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Postscript

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POSTSCRIPT

I am grateful to the School of Landscape Architecture and Planning at the University of Arizona for sponsoring this Festschrift and to the Georgia State University Law School's *Journal of Comparative Urban Law and Policy* for publishing it. I insisted, however, that they make it a celebration of my mentors, colleagues, and students. Hence, its theme is AGENDA FOR BUILDING A CHANGING WORLD RESPONSIBLY: COMMENTARIES AND REFLECTIONS BY LEADERS IN URBAN PLANNING, POLICY, AND DESIGN.

Why "responsibly?" The world is changing constantly through the decisions of billions of people each day. In my field of planning, this occurs when land is changed from one use to another. They are driven by the desire by those making the change to maximize benefits regardless of the consequent effects on society and the environment. To be responsible in this context is to make decisions about the use of land that advance the well-being of people, the economy, and the planet. These are the pillars of sustainability—a product of responsible decision making. I could not be more pleased with the calls for change published in this issue, not to mention the strategies presented for effecting it. The Festschrift also allows me to reflect on the past half century of service to my profession and the academy.

As a senior in urban studies at Portland State University in 1972, I joined two graduate students as interns on the Oregon legislature's Joint Committee on Land Use. It wrote Senate Bill 100—adopted in 1973—creating Oregon's pioneering statewide land use planning system. Our role was to interview local planning directors and elected officials in rural Oregon to understand why the state's earlier statewide planning attempt, Senate Bill 10, was not effective. While those officials endorsed planning, they also made it clear that without state mandates, planning would continue to be ineffective in rural Oregon if not throughout the state. Senator Hector McPherson, primary sponsor of the bill, listened to us carefully, because SB 100 needed a suite of enforcement mechanisms to ensure compliance. One of those, preventing new development until plans were approved by a state agency, became key to its implementation. In 2013, on the 40th anniversary of Senate Bill 100, I was invited to make a presentation to the Oregon

Land Conservation and Development Commission to share my scholarly research into the effectiveness of Oregon's planning policies. Sen. McPherson was present.

My primary field of planning addresses future needs and implements policies designed to help guide communities accordingly. My experiences as a student, a planner—including as a planning director, a consultant, and a litigant in Oregon are the foundation of much of my research, scholarly work, and service. From the beginning of my involvement in Oregon's land use planning system, I was impressed with efforts by developers, environmentalists, and local officials to write laws and rules that require plans be designed and implemented to meet all development needs in a manner that also protects valuable landscapes. It has done this remarkably well overall. These experiences framed my approach to helping Georgia craft its planning policies, as well as aiding Florida—as its chief expert witness during the 1980s and 1990s—in challenging local plans the state argued were inconsistent with its Growth Management Act.

As a small-scale developer (with a portfolio including affordable housing) and consultant to developers (including mixed-use and attainable housing projects), I am also sensitive to property rights and adjudicative processes. I learned early that planning is all about allocating and then protecting property rights. Without a planning process that defines property rights, they are only ephemeral and from a legal perspective may not even exist.

Another planning field of mine is the analysis of development externalities which can be both positive and negative. Planning processes tend to focus on minimizing adverse land use interactions. Denying or conditioning land use change, however, runs counter to ideological principles advanced by libertarians, among others. According to their ideology, government must defer to individuals' right to use land as they wish regardless of the resultant harms imposed on others.[1] Of course as I noted above, property rights do not exist until policy processes specify what they are. When proposals are made to change the use of land, courts allow government to require mitigation of known harms associated with that change. But this begs the question of knowing the true nature and extent of those harms, especially those that transcend generations. A key tenet of planning is thus to err on protecting the right of future generations to benefit from resources that may be compromised through decisions made today.

Furthermore, planning includes the messy work of choreographing resources to meet often competing interests. This has two main features: the allocation of resources needed to achieve various goals during a given planning

[1] An extension of libertarian philosophy was seen during the COVID-19 pandemic in which people claimed it was their individual right not to wear masks or be vaccinated thus enabling their infections to harm or kill others.

horizon and permitting no more development than needed to meet market demand so as to ensure efficient use of resources. The latter is an under-appreciated role of planning that I focus on next.

