

MARKET-ORIENTED PLANNING: PRINCIPLES AND TOOLS

BY SAMUEL STALEY AND LYNN SCARLETT

Executive Summary

Under urban planning in the United States, virtually every major development is subjected to the vagaries of the rezoning process and the uncertainties associated with legislative review by planning boards and city councils. In many cases, the planning process creates unnecessary costs and delays and inhibits investments in land as communities evolve over time.

Surveys of the impact of zoning and other land-use controls suggest local regulations add 20 to 30 percent to the cost of housing. Moreover, planners are so absorbed by process and implementation that they spend little time on larger, strategic issues. A survey of 178 California cities, for example, found that landuse permit-processing and rezonings account for almost 60 percent of planners' time. They spent less than 10 percent of their time in general plan preparation. Moreover, modern planning has spawned an unbounded politicization of decisionmaking regarding land use.

Twenty-first century planning will need to incorporate the evolutionary and dynamic aspect of communities to be successful. This implies accepting and integrating the fundamental role markets play in allocating resources in a market economy.

Urban planning and land-use regulations need to adopt market-oriented principles and concepts that build upon a vision of communities as constantly evolving. Planning processes need to recognize the role markets play in meeting consumer expectations and preferences. And, planning practice must limit the politically arbitrary nature of development approval, moving toward a common law, nuisance-based standard for regulating land development. The focus should be on those directly and tangibly affected by the proposed development.

Several practical recommendations flow from these general principles. Specifically,

- Planning should include a presumption in favor of property owners, requiring public hearings only if parties directly affected by the project identify tangible impacts on their interests. This approach does require that developers properly notice neighbors of proposed developments.

- Local planning decisions should be protected from regional or state interference unless a clear public interest exists or regional spillover effects are not addressed in the proposed plan.
- Developers should be expected to modify projects to minimize negative impacts, but these impacts should be tangible and measurable.
- Planning boards should adopt zoning districts that accommodate a large number of uses to facilitate changing needs.
- Cities should adopt administrative review processes that set forth clearly defined criteria for what is acceptable by local planning boards.
- Property owners and developers should bear the costs of property development, including infrastructure directly associated with that development. However, property owners should be given latitude to determine what kind of infrastructure is appropriate.
- Standing in public hearings should be limited to parties clearly and directly affected by a proposed development.
- Development approval should be based on a set of clearly defined and stable rules, rather than on prescribing specific land-use outcomes. Stability can be enhanced by requiring a supermajority to modify planning board decisions and by requiring pre-application meetings.

Planning that relies on end-state prescriptions and unbounded political intervention into landowner choices, even where tangible impacts are not apparent, is both costly and incompatible with dynamic economies. Market-oriented planning offers both greater predictability and greater flexibility so that communities can evolve as economies and consumer preferences change over time.

Part 1

Introduction

Dr. Robert Gaston thought his small, unobtrusive business would be a healthy addition to a growing middle class community in the Midwest. A small farming community just thirty years ago, the village had successfully made the transition to city status and become a classic bedroom community. Now, as the city and its surrounding areas had become even more intensively developed, demand was growing for small, community-based services.

His veterinary practice would be ideal: as a sole practitioner, he would work with small domestic animals on an out-patient basis, retain the residential character of the neighborhood, and keep a well-maintained professional office in an older ranch home on a busy thoroughfare. He liked the location so much he wanted to maintain the home exactly as it was, restricting renovation to the interior and retaining as much foliage and lawn as possible. The fact that the site was located on a major thoroughfare into the city's downtown, and within a few thousand yards of several hundred acres of new residential construction, meant the proposed site was ripe for commercial redevelopment.

What made the site even more attractive was its selling price. The home's price had been reduced \$10,000 because families with children did not want a house on a busy road leading into the city's quaint, historic downtown. They preferred the more quiet streets of interior neighborhoods. By changing the use from single-family residential to professional commercial office space, the new business would simply reinforce trends toward more commercial development evident less than one mile from the proposed clinic. Even the members of the local planning board thought Dr. Gaston's plans were good for the community and a natural part of the evolution of the strip along the road. Then the planning board unanimously voted to reject the rezoning.

Is this an example of abusive governmental interference and oppression? Not quite. It's an unfortunate example of the quandary many citizens, businesses, and professional planners find themselves in because modern planning is based on flawed and unworkable principles.

At issue in Dr. Gaston's request was not whether his proposed project would benefit the community. Virtually everyone, even those testifying against the rezoning request, agreed the use was a good one, and Dr. Gaston's proposal did an excellent job of melding the changing commercial use into the residential neighborhood. The problem was that modern zoning is intended to tie land uses to a particular view of the world, usually the world that existed at the time the zoning code was adopted. Since zoning codes are rarely updated comprehensively, conflicts similar to this one are inevitable and increasingly common. Communities change, and zoning codes rarely forecast what these changes will be nor do they readily accommodate an evolution of land uses.

Few planners in the 1960s and 1970s, for example, predicted the technological and telecommunications explosions of the 1980s and 1990s which would dramatically increase the demand for home office space.

Most zoning codes strictly limit the types of activity allowed in residential districts, incorporating blanket prohibitions on commercial activity regardless of its impact on the neighborhood and property owners. Zoning codes may prohibit any home-based enterprise that increases traffic beyond “normal” levels. This provision alone may limit a business that receives several package deliveries a day, or a salesperson who may use her home as a base from which she drives to see clients. As a result, many zoning codes do not provide for home offices, effectively forcing self-employed residents underground. Home-based businesses are tolerated only at the discretion of the local zoning authorities.

In this particular Midwestern community, the zoning code was adopted along with a comprehensive plan in 1974. All land was separated into land-use zones consistent with the comprehensive plan. The comprehensive plan had not been updated since it was adopted. So, in 1997, virtually all development is still subjected to a legislative review process evaluating current proposals based on a 1970s vision of the future.

In Dr. Gaston’s case, in order for his clinic to locate in this city, he needed permission from the local government to change the land use from residential to commercial. He had two choices based on this city’s zoning. He could request a zoning change to O-1, professional office. O-1, however, accommodated attorneys, medical doctors, and other professions, but did not explicitly mention veterinarians. The zoning code also does not give the local planning board discretion to allow uses not specified explicitly in the zoning code. Thus, Dr. Gaston could have requested O-1—in fact, in this case, the planning board may have approved it—but he still would not have been allowed to locate his clinic at the site.

