer expectations for all stakeholders involved in the development process around specific projects. Both of these planning efforts will help reduce NIMBYism.

II. ECONOMICS

Individuals' perceptions about the benefits and costs of new growth can be strongly affected by the impact of such growth on their personal wealth and quality of life. If they perceive new growth as benefiting their community and lives, they are more likely to support it. If they perceive the opposite and feel that new growth is adversely affecting their wealth or diminishing their quality of life, then they likely will oppose it. Communities can better ensure citizen support if they secure the necessary funds from new growth to maintain quality community services.

In order to understand local government decisions concerning development, as Deep Throat says to Bob Woodward in the movie *All the President's Men*, one must "[f]ollow the money."[13] Local governments are apt to favor land uses that improve their fiscal position, a pattern that is sometimes referred to as the fiscalization of land use. Unfortunately, this view can drive local land-use decisions in ways that do not favor sustainable development. But more equitable systems of local tax distribution involving revenue sharing could solve this problem.

A. Growth Paying Its Own Way, or Not

People often oppose new development because of its potential impact on their public services. Unless a community adequately accounts for the costs associated with serving new development, taxpayers may face either a reduced quality of service or higher taxes in order to keep current services up to the same level. At a minimum, a community should require the construction of public improvements located within the boundaries of a proposed project. Local streets complete with pedestrian and bicycle improvements, water and sewer lines, common open space, and provisions for other utilities such as energy and communications should also be part of local development requirements. Beyond these minimal requirements, communities should provide for other public services too, even

13. ALL THE PRESIDENT'S MEN (Warner Bros. Pictures 1976).

if they are not necessarily found on every development site. They should provide for police and fire protection for increased public safety, community and regional parks, libraries, and office space for local government administrative functions. This could be accomplished either in-kind or through development impact fees.

By approaching new development in this way, the incremental costs associated with new growth are recovered, and local services can keep pace with the growth. Presently, communities sometimes use forgiveness of fees to encourage new businesses to come to town or to encourage existing businesses to expand rather than leave. The resulting competition between communities requires that existing taxpayers either subsidize the costs of not collecting adequate fees or experience reduced service levels. Instead, creating a separate fund to incentivize economic development activities can help separate the two policy goals: (1) making growth pay its way, and (2) encouraging appropriate economic development without penalizing existing taxpayers.

B. Local Government Finance

You are what you eat, but in local government, you develop what you tax. Although revenues for local government operations can come from a variety of sources, usually a particular source of funding pays the lion's share. To take the Boulder example, the biggest single source of funds in the city's 2009 budget was sales tax, which contributed 39 percent to the overall budget.[14] Sales tax is generated through retail establishments, and since Colorado law establishes that those political entities that generate local taxes get to keep them,[15] retail establishments within the city limits of Boulder contribute substantially to local revenues. In contrast, property tax added a mere 10 percent to Boulder's budget.[16] The remaining half of

14. *See* CITY OF BOULDER, CITYWIDE SUMMARIES 5 (2008), *available at* http://www.bouldercolorado.gov/files/Finance/Budget/2009_approved_budget/citywide_summaries.pdf.

15. COLO. CONST. art. X, § 7.

16. CITY OF BOULDER, *supra* note 14, at 5.

the budget came from fees for services and intergovernmental transfers.

Spreading a high tax base over a small population base promotes a higher quality of services for residents. However, to take this proposition to an absurd extreme, in Boulder, the highest-value land-use pattern would be to combine a substantial retail base that attracts outsiders to come to the community to spend their shopping dollars (and then leave to go back to their homes elsewhere) with a very small local residential population that would benefit from high sales tax revenues and thus high-quality public services. Generally, in Colorado, local government dependence on locally generated sales tax drives land-use decisions towards retail development, often to the exclusion of housing—especially workforce housing. The lack of housing to supply the local demand translates to higher housing costs and more commuters who live in distant communities. More driving leads to more GHG emissions.

In Boulder and Broomfield, each community has attempted to create the latest retail shopping environment, aiming to attract outside shoppers. This competition has led to a boom/bust cycle of mall developments and a general over-building of retail. For instance, when Broomfield built the FlatIron Crossing shopping center and the towns of Louisville and Superior developed big-box stores not encouraged in Boulder, Boulder's Crossroads shopping mall entered into a long period of decline—until Boulder redeveloped it into a new shopping center called Twenty Ninth Street. This causes more travel as shoppers from surrounding communities drive to regional retail shopping centers out of town, creating more GHG emissions.

However, if one crosses from Colorado into neighboring Wyoming, cities have revenue-sharing programs to reallocate retail sales tax back to local jurisdictions based on their number of residential units.[17] This strategy keeps retail development scaled to the needs of the local community and, if anything, provides an incentive for residential development. This strategy also provides the link back to sustainable development: a land-use pattern that encourages the development of housing alongside employment and commerce, thereby reducing GHG production from transportation. If communities

17. WYO. STAT. ANN. § 39-15-211 (2007).

shared their tax revenues on the basis of housing units or population, it would remove a local government's fiscal incentive for promoting a particular land use at the expense of others and would lead to more balanced, sustainable communities.

