

TO SPRAWL OR NOT TO SPRAWL: A NATIONAL PERSPECTIVE FOR KANSAS CITY



*Western Historical Manuscript Collection
Kansas City*

Charles N. Kimball Lecture

Dr. Robert H. Freilich

Partner, Freilich, Leitner & Carlisle, Kansas City, Missouri
Professor of Law, University of Missouri-Kansas City, School of Law
Editor, *The Urban Lawyer*, the National Journal on State and Local
Government Law of the American Bar Association
Chair, Planning and Law Division of the American Planning Association
A.B. University of Chicago; J.D. Yale Law School;
M.I.A. Columbia University School of International Affairs,
LL.M. & J.S.D. Columbia University School of Law

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The Charles N. Kimball Lecture Series

is a tribute to our late friend and civic leader, Dr. Charles N. Kimball, President Emeritus of the Midwest Research Institute, to acknowledge his support of the Western Historical Manuscript Collection-Kansas City and his enduring interest in the exchange of ideas.

Charlie Kimball was a consummate networker bringing together people and ideas because he knew that ideas move people to action. His credo, “Chance favors a prepared mind,” reflects the belief that the truest form of creativity requires that we look two directions at once – to the past for guidance and inspiration, and to the future with hope and purpose. The study of experiences, both individual and communal – that is to say history – prepares us to understand and articulate the present, and to create our future – to face challenges and to seize opportunities.

Sponsored by the Western Historical Manuscript Collection-Kansas City, the Series is not intended to be a continuation of Charlie’s popular *Midcontinent Perspectives*, but does share his primary goal: to encourage reflection and discourse on issues vitally important to our region. The topic of the lectures may vary, but our particular focus is on understanding how historical developments affect and inform our region’s present and future. The Lectures will be presented by persons from the Kansas City region semi-annually in April, near the anniversary of Charlie’s birth, and in October. Additionally, presentations may occur at other times of the year, if opportunities present themselves.

WHMC-KC appreciates the substantial financial underwriting and support for this Series provided by the **Charles N. Kimball Fund** of the Midwest Research Institute and by other friends of Charlie Kimball.



1911-1994

INTRODUCTION

to the Third Charles N. Kimball Lecture

David Boutros

Associate Director, WHMC-KC

Welcome to the third Charles N. Kimball Lecture. Before we get started I would like to acknowledge a number of people who made the lecture today, and in some cases the series as a whole, possible. Marlene Nagel at the Mid America Regional Council; Becky Garten, president of the Kansas City Metro Section of the American Planning Association; and Doris Nagel at the Midwest Research Institute each provided names for our mailing list for the announcement of this event. Jonathan Kemper and the William T. Kemper Foundation at Commerce Bank gave us money to publish the first lecture about Crown Center by Robert Kipp and the promotion of both this year's and last year's lecture on Hospital Hill by Albert Mauro.

I would also like to thank the members of my advisory committee, especially Dr. Lawrence Larsen of the UMKC History Department who is chair of the committee, Dr. James Olson, President Emeritus of the University of Missouri, and Dr. Charles Wheeler, former mayor of Kansas City, Missouri.

Lastly, I want to express my appreciation to Mrs. Kimball for permitting the use of Dr. Charles N. Kimball's name as a way of honoring his contributions, both to my office and to Kansas City.

Charlie was an early and continuous supporter of the Western Historical Manuscript Collection. For those of you who may not know, WHMC is a four-campus operation of the State Historical Society of Missouri and the University of Missouri. Our mission is to collect historical records and papers that document the history and culture of the people of Missouri and the Midwest. The Kansas City office, established in 1980, focuses on western Missouri, and in particular the Kansas City region. Charlie gave us his papers, and encouraged his friends to do so, too. We are a major repository – in many ways we hold the collective memory of our community.

But our purpose is not to just be a warehouse of old paper. We also promote the use and understanding of our history. Charlie often told me that he gave his support to us because he saw the great value and potential for the work we do. History is not just a trivial pursuit game answering nostalgic questions – when did that battle occur, who built that building, where did the first automobile accident happen. The study of history is a process of searching for a usable past.

Charlie Kimball was a consummate networker bringing together people and ideas. He knew that ideas move people to action. His credo, "Chance favors a prepared mind," is anchored in the belief that the truest form of creativity requires that we look two directions at once – to the past for guidance and inspiration, and to the future with hope and purpose. The study of experiences, both individual and communal – that is to say history – prepares us to understand and articulate the present, and to create our future – to face challenges and to seize opportunities.

This series is intended as a fulfillment of that spirit and belief. Today is Charlie Kimball's 86th birthday. Please join in remembering him.

Now let me introduce Dr. Eugene Wagner of the UMKC department of Economics who will introduce today's speaker.

*Western Historical Manuscript Collection-Kansas City
302 Newcomb Hall, University of Missouri-Kansas City
5100 Rockhill Road, Kansas City, MO 64110-2499
(816) 235-1543 WHMCKC@umkc.edu*

Dr. Eugene Wagner

Professor, University of Missouri-Kansas City
Department of Economics

Committees are much maligned in both the corporate world and in the academic world for being slow moving in matters of decision making. This is not always so. It is to be admitted that some committee assignments and some committee meetings, particularly academic meetings, can be absolutely dreadful, but there are academic committees that move issues with lightning speed. Of particular delight are those meetings that are short in duration and in which unanimity prevails. So it was some months ago when the committee of the Western Historical Manuscript Collection, under the efficient chairmanship of Professor Larry Larson, raised the matter of the speaker selection for today's Charles N. Kimball Lecture. Some one said "we ought to ask Bob Freilich." Agreement was unanimous, and the meeting could stand adjourned.

Dr. Robert H. Freilich is a partner in the law and planning firm of Freilich, Leitner, and Carlisle in Kansas City. He also is in law partnership in Los Angeles, Dallas, and Aspen. Dr. Freilich has a much-deserved national reputation as an expert in matters of urban economic development planning, land use litigation, and zoning legislation. He also enjoys a much-deserved reputation at the UMKC School of Law where he holds the title of professor emeritus.

Professor Freilich did his undergraduate work at the University of Chicago (1954). He received the Masters of International Affairs from Columbia University (1958) and his J.D. at Yale University (1957). From Columbia University School of Law he earned a LL.M. (1969) and J.S.D. (1975). In 1968, Professor Freilich was appointed Hulen Professor of Law in Urban Affairs at UMKC. During his years on faculty he also was a Visiting Professor of Law at Harvard Law School and, from my biased perspective, the even more prestigious London School of Economics.

His text, *Cases and Materials on Land Use* is the leading casebook on these matters. His recent publications include *Model Subdivisions Regulations: Planning and Law*; and *Exactions, Impact Fees and Dedication: Shaping Land Use Development and Funding of Infrastructure in the Dolan Era*. Professor Freilich is Editor of the *Urban Lawyer* and a member of the Advisory Board of the *Land Use and Environment Law Review*. He is Director of the Annual Planning and Zoning Institute and was the Past Chair of the Planning and Law Division of the American Planning Association. Other memberships include the American Institute of Certified Planners and the Municipal Legal Studies Center. The citations continue. They clearly show how it was that our committee could reach a unanimous verdict so quickly regarding the speaker for this afternoon's program.

Last year the *Kansas City Star* published an extensive series on the urban sprawl of Kansas City. This afternoon Professor Freilich continues the discussion of this extremely difficult and timely issue in his address, "To Sprawl or Not to Sprawl." It is my pleasure to present to you Robert H. Freilich, professor emeritus, University of Missouri-Kansas City, and past visiting professor of the London School of Economics.

TO SPRAWL OR NOT TO SPRAWL: A NATIONAL PERSPECTIVE FOR KANSAS CITY

Dr. Robert H. Freilich

April 21, 1997

Introduction

From the time of America's early colonial settlements, cities, towns and villages were planned and designed in the European mode to emphasize urban community. Yet the vast majority of people lived in rural and agricultural areas. Our transition from an agrarian to an urbanized nation first became noticeable in the 1910 census, as the nation's "urbanizing" population appreciably began to rise. In concert with the burgeoning of the industrializing and urbanizing economy, individual and community expectations changed. Urban planning as a social tool became commonplace, attempting to balance a sense of community founded on rising expectations and aspirations with the rapid physical outward growth of cities from their early compact form.¹

Negative perceptions of urban living became manifested in early suburbanization efforts during the mid- to late-19th century.² Ironically as the nation's frontier came to a close in the late 19th century, the city began to exhibit its own "frontier" as the exodus from the city scene to suburban "rural" living began. Urban life in the post-industrial age began to exhibit rural lifestyle tendencies of the growing economic and social class of business owner-managers. Those with the financial capability moved into *sub-urban*, semi-rural developments located at the fringes of cities. Streetcars, trains, and subways were available modes of transportation to and from residential and commercial uses, predating a land use pattern to be accelerated by the advent of the automobile.³ From the post-World War I years to the 1950's Interstate Highway System, sprawling low-density residential development moved farther and farther from the central city – a pattern that in the next 40 years barely slowed despite political rhetoric, energy crises, and fiscal distress. Though sprawl seemingly accommodates the greatest amount of growth, it requires significant development of new facilities and services, with accompanying abandonment and underutilization of existing facilities. Sprawl also increases development costs to the suburbs, diminishes the environmental factors needed to sustain viable economic growth and requires the consumption of the greatest amount of agricultural land,⁴ energy and natural resources.⁵

¹ See generally, Eric H. Monkkonen, *America Becomes Urban* (University of California Press, 1988), which presents commentaries and thoughts on the urban form by a diverse assemblage of writers, from Thoreau to Mumford to Schlessinger.

² Frederic Jackson Turner, *The Frontier in American History* (H. Holt and Co, 1920).

³ Anthony Downs, *Opening Up the Suburbs* (Yale University Press, 1973).

⁴ Robert H. Freilich & Linda Davis, "Saving The Land: The Utilization of Modern Growth Management to Preserve Rural and Agricultural America," *Urban Lawyer* 13 (Winter 1981): 1.

⁵ Robert H. Freilich, S. Mark White and Elizabeth A. Garvin, "Economic Development and Public Transit: Making the Most of the Washington Growth Management Act," *University of Puget Sound Law Review* 16 (1993): 949, 957; Real Estate Research Corporation, *The Costs of Sprawl: Environmental and*

Sprawl has engendered six major crises for America's major metropolitan regions. These crises are: (1) central city and first- and second-ring suburban distress; (2) environmental degradation through loss of wetlands, sensitive lands, air and water quality degradation; (3) massive gasoline energy overutilization; (4) fiscal insolvency, transportation congestion, infrastructure deficiencies and taxpayer revolts; (5) massive agricultural land conversion; and (6) housing inaffordability.⁶

As history has shown, and this article will identify, political, institutional, and social factors contributed to the continuing, outward urban to suburban/rural exodus, often resulting in uncontrolled sprawl. Perhaps the most telling definition of "sprawl" has been penned by Richard Moe, President of the National Trust for Historic Preservation, who stated that sprawl is "low-density development on the edges of cities and towns that is poorly planned, land-consumptive, automobile-dependent [and] designed without regard to its surroundings."⁷ Though it has been difficult to control sprawl economically and politically, suburban communities are coming to recognize that the costs of providing services is at least double, compared to development located contiguously to existing facilities.⁸ Housing costs are inflated, attributable to new development occurring in "leapfrogged" areas that exhibit scattered inefficient development patterns of low density, with concomitant loss of scale economies.⁹ An examination of sprawl in the Kansas City metropolitan area indicated that between 1960 and 1990, regional population grew by 29%, but the amount of land developed during that same period increased by 110%¹⁰ and density decreased from almost 3,500 people per square mile to 2,150 per square mile.¹¹ Sprawl is the root cause of many of the land use problems across the country, and does not end at municipal or state lines.¹² It requires cooperative national, state and local government efforts to effectuate regional

economic costs of alternative residential development patterns at the urban fringe (U.S. Gov. Printing Office, 1974), 4, 7; Robert W. Burchell, "Economic and Fiscal Costs of Sprawl," *Urban Lawyer* 29 (Spring 1997): 159.

⁶ Jack Noble, *A Proposed System For Regulating Land Use in Urbanizing Counties* (American Society of Planning Officials, 1967), 16; Robert H. Freilich and S. Mark White, "Transportation Congestion and Growth Management: Comprehensive Approaches to Resolving America's Major Quality of Life Crises," *Loyola of Los Angeles Law Review* 24 (1991):915, 917; Robert H. Freilich and E. Stohler, *The Land Use Awakening, Zoning In the Seventies* (American Bar Association, 1981), 5; Robert H. Freilich, *Managing Energy Conservation Under Planned Growth in Energy and Land Use*, p.453, 454-56 (1982); S. Mark White and James Hecimovich, "Affordable Housing: Decent Shelter Is A Fundamental Right" in *Planning and Community Equity* (APA Planners Press, 1994).

⁷ *Alternatives to Sprawl*, *Lincoln Institute of Public Policy*, p.4 (1995).

⁸ James E. Frank, *The Costs of Alternative Development Patterns* (1989), 39.

⁹ See James Heilburn, *Urban Economics and Public Policy* (St. Martin's Press, 1981), 117-152.

¹⁰ Chris Lester and Jeffrey Spivak, "Divided We Sprawl: Suburbs Can't Escape the Cost of Separation," *Kansas City Star*, December 17, 1995 (the first of a six-part series describing the effects of sprawl in the Kansas City (MO) metropolitan area).