The only other zoning district that allowed a veterinary clinic was B-3, neighborhood businesses. This use also allowed bowling alleys, gasoline filling stations, auto repair shops, bakeries, candy shops and numerous other high-volume retail establishments intended for high-traffic commercial areas. Allowing a B-3 zoning would then allow by law many other uses for this site (once the zoning was approved) even though they would have significant impacts on neighbors through higher traffic congestion, higher noise levels, and lower property values.¹ Notably, Dr. Gaston’s site plan also included 17 parking spaces even though he felt he would need, at the most, nine. The city’s off-street parking regulations for B-3 districts required Dr. Gaston to overbuild his parking lot, reducing green space and threatening the existing trees and foliage he wanted to keep to retain the residential character of the building.

The bottom line was summed up by one nearby property owner: “I’m not really opposed to the veterinary clinic and would be more receptive if it could be zoned O-1. But I own property in the township that is zoned B-3 and I would be opposed to B-3 zoning close to my home.”

The result? The planning board turned down the rezoning request. No one was satisfied at the end of the process. In the words of one of the planning board members: “I don’t like turning down a good use for property based on bad zoning.” But that is what the planning board essentially had to do.

¹ In fact, if B-3 zoning were approved, neighbors would be unable to object to any of these uses regardless of their impact on their neighborhood, property values, or other aspects of the community. The legal status of zoning means that all these other uses would be legally protected, regardless of their creation of nuisances, because zoning creates a legally protected development right for specified uses. See discussions in William Fischel, *The Economics of Zoning Laws: A Property Rights Approach to American Land Use Controls* (Baltimore: Johns Hopkins University Press, 1985).

Part 2

The Need For A New Vision

The zoning code, trapped by an outdated comprehensive plan and zoning districts, could not accommodate a worthwhile and beneficial property development in the above example. Planning, and more specifically zoning, created a lose-lose situation: the local citizen and property owner lost because he could not sell his property to a willing buyer, and the community lost because it did not have a viable business that could service the growing needs of its population.

This situation is not unique. Under contemporary urban planning in the United States, virtually every major development is subjected to the vagaries of the rezoning process and the uncertainties associated with a legislative review at the planning board and the city council level. In many cases, the planning process creates unnecessary costs and delays, and inhibits valuable investments in land as communities evolve and grow over time.²

Urban planning needs a significant overhaul, theoretically and practically. At the national and macroeconomic level, policymakers have recognized the importance of markets for organizing society's resources efficiently and productively. Indeed, debates over national industrial policy were resolved almost a decade ago as economists and policymakers recognized the superiority of markets over planning in national economies.³ However, at the local level in the United States, markets are still often viewed with suspicion and skepticism. Nowhere is this more evident than in land-use planning as conceived and practiced at the local and regional levels.

In fact, planning is taking on an increasingly prominent role as planners attempt to implement regional and statewide growth controls.⁴ The cases of Oregon and Florida, in particular, are lauded as examples of "effective" statewide planning because they feature strong, centralized control over land development and effective enforcement of state planning goals. The catchword, notes one observer of the growth in regional

² See, for example, the discussions in Robert H. Nelson, "Zoning Myth and Practice—From Euclid into the Future," *Zoning and the American Dream: Promises Still to Keep*, ed. Charles M. Harr and Jerola S. Kayden, (Chicago: Planners Press, APA, 1989), pp. 299–318.; Bernard H. Seigan, "Land Use Regulations Should Preserve Only Vital and Pressing Government Interests," *Cato Journal*, vol. 10, no. 1 (Spring/Summer 1990), pp. 127–158.

³ R.D. Norton, "Industrial Policy and American Renewal," *Journal of Economic Literature* 24, no. 1 (1986), pp. 1–40. See also Donald C. Lavoie, *National Economic Planning: What is Left?* (Cambridge, MA: Ballinger Books, 1985); John Kendrick, "U.S. Economic Policy and Productivity Growth," *Cato Journal*, vol. 4, no. 1 (Fall 1984), pp. 387–400. Periodically, some policy analysts attempt to reinvigorate the industrial policy debate. With the collapse of the centrally planned economies in Eastern Europe and Asia, most proposals have carried little weight in the policy arena, particularly in the U.S.

⁴ See Jay M. Stein, ed., *Growth Management: The Planning Challenge of the 1990s* (Newbury Park: Sage Publications, 1993).

planning, is “consistency”:⁵ cities, villages, and townships are required by law to create master plans (usually with 10 to 20 year time horizons) that are consistent with the planning goals and objectives established by the state.

An almost universal tenet of development control, or growth management, is that markets need to be guided by the public sector to maximize the public interest. This is most evident in the ongoing debates over urban “sprawl” and farmland preservation. Concern over farmland preservation was one of the primary reasons Oregon implemented regional planning and urban growth boundaries.⁶ Concern over sprawl was one of the primary reasons Florida trumped market development through statewide planning.⁷ Even here, however, these concerns may not be as relevant as proponents of regional planning suggest.⁸

Nevertheless, many planning practitioners recognize the limitations of planning as a discipline and profession (and that planning will never supplant markets as a practical matter). Even Oregon is beginning to feel the repercussions of regional planning as housing costs climb to record levels. These costs are in part a result of planners prohibiting development beyond arbitrary boundaries established by state and regional planning agencies.

These planning rules are rarely developed within a market framework or context. More than a decade ago, planner Lloyd Rodwin recognized the ability of markets to organize and direct development activity in a productive and efficient way relative to urban planning. “In short,” he wrote, “it does not take great insight today to see that, however inadequate the market may be, there is no reason to suppose that urban planners will necessarily do a better job, at least in the short or intermediate term. This reality of the inadequacy of planners and their tools offsets the other reality of the inadequacies of the market and price mechanism.”⁹

Unfortunately, planning theory still has not integrated market-oriented thinking into its approach to urban development. This paper begins to fill this void by providing a preliminary set of general guidelines for integrating market-oriented thinking into a general framework for growth management and development control.

A full integration of market-oriented thinking into contemporary planning requires two steps. The first step is to outline a general set of principles that provide a foundation for policy recommendations. The second step is to outline specific, practical reform recommendations geared to local planning policy and development-permission procedures.

We turn first to a brief discussion of why change in land-use planning policies and processes is necessary.