In the early 1980s, then President Ronald Reagan persuaded Congress to change federal tax laws so as to induce the market to build more real estate projects than needed to meet market demand. This led to the collapse of much of the savings and loan industry in the late 1980s, triggering the recession of the early 1990s. Then, as if we learned nothing from this federal policy failure, the housing market produced more homes than needed during the 2000s, leading to the Great Recession. Despite having tools at their disposal, various federal agencies did nothing to intervene in the market to prevent or correct for residential overproduction. By the late 2000s, millions of homes were being foreclosed and financial institutions were collapsing. Since the beginning of the last century, only the Great Depression inflicted more economic harm on more people.

Why did the market produce more development than needed? After all, a key principle of conservative economic ideology is that financial and other institutions will prevent their own demise as they act in their own self-interest. This is exactly what did not happen, however, in the 1980s when excess commercial property development led to the demise of much of the savings and loan industry and in the 2000s when excess residential property development led to the demise of many financial institutions, including some very large ones. When pressed by Congress in 2008, Alan Greenspan, then immediate past chair of the Federal Reserve Board, which had many tools available to reduce if not prevent overbuilding, admitted:

> I made a mistake in presuming that the self-interests of organizations, specifically banks and others, were such that they were best capable of protecting their own shareholders and their equity in the firms. … Those of us who have looked to the self-interest of lending institutions to protect shareholders' equity, myself included, are in a state of shocked disbelief.[2]

Which brings me to the role of planning in the scheme of the nation's economy. Allow me to assert that if federal, state, and local policymakers—and even development and financial interests—were guided by planners in ways outlined below, perhaps we might not have had the savings and loan crash of the 1980s and the Great Recession of the 2000s. There is good evidence to make this claim. But first consider the prophetic words of then Berkeley planning professor David E. Dowall in 1986, before the savings and loan crash materialized:

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[2] Edmund L. Andrews, Greenspan Concedes Error on Regulation, *The New York Times*, October 23, 2008, retrieved from https://www.nytimes.com/2008/10/24/business/economy/24panel.html.

> … by the time you read this piece it will be commonly accepted that the nation's office markets are financial basket cases. It seems that we again have wildly overbuilt real estate, this time in office buildings. The last time, in 1974-75, it was condominiums. [3]

He goes on to outline serious consequences communities face due to overbuilding, such as: empty buildings that blight surrounding uses and undercut viable markets; inflated demand for public facilities meaning more facilities will need to be built than needed thereby increasing costs on everyone; and empty buildings may bankrupt developers, forcing them to breach agreements with local governments. Dowall concludes: "… it (is) clear that developers and lenders are abdicating their responsibility to exercise stewardship over the real estate market."[4]

Greenspan admitted as much 22 years later.

Noting planners' role in reviewing development proposals for their consistency with local plans and codes, Dowall recommends including assessing the market demand and financial feasibility of those proposals.

What he did not anticipate was the magnitude of federal taxpayer intervention in the 1980s to bail out financial institutions strapped with excess debt because of overbuilt real estate. This gave rise to "moral hazard," in which financial institutions learned that they could hedge their bad investment decision bets because federal taxpayers would bail them out.[5] Of course, the next real estate crash after the one predicted by Dowall was the largest since the Great Depression.

However, harms associated with overbuilding during the 1980s and 2000s varied between states. Research has shown that those states where permitted development was closer to meeting market demand fared far better than states lacking such discipline.[6] The reason is that those states had a tradition of using planning systems to better match development supply with market demand.[7] In effect, planning in those states worked as a safety valve to prevent or at least soften overbuilding and its economic consequences. Unfortunately, the cruel irony is that

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[3] David E. Dowall (1986) Planners and Office Overbuilding, *Journal of the American Planning Association*, 52(2) 131.

[4] Id. Dowall at 132.

[5] Juan Flores Zendejas, Norbert Gaillard, and Rick Michalek. *Moral Hazard: A Financial, Legal, and Economic Perspective*, Routledge (2021).

[6] Arthur C. Nelson, John Travis Marshall, Julian Conrad Juergensmeyer, and James C. Nicholas, *Market Demand-Based Planning and Permitting*, American Bar Association (2017).