¹¹ Jeffrey Spivak and Chris Lester, "Divided We Sprawl: U.S. Fosters Society of Separation," *Kansas City Star*, December 18, 1995.

¹² See generally, National Commission on Urban Problems, *Building the American City Report* (Praeger, 1969), 199-254.

solutions. That this is even a possibility is in fact one reality of our changing political climate¹³ that will no longer tolerate unacceptable fiscal, if not environmental,¹⁴ waste.

“Sustainability,”¹⁵ “growth management,” and “fiscal conservatism” concepts form the basis for comprehensive plans and subdivision regulations encouraging and requiring responsible development, as communities try to balance between jobs, the environment and social well-being across a constantly evolving and changing landscape.¹⁶ Urban and suburban communities are realizing that in the glow of taillights of Ford Explorers and Jeep Grand Cherokees leaving the city at the end of the day, their cargo-holds contain more than Burberry jackets and Fisher-Price toys. They hold the future of the American metropolis.

Sprawl Became Socialized

Sprawl has been promoted by social forces, which reflect the desire for a rural lifestyle coupled with an urban income. It is also encouraged by the political power of development interests and supported by legislative mandates which sustain income tax deductions for single family homes and property taxes and inadequate development funding of infrastructure generated by new development. It has become an institutionalized facet of American life. Suburbanization and sprawl are as ingrained in our national myth as baseball and apple pie once were. The image of curvilinear streets, cul-de-sacs, ranch houses, station wagons, and gated communities as progressive development denigrates that development pattern’s urban counterpoint – the value of community represented by open access, neighborhood commercial centers, cultural resources, and pedestrian access to both.¹⁷ Simultaneously as social infrastructure and fiscal needs escalate in cities and first and second ring suburban areas, the property tax base supporting community facilities and services has decreased due to sprawl’s outward migration of people and businesses.¹⁸ Government action and inaction have resulted in sprawl, perpetuating a lack of resources in urban areas that are a cancer attacking the region from the inside out and the outside in. Every twenty years we desperately revolt from this pattern. In the 1950s we talked about “the City of Man.”¹⁹ In the 1960s and

¹³ John M. DeGrove, *Land Growth and Politics* (APA Planners Press, 1984); John M. DeGrove, *Planning and Growth Management* (Lincoln Institute of Land Policy, 1972).

¹⁴ Arthur C. Nelson and James B. Duncan, *Growth Management Principles and Practices, Effects of Urban Sprawl* (APA Planners Press, 1995), 5.

¹⁵ See *Earth Summit in Rio, Sustainable Development* (1992); *BioDiversity: The United Kingdom Action Plan* (1994).

¹⁶ See Robert H. Freilich & Michael M. Shultz, *Model Subdivision Regulations* (APA Planners Press, 1995); see also Virginia W. Maclaren, “Urban Sustainability Reporting,” *Journal of the American Planning Association* 62 (1996): 184, 185.

¹⁷ Timothy Egan, “The Serene Fortress,” *New York Times*, September 3, 1995 (in California, one-third of all new developments in the last five years have been in gated communities with private governments); Reich, “Secession of the Successful,” *New York Times*, January 20, 1991 (there are now more security guards in the U.S. than police officers); Susan Moffat, “Although Residents Say They Feel More Secure Behind Barricades, Some Say They Ruin Communities,” *Los Angeles Times*, Nov. 24, 1996.

¹⁸ Myron Orfield, “The Promise and Promise of Regional Tax-Base Sharing” in *APA Public Investment PAS Memo* (December 1995).

¹⁹ Christopher Tunnard, *The City of Man*, (Scribner, 1953), 362-385.

1970s we focused on trying to build real communities in the suburbs. Today we are trying to build “neo-traditional” areas.²⁰

The Federal Housing Administration was intended to impact the urban landscape by spurring residential development during the depression era. FHA (and later the Veterans Administration) home mortgages required lower down payments and offered lower interest rates and longer repayment terms, becoming too popular with home buyers to discontinue. As disposable incomes increased, so too did the frequency and loan amount of FHA/VA loans. Unfortunately, these federally assisted loan programs were tainted by unfair lending practices. Neighborhoods were rated by the FHA/VA based on socio-economic variables, including race. Redlining occurred, limiting reinvestment in central cities and supporting reinvestment in outlying suburbs, and federal tax policies were geared in favor of single-family home ownership in the suburbs.²¹

The Federal Aid Highway Act provided preferential federal highway expenditures as opposed to transit or multi-modal uses, and was instrumental in linking the country with a usable and dependable interstate highway system, which also resulted in a surge of suburban employment centers. Unfortunately, as many of the interstate highways and federal highways were constructed subsequent to residential and commercial development patterns, the process of building roads to link cities necessitated that large amounts of land be taken.²² Many existing, thriving, but politically powerless neighborhoods throughout the country were effectively decimated. Neighborhoods, many with predominantly minority populations, that weren't razed, were bisected by highways, prompting a downward cycle of decay. Conversely, undeveloped areas were now developable. The irony of the interstate highways is that they became the routes, literally and figuratively, out of the cities.²³

The federal tax code also contains provisions that encourage sprawl. The mortgage tax deduction permits homeowners, but not occupiers of rental housing, to deduct home mortgage interest and taxes from taxable income, effectively and significantly lowering taxpayer liability. Staunchly supported by liberals and conservatives alike, even recent “flat tax” proponents acknowledge the deduction's widespread support and the likelihood of it continuing, in some form, indefinitely. To take full advantage of the deduction, higher incomes require higher home mortgages (and higher housing costs). This deduction encourages sprawl by providing the means to protect *more income* by buying *more home*. The capital gains tax no longer treats

²⁰ Peter Katz, *The New Urbanism: Toward An Architecture of Community* (McGraw-Hill, 1994); Peter Calthorpe, *Transit Orient Development Guidelines* (1991); Christo Foridis, “New Alternatives to the Suburbs: Neo-Traditional Developments,” *Journal of Planning Literature* 8 (1994): 429.

²¹ *Building the American City Report*, part IV, Chap. 7.

²² Robert Cervero, *America's Suburban Centers: A Study of the Land Use Transportation Link* (U.S. Dept. of Transportation, 1988), 34-41.

²³ Larry Bourne, “A Hennakie Perspective on Urban Decline and Population Deconcentration,” *Urban Geography* 1 (1980): 39; *Building the American City Report*, 231; Lawrence Aurbach, “The Urban Freeway Manifesto Revisited, Environmental Policy and Urban Transportation,” *Urban Lawyer* 4 (1972): 713.

“profits” realized from the sale of a home as taxable income up to \$500,000, thus further exacerbating the differential between home ownership and rental.²⁴

Local governments frequently are their own worst enemies concerning sprawl. Urban areas have experienced the effects of diminishing economically viable populations – reacting to, but not effectively combating through regional and state policies and strategies, the outward exodus. Suburban communities have only slowly come to realize that growth requires costly infrastructure and that efficient land use patterns can control the adverse effects of sprawl.²⁵ Gone are the days when virtually unfettered development and growth was considered a win-win situation. Prior to World War II, property taxes were used to finance state government activities, while local development was required only to finance on-site infrastructure costs. The financial responsibility for off-site community facilities and services was subsidized almost exclusively by the general taxing public.²⁶ Today it is universally recognized that new growth in the suburbs must pay for its own one-time cost of major off-site (arterial highways, regional parks, sewer and water systems, fire and police substations, downstream drainage and schools) capital infrastructure so that the general fund can be utilized to cover infrastructure deficiencies, operation, and maintenance.²⁷

As expectations for local government changed, the general fund, comprised of property and sales taxes and fees, became an alternate source to finance facilities and services demanded by new development. Suburban communities failed to make growth pay for needed infrastructure and services, creating a current gap in excess of 2 trillion dollars. Effective approaches to the problems have largely remained unused and/or unadopted.²⁸

Socialization factors have been powerful influences contributing to sprawl and socio-economic polarization. The “race card” remains a symbol of sprawl, a cause as much as a result of heightened racism, characterized by names such as *Brown* and *King*. Housing discrimination is fueled by animosity toward targeted racial and ethnic groups, denying housing opportunities through the use of restrictive zoning, buyer steering, indirect or off-market sales (*i.e.*, sales occurring by word-of-mouth), and unfair lending

²⁴ A. Paulakonis, “The Effect of the Tax Relief Act of 1997 on Real Estate Planning, Investing and Transactions” in *1997 Real Estate Digest* (Matthew Bender, 1997).

²⁵ Charles L. Siemon, “Successful Growth Management Techniques: Observations From The Monkey Cage,” *Urban Lawyer* 29 (*Local Solutions For Regional Problems*, 1997): 233, 248.

²⁶ Franklin J. James, “Evaluation of Local Impact Fees As a Source of Infrastructure Finance,” *Municipal Finance Journal* 11 (1990): 408, 414.

²⁷ See Robert H. Freilich and Morgan, “Municipal Strategies For Imposing Valid Development Exactions,” *Zoning and Planning Law Report* 10 (1987) 169; See also U.S. Supreme Court cases upholding development exactions if based upon proper municipal studies proportioning the cost: *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), *Dolan v. City of Tigard*, 114 S.Ct. 2309 (1994) – all discussed in Robert H. Freilich and David W. Bushek, *Exactions, Impact Fees and Dedications: Shaping Land Use Development and Funding of Infrastructure in the Dolan Era* (American Bar Association Press, 1995).

²⁸ See *Hard Choices*, Summary Report of the National Infrastructure Study, Joint Economic Committee, U.S. Congress (February, 1984); see also Nancy S. Rutlege, *Public Infrastructure as a National Concern*; Report of the National Council on Public Works Improvement, 17-18 (1987).

practices.²⁹ These actions create barriers to a class of persons searching for better housing for their families – some who can afford to leave but find limited opportunities, others who can't afford to leave and are forced to find “affordable” or subsidized housing in geographically-constrained areas.³⁰

There also is a certain socialized *hypocrisy* attached to sprawl. Suburbanites tend to desire a rural lifestyle and setting, but with urban amenities and an urban level of income, leading to the semi-comical term that I coined and has spread nationally “cappuccino cowboys.” However, according to numerous studies indicating that real income is dropping for most Americans, urban densities are needed to maintain economic housing affordability. Suburban/rural developments also have a security factor – the suburbs are viewed as safe havens from the evils of the central cities. This has spawned three problems: (i) a second generation “NIMBY” syndrome exists, as new suburban residents want to “shut the gates” after their arrival, an act evidenced by the increasing number of “gated” communities, (ii) first- and second-ring suburbs experience similar problems of the central city neighborhoods as the scenario is set for further residential and economic fringe development outside of their communities, leaving behind incompletely developed existing built-up areas, and (iii) sprawl development occurs which lacks land use balance, fails to pay for capital, operational and maintenance costs since residential uses only pay a portion in taxes over their life expectancy for services and facilities received.³¹

Sprawl's Social Costs

Sprawl's costs are most pronounced for those residents remaining in the central city and first- and second-ring suburbs. It exacts a price from families by providing fewer employment opportunities, resulting in lower income and education levels and provides fewer positive role models for children. Henry Richmond, Chairman of the National Growth Management Leadership Project, identifies five negative impacts of sprawl: (i) poverty becomes concentrated in urban areas, (ii) society resegregates along racial and economic lines, (iii) public investment in urban facilities and services becomes unfeasible, (iv) increased automobile dependence undermines environmental and energy policies, and (v) social anxiety increases due to financial instability, rising housing costs and limited employment opportunities.³²

²⁹ Rubinowitz and Trosman, “Affirmative Action and the American Dream: Implementing Fair Housing Policies in Federal Homeownership Programs,” *Northwestern University Law Review* 74 (1979): 491, 538.

³⁰ *Huntington Branch NAACP v. Town of Huntington*, 844 F.2d 926 (2nd Cir., 1988) dealing with the town's refusal to amend its zoning ordinance which restricted private multi-family housing projects to urban renewal area violates Title VIII of Fair Housing Act.

³¹ Arthur Nelson, ed., *Development Impact Fees: Policy Rationale, Practice, Theory and Issues* (APA Planners Press, 1988); Arthur Nelson, “Development Impact Fees: The Next Generation,” in Freilich and Bushek, *Exactions, Impact Fees and Dedications, Shaping Land Use Development and Funding Infrastructure in the Post Dolan Era*, 87. Blaesser and Kentoff, “Impact Fees, the Second Generation,” *Washington University Journal of Urban and Contemporary Law* 38 (1990): 55; *J.W. Jones v. City of San Diego*, 203 CA Rptr. 36 (CA Ct. App., 1977).

³² Dwight Young, *Alternatives to Sprawl*, 10.

Community Impact. Sprawl causes and exacerbates the problems of built-up communities as people feel “trapped” living in areas with little growth (or lower growth) potential and limited employment opportunities. Sprawl reinforces segregation, creating a new concept of *separate and unequal*.³³ As noted in *American Apartheid, Segregation and the Making of the Underclass* (Massey and Denton, 1993), sprawl systematically deprives city and first- and second-ring suburban residents of opportunities and adequate services, which stimulates the anti-social behavior suburban America rejects.³⁴ Decreasing demographic diversity, geographic separation, and escalating costs due to sprawl-borne social problems minimize the bond of social responsibility that should exist between central cities, suburban communities and the new expanding exurbia.³⁵

The metropolitan area loses its sense of community as families and businesses move away from established neighborhoods and into “new” third tier suburban, exurban or “rural” neighborhoods. Sprawl diminishes community ties, for both suburban and remaining urban populations, as evidenced by reported decreases in volunteerism, a general lack of commitment by individuals to join community-based organizations, and decreases in donations to charities.³⁶ The economic climate creates the perceived need for two income families – working urban families typically need two incomes to meet their families needs, suburban families want two incomes to maintain a desired standard of living. Making time to commit to non-family, non-work functions becomes more difficult.

