1994

Growth Management and the City

James A. Kushner

Follow this and additional works at: http://digitalcommons.law.yale.edu/ylpr

Part of the Law Commons

Recommended Citation
Available at: http://digitalcommons.law.yale.edu/ylpr/vol12/iss1/5
Growth Management and the City

James A. Kushner†

The way urban growth has been "managed," it is no surprise that America's cities are dying.¹ During the last three decades, American urban growth policy was directed to suburban growth. Government encouraged exodus from the metropolis through: deep subsidies for highways, utilities, and open space; housing finance, particularly in the form of tax deductions for mortgage interest and real property taxes; and subsidized Veteran's Administration loans and Federal Housing Administration mortgage insurance.² Leaving the city in search of suburban values, the affluent were followed by industry in search of greener locations, retail establishments that favor malls, and restaurants and entertainment outlets looking for secure locations. Thus, the economic base from which taxes are generated to fund public services was transferred to the suburbs.

Despite notable, symbolic, and often exciting urban renewal projects, the suburban growth explosion left distinct patterns of systemic poverty in the cities. These patterns include: racial segregation, burgeoning crime, inadequate transit systems, decaying neighborhoods and housing stock, declining school systems, inadequate job training, high unemployment, rapid population expansion, minimal employment creation, and inadequate systems of public safety and health. America's urban streets and parks are often unsafe, and urban transit systems, bridges, water and sewer lines, and public buildings need extensive rebuilding. The situation requires both massive reallocation of the tax base and an escalation in taxing and spending on public works, human services, and job creation rivaling the scale of the New Deal. Without this radical alteration of America's urban policy, together with public safety initiatives reflecting a wartime mobilization, the American metropolis—indeed the nation—will be doomed to a declining quality of life that leads to eventual third world economic status.

Artificial life support systems were largely terminated under the Reagan and Bush Administrations,³ and the Clinton Administration's modest initia-

† Professor of Law, Southwestern University School of Law. The author assumes full responsibility for the ideas, opinions, and proposals contained in this article, but wishes to express his appreciation to those who provided thoughtful comments, including Michael Frost, Isabelle R. Gunning, Norman Karlin, George LeFcoe, and Robert Pugsley. Research assistance was provided by Jeremy Robin Frost and Robert E. Ragland, III.

¹ See, e.g., Tom Morganthau & John McCormick, Are Cities Obsolete?, NEWSWEEK, Sept. 9, 1991, at 42; see also Bill Lewis, Is Consolidation for Memphis?, MEMPHIS BUS. J., Oct. 18, 1993, § 1, at 1 (describing the flight of the middle-class tax base, resulting in urban decline).

² See JAMES A. KUSHNER, APARTHEID IN AMERICA 20-30, 56-63 (1980).

³ See Peter Dreier, America's Urban Crisis, 71 N.C. L. REV. 1351, 1383 (1993) (during the Reagan and Bush Administrations, "federal government policies . . . encouraged, even subsidized, the flight of businesses, jobs, and people from America's cities"); Robert F. Wagner, Jr. & Julia Vitullo-Martin, Can
Growth Management and the City
tives—shaped by the political realities of reflexive opposition to "tax and spend" policies—offer only symbolic improvement. Federal initiative under the proposed Clinton urban development program promises, at best, catalytic leadership with insufficient investment; 4 this, when only radical experimental surgery stands between urban survival and the death of the city.

Part I of this Article will describe the state of growth management planning and controls in the United States. Part II will criticize the current schemes of both suburban growth management and traditional land use regulation. Part III will describe a vision of rational growth management that encompasses both the city and its suburbs.

I. URBAN GROWTH MANAGEMENT

Urban growth management is the essence of public urban planning. 5 As practiced in the United States, growth management is reflected in limits on development, typically controlled by zoning, infrastructure capacity, and development timing. 6 Commencing in the 1970s, suburban and rural communities on the outer fringe of development realized that rapid urbanization was outstripping their ability to provide supporting infrastructure, 7 and that developers seeking cheaper rural sites often posed a serious environmental threat to communities.