⁵ John DeGrove and Patricia Metzger, “Growth Management and Integrated Roles of State, Regional, and Local Governments,” *Growth Management: The Planning Challenge of the 1990s*, ed. Jay M. Stein, p. 6.

⁶ Deborah A. Howe, “Growth Management in Oregon,” *Growth Management: The Planning Challenges of the 1990s*, ed. Jay M. Stein, pp. 61–75.

⁷ Randall G. Holcombe, “Growth Management in Florida: Lessons for the National Economy,” *Cato Journal* 10, no. 1 (Spring/Summer 1990), pp. 109–125; Reid Ewing, “Is LA-type Sprawl desirable?” *Journal of the American Planning Association* 63, no. 1 (Winter 1997), pp. 107–126.

⁸ See the general discussion in Peter Gordon and Harry W. Richardson, “Are Compact Cities a Desirable Planning Goal?” *Journal of the American Planning Association* 63, no. 1 (Winter 1997): 95–106. For an application to a specific region, see the critique of Portland, Oregon’s regional planning approach in John A. Charles, “Let’s Unleash Growth’s Benefits,” *The Oregonian*, April 12, 1997 and Randal O’Toole, “Packing ‘Em In,” *The Oregonian*, November 17, 1996.

⁹ Lloyd Rodwin, *Cities and City Planning* (New York: Plenum Press, 1981), p. 230.

Part 3

The Planning Problem

Most planning architects envision an “ideal” plan as one that is:

- comprehensive, encompassing all types of land uses (e.g., residential, commercial, industrial, and open space);
- internally consistent, to avoid contradictions such as accommodating commercial development in a residential community;
- rational and information-based, leaving little up to the spontaneous evolution of the market or community;
- future-oriented, with a long time horizon, often 20 or more years;
- goal-oriented, with specific priorities, to identify trade-offs and encourage political decisions over future development.

Moreover, the ideal plan would steer otherwise unfettered private activities into “socially useful” (however defined) directions.

While planning ideals are lofty, reality has diverged from those ideals. How has planning fallen short of its intended goals? One indicator is the cost of implementing the plans. Surveys of the impact of zoning and other land-use controls suggest local regulations add 20 percent to 30 percent to the cost of housing.¹⁰ Moreover, planners are so absorbed by the “business of planning”—the implementation and enforcement of the master plan—that they rarely have time to focus on larger issues such as strategic planning. A survey of 178 California cities, for example, found that land-use permit processing and rezonings account for almost 60 percent of planners’ time.¹¹ Planners spent less than 10 percent of their time in general plan preparation. Hence, small, unobtrusive veterinary clinics are frozen out of development because zoning codes and comprehensive plans are not updated to reflect contemporary trends and realities.

¹⁰ Numerous studies exist showing these impacts. See Anne B. Shlay and Peter H. Rossi, “Putting Politics into Urban Ecology: Estimating Net Effects of Zoning,” *Urban Policy Analysis: Directions for Future Research*, ed. Terry Nichols Clark (Beverly Hills: Sage Publications, 1981), pp. 257–286; Norman Karlin, “Zoning and Other Land Use Controls,” *Resolving the Housing Crisis: Government Policy, Decontrol, and the Public Interest*, ed. M. Bruce Johnson, pp. 35–55. (San Francisco: Pacific Institute for Public Policy Research) 1982; Lawrence Katz and Kenneth Rosen, “The Interjurisdictional Effects of Growth Controls on Housing Prices,” *Journal of Law and Economics*, vol. 30, no. 1 (April 1987), pp. 149–160; Jane H. Lillydahl and Larry D. Singell, “The Effects of Growth Management on the Housing Market: A Review of the Theoretical and Empirical Evidence,” *Journal of Urban Affairs*, vol. 9, no. 1 (1987), pp. 63–77; Farhad Atash, “Local Land Use Regulations in the the USA: A Study of their Impacts on Housing Cost,” *Land Use Policy*, vol. 7, no. 3 (1990), pp. 231–242.

¹¹ Linda C. Dalton, “The Limits of Regulation: Evidence from Local Plan Implementation in California,” *Journal of the American Planning Association* (Spring 1989), table 1, p. 156.

One caveat is in order: urban land-use rules and plans come in many forms. They range from the simple—zoning ordinances that set forth broad and general land-use designations such as “residential,” “commercial,” and “industrial”—to the complex and highly prescriptive. For example, by the 1980s, New York City had added over 2,500 amendments to its zoning laws, which had received no comprehensive overhaul since the 1950s.¹² Plans also run the gamut from simple zoning rules to long-term and highly detailed, top-down general plans.

Nonetheless, most U.S. ventures into land-use planning have experienced several common pitfalls. Harvard professor Alan Altshuler’s taxonomy of these problems is useful as a summary.¹³

Decision gridlock: current planning processes have often fostered delays, high regulatory costs, and litigation in response to the perceived erosion of rights to use property. Sometimes property owners are not permitted to develop their property at all because of local moratoria on building permits. At other times, approval can take years and include public referenda on the project.

Perversity: the planning process and zoning criteria sometimes result in unintended consequences such as unaffordable housing, increased traffic congestion, and loss of open space. These results perversely have occurred even when plans were designed to improve housing access, reduce traffic, and create open space.

Incoherence: problem boundaries often don’t match jurisdictional boundaries, leaving few opportunities to limit spillover effects among communities. For example, Joel Garreau has described the emergence of some 181 “edge cities” over the past several decades, many of which do not lie within a single legal boundary.¹⁴

Mismatch between static plans and dynamic economies: visionary end-state plans of the 1960s, ‘70s and ‘80s have failed to anticipate what the real world of the 1990s looks like. Planners failed to anticipate such changes as the feminist revolution and the emergence of dual-income households, the computer revolution, and workplace transformations into horizontal and often highly mobile organizations. Also unanticipated were just-in-time inventorying, telecommuting, and warehouse retailing, among many other changes in economic form and content.

In addition to these shortcomings, modern planning has also spawned an unbounded politicization of decision-making regarding land use. This is because zoning confers development rights on property irrespective of neighborhood impacts and other potential nuisances.¹⁵ In the example from the Midwestern suburb at the beginning of this paper, a sole practitioner veterinary clinic was not approved because the city’s zoning would, by law, allow numerous other uses that could be potentially damaging to the local neighborhood.