Newer suburbs don’t have the same types of community institutions as older, established neighborhoods. There also is more political isolation, less political participation. Central city schools, on the other hand, suffer as populations decline from lower budgets (attributed to residents’ lower incomes), closed schools and overcrowded classrooms (as neighborhood-based schools are closed or merged with other schools). Crime, real and perceived (since crime rates in cities have dramatically declined), continues to be a strong issue driving development outward, and is manifested in the increasing numbers of walled or gated communities in suburban areas, as well as firearms and home security alarms becoming more commonplace in urban and suburban dwellings.³⁷

Housing Impact. The lack of affordable housing is a crisis made worse by sprawl, as the suburban development reduces demand for residential and commercial properties in the urban core and first-ring suburbs and the lower densities increase per-unit housing costs for land even if gross acreage costs are lower. Nevertheless, the myths of better housing appreciation in third-ring suburbs versus the central city gentrified or infill areas is continued to be spread by an ill-informed real estate brokerage industry. In a plan I

³³ Robert H. Freilich, “Separate But Unequalled: The Need For Interdistrict Relief Based on State Law,” *Urban Lawyer* 24 (1992): 637.

³⁴ William B. Shore, “Recentralization: The Single Answer to More Than a Dozen United States Problems and a Major Answer to Poverty,” *Journal of the American Planning Association* 61 (1995): 496, 497.

³⁵ See Anthony Downs, *New Visions for Metropolitan America* (Lincoln Institute of Land Policy, 1994), 45.

³⁶ Sara Rimer, “A Hometown Feels Less Like Home,” *New York Times*, March 6, 1996.

³⁷ Larry J. Smith, et al., “Gated Communities: Private Solution or Public Dilemma,” *Urban Lawyer* 29 (1997): 413.

developed for San Diego that continues to accelerate infill development, the incentive for sprawl was removed through proper pricing of infrastructure on the fringe.³⁸ Gentrification, such as in the Union Hill, Quality Hill, and Hyde Park areas of Kansas City, Missouri, help to rehabilitate inner-city and historical areas. Median closer-in, gentrified housing values actually appreciate more than exurban sprawl housing values, a fact that is little known and if fully appreciated may make a huge difference. A comparative analysis conducted in the Kansas City (MO) metropolitan area indicated that between 1985 and 1994 more expensive homes in the suburban real estate market were appreciating at a lower rate than less expensive central city homes (8.8% vs. 25%). Thus, family "A" buying a \$165,000 home in the suburbs in 1985 and selling in 1994 for \$180,000 would suffer a \$49,000 net loss in 1994 (because the value of the house did not keep pace with the rate of inflation). Whereas, family "B" buying a home in the central city or first-ring suburbs for \$104,000 in 1985 and selling it for \$131,000 in 1994, would have received a net gain of \$58,000 (attributed to the value of savings invested from purchasing a less expensive home, less the value of the house not keeping pace with inflation).³⁹

Employment Impact. Employment has been redistributed by sprawl. The central city and first-ring suburbs have lost a significant share of the job market to the suburbs. Entry-level and mid-level jobs that historically have been vehicles of upward mobility similarly have relocated to suburban areas. This has led to higher rates of poverty and greater unemployment in the urban core. Decentralization makes middle class employment inaccessible for many urban residents. Recently the mayor of Kansas City attacked the Area Transportation Plan for light rail because of its failure to provide for carrying inner city residents to suburban employment but instead concentrated on bringing tourists to linear central city attractions.⁴⁰

Businesses similarly are not immune to sprawl, relying on access to qualified workers and the community's (*i.e.*, the metropolitan area's) perceived quality of life by employees and other businesses. The competition for development within the metropolitan area also pits communities against one another, making the whole weaker. The effect of "subsidized" sprawl on the overall business climate and the use of tax breaks forces remaining central city businesses and residents to pay more taxes to maintain a constant level of service and act as a disincentive to stay and contribute to one community.

Political Impact. Sprawl causes fiscal strains on cities by drawing commercial development outward. The resultant lack of financial resources in central cities is inadequate as social needs of lower-income populations increase and community facilities age, deteriorate and become deficient. Within the metropolitan area, first- and second-ring suburban communities inefficiently replicate facilities. This is not to say that

³⁸ *Jones v. City of San Diego*, 203 CA Rptr. 580 (1984) established the constitutionality of facilities benefit assessments in California; Robert H. Freilich & David W. Bushek, *Exactions, Impact Fees and Dedications: Shaping Land Use Development and Funding of Infrastructure in the Dolan Era*.

³⁹ "Divided We Sprawl: Suburbs Can't Escape the Cost of Separation." Based on average actual sales prices and a 3.8% annual inflation rate.

⁴⁰ Jeffrey Spivak and Chris Lester, "Divided We Sprawl: Frenetic Growth Fractures Community," *Kansas City Star*, October 17, 1997.

some urban neglect has not been self-inflicted, for a lack of foresight to phase extra-territorial growth is evident; but the resultant effect has left cities unable to maintain facilities and services and rebuild infrastructure. Cities that provide extra-jurisdictional service effectively subsidize suburbs and finance sprawl. Infrastructure for new fringe development has been financed by existing urban and suburban taxpayers, effectively subsidizing the process and luring new business and residents away from the central cities and first- and second-ring suburbs.

In the metropolitan area, sprawl contributes to the lack of regional coordination caused by the existence of numerous, autonomous local governments. This bureaucratic and jurisdictional layering, or governmental fragmentation, impedes the efficient provision of community facilities and services because many of these communities replicate existing services, which may have sufficient excess capacity to meet additional demand. The concept of regional general welfare is an apt tool to address deficiencies across a metropolitan area, which has been applied to remedy schools, housing, and environmental inequities. The result of the area's fragmentation is a duplication of services (rather than the intensification of services), decreasing services and requests for additional services.

The social aspects of transportation go beyond infrastructure. Traffic congestion creates enormous societal costs in the form of environmental pollution, energy consumption, increased energy costs, decreases in economic productivity and a general decline in citizens' quality of life.⁴¹ Automobile fuel combustion, due to greater distances traveled with fewer occupants, results in substantially greater air quality pollution.⁴² Personal time is lost as driving times increase as distances between population, employment and recreational/cultural centers increase, putting more vehicles on the road for greater periods of time.⁴³ Transit time is one negative employment quality of life factor that results as sprawl increases. Emergency services suffer as congestion and accessibility from the lack of alternative transit cause slow response times, an issue especially prominent in growing suburban communities.

Sprawl is the major factor for the loss of prime agricultural lands and open space, estimated to be as much as 1½%⁴⁴ per year. If the trend continues unabated, by 2010 the U.S. could be a net importing agricultural nation. Wetlands also are being lost to development. Sprawl is an inefficient use of land, overutilizing energy sources.

⁴¹ Robert H. Freilich and S. Mark White, "Transportation Congestion and Growth Management: Comprehensive Approach to Resolving America's Major Quality of Life Crisis," *Loyola of Los Angeles Law Review* 24 (1991): 915, 919-920; Anthony Downs, *The Need For a New Vision for the Development of Large U.S. Metropolitan Areas*.

⁴² Frederick R. Anderson, Daniel R. Mandelker, A. Dan Tarlock, *Environmental Protection: Law and Policy* (Little, Brown, 1990), 146-48.

⁴³ Senate Office of Research, *Report on Urban Growth Policy Project 24-25* (1989) reporting that the sprawl pattern of low-density residential development induces automobile reliance by consuming land on the urban fringe and minimizing the density necessary to make public transit financially feasible.

⁴⁴ David L. Callies, Robert H. Freilich and T. Roberts, *Cases and Materials on Land Use* (West Pub. Co., 1986) citing the National Agricultural Lands Study and the recent report indicating that the trend continues unabated. See also, *A Living Countryside*, Report of the U.K. Countryside Commission, Strategy for the Next Ten Years (1996).

Counterpoint. Nonetheless, suburban communities that have grown with sprawl argue that the status quo should be maintained. These communities assert that real growth is occurring within the metropolitan area and that it is not just a game of corporate musical chairs. This growth creates jobs in construction, finance, banking, industry, and retail. It is asserted that commercial and residential decisions are based on the free market system, that people are drawn to the perceived quality of life benefits in the suburbs (such as better schools and lower crime rates), that retail/commercial pays more in taxes than services used, and that modern-day thinking encourages gated developments.

However, the 1995 Bank of America report, *Beyond Sprawl*, counters most of these points and demonstrates that it makes good business sense to encourage development patterns that promote the economic health and diversity of the [metropolitan area-wide] community.

Balanced sprawl means that both residential and commercial uses develop within a community. A study by the Real Estate Research Corporation for the Council on Environmental Quality, Department of Housing and Urban Development and the Environmental Protection Agency, found that low-density, large-lot development required extremely high public investment for public facilities and services such as open space, schools, transportation, refuse collection, police and fire protection, utilities, postal services, administrative facilities, health care, and library services.⁴⁵ Another independent study, conducted by a team of planners and engineers, found that when land uses in an area are predominantly residential in character and distances are greater between residential and non-residential uses, the revenue-to-cost ratio (*i.e.*, the ratio of annual tax revenues generated by a use compared to the annual costs of providing facilities and services to that use) decreases. Contiguous, commercial uses pay in tax revenues as much as 136% of the cost of providing public facilities and services, whereas scattered, low-density residential development pay as little as 41% in tax revenues for public facilities and services. Even the average revenue-to-cost ratio of 68% assumes that some degree of cross-subsidization is occurring, either that (i) some areas within a jurisdiction are contributing to making up the fiscal shortfall, or (ii) intergovernmental transfers of funds contribute to subsidization of development.⁴⁶

The Problem of Sprawl in Kansas City

Sprawl does not only affect large cities such as Los Angeles. It also affects Kansas City. In fact, viewed in light of some studies, Kansas City might be considered the Sprawl Capital of the world. "Nowhere in the United States is sprawl more active, more virulent, than right here."⁴⁷ Perhaps it is the city's geographical location – unrestrained by any major obstacle, it is free to spread in all directions, consuming

⁴⁵ Real Estate Research Corporation, *The Costs of Sprawl: Environmental and Economic Costs of Alternative Residential Development Patterns at the Urban Fringe, Detailed Cost Analysis*, 105-31 and *Executive Summary*, 3.

⁴⁶ James Duncan, *et al*, *The Search for Efficient Urban Growth Patterns: A Study of the Fiscal Impacts of Development in Florida* (July 1989), p. 18-19.

⁴⁷ See Lester and Spivak, "Divided We Sprawl: Exodus Carries Cost Of Sprawl To All Corners," *Kansas City Star*, December 17, 1995.

agricultural land, driving up the cost of the metropolitan infrastructure, and creating traffic problems. Between 1960 and 1990, the metropolitan area population grew 29%, while the land base this population consumed more than doubled at 110%.⁴⁸ In a recent study, Kansas City had the second lowest population density per square mile of all cities, higher in density only than Atlanta, Georgia.⁴⁹ A great deal of the movement is southward,⁵⁰ although it is now rapidly accelerating north of the river and eastward in Jackson County.

A major contributing factor to sprawl in Kansas City is transportation. A series of highways and interstates leave the urban core, creating a suburban web of roads which must be traveled in order to get to jobs located in the urban core.⁵¹ Attitudes concerning mass-transit systems, exemplified by the endless delay of the proposed light-rail plan that would have connected the Plaza to downtown and the airport, further add to the problem, creating more congestion and the ever-pressing need to widen and maintain roads. Kansas City has the highest per capita number of freeway lane miles per 100,000 residents, at over 120 miles. It also contains the third highest average of freeway lane miles per square mile and the highest average number of miles per person in the country.⁵² The high number of miles is attributable to a growth ring of the most expensive homes that expands farther out from the core of downtown at about two miles each decade. In 1970, that ring was 10 to 12 miles from the center of the urban core. By 1980, it was 12 to 14 miles, and in 1990, the radius progressed to 14 to 16 miles from the center.⁵³ Johnson County, which has perhaps the highest concentration of high-dollar homes in the metropolitan area, also has the nation's fourth highest rate of people who drive alone to work.⁵⁴ This in turn has led to longer vehicle trips, creating the need for yet more roads and higher costs to maintain the roads already in existence.⁵⁵

Sprawl Alternatives and Solutions

There are few quick fixes to sprawl or the social effects and costs of sprawl. The only proven method of controlling the negative effects of sprawl is through regional coordination which guides local governments to determine which areas are appropriate for development or should be protected from development, analyzes corridor location and

⁴⁸ See *Urban Sprawl Costs Us All*, The Metropolitan Coalition for Sensible Transportation.