Growth management must address the form of the city rather than simply place a restraint on the pace and extent of development. To offer its citizens a heightened standard of living, a city must assure a viable economic base that

---


5. JAMES A. KUSHER, SUBDIVISION LAW AND GROWTH MANAGEMENT §§ 1.01, 1.02, 2.01 (1991 & Supp. 1993).


7. Infrastructure refers to the broad range of services and facilities necessary to support development. See generally KUSHER, supra note 5, ch. 6 (outlining the financing of capital improvements).
provides accessible employment, essential services, security, and a pattern of affordable housing and transportation.

Development increases the demand for streets, bridges, sewer and water lines, treatment facilities, solid waste disposal, flood control systems, schools, parks and open space, and transit. Development also generates demand for cultural resources such as libraries, museums, art, and entertainment, as well as hospitals, police and fire facilities and services, convention centers, auditoriums, sports stadiums, courtrooms, and prisons. It is up to communities to condition development on the adequacy of existing facilities and on the controlled expansion of infrastructure capacity.

Under traditional zoning schemes, districts of the community are regulated to limit: the uses permitted on property; the height of any structure; and the minimum size of any lot to be developed. Modern zoning ordinances are often more complex. By defining overall project, rather than individual lot, requirements, these ordinances give greater flexibility to project designers. The concept and design of projects, including the mixing of residential and commercial uses within a common project, have almost limitless variations. Overall density is typically set to permit a particular number of dwelling units per acre, with comparable density limits on commercial or industrial development.

Flexible zoning systems require a more sophisticated development review process. These processes usually include public review of the development proposal. Development review may take place before both the local legislative body and a planning commission or similar administrative body. The reviewing agency is typically charged to assure quality site planning, to determine the adequacy of supporting facilities and services, to compare proposals with comprehensive planning documents, and to consider the project in light of the protection of the general welfare of the community. Zoning of the undeveloped suburban fringe generally restricts construction to single-family homes on generous lots to avoid both street congestion and the exhaustion of the community’s capacity to provide schools and water and sewer services.


10. For instance, modern zoning ordinances may regulate parking or establish open space, yard, or noise standards. See Chinn & Garvin, supra note 6, at 6-8. In many communities, zoning has been modified to allow larger developments of mixed uses subject to certain performance standards. See, e.g., LANE KENDIG, PERFORMANCE ZONING 3 (1980); Kushner, supra note 5, § 7.03; Frederick W. Acker, Note, Performance Zoning, 67 NOTRE DAME L. REV. 363, 370-80 (1991).

Growth Management and the City

Many communities condition project approval on the adequacy of infrastructure capacity under timing-based growth management systems. When tied to infrastructure, permits may be based on a project’s proximity to the extension of existing services and the infrastructure’s capacity to serve the needs generated by the project. Other timing systems may simply ration permits to restrict the pace of community growth, as where an annual cap is placed on the number of available permits.

Typical urban growth management systems used to limit growth rely on one or more central devices. The most popular systems rely on moratoria, downzoning, and permit caps. Moratoria may be employed to halt permit issuance temporarily and allow a thoughtful, comprehensive planning or replanning process. A halt also insures against the undermining of new planning goals by preventing owners from rushing to obtain permits under existing regulations. Additionally, moratoria may be employed by the community to restrict utility hookups or permits until utility or other infrastructure capacity is expanded.

Downzoning involves reducing the maximum height of structures, increasing lot size, or restricting the intensity of land use previously permitted. Downzoning typically increases minimum lot sizes, changes the use classification from multifamily to single-family residential, or involves a reduction of a commercial height limitation. Its purpose is to reduce demand for the costly expansion of facility and service capacity that is generated by a more densely developed district. Permit caps limit the number of permits issued within a given area or within a specific time period. Timed sequential zoning is an alternative system whereby permits for particular districts of a community are made available at a time that is often tied to the availability of service extension to the district.