III. PLANNING PRACTICE

In moving towards more sustainable development, communities sometimes find that their existing zoning and development regulations are outmoded and do not foster the type of development the communities seek. Thus, in order to encourage smart growth, these communities often push developers to avail themselves of an alternative—the discretionary development review process. The resulting irony is that the very development review processes that planners once designed for flexibility are now a source of inflexibility in the context of redevelopment.

Local land-use codes include standards for development spelled out in zoning codes. Zoning codes establish the "as of right" standards for development—for example, the prescribed building placement on a lot, height, parking requirements, etc.—as well as set out some form of discretionary review that allows for waivers from those standards with the intention of providing flexibility and creativity in design.[18] Projects that go through discretionary review are often referred to as planned unit developments ("PUDs") or site review projects. Local governments designed discretionary review processes to overcome the rigid set of standards in conventional zoning. The result of this alternative to standard zoning has been the realized dream of more creatively designed developments that mix housing types, introduce a mixture of uses, and provide for common open space and unique lot and street patterns. Yet, at the same time, discretionary review has also created an administrative nightmare that restricts the ability of urban development to adapt over time.

PUDs are complex. Rather than a published set of zoning rules governing development, each project approved through a discretionary review process has its own set of parameters that govern changes. When someone inquires what the appropriate

18. *See* INT'L CITY MGMT. ASS'N, *supra* note 4, at 287–90, 298–306.

set of development regulations might be for a PUD, the planner cannot rely on the zoning district standards but must instead determine the specific set of standards that apply to that particular development. While most PUDs build out within a reasonable amount of time, eventually, property owners may want to make reasonable, minor changes to their property—like enclosing a carport or upstairs deck, or adding an air-lock entry into their home. Hopefully, the planners of yesteryear kept good notes and have duly recorded them so that they are easily retrievable!

Record keeping is not the only problem with PUDs. Many of these developments maximized their density by getting credit for common open space throughout the development, creating a certain development density. As a result, if a homeowner would like to perform a simple building expansion, he or she is told that the open space budget has been used up by all of the owners in the development. These PUDs are locked in unless all of the owners can agree to amend the approved plan.

Therefore, the very tool that provided flexible development standards for the initial construction of the development becomes the source of inflexibility as later changes are proposed. This situation not only annoys the individual homeowners who want to build an addition but also frustrates the ability of a community to encourage more sweeping changes, like mixed-use or higher-density housing.

When this type of development became popular in Boulder in the 1970s, the as-of-right zoning standards were, for the most part, neglected. In fact, the city used the unreasonableness of zoning standards to channel developers into the discretionary review process, where the community could benefit from improved design and perhaps negotiated benefits. Zoning that was antithetical to the desired development pattern was left in place so that developers would have to go through the review process in order to "do the right thing." Boulder and other communities were left with zoning standards they no longer believed in and that could not be used to foster appropriate development.

Zoning reform is needed because zoning is too big to fail. Form-based zoning is an example of reformers trying to reinvigorate this community development tool by calling into question suburban development standards for building setbacks,

parking, and the like.[19] Form-based zoning prescribes very specific building forms designed to enhance the character of particular areas. For instance, a "main street" development pattern would be reinforced by stipulating that buildings be built right at the sidewalk. A change to zoning to better describe the physical outcome stipulated in area planning is a powerful tool in implementing a new vision for a community or neighborhood without the difficulty of discretionary reviews. For example, if, after an area plan is adopted, the community really wants retail establishments to front directly on a street, zoning can be created that requires "build-to" lines rather than building setbacks.[20] Or if the community wants to encourage mixed-use development with retail on the ground floor and housing above, a zoning district can be created that makes that type of development "as of right," requiring no lengthy development review process at all. Then, when changes are desired in the future, the standards of the zoning can apply, rather than requiring an amendment to a discretionary review.

Where possible, retiring old discretionary reviews to allow those areas to undergo adaptations under conventional zoning might be another way to make doing the right thing easier. If an appropriate zoning district, consistent with the intent of the original approval, can regulate changes to areas developed under a PUD, then zoning would be an easier process to manage change over time.

I often speak to planners who raise the concern of tracking and managing change within developments that were approved under discretionary review processes. Aside from better records management, little has been done to address this concern. The large backlog of special approvals that limit flexibility for the future cries out for innovative legal and administrative approaches.

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19. *See* Form-Based Codes Inst., Definition of a Form-Based Code (Jan. 29, 2008), http://www.formbasedcodes.org/ definition.html.

20. A building setback is usually expressed as the minimum distance a building should be placed away from property lines. For instance, a typical front yard setback in a low-density housing district might be twenty-five feet. The house could be placed twenty-five, thirty, or forty feet from the front property line, as long as it meets the minimum setback. A "build-to" line requires that a building must be placed at a certain point on a lot. For instance, in commercial districts where a "main street" development pattern is desired, the requirement might be that the building be built at the front property line rather than be set back at all.

CONCLUSION

There will undoubtedly be innovation in land-use planning tools and regulation. Not every good idea has been thought of and not every reform has been brought forward. Our current problem is not the lack of planning tools, but rather, the lack of their use. But even with a full complement of land-use planning tools at a community's disposal, there are barriers to effective implementation that deserve our attention and efforts. Land-use planning today is too local, too parochial, too timid in assigning the true costs of growth, too driven by the fiscal needs of local government, and too tied to outmoded approaches to development review. These issues are worthy subjects of inquiry in our efforts to develop a more sustainable future.