⁴⁹ See Robert H. Freilich, *Sprawl Development and Kansas City: Problem or Opportunity*, speech given at The New Reform Temple, October 27, 1996. The cities in the study were, by highest rank in density, Los Angeles, New York, Chicago, Portland, Omaha, St. Louis, Denver, Memphis, Houston, Dallas, Tulsa, Kansas City, and Atlanta.

⁵⁰ Johnson County's population is projected to escalate to 518,349 people by the year 2020 – an increase of over 170,000 since 1990.

⁵¹ The Mid-America Regional Council in its *Perimeter Transportation Needs Assessment Background Report* found that, "A substantial amount of the population is concentrated from the center of the region outward to the I-435 beltway. Population is also distributed along major interstate highways such as I-35 and I-70."

⁵² *Perimeter Transportation Needs Assessment Background Report*, Exhibits 40-43.

⁵³ See "Divided We Sprawl: Exodus Carries Cost Of Sprawl To All Corners."

⁵⁴ See *Urban Sprawl Costs Us All*.

⁵⁵ According to the Mid-America Regional Council's *Perimeter Transportation Needs Assessment Report*, Kansas Citians also drive over 25 miles per day on average.

capacity, and identifies appropriate development patterns.⁵⁶ This accepts the premise that accommodating growth is not bad, but that unchecked sprawl will damage the metropolitan area. Growth coordination makes development responsive to a community's ability to efficiently provide facilities and services, phasing growth by timing its development to the availability of public facilities and making planning decisions with an understanding of the consequences of development.⁵⁷ Managing sprawl creates joint partnerships between developers and communities, and among communities – relationships that foster interdependence and encourage cooperation and coordination, not confrontation.⁵⁸

Urban communities can learn from suburban communities, by becoming more responsive to “internal” issues. Though central cities may find it difficult to compete with the “sizzle” of suburban development patterns, they can compete by promoting diverse, cosmopolitan alternatives and effectively providing desired and basic services to its citizens. Alternatives exist to provide for, and eliminate barriers to, affordable housing.⁵⁹ Education can be improved through the use of magnet and neighborhood-based schools.⁶⁰ Cities can respond to the crime issue by refocusing police department programs and staffing based on community and neighborhood need. Infrastructure can be improved for streets, parks and cultural facilities, and services enhanced. They can learn to reverse the decline of their residential and economic base.⁶¹

⁵⁶ See Stuart Meck and Laura Thompson, “Impact Analysis: From Sharp Tools Come Sharp Assessments,” *Zoning News* (December 1995).

⁵⁷ Almost all systems for containing urban sprawl in America stem from the Ramapo plan developed by Professor Freilich, upholding timing and sequencing of development based on adequate public facilities (Freilich and Greis, “Timing and Sequencing Development: Controlling Sprawl in Future Land Use, Energy, Environment and Legal Constraints” in Robert W. Burchell, David Listokin, *Practitioner's guide to fiscal impact analysis* (Rutgers, 1975), 59-106; and then expanded to metropolitan areas and state legislation of Florida and Washington on concurrency. Freilich and Ragsdale, “Timing and Sequential Controls: The Essential Basis for Effective Regional Planning,” *Minnesota Law Review* 58 (1974): 1009 (describing the Metropolitan Council of Minneapolis-St. Paul Development Framework prepared by Professor Freilich) the New Jersey State Plan (using Tiered Planning Areas), Baltimore (centers), Washington (corridors), and Oregon (Urban Growth Boundaries), see Robert H. Freilich and Chinn, “Transportation Corridors: Shaping and Financing Urbanization,” *University of Missouri-Kansas City Law Review* 55 (1987): 150; David L. Callies, Robert H. Freilich, T. Roberts, “From Ramapo to the Tiers” in *Cases and Materials on Land Use* (2nd Ed., 1994).

⁵⁸ Elizabeth A. Deakin, “Growth Management: Past, Present and Future,” in John M. DeGrove, ed., *Balanced Growth: A Planning Guide for Local Government* (International City Management Association, 1991), 8-9; Robert H. Freilich and Brenda L. Nichols, “Public-Private Partnerships in Joint Development: The Legal and Financial Anatomy of Large-Scale Urban Development Projects,” *Municipal Finance Journal* 7 (1986): 5.

⁵⁹ See Advisory Commission on Regulatory Barriers to Affordable Housing, *Not in My Backyard: Removing Regulatory Barriers to Affordable Housing* (U.S. Dept. of Housing and Urban Development, 1991).

⁶⁰ Robert H. Freilich, “Separate But Unequalled, The Need for Inter-district Relief Based on State Law,” *Urban Lawyer* 24 (1992): 637.

⁶¹ Between 1970 and 1995, Wyandotte County saw a drop in residents from 186,846 people to 153,826 people, while Jackson County saw a decrease from 654,178 residents to 635,637 residents. Meanwhile, the median household income of these two counties in 1989 was \$23,780 for Wyandotte County and \$27,853 for Jackson County -- the two lowest median household incomes in the metropolitan area. Compare Johnson County's 1989 median household income, at \$42,741.

Incentives have been used successfully to entice businesses to relocate, and their applicability to lure homeowners is equally justified. San Diego required that new growth pay its fair share of the cost it generates in off-site facilities while making available equity financing in urban areas, which balanced infill and suburban growth. Portland, Oregon; Boulder, Colorado; and Dayton, Ohio have marketed the advantages of their cities' neighborhoods, transit, open space, and cultural/ethnic diversity. The Puget Sound region has proposed spending \$12 billion to construct and expand the mass transit system to channel growth within corridors and centers.⁶² Cities also can encourage development to re-establish urban neighborhoods. Champaign, Illinois encouraged infill development and emphasized performance zoning by using realistic goals that were attainable and not frightening to current residents.⁶³

Suburban communities can respond by limiting growth in areas not yet ready for development and requiring that development pay for facilities and services generated by new growth. Urban and suburban communities can reduce the costs of sprawl by addressing connectivity, and encourage the use of urban villages and neo-traditional neighborhoods, both of which emphasize a neighborhood's role and reduced trips by locating commercial activities within walking distance.⁶⁴

The metropolitan area needs to develop regional plans, which are translated into county and city implementation for infrastructure and other social services. The transportation network is a tool to accomplish regional cooperation by rebuilding more roads within developed areas rather than exclusively building urban loops, and finding ways to incorporate mass transit (even on a limited basis). Government, though politically unlikely to consolidate, can enter into intergovernmental agreements to share responsibilities and revenues, undertake unified development and growth planning, and provide coordinated and non-confrontational tax and development incentives at local, state and federal levels.⁶⁵ A regional plan offers equity among both the wealthy and poor areas within a metropolitan area and matches environmental, fiscal and social needs with resources.⁶⁶

These are the goals that the regional area and cities such as Overland Park, Lee's Summit, Liberty, and Olathe should begin to focus on. These cities do not need to stop growing -- they need to adopt sensible plans for sound, contiguous growth patterns.⁶⁷ One can be an advocate for the suburbs and for the metropolitan area -- they are not mutually exclusive. It is more, and not less, coordination that will lead to greater wealth

⁶² Freilich, White and Garvin, "Economic Development and Public Transit: Making The Most of the Washington Growth Management Act," 949.

⁶³ Thomas I. Miller, "Must Growth Restrictions Eliminate Moderate Priced Housing," Journal of American Planning Association, 52 (1986): 319-25.

⁶⁴ Andres Duany and Elizabeth Plater-Zyberk, *Towns and Town-Making Principles* (Howard University Graduate School of Design, 1991); Judy S. David, Arthur C. Nelson and Kenneth J. Dueker, "The New Burbs," Journal of American Planning Association 45 (1994).

⁶⁵ Doreen Piligian, "Financing Regional Infrastructure" (reviewing transcript of Robert A. Lamb), Urban, State and Local Gov. Newsletter (Fall 1987): 19; see also Freilich and Nichols, "Public Private Partnerships in Joint Development: The Legal and Financial Autonomy of Large-Scale Urban Development Projects," 1.

⁶⁶ Orfield, "The Promise and Promise of Regional Tax-Base Sharing," 2.

⁶⁷ See "Symposium Urges Civic Cooperation," Kansas City Star, October 19, 1994.

in our metropolitan area.⁶⁸ When governments come together and work with each other instead of against each other, infrastructure costs will decline and sprawl will slow.⁶⁹ If communities refrain from adopting efficient, coordinated growth management strategies, development will continue to sprawl across the countryside, because sprawl is a *process* that pits new development areas against old. As the decay spreads outward, third-ring suburbs will be affected, and the “doughnut hole” will expand. Suburban cities already are finding evidence of “urban decay” in their neighborhoods, such as deferred maintenance of structures, absentee property owners, and neighborhoods with declining income levels and infrastructure deficiencies. In addition, sprawl breeds increased governmental fragmentation and inefficiencies, as more independent levels of government, each with its own agenda, impact more people and businesses.

Solutions require broad-based support. History has taught that lasting fiscal growth occurs within a strong economy – one based as much on the quality of life and successful business practices as on collaborative, rather than adversarial, government participation. Planning for growth, though a primarily a local function, is largely dependent on government’s perception of its role in the marketplace.

Having set forth its causes, imperatives, and impacts, it is now appropriate to turn to examine specific responses as effective solutions for the management of suburban sprawl. Transportation is the key element creating outward sprawl, and realistically governments and communities should place major emphasis upon transportation-oriented development. The remainder of this paper will focus on how that might be accomplished.

The Transportation and Transit Corridor Concept for Controlling Sprawl

Transportation is, aside from education, the most important segment of a community’s infrastructure. A community’s transportation system has a profound influence on its land use patterns and rate of growth. Not only is the transportation network a shaper of urban form, but a region’s land use patterns influence the transportation modes used for work and non-work interurban travel. Since the advent of the Federal-Aid Highway Legislation of 1954, the automobile has become the predominant form of transportation in the nation’s urban areas.⁷⁰ Highways in urban areas have fostered urban sprawl, characterized by low-density, single-use suburban development, which has hastened the decline in public transit as a mode of interurban travel. This phenomenon has increased the spatial separation of jobs and residences, has encouraged development in areas not served by public transit, and has created a pattern of

⁶⁸ See Freilich, “Sprawl Series Contributed to Valuable Debate,” Kansas City Star, January 19, 1996.

⁶⁹ Professor Freilich’s implementation of growth management in Minneapolis, Minnesota, for example has resulted in savings of about \$2 billion every ten years. Freilich has compared Kansas City to Minneapolis, suggesting that this city is at the same crossroads Minneapolis faced in the mid-seventies. “The Mid-America Regional Council has projected the same scenario Minneapolis was facing 20 years ago – more growth and more highway construction in the outer rings of the metropolis.” “City Can Turn Eyes Inward,” Kansas City Star, August 22, 1990.

⁷⁰ Carlson, “Surface Transportation Policy Project,” At Roads’ End: Transportation and Land Use Choices for Communities (1995): 6. Transit now accounts for only 5.12% percent of work trips in this country as opposed to 12.6% percent in 1960, while the modal share of the automobile increased from 69.5% to 88% over the same time period. U.S. Department of Transportation, National Transportation Statistics (1995): 231.

development in our suburban areas which insures almost exclusive reliance on the automobile as the primary means of travel to work and shopping.⁷¹

This pattern of development has fostered a love-hate relationship between suburban residents and their beloved vehicles. Middle class families who once dreamed of a new single-family home in the suburbs now fight the expansion of highways that would open up new areas for suburban development. Motorists en route to work find their economic productivity stifled by highway gridlock. Inner urban highway travel has proven very inefficient⁷² despite its relative popularity. Other unintended consequences of highway travel include automobile fatalities, dependence on imported oil and energy, loss of agricultural lands,⁷³ and environmental and economic impacts.⁷⁴ These environmental impacts have prompted changes in federal legislation designed to encourage shifts in urban travel from the automobile to public transit,⁷⁵ such as the Intermodal Surface Transportation Efficiency Act (ISTEA)⁷⁶ and the Clean Air Act

⁷¹ See Freilich and Peshoff, "The Social Costs of Sprawl," *Urban Lawyer*, 29 (1997): 183; Burchell, "The Economic and Fiscal Costs of Sprawl," *Urban Lawyer*, 29 (1997): 159.

⁷² While a typical highway lane can accommodate only 2,400 persons per hour, a busway can carry up to 9,400 persons per hour and a light rail system can handle over 22,000 persons per hour. (Municipality of Metropolitan Seattle, *Draft Environmental Impact Statement, Regional Transit System Plan* (October 1992): xvi).

⁷³ Sprawl is the major factor for the loss of prime agricultural lands and open space estimated to be as much as 1½% of the nation's agricultural land per year. Freilich and Davis, "Saving the Land; The Utilization of Modern Techniques of Growth Management to Preserve Rural and Agricultural America," *Urban Lawyer*, 13 (1981): 27; R.J. Hildreth, ed. *Agriculture and Rural Areas Approaching the 21st Century* (Iowa Press, 1988); Rick Pruetz, *Saved By Development: Preserving Farmland With Transfers of Development Rights* (Arje Press, 1997).

⁷⁴ Motor vehicle accidents are the leading cause of death for Americans until they reach their mid-30s. (U.S. Department of Transportation, Bureau of Transportation Statistics, *Transportation in the United States: A Review* (1997)). Imported oil as a share of national consumption has increased from 27 percent in 1985 to 44.5 percent in 1995. Transportation accounts for two-thirds of U.S. oil consumption, with highway vehicles accounting for the largest share. Approximately 40 percent of man-made hydrocarbon and nitrogen oxide (NOx) emissions, as well as two-thirds of carbon monoxide (CO) emissions are generated by automobile travel. (M. Bernick & R. Cervero, *Transit Villages in the 21st Century* (1997): 44). Automobiles also generate airborne particulates (pm-10) water pollution from highway construction and drainage, and noise impacts. (Bureau of Transportation Statistics, 23-25).

