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DO PLANNERS ALWAYS HAVE TO MAKE THE NEIGHBORHOOD "BETTER"? RETHINKING THE DISTURBING TENSIONS BETWEEN REDEVELOPMENT AND EQUITY

Don Elliott*

ABSTRACT

America's public sector planners are constantly trying to "make things better." That has been true ever since planning became a profession. Planners are paid to think broadly about how emerging demographic, economic, environmental, and mobility trends will impact life in our communities, and then make recommendations and write regulations to respond to those trends in ways that make the city a better place. In fact, if planners were not doing that, it is not clear why cities should pay them. For the most part, the predominant focus by planners is making communities physically better through comprehensive, neighborhood, sector, and corridor plans. Unanswered in most plans and planning processes is the question "make it better for whom?" While there is often an implicit assumption that the neighborhood should be made better for those who live there, the problem is that if the plan succeeds in improving the physical environment, the current residents may not be the ones who benefit from the change. In this article, I address the disturbing tensions between redevelopment planning and social equity.

INTRODUCTION

For most of the profession's young life (only about 100 years in its current form), "making things better" has focused on improving the physical environment. If housing is deteriorating, make plans to spur renovation and construction of new housing. If streets are congested with cars, make plans for better streets, or parking lots to get some of those cars out of the streets. Or better yet, put more development density near transit so fewer people need to drive as often. If the children do not have safe places to play, plan for more parks. If residents do not have access to fresh food, plan to improve local food systems and allow and encourage more grocery stores. If local history and character are being destroyed, plan to preserve more buildings.

It is not really that simple, of course. Some planners have always focused on encouraging local job creation, or increasing educational opportunities, or on community engagement and empowerment. They reflect a different view of what makes things better. But the predominant focus on planning for a better physical

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environment permeates most comprehensive, neighborhood, sector, and corridor plans.

Left unanswered in most plans and planning processes, however, is the question "make it better for whom?" Community engagement during most neighborhood planning processes often focuses on the current residents, businesses, and property owners in the neighborhood. And since there is never enough money to make plans for every neighborhood, the planning often focuses on those neighborhoods most in need of "making better," which tend to be disproportionately occupied by lower income households and communities of color.[1] While there is often an implicit assumption—by both neighborhood residents and planners -- that the neighborhood should be made better for those who live there, there are serious problems with that assumption. The most serious problem is that if the plan succeeds in improving the physical environment, the current residents may not be the ones who benefit from the change.

THE JUSTFINE PARADIGM

The tension between "making things better" and benefitting current neighborhood residents is extraordinarily complex, and there is no right answer. At the risk of oversimplifying (again), imagine a planning process for the Justfine neighborhood, which has aging and deteriorating housing. Some would call it Naturally Occurring Affordable Housing—it is not subsidized or income-restricted, but due to the age and quality of the housing it is pretty affordable. Justfine also has an incomplete sidewalk system, few parks, a struggling public school, and a smattering of smaller independent businesses occupying older buildings without much parking.

The neighborhood is clearly deserving of city attention to make it better, and the city announces a neighborhood planning process. Justfine residents and businesses are pleased. Those who own their homes and buildings think perhaps better conditions will lead their lives to improve and their property value to increase. Some tenants hope neighborhood conditions will improve, while others just hope their rents do not increase to reflect those improved conditions. The real estate market does what it does best, it smells opportunity, begins to pay more attention, raises its purchase offers by 10 percent, and begins buying property from those willing to sell.

Let's assume the planners do a great job engaging the community. Instead of notifying only property owners and publicizing the planning effort in public places and websites, they also notify all Justfine residential and business tenants. This is

[1] The structural biases in zoning towards privileged sections of U.S. society is well documented in Rothstein, Richard, The Color of Law, Liveright, 2017.

optimistic, since in most cities notification of existing tenants does not happen. Let's further assume that things go well and that the true desires of each participant are accurately recorded and allowed to influence the planning process. But the result will be a mix of desires from:

- Long-time residents who own their property and want to continue to occupy it;
- Long-time residents who own their property and would be happy to sell and move at the right price;
- Recent property buyers who want to improve and occupy their properties;
- Recent property buyers who do not occupy their properties and are primarily interested in rental revenue and property appreciation;
- Renters who want to stay and can afford higher rent;
- Renters who want to stay but cannot afford higher rent; and
- Renters who would be happy to move.