[7] To be sure, at the other end of the spectrum are states that permit less development than needed to meet market needs.

taxpayers of those responsible states saw their tax dollars used to subsidize bailouts for irresponsible ones.

Going forward, how can planning protect both financial institutions and taxpayers—and incidentally the American economy? The imminent economist Marion Clawson offered this insight back in 1971:

> If planning, zoning, and subdivision were firm—enforceable and enforced—then the area available at any one time for each kind of use would bear some relationship to the need for land for this use. … *but no more*. (Emphasis added.) [8]

Which leads me to advocate that planning as an institution is ripe for a reorientation toward what I call **Smart Planning**. At its heart, smart planning is about addressing the needs of people consistent with six aspirational goals that I outline below. It begins with identifying current and future development needs for all land uses which is then matched with an assessment of current conditions and an inventory of community assets judged on their ability to meet current and future needs. This is followed by coordinating the availability of land and other resources to meet those needs. In my experience, I've seen communities choose to not meet development needs—often by refusing to expand housing choices—even when those needs are known and can be accommodated. The result is the over-allocation of resources for some types of development, the under-allocation of resources for others, and higher taxes and fees on everyone because expensive infrastructure is rendered less efficient. This is not smart planning.

Smart planning would reframe smart growth principles[9] and go beyond growth management[10] to focus on these six aspirational goals:

- Provide public and common goods;
- Maximize the use of existing and new infrastructure to minimize costs;
- Maximize positive land use interactions and minimize negative ones;

[8] Marion Clawson, *Suburban Land Conversion in the United States: An Economic and Governmental Process*, Routledge (1971), 109.

[9] See Environmental Protection Agency, *About Smart Growth*, retrieved January 29, 2022, from https://www.epa.gov/smartgrowth/about-smart-growth. See *About Smart Growth*, Environmental Protection Agency, retrieved January 29, 2022, from https://www.epa.gov/smartgrowth/about-smart-growth.

[10] Arthur C. Nelson and James B. Duncan, *Growth Management Principles and Practice*, Routledge (1995). Although many of the aspirational goals were introduced in this book, I have refined them and added others.

- Equitably distribute the benefits and burdens of change;
- Elevate the quality of life; and
- Preserve choices for future generations.

Overarching these aspirational goals is the engagement of citizens in the planning process. This means going outside the meeting hall—which is often dominated by NIMBY (not-in-my-backyard) interests—directly into the multiple communities that comprise the constituencies of local government. Allow me to summarize the aspirational goals.

PROVIDE PUBLIC AND COMMON GOODS

Smart planning provides and ideally enhances public and common goods.

Public goods are those deemed by a society to be important to advancing its well-being. They are non-rival, meaning that no matter how many people may use them, no one is deprived of their benefits. They are also non-excludable, meaning that no one can be deprived of their use through user fees, quotas, or other limitations. National defense is one example, as are lighthouses, streetlights, clean air, and knowledge. In local land use planning, examples of public goods are scenic views and vistas, and historically, culturally, and scientifically important sites and landscapes, among others. Many tools are available to provide these local public goods such as taxes and other revenues to acquire and maintain them, and regulation to preserve their benefits.

Common goods are non-excludable, meaning no one can be deprived of their use, but they are rivalrous, meaning that if more people use them than is sustainable, everyone is harmed.[11] In planning, examples of common goods are public roads, public parks, public safety, and public schools, among others.[12] Taxes, user fees, quotas, and regulation help provide them as well as prevent their overuse.

A challenging part of planning is addressing land that confers both public and private goods, such as farmland, forestland, rangeland, and related landscapes. While agricultural land uses have classically had the characteristics of private goods, they also produce such public goods as: wildlife habitat and biodiversity; protection of natural resources including soil, water, and air quality; pollination of crops; flood control and extreme weather mitigation; carbon storage; and human physical and mental well-being, among others.

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[11] See Garrett Hardin, The Tragedy of the Commons, *Science* 162(3859): 1243-1248 (1968).

[12] Many of these goods can be provided by the private sector and the use of some can be managed through pricing schemes such as toll roads, congestion pricing, and use fees. Their provision, financing, and management is based on public policy choices.