⁷⁵ The Federal-Aid Highway Act of 1962 established that federal funds for urban highways be based upon a "continuing, comprehensive transportation planning process carried out cooperatively by states and local communities" (the so-called "3C" process). (23 CFR § 450.100; Freilich & White, "Transportation Congestion and Growth Management: Comprehensive Approaches to Resolving America's Major Quality of Life Crisis," *Loyola L.A. L. Rev.* 915, 24 (June 1991): 923).

⁷⁶ Pub. L. No. 102-240, 105 Stat. 1914 (Dec. 18, 1991). ISTEA provides new standards and procedures for transportation planning and investment. The centerpiece of the legislation is the USC Title 23 programs involving new investment in highways, public transit, and transportation planning. (Title I, Part A, §§ 1001-1109, 105 Stat. 1915-2064). Funds allocated for the NHS may be spent on innovative projects as well as new highway construction, § 1006(d), to be codified at 23 U.S.C. § 103(i), including FTA transit projects not on the NHS but within the same transportation corridor and which improve the level of service on NHS highways. The Metropolitan Planning Organization (MPO) and the state long-term transportation plan must take into consideration the a number of planning criteria which include congestion relief, effect on land use and development, transportation management and congestion monitoring systems, and methods to expand, enhance and increase use of transit services. (ISTEA §§ 1024(a), codified at 23 U.S.C. § 134(f) and § 1025 codified at 23 U.S.C. § 135(c)).

Amendments of 1990.⁷⁷ “Transit supportive existing land use policies” are one consideration in the issuance of a grant or loan for the construction or expansion of fixed guideway systems under ISTEA.⁷⁸

While suburban sprawl continues,⁷⁹ professional planners believe that there is deep-seated dissatisfaction with 20th century urban sprawl and have championed a return to mixed-use villages and centers that promote pedestrian and transit travel. The so-called “new urbanists”⁸⁰ are challenging cities and developers to employ new concepts of transportation corridors and centers and pedestrian-oriented development as alternatives to urban sprawl.⁸¹ This form of development has five major characteristics. First, it creates sufficient density to encourage the use of public transit but also relies upon the use of transportation corridors and centers with or without rail transit. Second, it locates residences, jobs, and retail destinations close to public transit facilities. Third, it utilizes mixed uses, with retail and employment locations within walking distance of residential areas. Fourth, it is built on a grid transportation network, which is not divided into the arterial-collector-local road classification system found in most suburban areas. Finally, it contains urban design guidelines and design features in order to encourage a more pedestrian orientation that, theoretically, encourages its residents to eschew the automobile in favor of more communal forms of transportation.

Transportation corridor and center development is designed to accomplish several key public objectives. First and foremost, it is designed to encourage residents and workers to utilize public transit rather than the automobile as a secondary means of transportation. A second purpose, related to the first, is the minimization of congestion on surrounding roadways. Finally, it is designed to increase pedestrian utilization of streets, sidewalks, and other transportation facilities. As a form of neo-traditional development, it also reflects a new approach to suburban development that encourages a

⁷⁷ Pub. L. No. 101-549, 104 Stat. 2399. Section 108 of the Clean Air Act Amendments of 1990 require the Environmental Protection Agency (EPA) to publish, in consultation with the Secretary of Transportation, guidance on maintaining a “continuous transportation-air quality planning process”, including alternative planning and control activities, plan review, funding and other implementation alternatives, and methods to ensure public participation. (§ 108(e)). This process is to be coordinated with the surface transportation planning process created under ISTEA. Transportation control measures to be included in EPA guidance include, among other things, public transit. (§ 108(f)(1)(A)). The EPA is authorized to disapprove highway projects for failure to submit a SIP or to conform the SIP to applicable law. In lieu of highway money, the Secretary may approve specific TDM and TSM measures. (42 U.S.C. § 7509(b)(2)). These include public transit, HOV roads, employer-based trip reduction plans, and other transportation control measures listed in the statute are excluded from these sanctions. The relationship between transit and land use must also be recognized in air quality planning in some states. See, e.g., 9 Va. Admin. Code § 5-15-140 (transportation plans in serious, severe, or extreme ozone nonattainment areas and serious carbon monoxide nonattainment areas must allow for modeling of transit ridership and show that there is reasonable relationship between expected land use and the transportation system).

⁷⁸ ISTEA § 3010 (to be codified at 49 USC § 1602(i)(2)(C)).

⁷⁹ For a description of how urban sprawl has overwhelmed the capacity of the nation’s major metropolitan area systems, see Freilich, *Managing Energy Conservation Under Planned Growth, Energy and Land Use* 453, (Rutgers U. Press, 1981): 454-456.

⁸⁰ The term “new urbanism” has been in use for many years, originally referring to the trend away from traditional village-oriented development. (C. Tunnard, *The City of Man*, 362-85).

⁸¹ P. Calthorpe, *The Next American Metropolis: Ecology, Community, and the American Dream* (1990); P. Katz, *The New Urbanism: Toward an Architecture of Community* (1994).

greater variety of uses and architectural design than the monotonous, single-use suburban subdivision. The “new suburbia” has been described as “packaged villages that are becoming the barracks of the new generation.”⁸² In fact, the prototype of most neo-traditional ordinances – or traditional neighborhood development ordinances – is the community neighborhood with its mixed uses, narrow gridiron streets, and higher densities.⁸³

Urban Form

There are six basic modes of transportation corridor development that have emerged in actual practice and in planning theory. These include single-use corridor development, mixed-use corridor development, neo-traditional or traditional neighborhood development, transit-oriented development, pedestrian pockets, and hamlets and villages. Traditional neighborhood developments focus primarily on design features that replicate the traditional town or village concept, such as small lots with narrow streets, front porches, and detached rear parking.⁸⁴ Pedestrian pockets feature compact development with mixed uses concentrated along a corridor center.⁸⁵ The hamlet or village concept features a cluster of single-family homes around a central green area.⁸⁶ A *purlieu* is a community with approximately 150 acres and seven thousand residents, with comprehensive urban design regulations but few use restrictions.⁸⁷

Thus transportation corridor development typically contains a mix of residential and nonresidential uses, which is designed to accomplish several key objectives. First, locating the residences and employment destinations on a single site increases the likelihood that persons will walk to work or commute by transit, rather than solely by automobile. This is referred to in transportation engineering parlance as the “internal capture” of trip origins and trip destinations. Second, some nonresidential uses, such as daycare and shopping facilities, make commuting more convenient. Third, a mix of uses holds the area together as a community, rather than as a single-use bedroom complex. Finally, ordinances typically feature a town center that features the most intensive

⁸² *Reid v. Architectural Board of Review*, 192 N.E.2d 74, 80 (Ohio App. 1963) (Corrigan, J., dissenting).

⁸³ See Freilich and White, “The Interaction of Land Use Planning and Transportation Management: Lessons From the American Experience,” Transport Policy 101 (1994). An earlier version of this article was presented by Professor Freilich on November 9, 1993 at the Royal Town Planning Institute Conference “Planners For Sustainable Transport,” London and was utilized in the draft note on *Planning Policy Guidance on Transport*, UK Department of Environment. See also, Kusher, *Growth For The Twenty-First Century: Tales From Bavaria and the Vienna Woods: Comparative Images of Planning in Munich, Salzburg, Vienna and the United States* (1997) (paper delivered at Property Forum, University of Southern California).

⁸⁴ Christoforidis, “New Alternatives to the Suburb: Neo-traditional Developments,” Journal of Planning Literature 8 (May 1994): 429-440; Duany & Plater-Zyberk, 1991; Knack, “Repent, Ye Sinners, Repent,” Planning (August 1989): 4-8.

⁸⁵ Christoforidis, “New Alternatives to the Suburb”; Calthorpe, *The Next American Metropolis: Ecology*.

⁸⁶ Christoforidis, “New Alternatives to the Suburb”; Knack, *Repent, “Ye Sinners, Repent”*; S. Sutro, *Reinventing the Village: Planning, Zoning, and Design Strategies* (American Planning Association, Planning Advisory Service Report No. 430, December 1990).

⁸⁷ Christoforidis, “New Alternatives to the Suburb.”

commercial, civic, and other non-residential activity serving the neighborhood. Ordinances may require residences to be located within a specified distance of the town center. In addition, they may require a greenbelt or open space to form an edge around the neighborhood.

Several factors are key to the successful implementation of a mixed-use development program. First, sequential development controls are needed to insure that both residential and non-residential development occurs on the site. In suburban areas for example, the ordinance may require development to occur in phases, so that subsequent phases of a residential development do not occur until non-residential supportive uses are in place. Second, incentives – either regulatory or financial – may be needed to encourage non-residential development in some areas and residential development in others. This may take the form of the donation of excess public land, redevelopment loans, and regulatory incentives such as density bonuses, streamlined processing, or concurrency exemptions.⁸⁸ Finally, some mixed-use ordinances use detailed urban design guidelines in order to ensure compatibility between uses and to stimulate pedestrian activity.⁸⁹

Density and Use Regulations. A key to creating supportive land use regulations is designating uses that are supportive of public transit, while excluding those that may be detrimental to residential development or transit destinations. In addition, the regulations must permit or require adequate densities to encourage the utilization of transit. Some communities have carved out special uses in their zoning districts designed to foster the development of transit-supportive retail and commercial facilities as well as parking and other facilities ancillary to transit stations, transportation corridor centers and interchanges.⁹⁰ Ordinances often encourage or require more intensive development patterns by establishing minimum densities or by offering density bonuses in exchange for the provision of transit facilities or other urban design features.⁹¹ By increasing densities in corridors and nodes, ordinances encourage a more concentrated, rather than dispersed, pattern of development.

The determination of appropriate densities in transportation corridor districts should take into consideration the type of transit service currently available or projected

⁸⁸ See Freilich & Chinn, "Transportation Corridors: Shaping and Financing Urbanization Through Integration of Eminent Domain, Zoning and Growth Management," *UMKC Law Review* 55 (1987): 153, 165.

⁸⁹ For example, the Charlotte, North Carolina Uptown Mixed Use District Ordinance and Urban Design Guidelines provides regulations for setbacks, side and rear yards, height, streetscape design, screening, signage, street trees and other urban design standards. In addition, the standards require that the first floor of any new building over 100,000 square feet devote fifty percent (50%) of the first floor area to retail activities in order to stimulate street level pedestrian activity. (Charlotte-Mecklenburg Planning Commission, Uptown Mixed Use District Ordinance and Urban Design Guidelines (April 1987): § 3053.6).

⁹⁰ Most studies show that residential densities of at least 7-15 dwelling units per acre are needed in order to encourage the utilization of public transit. Conversely, lower densities discourage the utilization of transit because they do not provide the critical mass to operate the system, because commuters are required to travel too far to transit stations, and because the sheer amount of roadways needed to serve lower development densities favors usage of the automobile.

⁹¹ M. Morris, "Creating Transit-Supportive Land-Use Regulations," (American Planning Association, Planning Advisory Service Report No. 468, December 1996).

during the life of the Capital Improvements Program. Density standards may depend upon whether the area is served by local on-street buses, express buses, busways or priority bus lanes, light rail transit, rail buses, commuter rail, regional rail, or heavy rail transit.⁹² Systems with higher capacities, such as heavy rail, are capable of serving higher densities, whereas lower capacity systems such as bus systems may be served with lower densities.⁹³ Densities may also be predicated on transit operating costs.⁹⁴ A figure for density within the service area can be derived from the number of trips per acre, which can be used to determine whether there is sufficient demand to justify the transit service.

Encouraging or requiring developers to construct adequate residential densities in the vicinity of a transit facility is key to the success of transit corridor development. Most jurisdictions encourage density increases through the use of density bonuses in exchange for specified urban design elements or the provision of public benefits.⁹⁵ The alternative is to mandate that densities exceed a specified minimum. While few cities in the United States have provisions which require minimum densities, minimum and maximum densities are often included as part of a Planned Unit Development (PUD) approval or development agreement. In addition, some states have, through judicial fiat or legislative action, established “regional general welfare” standards that require local governments to accommodate their fair share of regional housing needs by adjusting permitted densities.⁹⁶

⁹² Triangle Transit Authority and Parsons Brinckerhoff Quade & Douglas, Inc., Triangle Fixed Guideway Study Phase I/II Report, Regional Analysis & Current Trend Future in 2020, Executive Summary (August 1994): 13-14.

⁹³ The seminal study on the relationship between transit and land use by Pushkarev and Zupan presents a range of densities for various types of transit facilities ranging from four units per acre for local bus systems serving an employment destination of 10 million gross square feet, to 9-12 units per acre for light rail systems serving an employment destination of 35-50 million gross square feet. B. Pushkarev & J. Zupan, *Public Transportation and Land Use Policy* (1977): 184-199.

⁹⁴ H. Rabinowitz & E. Beimborn, *Guidelines for Transit Sensitive Suburban Land Use Design: Final Report* (July 1991).