Regardless of the mix of participants in each of these categories, their combined desires will reflect not only those of existing residents who want to stay, but also those of long-term residents and recent property buyers who do not plan to live in Justfine in the future. This is important: With the best of intentions, this well-run planning process will result in a plan that reflects the desires of some people who do not live and have no intention of living in the neighborhood.

To continue with our example, we'll assume that the Justfine neighborhood plan recommends a blend of public investments and private actions to "make it better." Recommended public investments include new sidewalks, a new pocket park (or two), and a small, centrally located parking lot to make it easier for pass-by traffic to patronize local businesses. Maybe it also makes it easier for area property owners to get renovation loans under the city's revolving loan program. To spur private investment in housing, the plan recommends zoning changes to allow individual homes to occupy more of their lots, as well as increases in permitted multifamily densities along major streets. Maybe it also allows the construction of accessory dwelling units. The real estate industry responds as predicted; purchase offers rise another 10 percent and some more existing property owners decide to sell.

As properties begin to change hands and the new owners want to recoup their 20 percent higher purchase prices, rents begin to rise, and those residential and business tenants that cannot afford the new rents may well be displaced. Involuntary displacement is not a foregone conclusion, of course. Perhaps a compassionate property owner will not raise the rent, or maybe the business owner was ready to retire anyway and decided this was a good time to do so, but these may be the exceptions. In general, those involuntarily displaced will tend to be those with the lowest household incomes or the weakest business revenue streams. In most cities those residents and businesses owners may well include a disproportionate number of persons of color and/or women and/or the disabled. This is important as well. The predictable outcome of a neighborhood planning process with a mix of recommendations for public and private actions to "make it better" through physical improvements is likely to lead to some level of involuntary displacement that has disproportionate impacts on women, persons of color, and lower income households.

Let's take the scenario one step further. Assume that the city is worried about involuntary displacement of existing Justfine residents, so it requires that all new construction of projects with more than 20 dwelling units set aside at least 20 percent of those units for households at the current Justfine average household income, and that existing residents be given first priority to occupy those units. Some cities do not have the legal authority to do this, but sometimes it happens, so let's assume that it works perfectly (in spite of strong evidence that it seldom does). As new projects are built, 20 percent are actually occupied by some of the very same people that participated in the Justfine planning process.

Even under these perfect assumptions, however, there may be significant impacts on the existing Justfine residents—the ones for whom the planners assumed they were making the place better. The 20 percent of new units that are "affordable" may not be enough to house all those involuntarily displaced. Some of those displaced will have resettled in other neighborhoods, enrolled their children in other schools, and may not want to move back to Justfine. Those households that earn less than the average Justfine income will not be able to afford the new income-restricted units. To offset the lost revenue from the 20 percent income-restricted units, the developers will need to rent or sell the remaining 80 percent of new housing units at higher prices than they otherwise could.

Why it Happens

The Justfine example is just a hypothetical, of course. Real neighborhoods are much more complicated, real planning processes vary a lot, and cities have many more tools available to mitigate the unintended impacts of "making it better." However, the basic dynamics of the Justfine examples tend to be true and are grounded in four key facts.

1. Money flows toward new investment opportunities. When a new neighborhood plan allows more development, or new kinds of development supported by the market, new money will flow towards Justfine.