¹² Samuel R. Staley, *Planning Rules and Urban Economic Performance: The Case of Hong Kong* (Hong Kong: Chinese University Press/Hong Kong Centre for Economic Research 1994), p. 47, n4. For an overview of New York City planning and proposed reforms, see Peter D. Salins, “Simple Rules for a Complex Society: Redesigning New York’s Zoning,” *City Journal*, vol. 3, no. 1 (Winter 1993), pp. 40–49.

¹³ Alan Altshuler, “The Governing of Urban Land: Critical Issues and Research Priorities,” Lincoln Institute of Land Policy, Cambridge, MA 1994.

¹⁴ For a more complete explanation of Edge Cities, see Joel Garreau, *Edge Cities* (New York: Doubleday, 1991).

¹⁵ Robert Nelson, “Zoning Myth and Practice—From Euclid into the Future,” in *Zoning and the American Dream: Promises Still to Keep*, eds. Charles M. Haar and Jerola S. Kayden, pp. 299–318. See also Fischel, *The Economics of Zoning Laws*.

Zoning has effectively nullified private property rights with respect to land development: the decision to develop land is made through a legislative process. When land is developed through zoning, notes land-use lawyer Bernard Seigan, land-use decisions will be made politically. “Almost everyone except those who will directly benefit from the development, such as potential homeowners, tenants, and shoppers, can be expected to enter the fray,” he observes.¹⁶ As spheres of autonomy made possible by property rights have eroded, common law rules regarding rights, responsibilities, and “nuisance” protection have been replaced by statute law and land-use decisions by referenda, political jockeying, and majority rule. The prescriptive focus of plans, zoning, and other land-use and construction ordinances have invited battles over building details. In some cases, development plans have been rejected by planning boards because proposed houses did not have the right proportion of brick, used too much stucco siding, or could potentially increase traffic volumes.¹⁷

¹⁶ Seigan, “Land Use Regulations Should Preserve Only Vital and Pressing Governmental Interests,” p. 154.

¹⁷ Several examples can be found in Samuel R. Staley, “Urban Planning and Economic Development: A Transaction Cost Approach” (Columbus, OH: The Ohio State University, 1997), pp. 124–183. (unpublished doctoral dissertation)

Part 4

Challenges for 21st-Century Planning

Twenty-first-century planning will need to incorporate, explicitly, the evolutionary and dynamic aspect of communities to be successful. This implies accepting and integrating the fundamental role markets play in allocating resources in a market economy, including land. Thus, urban planning and land-use regulation must adopt market-oriented principles and concepts before these processes can realize the goals and objectives of planners.

Market-oriented planning (MOP) has a few core principles that provide a general framework for developing specific recommendations for local planning practice. The MOP paradigm, at its core, builds upon a vision of communities as constantly evolving and interrelated sets of institutions.

Communities and economies are dynamic and complex. Complexity theorist Stanley Kaufmann describes economies as a vast grid of interconnected products.¹⁸ For example, cars are connected to roads which are connected to fast food joints. These restaurants are in turn connected to french fries, which are connected to plates, which are connected to washing machines or landfills. As Kaufmann notes, it is impossible to lay out all economic relationships in a planner's diagram.

Economies are complex and, increasingly, economic development comes from leveraging knowledge and providing service—personalized and specialized service. Entrepreneurial activity is constantly recreating the world according to many personal and diverse visions. Innovation and resilience to changing economic and personal circumstances are keys to economic prosperity in a dynamic, global economy. Often, these innovations are antithetical to the basic principle of planning: future-directed decisions about community needs. The microchip, rise in dual income families, and telecommuting have all transformed the community in ways unanticipated by the most knowledgeable and experienced urban planners of the 1950s, 1960s and 1970s. Zoning codes and comprehensive plans, for example, still often use exceedingly narrow criteria for permitting home-based businesses, if they are allowed at all.

In an “idea-based” economy, economic activity has become more “footloose.” Firms are not tied to place; nearness to raw materials is often no longer critical. Instead, what is important to firms are supplies of skilled workers; low overall operating costs; the ability to change building form, work style, and production content quickly; and desirable amenities to attract employees.

In this dynamic, idea-based context, the public interest is best served by institutions that can register, process, and meet the needs and desires of all individuals within the community or neighborhood rather than

¹⁸ Stanley A. Kauffman, *At Home in the Universe: The Search for Laws of Self-Organization and Complexity* (New York: Oxford University Press, 1995). See also Joseph Marshall, “Creativity at the Edge of Chaos,” *Working Woman*, February 1997.

prescribing outcomes that represent the vision or desire of planners and politically effective, special-interest constituents.

Land-use decisionmaking institutions should be grounded in voluntary exchanges, since voluntary exchanges mean reduced conflict and mutual gain. Public policy should facilitate community evolution in ways that harmonize the interests of current *and future* individuals within a community.

The fundamental challenges faced by planners, local residents, and their elected officials are:

- what rules will determine the boundaries of autonomous action; and
- what rules will resolve conflicts in those realms where different people's rights and actions intersect?

These challenges translate into four more specific questions:

- What rules will facilitate entrepreneurship, innovation, and a dynamic, evolving economy?
- What institutions will create opportunities for cross-jurisdictional coordination and market-driven problem-solving?
- What institutions and decision rules will ensure linkages between developer/consumer decisions and the public impacts associated with those decisions?
- What rules will create a sort of "bounded instability" that preserves spheres of autonomy that are a key source of innovation, dreaming, opportunity, and personal satisfaction, while still limiting public harms and balancing competing rights?

The next sections attempt to begin answering these questions by outlining the principles and tools of a market-based system of urban planning.

Part 5

Principles of Market-Oriented Planning

The following observations outline a few of the core principles of market-oriented planning (MOP).

A. OBSERVATION # 1: Communities are Open Systems

Local planning policy and development regulations are often framed within a general world view that presumes communities can be designed or built as permanent features of society. This approach views whole communities as similar to its individual components—the buildings, bridges, parks, or other physical elements of a community. Planning, presumably, simply arranges the components together to fit some idealized community as determined by planners or other policymakers.