Smart planning identifies those public and common goods the community decides it wants to provide and determines how they will be delivered. Smart planning then allocates resources and guides development patterns, usually through regulation, to achieve this goal. Doing so often adds value to new development that can be leveraged into new resources to help provide those and other public and common goods.

MAXIMIZE THE USE OF EXISTING AND NEW INFRASTRUCTURE TO MINIMIZE COSTS

Infrastructure is expensive to construct and maintain. All too often, local governments arrange their land use patterns to underuse infrastructure, thereby raising costs on everyone. For instance, if a road has the capacity to serve 10,000 homes in an area, zoning to limit homes to half that number means road costs per home are doubled. I know of situations where the reconstruction of older roads in low-density neighborhoods costs more than several decades worth of property taxes generated by all the homes in that neighborhood combined. At sufficient density, along with smart infrastructure financing programs, resources would be available to build and maintain infrastructure over the long term. Short of this, maintenance is deferred, and higher costs are usually incurred in the future. In some cases, the high cost of paying for deferred maintenance requires cutting local budgets for public safety, parks and recreation, and other services. Smart planning maximizes the use of new and existing infrastructure, which reduces present and future public costs. Savings can be used to help finance other government goods and services, including economic development, or reduce taxes and fees, or various combinations.

MAXIMIZE POSITIVE LAND USE INTERACTIONS AND MINIMIZE NEGATIVE ONES

Zoning was invented in large part to separate land uses deemed incompatible with one another. The famous *Euclid v. Ambler* case in which the U.S. Supreme Court determined that zoning was a police power function dealt in part with a city wanting to separate new subdivisions from noxious industrial activities nearby. For sure, there is ample evidence showing that certain land uses impose negative externalities on others. But land uses can also be complementary in ways that modern planning and zoning codes do not appreciate. Indeed, because of modern environmental policies, building codes, and advances in architecture, design, and materials, it may be more the case that incompatible land uses are the exceptions. Smart planning takes a fresh look at development codes to determine the maximum number of land uses that are compatible with one another and crafts codes that maximize those positive land use interactions.

EQUITABLY DISTRIBUTE THE BENEFITS AND BURDENS OF CHANGE

Planning that is socially just will find ways in which to fairly distribute the benefits and burdens of change equitably among constituents. Indeed, the AICP Code of Ethics requires planners to seek ways in which to do so:

> We shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.[13]

This is potentially revolutionary if carried out fully, as it must be. We start by recognizing that much of our planning and development regulations are rooted in patently discriminatory practices, as shown by Richard Rothstein in *The Color of Law.*[14] There are sound arguments for reparations to help redress past harms. Going forward, as American society continues to change along racial/ethnic, age, education, and wealth dimensions, smart planning will be needed to characterize the nature of change and then craft plans and other policies that equitably distribute the benefits and burdens of that change.

ELEVATE QUALITY OF LIFE

Research shows that mixed land uses, higher densities, and improved transportation and land use accessibility elevate quality of life in such ways as improving personal and public health, enhancing economic resilience, creating sense of community, and advancing well-being among others. We are far from having the number of communities that maximize quality of life that we should. My review of Community Preference Surveys conducted by the National Association of Realtors since 2004 reveals that while roughly half of American households want to live in walkable communities with a mix of housing opportunities, only a fifth do.[15] In other words, our planning and development institutions are underserving tens of millions of households. In this respect, smart planning is needed to help reshape existing communities and build new ones that elevate the quality of life for all Americans who want to live in mixed use, walkable communities with a range of housing choices. Research shows that doing so will advance quality of life of those millions of households.

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[13] See https://www.planning.org/ethics/ethicscode/.

[14] Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America*, Economic Policy institute (2017).

[15] Daniel G. Parolek with Arthur C. Nelson, *Missing Middle Housing: Thinking Big and Building Small to Respond to Today's Housing Crisis,* Island Press (2020).