Limits on growth may also be accomplished through tax schemes designed

13. See Golden, 285 N.E.2d at 295-96; Kushner, supra note 8, at 37, 38.
16. See, e.g., Steel Hill Dev., Inc. v. Town of Sanbornton, 469 F.2d 956, 958-59 (1st Cir. 1972); see also C. Thomas Williamson III, Constitutional and Judicial Limitations on the Community’s Power to Downzone, 12 Urb. Law. 157, 181-82 (1980).
17. See, e.g., Construction Indus. Ass’n, 522 F.2d at 901-02.
18. See, e.g., Collura, 329 N.E.2d at 737; Almquist, 245 N.W.2d at 827.

to restrict development, and under subdivision, site plan, or environmental standards review procedures. These discretionary administrative processes typically require review by a planning commission to consider site design, adequacy of infrastructure, environmental effect, and consistency of the project with the community's comprehensive plan. In addition, growth may be controlled through a program of open space acquisition, or by conditioning approval upon the adequacy of supporting facilities. The computer-driven development monitoring system is an example of a sophisticated tool for measuring the adequacy of a community's facilities. The Los Angeles County Development Monitoring System (DMS) uses a computer data base analysis to compare the demands for infrastructure generated by existing and proposed development with the capacity of existing and proposed service extensions. Programmed to reject projects that will strain capacity, the DMS theoretically assures adequate facilities.

Although a recessionary economic and building slump in the 1990s in America has slowed the rapid suburbanization of the previous three decades, these evolving techniques of growth management have proliferated and become a mainstay of the suburban planning process. This has frozen American metropolitan areas in a pattern of low density outer suburban sprawl surrounding a deteriorated, poverty-stricken central city. Despite the evolution and sophistication of contemporary planning and growth management, our cities are stagnating and dying.

II. A CRITIQUE OF URBAN GROWTH MANAGEMENT SYSTEMS

A. The Failure To Address Urban Design

Existing growth management systems focus on timing and infrastructure capacity without considering the ultimate community design and function. Most communities prefer the sprawl-type development pattern of single-family homes.

24. See Kushner, supra note 5, chs. 5, 9.
25. See id. § 7.08; see also 5 NORMAN WILLIAMS, JR. & JOHN M. TAYLOR, AMERICAN LAND PLANNING LAW § 152.01 (1985 & Supp. 1993).
26. See Kushner, supra note 5, § 2.11.
28. See Kushner, supra note 8, at 36-37; Pelham, supra note 8, at 981-82.
29. See KUSHER, supra note 5, § 2.14; Kushner, supra note 8, at 33-39.
Growth Management and the City

on tree-lined boulevards, primarily motivated by anticipated increases in property values. These low-density projects usually accelerate sprawl and foreclose the possibility of efficient transit alternatives to automobile travel. In addition, low-density projects increase per-dwelling infrastructure costs and result in higher home prices. This increases housing costs and results in economic segregation, confining those on limited incomes to central cities with declining tax bases and deteriorating infrastructure.

Communities typically and parochially fail to address the needs of the entire regional area. These needs include more efficient patterns of development served by transit to and from high-density residential areas. The benefits of such development include greater open space with convenient access by foot or bicycle to schools, shopping, recreation, entertainment, offices, and other employment. Mixed-use development, which integrates commercial and office development with residences, also greatly reduces peak-hour automobile trips, thereby reducing both street congestion and air pollution. When employment centers are developed as part of commercial and residential projects, workers need not drive to lunch, and daily automobile trips plummet and become spread throughout the day, eliminating the need for disruptive alteration of labor practices of business and industry in pursuit of traffic reduction plans.

Existing growth management systems tend to generate growth in neighboring communities, thereby exacerbating regional sprawl. Local governments often suppress the pace of development within their own communities, protecting the available capacities of schools, roads, and other essential supporting services. Ironically, growth management schemes designed to avoid suburban low-density sprawl thus generate the precise sprawl they were designed to prevent. Additionally, the dispersion of overall regional development patterns may be exacerbated by growth management systems because development sometimes leapfrogs to adjacent and nonadjacent communities that are more accommodating to growth.