This “closed-system” approach is implicit in many of the paradigms that have driven local planning in the United States, as well as Europe, beginning with the City Beautiful and Garden City movements in the late 19th and early 20th centuries and continuing into contemporary times through neotraditional town planning (or the New Urbanism). The closed system approach is evident as part of Florida’s top-down, state-directed growth management policy. Planners and elected officials passed Florida’s growth management law in an attempt to create higher density, compact cities, a policy at odds with the desires of most Floridians.¹⁹

In other cases, modern planning attempts to convert open systems to closed systems. Urban growth boundaries, or UGBs, attempt to create green belts (strips of undeveloped property) around built-up areas such as cities. The concept underlying the UGB is that more densely populated cities are preferred to less dense suburbs, and regions that close off development in outlying areas will create a more desirable compact city. As investment is funneled into higher-density areas, communities can be designed to accommodate basic human needs outside a market framework.

A core value driving these paradigms is that if cities, communities, and neighborhoods can be “designed” or engineered in the right way, they will function properly. In many cases, market-driven development and “livability” are considered conflicting goals.

¹⁹ Ivonne Audirac, Anne H. Shermyen and Marc T. Smith, “Ideal Urban Form and Visions of the Good Life: Florida’s Growth Management Dilemma,” *Journal of the American Planning Association*, vol. 54, no. 4 (Autumn 1990), pp. 470–482. See also Randall G. Holcombe, *Florida’s Growth Management Experiment* (Tallahassee, FL: James Madison Institute, December 1994).

Most general and master plans begin with a vision of what the community should look like after a period of time, usually 10 or 20 years. As a result, most local general plans and zoning maps do not integrate uncertainty and/or spontaneous development as a fundamental element of the plan or planning process. Zoning maps, for example, are amended *ad hoc*, variances are legally permissible only under very restrictive conditions, and the presumption is almost always against changes to the general plan. Under most zoning and local planning laws, property owners must ask for, and receive, permission to develop their property from a government agency or planning board before any investment in land redevelopment can take place. Major developments are almost always subjected to lengthy public deliberation through public meetings and hearings as a matter of process.

MOP recognizes that communities, neighborhoods, and cities evolve over time in a dynamic, evolutionary way. Planning theory and tools must fully integrate the concepts of change and evolution into a framework that embraces evolving land uses as a fundamental building block of local planning and development regulation. Market-oriented planning strives to institutionalize mechanisms that facilitate community evolution through decentralized, voluntary processes. As a practical matter, economic markets serve this function more effectively than political markets because they are driven by *consumers* and, by necessity, are *forward-looking*.

PRINCIPLE #1: As a basic planning principle, growth management should incorporate a presumption in favor of market trends and dynamic evolution.

B. OBSERVATION #2: Markets Allocate Most Resources Effectively and Efficiently

Contemporary planning views markets with skepticism and suspicion. Market-driven development, many planners believe, is driven by the short-term (and narrow) interests of property owners and land developers. Thus, they believe, markets tend to maximize short-term private profits at the expense of the public interest. Many planners presume that market behavior does not incorporate long-term concerns or interests into the decision to buy or develop property. An implicit, underlying theme of much planning theory is that market behavior is uncoordinated or unordered.

MOP recognizes that, under appropriate rules, markets are efficient and equitable mechanisms for allocating land uses. Under the right institutional conditions (where the property rights and responsibilities of all affected property owners are considered), markets maximize public welfare. Long-term goals and the public interest are maximized because land development is by nature speculative: investments in land and property are based on expectations that consumers will be willing to purchase property in a desirable community and that businesses will want to locate in commercial and industrial centers.

PRINCIPLE #2: Planning theory should embrace this more realistic concept of markets in which markets are understood to incorporate long-term goals and dynamic consumer and commercial expectations.

C. OBSERVATION #3: Political Processes are Inefficient Means with Which to Make Land-Use Decisions

Planning theory implicitly assumes that voter involvement in specific land-use decisions is socially efficient and beneficial. This assumption is most clearly evident in recent trends toward “ballot box zoning,” where planners have almost universally heralded this trend as another way of encouraging citizen participation in local planning issues and land development.²⁰

Ballot-box decision-making, however, is also an unstable, uncertain, and slow approval mechanism. It can also be arbitrary and inequitable. When applied to economic decisions, political processes tend to generate significant inefficiencies as well as inequities.

Some cities, for example, require community approval through referenda for all rezoning applications. Typically, referenda suffer from poor turnout, giving special-interest groups more weight at the ballot box than community sentiment may warrant. In addition, the delays and uncertainty associated with this procedure discourage property development generally, regardless of the scope or quality of the proposed project. In fact, a study of 63 Ohio cities found that cities that use the ballot box on zoning issues suffer a “growth penalty.”²¹ Communities run a very real risk of reducing the quality of property development and redevelopment because of the transaction costs implicit in this arrangement.

Further, economic decision-making through collective voting severely constrains and weakens property rights that establish the spheres of autonomy critical to economic investment, private planning, development and growth. By subjecting property development to a legislative approval process, property rights are effectively negated, since public approval is a prerequisite for exercising those rights. Planning, as it is currently conceived and practiced, shifts the regulatory role of government from one of protecting individual spheres of autonomy, and mitigating specific harms and social impacts, to one that supersedes individual rights and replaces them with potentially unbounded majority rule or special-interest dominance.

Consider the following paradox. Conventional wisdom considers planning to be an essential part of land development. Yet, in reality, planning boards and city councils approve the lion’s share of rezoning applications. One study of Santa Barbara, for example, found that 95 percent of zoning requests were approved by the local coastal commission.²² In another study of twenty California cities, communities that were supportive of growth approved 95 percent of proposed zone changes and amendments to the general plan.²³ Communities that were unsupportive of growth approved 72 percent of zone changes and amendments to the general plan. Thus, even “slow growth” communities altered their plans to conform to changing needs, most of which are market driven. Yet the planning process imposes additional costs on development, regardless of its appropriateness or the inefficiencies inherent in a legislative approval process. To the extent results of land development with planning approval are the same as they would have been if land development were left to market processes, the costs of obtaining development permission from a local planning board represent a net loss to society—the process imposed higher costs than were necessary to reach the same goal.

²⁰ See, for example, the discussion in Roger Caves, *Land-use Planning: The Ballot-box Revolution* (Newbury Park: Sage Publications, 1992).

²¹ Staley, *Urban Planning and Economic Development*.

²² Seigan, “Land Use Regulations Should Preserve Only Vital and Pressing Governmental Interests.”

²³ Dalton, “The Limits of Regulation,” table 4, p. 159.