2. People are free to sell their properties if and when they want. While it is tempting to think of Justfine's property sellers as landlord just interested in "cashing out," they are just as likely to be longtime residents who will pocket the sale price to fund their retirement. The law treats them the same. It also good to remember that those property owners who may want to sell their property for a profit and relocate or retire could well be women, persons of color, and persons with disabilities whose lives are improved when they receive a higher sales price.
3. Households with more money can outbid those with less money. When neighborhoods are made "nicer," and there is increased competition to live in the area, that competition will generally be won by those with more money—regardless of whether they want to live in the housing or rent it out.
4. Rents for new residential construction are almost always higher than for existing housing. Naturally Occurring Affordable Housing is affordable in part because it was built decades ago when costs for materials, labor, and the energy to construct housing were significantly lower, and those initial costs have been repaid long ago. While the current owners will probably charge whatever rent the market will bear, in marginal neighborhood like Justfine that price is likely to be lower than the lowest rent a new developer can charge for a new unit.

This last point is key. Before the Justfine planning process began, property values did not reflect the better quality of life that would result from new sidewalks, parks, and more intense development. That was Naturally Occurring Affordable Housing un-influenced by city intervention (or conversely, kept low in part due to lack of city attention). Once the planning process was announced, and after the plan was published, property values, sales prices, and rental rates rose by 20 percent.

Ten years from now, Justfine's housing stock will include a mix of existing housing that has not been improved (the owner is not yet interested in investing or selling), older housing that has received upgrades and can charge higher rents than un-improved housing, and new housing built after the zoning changes. In a perfect market (which never exists) rents for these units should stabilize around values that differ only based on the quality of the housing unit (the newer one can charge higher rent because it is nicer, not because it is newer). In practice, however, the price of housing that has been built or renovated recently will almost always be higher than "standard" units that have received less investment—i.e., higher than that of Naturally Occurring Affordable Housing that existed before the planning effort. In short, without very deep public subsidies, it is very unlikely that the 80 percent of housing built in Justfine will be affordable to many of the current residents.

As the dynamics of the Justfine example have played out in cities throughout the U.S., these trends have become more apparent—not only to planners, but to neighborhood residents and business owners. Not surprisingly, then, planners have started hearing neighborhood residents ask that planners "not make it better." Because of worries about rising rents and displacement, some residents have been asking planners to "leave it alone"—i.e., to discourage public investments and avoid creating new incentives for private investment.

IS IT TIME FOR A "DON'T INVEST HERE" OVERLAY ZONE?

This poses a fundamental question for the planning profession. If a city wants to reduce the displacement of its most vulnerable renters, should planners be actively trying to "not make it better." Are there times where "making it better" for households with lower incomes (which are disproportionately headed by persons of color, women, and the disabled) means actively discouraging investment in the neighborhood—even if the physical condition of the housing and businesses in the area is likely to continue to deteriorate? Or, to put it another way, are there times when planners should actively ignore the physical deterioration of a neighborhood in order to "make it better" for those who fear that any change for the better will lead to displacement?

One way to do that would be to create a "Don't Invest Here" overlay zoning district—or more realistically a "Limited Investment" overlay zone. The overlay might include, for example, a provision limiting the physical expansion of an existing structure to no more than 10 or 20 percent of the gross floor area during each five-year period. Or it could include a limit on the dollar value of building permits issued for a structure to 10 or 20 percent of the assessed fair market value of the property during each five-year period. Or it might prohibit the expansion of any one-story structure into a two-story structure (a "pop-top"), even though the underlying zoning district would permit that expansion.

There could be exceptions granted for accidental damage or destruction, or to bring the building into compliance with building, fire, safety, or accessibility codes. Perhaps there could be an exception if any investments above the 10 or 20 percent limits was required to create a dwelling unit that is affordable at very low levels of Area Median Income, which would allow investments by community land trusts or affordable housing non-profits. Any combination of these tools would allow a property owner to make periodic investments while discouraging the real estate market from targeting the area in ways that would lead to the destruction of Naturally Occurring Affordable Housing.