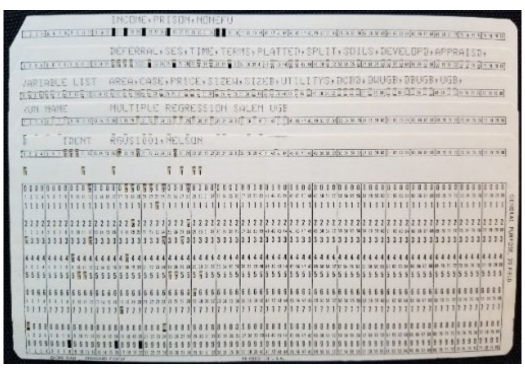
PRESERVE CHOICES FOR FUTURE GENERATIONS

Lastly, there is an intergenerational component to smart planning that is rooted in sustainability. Conceptually, society needs to ensure that development "meets the needs of the present without compromising the ability of future generations to meet their own needs."[16] From a planning perspective, decisions to convert land from one use to another may foreclose future options. For instance, a decision to convert prime farmland into low density subdivisions removes that land from the supply of farmland available to meet the needs of future generations. It may also reduce the provision of the kinds of public goods noted earlier. If society deems such landscapes important to preserve for future generations, it must protect them through taxes, fees, regulations, and other means.

TRIBUTES

I dedicate this volume to the mentors, colleagues, and students who contributed to it. They have given me an agenda for building a changing world responsibly that will be a roadmap for the balance of my career. Thank you all!

My passion for studying urban studies and planning was aided by Ken Dueker, my doctoral committee chair, and Jim Strathman, with whom I explored the extent to which Oregon's urban growth boundaries influenced real estate markets in expected, and often unexpected, ways. Those were the days of punch cards, when one waited with bated breath to see whether the cards were punched correctly and then what the outcome meant, in both cases often requiring redoing batches of punch cards (a sample is shown on the left). During those years, David "Rocky" Johnson, a fellow doctoral student, housemate, and great friend, had an immeasurable influence on focusing my passions. None of this would have happened without the College of Urban Affairs at Portland State University, founded by the late Nohad A. Toulan. We miss his wisdom and especially his humanity.



[16] Gro Brundtland, *Report of the World Commission on Environment and Development: Our Common Future*, United Nations General Assembly document, A/42/427 (1987), p. 47. With others, I had the great personal privilege of spending a week with Brundtland on a study tour of Norway in 2009.

I am indebted to six academic administrators who encouraged, guided, and supported my career in the academy, in order: Mark Lapping, dean at Kansas State University's College of Architecture, Planning and Design; the late Fritz Wagner, dean of the College of Urban and Public Affairs at the University of New Orleans; initially David Sawicki and then Steve French, directors respectively of the graduate program in City Planning in the College of Architecture at the Georgia Institute of Technology; Paul Knox, dean of the College of Architecture and Urban Studies as well as John Randolph, director of the School of Public and International Affairs at Virginia Tech; and Brenda Scheer, dean of the College of Architecture and Planning at the University of Utah.

I am also indebted to Ray Burby of the University of North Carolina, Chapel Hill, and former editor of the *Journal of the American Planning Association*, who became a valued mentor early in my career.

A word about my late friend and colleague, Rob Lang. We began working together in the middle 1990s when he was with the Fannie Mae Foundation while I was at Georgia Tech. We had the good fortune of being hired by Virginia Tech to start its Metropolitan Institute as well as the graduate urban affairs and planning program at Virginia Tech's Alexandria Center, in old town. We eventually went separate ways, pursuing exciting opportunities although continuing to collaborate. I remember those years in Alexandria with Rob, Paul, and John fondly.

I am especially indebted to two colleagues whom I met at the 1985 conference of the American Planning Association in Montreal: Jim Nicholas and Julian Juergensmeyer. As a professional in fiscal impact assessment, I was searching for experts in the then budding field of impact fees and found that Jim and Julian were the very mentors whom I was seeking. We went on to train more than 1,000 professionals in impact fees through more than 30 workshops sponsored by Georgia Tech, the American Planning Association, and others, and collaborated on dozens of publications along with scores of presentations spanning five decades, from the 1980s into the 2020s. They also imparted invaluable counsel along the way.

Through it all since the late 1970s, Monika has been my partner and fellow traveler. Together with our daughter, Emily, we have lived in very special places as I pursued new opportunities. I look forward to many more.

Chris Nelson
February 11, 2022