MOP recognizes that governments perform their most-important tasks when they set the rules of the game for market behavior, rather than make decisions over specialized, unique circumstances and prescribe outcomes. By subjecting development projects to public review, local governments are forced into a case-by-case review of land development. Ultimately, this lengthens the approval process, slows land redevelopment, and subjects development projects to an often arbitrary and unpredictable approval process.

PRINCIPLE #3: MOP attempts to limit the politically arbitrary nature of development approval by subjecting land development to administrative rather than legislative processes.

D. OBSERVATION #4: When Spillover Impacts From Development Occur, Their Effects Can Be Mitigated Through Performance-Based Public-Sector Planning.

Governments are most effective when they protect clear and definable interests. Market spillover impacts—circumstances in which market activity imposes costs or benefits on third parties (for example, erosions, noise or air pollution)—may require government or third-party action. Also, cases in which market transactions fail to provide enough of a good or service (for example, open space and habitat protection) may warrant some government action to create incentives for the provision of non-market amenities.²⁴

The original intent of zoning was to protect neighbors against development that could reduce property values by imposing harms.²⁵ Zoning was upheld by the U.S. Supreme Court as an appropriate use of the “police powers” of government to protect the general welfare.

However, before restrictive public interventions occur, the negative impacts of property development should be demonstrable, and developers should be given the opportunity to correct for these impacts. To some extent, the rezoning and plan-approval process in existing planning systems accomplishes this goal. Development approval is a result of bargaining between local officials (incorporating citizen concerns) and property developers. In order to obtain approval, developers must substantially satisfy citizen concerns and conditions required by staff and the local planning board.

The approval process creates a bargaining environment in which developers and property owners must meet *all* concerns, regardless of their actual impacts. Often, for example, proposed developments are scaled down to inefficient levels or are forced to adopt less-beneficial designs because developers must allay citizen opposition based on vaguely defined and unsubstantiated concerns over property values or “community impact.” Thus, while the Santa Barbara coastal commission approved 95 percent of zoning requests, they only allowed 60 percent of the proposed housing units.²⁶ In another case in the Midwest, vocal opposition

²⁴ Even in these cases, if amenities are valued by consumers, developers have an incentive to provide them. Often, for example, apartments that face lakes or scenic areas rent for higher prices than apartments that face streets, driveways or other less picturesque scenes. Developers will provide lakes, ponds, open space and other fields if they believe consumers are willing to pay for their provision. Thus, many planned communities represent attempts by developers to provide specific amenities and services through the private sector. See Fred Foldvary, *Public Goods and Private Communities: The Market Provision of Social Services* (Brookfield, VT: Edward Elgar, 1994).

²⁵ This does not necessarily imply that politics was absent from the adoption of zoning laws. Historically, zoning ordinances were adopted in cities with ward-based election systems, suggesting that politicians adopted zoning to confer benefits on specific, geographically targeted constituencies. James Clingermayer, “Distributive politics, ward representation, and the spread of zoning,” *Public Choice* 77, no. 4 (1993), pp. 725–738.

²⁶ Siegan, “Land Use Regulations Should Preserve Only Vital and Pressing Governmental Interests.”

from a grass roots slow-growth group led the local planning board to require that a new housing development hook up to a nearby city's sewer system even though using a proposed septic system was both environmentally safe and less expensive.²⁷ The requirement was made because of unsubstantiated fears that the development would lower water pressure for nearby residents.

MOP adopts a market-impact standard for addressing concerns over property development, moving toward the common law principle of nuisance as a standard for government regulation of voluntary, private activity. This focus differs from traditional zoning practice, which confers development rights on property owners regardless of the impact on adjacent property owners.²⁸ It also differs from modern practice in which, through political pressures, the "use as of right" notions of traditional zoning have become subject to manipulation, reducing development certainty and requiring project modifications even where impacts are trivial or represent purely subjective perspectives of planners.

Traditionally, if someone wanted to add another floor to his house in a residential district, blocking the sun for adjacent property owners that reduced their quality of life, the would-be builder had a legal right to redevelop the property under the zoning law regardless of the impact on his neighbors. By contrast, a common law-type nuisance standard would give the neighbor standing to have clearly demonstrable damages resulting from the redevelopment compensated or mitigated. At the same time, this approach requires demonstration of actual "harm" or impact in order to require compensation of "nuisance" mitigation. This approach enhances the role of planners as mediators within the community, while still preserving "spheres of autonomy" for property owners.

PRINCIPLE #4: Local planning should move toward a common law, nuisance-based standard for regulating land development.

E. OBSERVATION #5: Local Politics Tends to Give Narrow Special Interests Too Much Weight and Influence.

The political decision-making process is poorly suited to the task of making decisions about resource-allocation activity, including property development. Property development, first and foremost, is about transforming an economic resource (land) from a less-productive use to a more-productive use. Planning policy should reflect and encourage this transformation of uses to maximize community welfare.

Current planning procedures place developers and public officials in a bargaining relationship that unnecessarily drives up costs. The process is based on a fundamentally static conception of community. The land-use plan sets out in detail the planned development of the community. Any deviation is contrary to the plan. Since the plan, in theory, lays out the community's "values," the presumption is always in favor of the plan, irrespective of its applicability and relevance over time. As a result, all development applications are presumed rejected and the burden is on property owners and developers to prove the benefit of their proposal to a government agency. This inevitably hinders change and innovation and protects the status quo. In addition, by giving all members of a community standing in a public hearing, special-interest groups that represent a minority in a community (for example, a no-growth coalition), can raise objections during the

²⁷ Staley, *Urban Planning and Economic Development*, p. 119.

²⁸ Fischel, *The Economics of Zoning Laws*.

public-hearing process. Bargaining drives toward compromise where developers modify their proposals to meet objections to expedite development approval.

For example, a senior citizen coalition may object to the addition of attached townhouse units, preferring single family, detached housing in its place. The developer will reduce the density of his project, perhaps eliminating the townhouses, to meet these concerns regardless of broader community sentiment on the project.

By adopting administrative approval procedures that favor market trends in land development, the arbitrariness of development approval is minimized. By limiting standing in public hearings to directly affected property owners, the impact of special interests in the development control process is also minimized.

PRINCIPLE #5: Standing in public hearings should be limited to those directly and tangibly affected by the proposed development.