More dramatically, the city could adopt a policy of limited public investment in the area in order to avoid expectations of rising property values. Instead of prioritizing neighborhood park construction and upgrading, it could deprioritize those actions. Instead of granting permits for sidewalk cafes on private property, it could refuse to issue those permits on the basis that some view outdoor dining spaces as symbols of impending gentrification.[2] Again, this reflects a dramatic reversal of the traditional planner's role—a decision not to "make it better" for the sake of the vulnerable population. It could also mean that some federal and state funds required to be spent in low-income areas could not be spent in this particular low-income area. Policies like these would reflect a city decision that "making it better" for low-income residents to stay in place means not "making it better" in terms of the physical characteristics of the area.

While a Limited Investment overlay district may seem strange, there are already analogies in the zoning world. Many historic preservation overlay districts are already limited investment districts. In order to achieve a city priority (heritage preservation) they affirmatively limit the types of investment that can be made in the districts. Those that reinforce the intended character are allowed; those that would weaken that character are not.[3] It does not matter that the new building would be "better" in terms of aesthetics, economics, and maybe even safety—the city as a whole says it is "better" for the old building to stay. The landmark case of *Penn Central Transportation Co. v. New York City*[4] involved a decision by New York City to "make it better" by not allowing the real estate market to make investments that would compromise Grand Central Station.

A second example comes from Youngstown, Ohio, which in 2013 adopted a Limited Services Overlay district for a large and mostly undeveloped area in the northeast corner of the city.[5] The goal of the overlay was to prevent significant new property investments that would expand the demand for police protection, fire protection, and water system improvements in an area of the city where the city could not afford to extend those systems and protections. Existing uses of the property and minor changes were allowed; conditional use approvals and variances were prohibited, and significant private investments were discouraged. The overlay said, in effect, "we don't intend to make this area "better"; we cannot afford the consequences of doing so."

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[2] See, for example, *How to Track a Neighborhood's Gentrification Through Restaurant Openings* (eater.com),Vince Dixon, September 30, 2020.

[3] See, for example, Duluth, Minnesota, Unified Development Chapter Section 50-18.3 Historic Preservation Overlay or Albany, New York, Unified Sustainable Development Ordinance Section 375-2(F)(1) Historic Resources Overlay.

[4] 438 U.S. 104 (1978).

[5] Youngstown Redevelopment Code, Section 1102.03(e) Limited Services Overlay District.

BUILDING ON ZONING'S STRENGTH

Many of the current challenges facing zoning arise from its DNA—the fact that zoning powers were designed to exclude rather than include. When the market wants to prevent a particular type of investment, zoning can—and with enough political backbone behind it will—prevent the investment from being made. An investor who can make a good return building a 10-story building on land zoned for three story buildings can and often will be prevented from making that investment. From the beginning, the very purpose of zoning was to thwart market investment pressures that would damage the intended character of different neighborhoods.[6]

But zoning is much less effective at including desired uses. It has a hard time making desired land uses happen if they are not supported by the market. Zoning cannot force an investor to build a 10-story building just because it changes the zoning to allow 10-story buildings. If market demand will only support and lenders will only finance a three-story building, then the 10-story building will not get built. On a more human level, zoning can be amended to allow grocery stores in areas that need them, but zoning alone cannot make them happen if there is not enough market demand to support a grocery store. Zoning also has a hard time forcing affordable housing to be built in expensive neighborhoods with high land prices.

While zoning can in some cases be drafted to induce development that would not otherwise occur (for example, by allowing an extra five stories of apartments in return for a ground floor grocery store), that only works when there is almost enough market demand to support the desired use and allowing extra density can make up that difference. Of course, money can often solve this—zoning for density plus a public subsidy can induce the market to build things the market does not want to build. But money is always in short supply and imagining that subsidies will be available is often a poor bet. At its heart, zoning was designed to exclude, and the fact that zoning gymnastics are needed to change that just proves the point.