⁹⁵ As part of implementation of a statewide demonstration program, the State of California requires a density bonus to a developer of housing within one-half mile of a mass transit guideway station unless the locality finds that granting of the density bonus would result in a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. (CA Gov't Code § 65913.5). The density increase required is a minimum of twenty-five percent (25%) over the otherwise maximum residential density allowed under the general plan and any applicable zoning and development ordinances. The local government may require a developer to enter into a development agreement to implement a density bonus granted under the density bonus legislation. Further protections are granted against third-party challenges to the increase densities. In any action to attack, set aside, void, or annul a density bonus, a court must uphold the decision of the local government to grant the density bonus if the court finds that there is substantial evidence in the record that the housing development will assist the local government to: (1) meet its share of the regional housing needs, or (2) implement its congestion management plan.

⁹⁶ S. Mark White, “Affordable Housing: Proactive and Reactive Planning Strategies,” (American Planning Association, Planning Advisory Service Report No. 441, 1992): 61-68; for a discussion of regional general welfare, see Koppelman & Merriam, *Regional General Welfare: The End of a Trend?* Institute on Planning, Zoning and Eminent Domain, Southwestern Legal Foundation (Matthew Bender, 1985).

Bulk, Setback, and Area Controls. Ordinances have several features that distinguish them from conventional zoning regulations. First, ordinances often feature maximum setback (or “build-to” lines) rather than minimum setbacks. By bringing buildings closer to the street, ordinances attempt to generate pedestrian activity and to force parking and other automobile-related facilities to the rear of buildings. Second, the frontage and lot size requirements are reduced in order to encourage higher densities. These may be coupled with zero lot line provisions that allow homes to be sited with no side setback on the lot side. Third, ordinances often require urban design amenities such as colonnades, front porches, and rear parking in order to stimulate pedestrian activity at the street level. General criteria for aesthetic and/or architectural compatibility and design are also included in many ordinances. Because most transit users reach the station by walking, creating adequate outdoor space and an interesting pedestrian environment is thought to encourage transit usage.⁹⁷

Street Patterns and Parking Restrictions. Most transportation corridor ordinances feature a traditional “grid” street pattern in which the streets are relatively straight and meet at right angles, forming the rectangular street pattern found in many older neighborhoods.⁹⁸ This is in contrast to the curvilinear street pattern found in most modern suburbs. The grid street system has the ability to distribute traffic evenly and efficiently, rather than concentrating traffic on several arterials.⁹⁹ A grid system is also easier to navigate because of the lack of dead ends and cul-de-sacs and can dispense with the typical classification of arterial, collector, and local streets. Under this classification, the traditional functional hierarchy of streets is abandoned in favor of a system whereby most streets serve basically the same function. While many neo-traditional development schemes permit one or several streets to carry through traffic, many require that through traffic be served only by abutting thoroughfares.¹⁰⁰ Many neo-traditional subdivisions feature the use of alleys to provide access to residential homes and commercial establishments. A major purpose of alleys, when coupled with requirements that parking facilities and garages be located in the rear of an establishment or residence, is to minimize the visibility and function of the automobile.

Neo-traditional developments also feature narrower streets than conventional subdivisions. Narrow streets are designed to provide a form of “traffic calming” by minimizing traffic speeds and through traffic while devoting more of the streetscape to pedestrian use than is the case in most conventional residential subdivisions. Narrow streets are also considered easier to cross on foot than wide streets with heavy traffic volumes.¹⁰¹ Neo-traditional communities often encourage on-street parking in order to

⁹⁷ Metropolitan Transit Development Board (MTDB), *Designing for Transit: a Manual for Integrating Public Transportation and Land Development in the San Diego Metropolitan Area* (July 1993).

⁹⁸ Kulash, Anglin & Marks, “Traditional Neighborhood Development: Will the Traffic Work?” *Development Magazine* (July/August 1990): 21-23.

⁹⁹ City & County of Denver, *The Gateway Plan* (October 1991): 9.

¹⁰⁰ Sacramento County, California, *Transit-Oriented Development Design Guidelines*, Prepared by Calthorpe and Associates (September 1990); San Diego, California, *Transit-Oriented Development Design Guidelines*, Prepared by Calthorpe and Associates (October 1991).

¹⁰¹ Metropolitan Transit Development Board, 199. The use of gridiron and narrow streets in neo-traditional developments is often attacked by public works officials on public safety grounds. Concern has been raised about the ability of fire trucks and other public vehicles to maneuver through narrow streets. In addition, public officials often express concern over potential legal liability associated with approving

provide a buffer for pedestrians on the sidewalk. By minimizing street widths, maximizing sidewalks and other pedestrian facilities, and by discouraging limited access roadway facilities which tend to discourage pedestrian travel, the neo-traditional community attempts to make the pedestrian rather than the automobile the primary determinant of urban form.

Ordinances take a different approach to parking than conventional zoning regulations. These regulations may restrict off-street parking rather than requiring a minimum number of off-street parking spaces. The abundance of suburban parking is often identified as an impediment to public transit for several reasons.¹⁰² First, generous parking requirements facilitate travel by the automobile, thereby reducing the likelihood that commuters will choose to travel by public transit. Second, large expanses of asphalt devoted to parking often discourage pedestrian mobility, thereby impeding travel from transit stations to employment destinations. Accordingly, neo-traditional ordinances often discourage parking by minimizing the number of spaces available for parking and by requiring landscaping, covered passageways, and other design amenities in order to encourage pedestrian travel.¹⁰³

Ancillary Techniques

Urban Growth Boundaries and Tier Systems. In order for development to occur under proper conditions, it is important to control development at the periphery of transportation corridors as well. Encouraging development to occur first within the transportation corridors ensures that the transit facilities will be financially feasible and that the community does not evolve as a single-use sprawl development. Whether mandatory or incentive-based, developers may avoid building in areas subject to these policies unless adequate incentives are created or unless land use controls are in place which channel development into transit corridors or centers.

The key to channeling development into locations, uses, and densities adequate to support transportation corridors is the identification of an appropriate urban form for transportation, one which discourages low-density sprawl and encourages densities which are serviceable by public transit. Regional urban form concepts include urban growth

developments with this type of street pattern. (Fulton, "Winning Over the Street People: Traffic Engineering Standards are Under Attack from All Sides," *Planning* (May 1991): 8-11). For a discussion of safety issues, see Institute of Transportation Engineers, *Traditional Neighborhood Development Street Design Guidelines* (June 1997): 13-19.

¹⁰² Cervero, "Land Uses and Travel at Suburban Activity Centers," *Transportation Quarterly* (October 1991): 479-491.

¹⁰³ Morris, "Creating Transit-Supportive Land-Use Regulations." Zoning ordinances typically require a designated number of off-street parking spaces for certain land uses. Transportation corridor districts turn this requirement on its head by restricting the number of parking spaces provided and by requiring that parking be placed in the rear of a building or in other non-conspicuous locations. The rationale for parking restrictions is that an abundance of parking encourages automobile travel and accordingly, reduces transit ridership. (Cervero, "Land Uses and Travel at Suburban Activity Centers.") Parking reductions are also justified by the reduced parking demand in the vicinity of transit facilities. A recent study of shared parking in San Diego showed that parking demand for some uses in the vicinity of transit facilities ranged from 7% to 69% lower than the standard zoning ordinance requirements. (JHK & Associates, *San Diego Shared Parking Study* (July 1996)).

boundaries, centers and nodes, and corridors.¹⁰⁴ An urban growth boundary (UGB) is a mapped line that separates urbanizable land from rural land and within which urban growth is contained for a specified time period.¹⁰⁵ Edges and urban growth boundaries (UGBs) are advocated by many neo-traditionalists as a way to channel growth into higher-density, mixed-use nodes and centers.¹⁰⁶ Because UGB's require large areas in order to effectively contain regional growth, they are often designated on a regional basis

¹⁰⁴ See Freilich, Leitner & Carlisle, "Growth Management Approaches For the New Jersey State Development and Redevelopment Plan", Technical Reference Document, (January, 1987): 87-15; Freilich, Leitner & Carlisle, *Reno-Washoe County Regional Plan* (November 1991). Another example of this approach is found in the Puget Sound, Washington Region, which has divided development into the following land use categories: major urban centers, activity centers, employment areas, and residential neighborhoods. (Bellevue Conference Center, *Transit/Land Use Linkages: Making it Work* (July 1993): 4). Major Urban Centers are areas that contain high concentrations of housing and employment, with direct service by high-capacity transit, and a wide range of other land uses such as retail, recreational, public facilities, parks, and open space. Major Urban Centers are a focus of regional activity and provide services to the general region. Activity Centers are locations that contain many of the same land uses as Urban Centers but tend to be more automobile oriented because of their physical layout. Low Density/Intensity Employment Areas include office parks, industrial areas, and manufacturing locations that are developed at relatively low densities. These areas are typically automobile-oriented, single-use areas and do not generate a high degree of transit use. Residential Neighborhoods generally include single-family residences with varying degrees of multifamily, depending on location. Commercial services can range from numerous and convenient to non-existent. (See Freilich, Garvin & White, "Economic Development and Public Transit: Making the Most of the Washington Growth Management Act," U. Puget Sound Law Review 16 (1994): 1091).

¹⁰⁵ See Freilich & Ragsdale, "Timing and Sequencing Controls: The Essential Bases for Effective Regional Planning," MN Law Review 58 (1974): 1009; G. Easley, "Staying Inside the Lines 3," American Planning Association, Planning Advisory Service Report No. 440, 1992.

¹⁰⁶ Calthorpe (1994): 70-71.

or by intergovernmental agreement.¹⁰⁷ UGB's are required by state law in Oregon¹⁰⁸ and Washington.¹⁰⁹

A more sophisticated application of the UGB approach is the use of a "tier system," which has been applied in San Diego, California and Minneapolis, Minnesota.¹¹⁰ A principal tenet of the "tier" system involves the geographic and functional division of the planning area into subareas ("tiers").¹¹¹ The functional planning area concept recognizes that different areas of the community present different problems relating to growth and development. Nevertheless, while individual geographical or functional areas may need to be separated for specialized treatment, they must still be viewed in terms of their interrelationships with other areas and with the community as a whole. The tier system divides the community into "growth" and

¹⁰⁷ Caves, "Defining Urban Regions: Land Use and Legal Considerations," *Urban Resources* 4 (Winter 1987): 23; Smith, "Cooperative Growth Management," *Colorado Municipalities* 57 (May/June 1981): 14.

¹⁰⁸ Oregon's UGB program is the first statewide requirement that local governments designate enforceable UGB's. (See *1000 Friends of Oregon v. Land Conservation and Development Commission*, 292 Or. 735, 642 P.2d 1158 (1982); *Branscomb v. Land Conservation & Development Commission*, 681 P.2d 124 (Or. 1984); *Phillips v. City of Sulslimitz*, 662 P.2d 325 (Or. 1983)). Goal 12 of the Oregon Land Use Goals and Guidelines Regulations establishes, in addition to a Public Facilities and Services Element goal, a Transportation goal. (Morgan & Shonkwiler, "Urban Development and Statewide Planning: Challenges of the 1980's," *OR Law Review* 61 (1982): 35). Goal 14 requires local governments to establish Urban Growth Boundaries wherein public facilities and services are extended in such a manner as to separate urbanizable from rural land. (Environmental Report (BNA) 1286: 2511-1286: 2513). The transportation element of the local comprehensive plan emphasizes the relationship between transportation and land use. The number and location of transportation facilities is required to be consistent with "state and local land use plans and policies designed to direct urban expansion to areas identified as necessary and suitable for urban development" (Goal 12(B)(1)). Plans for new facilities or the expansion of existing facilities are required to identify, *inter alia*, the impact on local land use patterns and existing transportation systems. The goal encourages the utilization of existing transportation facilities. Capital investment policies are designed to buttress the separation of urbanized from non-urbanized areas enforced through the urban growth boundary. Local governments are required to design, phase and locate transportation facilities, (including air, marine, rail, mass transit, highways, bicycle and pedestrian facilities) in such a manner as to encourage growth in urbanized areas while discouraging growth in rural areas. (Goal 14(B)(2)).

¹⁰⁹ The Washington "Urban Growth Areas" legislation requires each County adopting a comprehensive plan shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city in the County must be included in an urban growth area. An urban growth area may also include territory outside of existing City boundaries only if such territory is already characterized by urban growth or is adjacent to territory already characterized by urban growth. (WA Rev. Code § 36.70A.110(1), *1990 Growth Management Act*). Urban growth should be located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development, and second in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources. (WA Rev. Code § 36.70A.110(3), *1990 Growth Management Act*).

¹¹⁰ Freilich & White, 1991; Freilich, *A Five-Tiered Growth Management Program for San Diego*, (1976): 2-7 to 2-11; Freilich & Ragsdale, "Timing and Sequencing Controls".

¹¹¹ Freilich & Ragsdale, "Timing and Sequencing Controls"; Callies & Freilich, *Cases and Materials on Land Use* (West Publishing Co. 1986) 837; R. Freilich & M. Leitner, *Comprehensive Growth Management and Planning Framework in County Growth Management Regulation: A Guide for Zoning and Subdivision Administration* (1979); R. Freilich, et al., *Urban Growth Management Systems: An Evaluation of Policy Related Research* (1975).