These general principles provide a market-oriented framework for conceptualizing land-use planning on the local and regional level. The practical manifestations of these principles are discussed in the next section.

Observations	Principles
Communities are open systems	1. As a basic planning principle, growth management should incorporate a presumption in favor of market trends and dynamic evolution.
Markets allocate most resources effectively and efficiently	2. Planning theory should embrace this more realistic concept of markets in which markets are understood to incorporate long-term goals and dynamic consumer and commercial expectations.
Political processes are inefficient means with which to make land-use decisions	3. MOP attempts to limit the politically arbitrary nature of development approval by subjecting land development to administrative rather than legislative processes.
When spillover impacts from development occur, their effects can be mitigated through performance-based public-sector planning.	4. Local planning should move toward a common law-nuisance based standard for regulating land development.
Local politics tends to give narrow special interests more weight and influence than they would in the community at large.	5. Standing in public hearings should be limited to those directly and tangibly impacted by the proposed development

Part 6

Key Elements of Market-Oriented Planning

How can these principles be implemented in a practical way? Recognizing that Market-Oriented Planning attempts to capture the dynamic, evolutionary nature of property development, the following recommendations can be incorporated into local planning practice:

A. Presumption in Favor of Property Owners

Property development should be permitted as of right unless explicit action is taken by the planning board or local legislative body to evaluate the application. This can be coupled with maximum time limits for review by staff, planning commissions, or local legislative bodies.

Since MOP also explicitly incorporates market impacts and the pursuit of non-market amenities as a justification for public intervention in land development, developers can be required to notify neighbors and others directly impacted by their proposed project. Project proposals should be subjected to public hearings only if city staff, council members, planning commission members, or parties directly affected by the project identify tangible impacts on their interests (see “C. Objections” below).

B. Home Rule

Local planning decisions should be protected from regional or state planning decisionmaking. The extent to which local developments have negative impacts on communities and neighbors can best be evaluated at the local level. Decentralized governance allows policy to match citizen tastes. Thus, diversity in local government accommodates diversity among and within communities.²⁹

²⁹ See the discussion in Sam Staley, “Bigger is Not Better: The Virtues of Decentralized Local Government,” Policy Analysis No. 166 (Washington, D.C.: Cato Institute, January, 1992), pp. 21–23. Note that this argument rests on the dynamic implied in Charles Tiebout’s insight that residents “vote with their feet,” moving to those communities that meet their needs and preferences. The approach here differs, however, because Tiebout assumed residents had the same preferences for public services, zero transaction costs, and were cost minimizers. In the political economy framework used here, residents are assumed to have different preferences for the levels and quality of public services and community amenities. In a sense, residents are “quality maximizers” rather than “cost minimizers” although they are all constrained by limited resources (e.g., income). See Charles A. Tiebout, “A Pure Theory of Local Expenditure,” *Journal of Political Economy* 64, No. 5 (October 1956), pp. 416–424.

According to a number of studies on regional governance, these consolidations have had an unimpressive record in relieving traffic congestion, supplying affordable housing, and so on.³⁰ Moreover, other research demonstrates that presumed economies of scale in provision of most urban services do not exist.³¹ Indeed, regional governance appears to result in some efficiency losses in service delivery. Moreover, lower levels of government are more likely to restrain spending than are consolidated governments.³²

State and regional planning authorities are less likely to have the knowledge or forecasting ability to more accurately or reliably predict land use trends on the local level. They are also more displaced from community interests and desires. Therefore, intervention from regional or state planning agencies or authorities should occur only when a clear public interest or need is identified, or spillover effects are identified and not addressed in the proposed plan.

C. Objections Limited to Tangible Impacts

Developers should be expected to modify projects to minimize the negative impacts of their proposed development, but these impacts should be tangible and measurable. Groundwater run-off or traffic congestion, for example, are identifiable and measurable impacts that can be assessed objectively. Developers should be expected to consider the external costs imposed by their development on neighbors and the community.

In general, planning and zoning approval should not control development for aesthetic reasons, or concerns over layout and density unless the project is located in a district with a clear purpose, intent, and identity (for example, historic districts). Empirically, the impacts of these negative externalities tend to be very localized, affecting close neighbors rather than entire neighborhoods or communities.³³

D. Adopt Broadly Defined and Mixed-Use Zoning Districts

Planning boards should minimize the likelihood that projects will be delayed through a legislative approval process by adopting broadly defined zoning districts that accommodate a large number of uses. Rezoning is often prompted by poor forecasting by local planners and/or out-of-date master plans.

A parcel of property, for example, may be zoned for strip retail even though market signals indicate a better use is professional office or multifamily housing. In many communities, a development plan incorporating professional office or multifamily housing would constitute a change in use and be subjected to a two-stage approval process. The first stage would consider rezoning the property to a land-use designation consistent with the proposed use (for example, retail to professional office or multifamily residential). The second stage would consider the proposed development plan for the site. (In most cases, the rezoning approval would also include evaluation of a preliminary site plan.)

³⁰ William A. Fischel, "What do Economists Know about Growth Controls? A Research Review," in *Understanding Growth Management: Critical Issues and a Research Agenda*, ed. David J. Brower, David R. Godshalk and Douglas R. Porter (Washington, D.C.: The Urban Land Institute, 1989), pp. 59–86.

³¹ Staley, "Bigger is Not Better," pp. 16–17.

³² An excellent survey of this literature can be found in George A. Boyne, "Local Government Structure and Performance: Lessons from America," *Public Administration*, vol. 70 (Autumn 1992), pp. 333–357.

³³ J.M. Pogodzinski and T.R. Sass, "Measuring the Effects of Municipal Zoning Regulations: A Survey," *Urban Studies*, vol. 28, no. 4 (1991), pp. 597–621.

MOP would facilitate land-use changes that meet changing and evolving community needs by allowing diverse types of development as of right. Mixed-use districts are an excellent mechanism for promoting diversity within communities. An alternative would be broadly defined land-use districts that allow a variety of uses. For example, commercial districts could allow a wide range of commercial uses, from retail to professional office to hospitals to universities.

E. Administrative Site Plan Review

Once land is rezoned, site plans should be reviewed as quickly and efficiently as possible. This goal, in most cases, means adopting an administrative review process with clearly defined criteria for what is acceptable by local planning standards. Administrative site plan approval can also be coupled with performance bonuses to encourage the inclusion of certain characteristics. For example, under its flexible-zoning system (no longer used), Fort Collins, Colorado allowed higher densities if developers incorporated certain features (for example, landscaped buffers between roads and buildings) into their development plan.³⁴ The critical element of the Fort Collins model was flexibility, so that developers could make trade-offs about their site based on market conditions and trends.