A limited investment overlay zone plays to zoning's strength; it builds on zoning's DNA of exclusion. It simply prohibits investment where the market would otherwise like to invest, which zoning has been doing for 100 years. The difference is that we have seldom seen the power to exclude used to prohibit investments that most observers would agree would "make things better." Instead, zoning has generally been used to prevent investments that are out of character with the desired

[6] The inherently exclusionary nature of zoning is well documented in Levine, Jonathan, Zoned Out, Resources for the Future, 2006.

height, scale, and purpose of a neighborhood. There is no question that the market driven investment would have been "better" than what is currently on the property but zoning politely says "this is not the right place," or "that's too much of a good thing for this area." A limited investment overlay zone simply extends that logic to say, "this is not the right place to make any significant investment." This is not a new idea; it is an extension of an old idea that just shifts the public purpose from protection of the physical character of the area to preservation of its economic character.

In light of the serious and growing housing affordability crisis that plagues most cities, the protection of Naturally Occurring Affordable Housing ought to become a priority because the rents and sales prices of those older (and generally smaller) homes and apartments are substantially lower than those for new construction. That is particularly true if the sales prices for existing housing do not reflect the potential demolition and replacement of the house with a much bigger house. Without the speculative value of the land for redevelopment, sales prices (and the resulting rents if they are rented out) are likely to remain substantially lower than if the size of the house could be doubled or tripled. Limited investment overlay zones could do exactly that. They could remind the market—just like property in a historic district—that these houses and shops are to be priced for reuse without substantial expansion or redevelopment.

ON THE OTHER HAND

Limited investment overlay zones are one potential tool that could help resolve the tension between our desires for redevelopment and our desire for equity and affordability. They could limit and pace reinvestment to make it less likely that gentrification and involuntary displacement take place. They put the government's thumb on the equity side of the scale by limiting the scale and pace of development in ways that will discourage speculation based on the anticipation of a "better" neighborhood. But they do have three negative impacts.

First, long-time property owners who want to sell their properties will find that offering prices are lower than they would be without the overlay. The windfall that comes through speculation and gentrification, and that might have funded their retirement or relocation, will be smaller. If the neighborhood really does have a disproportionate population of households or businesses headed by women, persons of color, or the disabled, those smaller payouts will have a disproportionate effect on them.

Second, the housing stock will continue to age, may become more functionally obsolete, and may deteriorate in spite of the ability to make small investments for renovations and repairs. Some of our Naturally Occurring Affordable Housing was built cheaply (that's one reason why current rents are low) and cannot be made to last forever. The market-driven replacement of older buildings by new ones is one of the ways cities renew themselves, and it is generally a healthy outcome of market driven investment. A limited investment overlay zone puts its foot on the brake in some of the poorer neighborhoods that would otherwise be most ripe for renewal and redevelopment. It creates an economic distortion that may drive speculation into other almost-as-affordable-but-unprotected neighborhoods, and it may mean that housing conditions in the overlay zone get worse over time.

This is a serious and likely consequence of a limited investment overlay zone. If "better" places tend to be occupied by more affluent households, and we try to discourage that by not making the place "better," its physical quality may well decline, and the consequences of this not-as-nice-as-it-could-be status (broken sidewalks, few parks, marginal businesses) may well impact persons of color, and low-income families, and women-headed households most. Those consequences are themselves inequitable and might only be justified if the city concludes that they are the lesser of two evils—that the inequities that result from involuntary displacement of those current residents is worse than allowing the physical quality of the neighborhood to continue to erode. But that is a decision that local elected officials—acting rationally and in what they believe to be the best interests of the residents and the city—could make. It may violate our expectations as to how elected officials should balance the tensions between redevelopment and displacement, but it would easily pass the "rational relationship" test needed to uphold most local government actions.

Third, and most fundamentally, the use of a limited investment overlay zone violates the fundamental assumption that planning and zoning are there to preserve or improve the physical quality of our neighborhoods. It requires a different understanding of zoning as a power that can sometimes be used to "make it better" economically by not making it better physically. But that may be exactly what is needed to resolve the uneasy tension between redevelopment and equity over the next 30 years. That is particularly true as the planning profession begins to take the impacts of zoning on equity and displacement more seriously than we have in the past. Getting different outcomes requires thinking differently—including thinking harder about what "better" means.