“limited growth” categories and adds the tiers as subdivisions of those general categories.¹¹² Tiers within the growth category are commonly designated “Urbanized” and “Planned Urbanizing.” The tiers within the limited growth category would be “Rural/Future Urbanizing,” “Agricultural,” and “Conservation/Open Space.” Each of the tiers has specific geographical boundaries and is capable of being mapped. The Urbanized tier consists of those areas that are at or near built out and served by public facilities. The Planned Urbanizing area represents the “new” growth area. The Rural/Future Urbanizing area may be a permanent rural density development area or may be a temporary “holding” zone until the growth areas are built out. The Rural/Future Urbanizing tier generally contains lands that are presently unsewered and which have a lower population density. The Agriculture tier is intended to identify those lands that should be preserved either temporarily or permanently for agricultural production. Lastly, the Conservation/Open Space tier consists of lands containing natural resources or environmentally sensitive areas.

Transportation corridors, as areas that would be targeted for future growth, can be integrated into the framework by inclusion in the area mapped and designed as Planned or Future Urbanizing.¹¹³ Transportation corridors can be separately mapped and may overlay the tier delineations. In a typical community, transportation corridors pass through more than one tier and therefore may require the use of differing techniques. For instance, techniques utilized in transportation corridors in the urbanized tier will likely have a redevelopment/infill focus while techniques utilized in transportation corridors in the Future Urbanizing area would likely consist of advance acquisition, excess condemnation and the like. Joint development is a technique that is commonly used in all areas mapped as transportation corridors.

Joint Development. Once a local government has adopted planning policies and implementing ordinances for transit-oriented development, it may want to consider more pro-active approaches to stimulate development in transportation corridors. While jurisdiction for regulating development in areas typically resides with the local government, it may use joint development to alleviate the actual or perceived risks associated with undertaking development in the corridor and to obtain financial benefits related to construction and operation of transit systems and other public facilities.¹¹⁴

The term joint development refers to the development of real estate that is integrated with transportation corridor center or transit facility/station. It may include transportation corridor center development and may also include transit development such as an office tower built in the air rights over a transit terminal or a retail facility directly linked to a transit terminal by a pedestrian walkway.¹¹⁵ Regardless of the form it takes, joint development is a pairing of public and private resources to achieve a project that will benefit both sectors. Joint development also includes a value capture connotation in which the public sector attempts to recoup some of the real estate-related

¹¹² Robert Freilich, *a Growth Management Program for San Diego* (July 1976).

¹¹³ Callies & Freilich, *Cases and Materials on Land Use*, 114-15.

¹¹⁴ See Freilich & Nichols, “Public-Private Partnership in Joint Development: The Legal and Financial Anatomy of Large Scale Urban Projects,” *MN Fin. J.* 7 (1986): 5-6.

¹¹⁵ Freilich & Leitner, *Study of Joint Public-Private Development Implementation of Station Sites*, Dallas Area Rapid Transit (August 1985).

monetary benefits that result from public investments. Revenues derived from joint development can be used by the public sector to (1) offset the original transportation corridor center development and capital costs, (2) guarantee provision of desired public amenities, and (3) finance a portion of the transit investment and/or help to pay for ongoing operating costs of the transit system.

Joint development approaches typically include techniques that capitalize on real property assets that are acquired in the course of transportation corridor development. Examples include those involving property taxes or assessments and excess land acquisition such as land and air rights leasing,¹¹⁶ negotiated private sector investments in land and capital costs,¹¹⁷ connection fees for direction tie-ins to transit stations,¹¹⁸ and concessions at transit stations.¹¹⁹ Some states include a proportionality requirement in joint development deals.

¹¹⁶ Land and air rights leasing involves negotiation of a long-term lease agreement for real property which is originally purchased by the transit agency for transit purposes such as station sites and parking areas or is owned by a public agency. In these cases a plan is developed whereby the transit facility requirements can be met within the structure of a larger project, creating space for incremental commercial uses. In most cases, the station facilities are wholly integrated in the development project and ancillary facilities such as parking and entranceways are shared. These arrangements are typically structured as long-term leases, and the transit agency and/or other public agency can expect to gain contributions to station capital costs as well as long-term lease revenues. Lease revenues can be derived from a base rental value and/or as a percentage of project income, making the public agency a true equity partner in the development. Most states limit the duration of leasehold interests that may be granted pursuant to a public-private development. (Freilich & Leitner, *Study of Joint Public-Private Development Implementation of Station Sites*, 12.) Most states limit the duration of leasehold interests that may be granted pursuant to a public-private development. (CO Rev. Stat. § 43-1-1202(d)(II) (99 years)).

¹¹⁷ A negotiated investment is an agreement between a developer and a public agency or agencies, through which the developer agrees to contribute property and/or capital costs to a transit improvement in exchange for some concession which will benefit his development. These types of agreements can range from total integration of the transit station and ancillary facilities within the development project to agreements to provide access facilities or other public amenity improvements that enhance the transit facility. In certain instances, local governments can utilize zoning and building permit authorities to bargain with developers to pay for transit-related improvements. (Freilich & Leitner, *Study of Joint Public-Private Development Implementation of Station Sites*, 13-14).

¹¹⁸ Connection fees can be charged to owners/developers of both existing and future buildings for being physically connected to a station facility. Traditionally, these fees have included: (1) lump sum payments to cover capital costs of knock-out panels, entrance areas, etc., plus a fee to cover the intrinsic value of the connection, (2) an annual contribution to the operating cost of the station facility, (3) in lieu dedication of property for station areas or easements, and (4) architectural and operational enhancements to the facility. Connection fee agreements are best utilized with either subway or elevated stations where direct access to mezzanine levels creates additional prime rentable areas at the upper or lower levels of buildings. The enhanced value of these areas thus become the basis for connection fees and capital investments on the part of the developer. (Freilich & Leitner, *Study of Joint Public-Private Development Implementation of Station Sites*, 14-15).

¹¹⁹ Concessions involve the generation of revenues through the sale or lease of portions of their station facilities for concessions. Concessions may include mechanical or "vending" equipment ranging from automatic teller banking machines to food dispensers to pay telephones. Alternatively, concessions may include space set aside within the station site for retail stands and kiosks or roving vendors permitted to sell from floating locations. Major retail stall-form concessions dictate specific design requirements and accommodations in station areas. These can include supplemental provisions for electrical/water needs and additional space requirements. Free-standing kiosk-type outlets can reduce the structural accommodation

The zoning and land use controls adopted by the local government must be carefully considered in the joint development process. The approval of the local government may be required for construction and development. Joint development legislation may also require that the services provided pursuant to the agreement be consistent with the use and zoning of land adjacent to the right-of-way.¹²⁰ At the same time, general-purpose units of local government (such as cities or counties) may be authorized and empowered to do many things that are unavailable to the transit agency. Cities may be authorized to develop and adopt comprehensive plans to guide their growth and development; to enact zoning regulations; to undertake redevelopment and designate reinvestment zones; to utilize tax increment financing; and to approve special assessment benefit districts, among other powers. Cities, through zoning approval processes and/or subdivision regulations, can exact various contributions from development adjacent to transit stations, including easements, access points, improvements, connections, and even fees that would aid in transit station development and related joint development. The exercise of these powers in coordination with the transit agency's station development policy can materially benefit both the agency and the local government unit.¹²¹ The transit agency and local governments, through cooperative agreements, can aggregate all of the essential governmental powers and authorities for successful large-scale joint development:

Site assemblage

Flexibility (or relaxation) of zoning or zoning incentives

Low-cost financing (through tax exempt financing), sale-leaseback, lease or loan guarantees, federal grants)

Construction of infrastructure

Coordination between governmental entities

Expedited processing

Land use coordination

Establishment or creation of a growth center and, to an extent, a captive market of transit riders.

Concurrency. Concurrency regulations tie the issuance of development permits, such as rezoning, planned unit development approvals, subdivision plats, site plans, and building permits to level of service (LOS) standards identified in a comprehensive

requirements. (Freilich & Leitner, *Study of Joint Public-Private Development Implementation of Station Sites*, 15).

¹²⁰ CO Rev. Stat. § 43-1-1202(2); *Palm Beach County v. Wright*, 641 So.2d 50 (1994), argued and briefed by Professor Freilich in the Florida Supreme Court, which upheld major right-of-way protection acts as not unconstitutional under the takings clause of the 5th Amendment. See Freilich & Bushek, "Integrating Land-Use and Transportation Planning: The Case of *Palm Beach County v. Wright*," *State & Local Government News No. 2* 18 (Winter 1995).

¹²¹ Freilich & Leitner, *Study of Joint Public-Private Development Implementation of Station Sites*, 18; Freilich, Stone, Leitner & Carlisle, *Advice on Alternative Building Permit Allocation Strategies* (Draft Interim Report submitted to City of Los Angeles): 114-115.

plan.¹²² Most concurrency ordinances are tied to roadway LOS standards. Few concurrency ordinances tie the issuance of development permits to public transportation capacity. However, many concurrency or adequate public facilities regulations – such as those used in Montgomery County, Maryland – apply a lower roadway LOS where public transit is available. This technique maintains the integrity of the concurrency management system while encouraging development to occur in areas where alternative transportation capacity is available.

Transportation Concurrency Management Areas (TCMAs) are a framework for utilizing concurrency management in a manner conducive to mass transit, economic development and a desirable urban form.¹²³ While the system could be structured in a

¹²² S. Mark White, *Using Adequate Public Facilities Ordinances for Traffic Management*. (American Planning Association, Planning Advisory Service Report No. 465, August 1996).

¹²³ White, *Using Adequate Public Facilities Ordinances for Traffic Management*; “Growth Management Planning & Research Clearinghouse,” Local Government Planning Tools (Aug. 1992). Florida has created a useful framework for implementing transportation corridors by authorizing realistic, two-tiered level of service standards and TCMAs. Local governments may adopt a long-term transportation concurrency management system (LTTCMS) with a planning period of up to 10 years in specially designated districts where significant backlogs exist. (FL Stat. § 163.3180(9)). An interim LOS may be used for certain facilities, and the local government may use the 10-year CIP as a basis for issuing permits. The LTTCMS must be designed to correct existing deficiencies and to set priorities to address backlogged facilities. It must be financially feasible and consistent with other elements of the comprehensive plan. The DCA may allow up to 15 years based upon the extent of the backlog, whether the backlog occurs on state or local roads, the cost of eliminating the backlog, and the local government’s tax and other revenue-raising efforts. In order to “limit the liability” of local governments, the local government may allow development to proceed notwithstanding the transportation LOS if the jurisdiction has an approved comprehensive plan, the development is consistent with the future land use plan, the CIP is financially feasible and includes facilities adequate to serve the development, a fair share of the cost of transportation facilities is assessed against the landowner, and the landowner has made a binding commitment to pay these costs.

The Florida ELMS III legislation, which revised the state growth management law in 1993, now authorizes concurrency exemptions and TCMA’s in limited circumstances. Finding that concurrency may sometimes discourage urban infill development and redevelopment, Florida authorizes exemptions from transportation concurrency if a project is otherwise consistent with the comprehensive plan, and the project either promotes public transportation or is located within a designated urban infill development, urban redevelopment or downtown revitalization area in the comprehensive plan. Projects creating special part-time demands in these areas (less than 200 scheduled annual events or which does not affect the 100 highest traffic volume hours) may be exempted from concurrency. (FL Stat. § 163.3180(5)). “Downtown revitalization” means the “physical and economic renewal of a central business district” and includes downtown development and redevelopment. (FL Stat. § 163.3164(25)). “Urban redevelopment” includes the demolition and reconstruction or substantial renovation of existing buildings or infrastructure within urban infill areas or existing urban service areas. (FL Stat. § 163.3164(26)). “Urban infill” includes the development of vacant parcels in built-up areas where public facilities such as sewer, roads, schools, and recreation are already in place and the average residential density is at least five dwelling units per acre, the average nonresidential intensity is at 1.0 FAR, and vacant, development land does not constitute more than 10% of the area. One or more TCMA’s may be designated to promote infill development and redevelopment. (FL Stat. § 163.3180(7)). The TCMA must be a “compact geographic area within existing network of roads where multiple, viable alternative travel paths or modes are available for common trips.” An areawide LOS may be used, based upon an analysis that justifies the LOS, describes how infill or redevelopment will be promoted, and how mobility will be accomplished within the TCMA. To account for the impacts of redevelopment within an existing urban service area, 110% of the actual impact of previously existing development must be reserved for the redevelopment. (FL Stat. § 163.3180(8)). Redevelopment that requires less than 110% of the previously existing capacity cannot be prohibited due to

number of ways, the designation of major nodes and centers could provide a starting point for the designation of TCMA's and allocation of transportation capacity. Identification of regional service levels and regional improvements establishes a regional transportation carrying capacity, which is then allocated to centers as transportation concurrency management areas. This could operate in two different ways. First, the carrying capacity would establish a ceiling on regional development. This would provide a basis for the allocation of capacity to centers/TCMA's, and would also require the affected agencies to *debit* capacity utilized in centers from the outlying areas. This would ensure that (1) capacity for regional centers is accorded a priority for utilization by the business community, and (2) that capacity is taken away from areas where development is assigned a low priority by the public sector, thereby ensuring that the goals and objectives of development in the regional centers are not thwarted by competition from outlying areas. Capacity allocated to TCMA's could be allocated on a first-come first-served basis or subject to certain allocation criteria.