F. Developer Payment For Infrastructure Needs

Property owners and developers should bear the full costs of property development. Local communities should not be expected to subsidize property development by extending sewers, roads, and other infrastructure to the site.

While some communities use impact fees to accomplish this goal, a more appropriate mechanism would simply require property developers to pay the full financial burden of extending these features to their property using materials and technology consistent with the existing infrastructure and with their own development needs.

While many communities increasingly require developers to pay for infrastructure, they give developers little latitude in determining what kind of infrastructure is appropriate. The result is often high-cost infrastructure that exceeds the development-site needs. For example,

- Local governments sometimes specify roads with lane-widths (12-feet) appropriate for interstate highways—such lane-widths impose higher costs but are unnecessary for safety or smooth traffic flow on residential streets.
- Storm drainage piping is sometimes required to accommodate flows that are many times greater than any calculated necessary capacity.
- Many communities also require site landscaping according to prescriptive rules rather than allowing site developers to landscape according to what is prudent and aesthetically attractive to potential buyers and tenants.

³⁴ William D. Eggers, “Land Use Reform Through Performance Zoning,” Policy Insight No. 120 (Los Angeles, CA: The Reason Foundation, 1990).

- Subdivision regulations in many regions of the country require that roads have concave crowns (roads bow upward) to force stormwater to drain to pipes on both sides of the road even though new technology and materials permit lower-cost convex crowns toward the center line where one pipe drains stormwater.

A “developer-pay” approach needs to be accompanied by flexible design criteria, so that individual developers can determine what level of infrastructure and what construction standards make sense for the intended users of that infrastructure.

G. Standing in Public Hearings Limited to Parties Clearly and Directly Affected by Proposed Development

An important feature of MOP is correcting for “third-party” impacts of property development. Intensive development of a property may tangibly impact neighbors who might now be subjected to more traffic congestion, noise pollution, or other tangible impacts. Public hearings should be used primarily as a mechanism to disclose these tangible, measurable impacts so they can be addressed in the project proposal. Developers should address these concerns by modifying their projects. Alternatively, if agreement between developers and property owners cannot be reached, third parties such as conflict-management teams or local courts can mediate and adjudicate disputes.

H. Process-driven Planning

Land-use planning should embrace change and the evolutionary nature of urban development. Development approval should be based on a process—a set of clearly defined rules—rather than an end-state vision of what the community should look like 10 or 20 years down the road. This recommendation accepts recent empirical evidence that, in practice, zoning decisions tend to follow market trends rather than vice versa.³⁵

Several changes could also be made to existing local planning systems to streamline the approval process.

1. Supermajority requirement to modify planning board decisions

Planning board decisions and deliberations are important mechanisms for refining development plans. They also serve a mediating function between developers and neighboring property owners. While local communities should provide an appeal process, local planning systems should presume that recommendations of planning boards are fair and accurate. A supermajority requirement would build certainty into the planning process, strengthen the ability of planning boards to mediate between affected parties, and provide a local appeal process.

³⁵ Daniel P. McMillen and John F. McDonald, “A Simultaneous Equations Model of Zoning and Land Values,” *Regional Science and Urban Economics*, vol. 22 (1991), pp. 55–72; J.M. Pogodzinski and T.R. Sass, “The Theory and Estimation of Endogenous Zoning,” *Regional Science and Urban Economics*, vol. 23, no. 5 (October 1994), pp. 601–630.

2. One-stop permit processing

One-stop permit processing streamlines the permit application and approval process, particularly for small and less-experienced developers. This approach could significantly reduce the transaction costs associated with development permission and approval.

3. Mandatory pre-application meetings with planning staff, consultants, and planning boards

Pre-application meetings with staff and planning boards can be effective ways to identify externalities and market impacts before significant resources have been invested in a project. Modifications to development proposals and site plans are more efficiently incorporated at the early stages of the design process. Modifications at advanced stages of site development, however, can significantly increase costs. Mandatory pre-application meetings can minimize some of these costs and lay the groundwork for a working relationship between developers, planners, and other public officials.

4. Mandatory public-sector planning³⁶

Ironically, current planning practice regulates private property development without imposing the same restrictions on the public sector. This is particularly troublesome given the wide range and variety of long-term investments in infrastructure made by state and local governments.

State, local, and regional governments should be required to plan the location of infrastructure and secure the necessary rights of way and easements before development takes place. This does not imply that the public agencies begin constructing infrastructure immediately. Rather, public agencies should lay out clearly where they expect to place key infrastructure such as roads, bridges, interchanges, sewers, and water lines. This provides certainty for private developers but does not obligate the public sector to infrastructure development until land-use patterns are well established through market processes. This also gives public (or private) infrastructure agencies flexibility: they could construct a two-lane road at early stages of development, expand to a center-lane road later in the development phase, and eventually develop the roadway into a four-lane highway.

If public agencies were subject to mandatory planning requirements, and were required to buy rights of way early in the process, many of the objections to traffic congestion and other nuisance effects of development might disappear, reducing the politicized nature of the zoning and planning process.

³⁶ The authors thank Randall Holcombe at Florida State University for this insight. The authors, of course, claim sole responsibility for its form and presentation.

P a r t 7

Conclusion

One of the most important tasks confronting planners is how they will integrate market-oriented thinking into planning theory and procedures. Planning should not rely on end-state planning and static prescriptions to direct land-use and property development.

The lessons of the last 50 years—the decades of suburbanization and decentralization—are that land-use planning operates within a broader market framework. Integrating market-oriented thinking into planning theory and practice will require substantive changes to the way planners view the process of land development. It also may require changing their view of the regulatory role of local government in the urban development process.

About the Authors

Samuel Staley is Vice President for Research at The Buckeye Institute for Public Policy Solutions in Dayton, Ohio and directs the Urban Futures Program at the Reason Public Policy Institute in Los Angeles, California. He also serves as member of his local planning board and formerly served as a member of his local Board of Zoning Appeals and Property Review Commission.

Lynn Scarlett is Executive Director of the Reason Public Policy Institute in Los Angeles.

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