Transfer of Development Rights. The Transfer Development Rights (TDR) concept provides for planning on an area-wide basis by allowing land owners in restricted areas (or "sending areas") to transfer densities and other development rights to landowners in areas appropriate for higher densities (or "receiving areas"). A TDR system can be used to support transit-oriented development by designating areas around transit stops as receiving areas for TDRs. The TDR system may also have the secondary effect of channeling development into transportation corridors by restricting development outside of transit centers. The usual purpose of TDRs is to ameliorate the harshness of zoning restrictions. TDRs give planners an alternative to purchasing the land outright or abandoning any attempt to enforce carrying capacity by allowing the market to furnish "fair compensation" for rights relinquished through zoning restrictions.¹²⁴ The transit agency can use TDRs to encourage transit supportive development by working with general purpose local governments to design transit station areas as receiving areas and encouraging development restrictions in peripheral areas.

Procedures for Implementing Transportation Corridors

Specific Plans. A specific plan, like a Planned Unit Development (PUD), is a way to adjust general land use planning policies to specific parcels. It is a particularly useful device in states, such as California, Florida, Oregon, and Washington, which require consistency between comprehensive land use plans and land use regulations and/or development permits. A specific plan implements the comprehensive plan in one of three ways: (1) by acting as a policy statement which refines the general plan's policies with respect to a specific land area; (2) by directly regulating land use; or (3) by combining detailed policies and regulations into a focused scheme of development.¹²⁵

a reduction in the adopted LOS. However, the local government may assess fees or account for the impacts within the CMS and CIP.

¹²⁴ See generally *City of Hollywood v. Hollywood, Inc.*, 432 So.2d 1332, 1337 (FL App. 1983); *Penn Central Transportation Company v. New York City*, 438 U.S. 104 (1978); *Suitum v. Tahoe Regional Planning Agency*, U.S. No. 96-243 (May 27, 1997); *Barancik v. Marin County*, 872 F.2d 834 (9th Cir. 1989).

¹²⁵ California Governor's Office of Planning & Research, *Specific Plans in the Golden State* (1989): 7.

The transit agency can take a leadership role in sponsoring specific plans with transit-supportive land use policies in order to provide a sound legal and planning basis for subsequent development.

Planned Unit Development. Conventional planned unit development (PUD) ordinances are typically blamed for the automobile-oriented subdivision which features expansive parking and the “vigorous separation of uses.”¹²⁶ However, the PUD provides the legal mechanism for achieving the design flexibility needed for a transportation corridor. A PUD allows a local government to control the development of individual tracts of land by specifying the permissible form of development in accordance with the local PUD ordinance.¹²⁷ Because PUD zoning allows greater flexibility than traditional zoning, greater emphasis is given to site planning than in single use districts.¹²⁸

Development Agreements. Development agreements, annexation agreements, and settlement agreements are emerging tools for negotiating development approvals. Under a “development agreement,” the local government agrees to “freeze” the regulations applicable to a particular property, often in consideration for substantial contributions by the landowner to public infrastructure, environmental mitigation, or affordable housing. A number of states now expressly authorize development agreements¹²⁹ and annexation agreements¹³⁰ by statute. Most development agreement legislation permits the agreements to be adopted only after specified notice and public hearing requirements are followed, and limits the agreement to a period of 5-10 years.

Capital Improvements Programming. A capital improvements program (CIP) provides the mechanism for staging and sequencing the transportation improvements needed to accommodate a transit-oriented development. The CIP is often used in tandem with concurrency systems in order for local governments to demonstrate that the infrastructure needed to serve new development will be made available within a reasonable period of time. Transit agencies are therefore a key player in the development of a transit-supportive CIP. The CIP typically includes a list of transportation facilities that will be made available, when the facilities will be available, the funding mechanisms used to finance the facilities, and the capacity of the facilities.¹³¹

¹²⁶ A. Duany & E. Plater-Zyberk, *Towns and Town-Making Principles* (1992): 20.

¹²⁷ *South Creek Associates v. Bixby & Associates*, 781 P.2d 1027, 1032 (CO 1989)(citing 2 Anderson, *American Law of Zoning* § 11.12 (1986)).

¹²⁸ *Appelbaugh v. Board of County Commissioners*, 837 P.2d 304, 307 (CO App. 1992).

¹²⁹ AZ Rev. Stat. Ann. § 9-500.05, 48.701 *et seq.*; CA Gov't Code §§ 65864-65869.5; CO Rev. Stat. §§ 24-68-101 *et seq.*; Hawaii Rev. Stat. § 46-121 *et seq.*; FL Rev. Stat. § 163.3220 - 163.3247; MN Stat. Ann. § 462.358(3c); NJ Rev. Stat. § 40.55-D *et seq.*; and NV Rev. Stat. § 278.0201 - 278.0207; see generally Delaney, *Development Agreements, The Road from Prohibition to “Let’s Make a Deal!”* 1992 *Inst. on Planning, Zoning & Eminent Domain*, ch. 2 (Matthew-Bender, 1992); Taub, “Development Agreements,” *Land Use Law & Zoning Digest* 42 (December 1990): 3.

¹³⁰ See CO Rev. Stat. § 31-12-121; IL Municipal Code § 11-15.1-2. Annexation agreements conditioned on rezoning have been upheld on the grounds that the annexation statute does not prohibit such agreements. *Tanner v. City of Boulder*, 405 P.2d 939 (CO banc 1965); *Geralnes v. City of Greenwood Village*, 583 F.Supp. 830 (D. CO 1984); *cf. Rooney v. City of Aurora*, 534 P.2d 825 (CO App. 1975) (dismissal appeal of trial court action challenging contract for annexation and zoning due to lack of final, appealable judgment).

¹³¹ FL Stat. § 163.3177(3). The California Congestion Management Program (CMP) requirements adopted in 1991 provides an example of state legislation that may be used by local governments and transit

Transit Opportunities

A national survey was conducted of approximately 300 transit agencies as part of a study by Freilich, Leitner & Carlisle, commissioned by the National Transportation Research Board.¹³² The survey was not intended to be a complete or exhaustive list of transit-oriented development projects sponsored by transit agencies throughout the country. Instead, the survey provides an example of how transit agencies are using joint development powers and are working with local governments to utilize regulatory authority to encourage transit supportive development patterns. In addition, the survey was intended to search for examples of instances in which transit-oriented development projects or ordinances were subjected to litigation. The survey uncovered no examples of litigation. However, the following section presents an overview of legal issues that may be expected to arise in a development of transit-oriented development projects or ordinances. While the survey identified only a handful of agencies throughout the nation that are involved in transportation corridors, it did reveal a wide variety of techniques in use by the various agencies.

Agencies in California and Oregon have used transit-oriented development to provide housing along transit lines. For example, the Santa Clara Transit Authority has used joint development authority along its rail systems. The agency uses long term 75-year ground leases in order to construct high density, multi-family residential housing

agencies to link transit-supportive development policies with a CIP. The CMP is a broader concept than the CIP, of which the latter is only a part. The CMP requires local governments to “analyze the impacts of land use decisions made by local jurisdictions on regional transportation systems, including an estimate of the costs associated with mitigating those impacts.” (CA Gov’t Code § 65089(b)(4)). The program must measure the impact to the transportation system using the program’s performance measures which frequency and routing of public transit and the coordination of transit service provided by separate operators. (CA Gov’t Code § 65089(b)(2)). The performance measures support mobility, air quality, land use, and economic objectives, and are used in the development of the capital improvement program, deficiency plans and the land use analysis program. Despite its clear language about land use decisions, one reviewer notes that, in practice, the CMP law has had far greater relevance to public investment decisions than to land use controls. Pursuant to the CMP, the Metropolitan Planning Organization must prepare procedures for local deficiency plan development and implementation responsibilities, which must include: (1) an analysis of the cause of the deficiency including identification of the impacts of those local jurisdictions within the jurisdiction of the agency that contribute to the deficiency; (2) a list of improvements necessary for the deficient segment or intersection to maintain the minimum level of service otherwise required and the estimated costs of the improvements; (3) a list of improvements, programs, or actions, and estimates of costs, that will measurably improve multimodal performance using level of service standards, and which contribute to significant improvements in air quality, such as improved public transit service and facilities; (4) an action plan with a specific implementation schedule and implementation strategies for those jurisdictions that have contributed to the cause of the deficiency in accordance with the agency’s deficiency plan procedures. (CA Gov’t Code § 65089.4(c)). Action plan strategies must identify the most effective implementation strategies for improving current and future system performance. (CA Gov’t Code § 65089.4(c)). The analysis of the cause of the deficiency must exclude the traffic generated by high-density residential development located within one-fourth mile of a fixed rail passenger station (CA Gov’t Code § 65089.4(f)(6)(a)) and traffic generated by any mixed use development located within one-fourth mile of a fixed rail passenger station, if more than half of the land area, or floor area, of the mixed use development is used for high density residential housing, as determined by the agency. (CA Gov’t Code § 65089.4(f)(6)(B)).

¹³² The complete draft report of the study is entitled S. Mark White, *The Zoning and Real Estate Implications of Transit-Oriented Development*, TCRP J-5, Topic 3-03, August 1997.

known as “Trandominiums” on park-and-ride districts adjacent to the city’s light rail line. This approach, commenced in 1990, involves the lease of land to private developers who enter into a long-term ground lease, construct projects, and pay rental to the district for the term of the lease. The district owns ten large park-and-ride lots consisting of 101 acres of land. Using its ownership rights, the district has entered into three joint public/private projects for the development of both affordable housing and day care.

The district hopes to accomplish three major objectives through its joint development projects. First, it seeks a continuing source of revenue to defray operating and other expenses. Second, the development will attract new transit riders through the development of high density, multi-family housing at the park-and-ride lots. Third, the developments will create a sense of place and community near the park-and-ride lots, incorporating them into the surrounding community and “make them something more than sterile expanses of asphalt that emptied out at the end of the day.” The joint development will reduce traffic congestion, improve air quality, create live-travel options for transit-dependent groups, and promote infill and preservation of natural resources.¹³³

In other instances, agencies have been instrumental in encouraging the adoption of land use policies supportive of transit-oriented development. For example, in Sacramento County, California, the transit-oriented development policies have been described as the “cornerstone” of the County’s General Plan. These policies include restrictions on the uses permitted around transit stations, revisions in density restrictions, and the use of design amenities to encourage transit ridership. Snohomish County, Washington recently authorized park-and-ride lots and transit centers in all of its land use districts, excluding its mineral conservation and waterfront beach zoning districts. Parking lots are permitted as in the multi-family residential district, freeway service, neighborhood business, planned community business, community business, general commercial, industrial park, business park, light industrial, and heavy industrial districts, and are permitted as a conditional use in all other districts.¹³⁴ Park-and-pool lots are also permitted in those commercial districts as well as in residential zoning districts by conditional use. Park-and-pool lots are defined as follows:

A parking area comprised of fifty or fewer leased parking spaces located in an existing parking lot serving an existing land use (as) utilized by individuals to access car pools, van pools, or nearby public transit. Buses do not enter, or traverse, these park-and-pool lots.

The information from the nine agencies engaged in joint development projects that responded to the survey shows a wide variety of projects throughout the country. Since 1978, approximately 6,371 dwelling units, 2.6 million square feet of floor space of office use, 1.5 million square feet of floor space of commercial or retail use, and 1.7 million square feet of floor space of industrial or institutional use have been added in joint development projects by the agencies which provided information.

¹³³ Santa Clara County Transit District Response to Survey, Survey Question #5.

¹³⁴ Memorandum from Brent Russell, System Planner to Charles Prestrud, Supervisor of Comprehensive Planning re: Code RUB.

Conclusion

Social costs of sprawl are rooted in broader socio-economic issues. If communities are able to provide basic services, many social issues will be minimized. Unfortunately, unabated sprawl eventually will affect suburban communities. Fortunately, urban and suburban communities share opportunities to control this inefficient land use pattern.

At the 1995 American Planning Association National Conference in Toronto, attendees heard about the tough choices facing the country. Attorneys and planners were talking about fiscal bargaining to resolve, minimize, and solve these problems. Michael Stegman, the Assistant Director for Policy Development at HUD, spoke about fiscal and economic growth, about program proliferation diluting the purpose and goals of government as they were initially intended, and about the need to reinvent government to make it more responsive and efficient.

Applying result-oriented “good ol’ fashioned business sense” produces the healthy “bottom line” that is the fiscally conservative theology of the ‘90’s. Joint public/private ventures, subsidies that capitalize private sector dollars, communities that capture the benefit of public investment – these are tools and concepts that planners and attorneys recommend and use to squeeze every drop of value from available tax dollars. It forces government and developers to seek out viable projects. It encourages reasonable and rational economic behavior. Not acting may be the ultimate extension of the “new federalism” – a reliance on smaller special use/pay districts rather than the “full-service” city. The bottom line – we can no longer afford sprawl, either socially or fiscally. It may be difficult to contain, but it makes communities and the nation economically uncompetitive in a worldwide market.

*Western Historical Manuscript Collection-Kansas City
302 Newcomb Hall, University of Missouri-Kansas City
5100 Rockhill Road, Kansas City, MO 64110-2499
(816) 235-1543 WHMCKC@umkc.edu*

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Cover Photo: Southwest Trafficway, May 15, 1951, shortly after it was opened.
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5100 Rockhill Road, Kansas City, MO 64110-2499
(816) 235-1543 WHMCKC@umkc.edu*