31. Robert Cervero, Land-Use Mixing and Suburban Mobility, 42 TRANSP. Q. 429, 431-32 (1988); see also Robert Cervero, Congestion Relief: The Land Use Alternative, 10 J. PLAN. EDUC. & RES. 119, 123-25 (1991); Lloyd W. Bookout, Jobs and Housing—The Search for Balance, URB. LAND, Oct. 1990, at 5, 8 (noting high rate of increase of non-work-related travel as compared to work-related travel and reporting a projected average speed on Los Angeles freeways in 2010 of 19 miles per hour); Janice Fillip, Uptown District, San Diego—Looking at the Future of Mixed-Use Development in American Cities, URB. LAND, June 1990, at passim.
B. Transportation Planning

Growth management systems fail to consider the effects of planning on transportation modes other than automobile-based neighborhood street congestion. As described earlier, the Los Angeles County DMS uses a computer system that analyzes the cumulative demand of all existing and proposed development projects on area street congestion. Under the DMS, proposals must be rejected unless the affected county intersections are within a set maximum congestion standard, defined by the wait for a vehicle to cross each affected intersection. However, even the most sophisticated systems fail to embrace the need for integration of land use and transportation planning.

Planning regulation designed to ensure that employment, shopping, entertainment, and housing districts are conveniently served by transit can improve the overall standard of living. This is so because of the wastefulness associated with the automobile.  

As it is, planning schemes have allocated nearly a quarter of all urban land for use as “streets.” Reduced car usage would permit more land to be placed into productive, private, and taxable use; higher-density private development generates more tax revenues to support schools and infrastructure. The urban land dividend that would follow the drop in car use also could be converted to open space and recreational use.

Communities unable to influence federal, state, or county transportation policies may tend to ignore the impact of proposed development on limited-access highway congestion. Even the most sophisticated computer-based evaluation systems do not factor in regional, state, and federal highways.

C. Affordable Housing

Growth management systems fail to consider affordable housing and its integration with other land uses. Without the inclusion of affordable housing, controls tend to inflate housing costs. Costs increase as builders build more expensive units and the resulting lower-density pattern is an inefficient use of scarce land resources. The higher-cost suburban housing development pat-

---

34. Id. at 371.
35. Kushner, supra note 8, at 36. The only exception would be the highway planning system that predicts total corridor demand based on projected trip generation estimates, systems which have not been applied in the housing development approval and review process. James A. Kushner, Urban Transportation Planning, 4 URB. L. & POL’Y 161, 164-69 (1981) [hereinafter Kushner, Urban Transportation Planning].
tern also results in the concentration of affordable housing in central cities, typically in racially isolated districts. There is, however, some evidence demonstrating that management systems may not inflate prices because numerous exceptions or variances are granted and because demand spills over into non-regulated nearby communities.\textsuperscript{37} In addition, the relatively few communities that have passed growth controls have established quite modest restrictions.\textsuperscript{38}

The development of low-density housing for the affluent and the development of jobs for the nonaffluent working class present a jobs-housing mismatch, which requires increased commuting trips and their concomitant congestion and environmental degradation. The adverse effects of controls can be mitigated through programs of inclusion which subsidize, encourage, or mandate the inclusion of affordable housing.\textsuperscript{39}

Some growth management systems contain elements designed to accommodate affordable housing. For example, communities may form housing authorities to build public housing,\textsuperscript{40} set aside a portion of available permits for affordable housing,\textsuperscript{41} or establish density bonuses for including affordable housing.\textsuperscript{42} Despite such available components, performance is little more than symbolic.\textsuperscript{43}

D. Employment

Growth management systems fail to coordinate employment development with housing and transit planning so as to ensure access to employment. One tragic effect of post-World War II urban development is the pattern of locating jobs within a suburban belt, while low-income workers—a group disproportionately composed of racial minorities—are housed in distant metropolitan central cities. Low-income workers often lack the reliable automobiles that provide access to jobs.\textsuperscript{44} In addition, public transportation is either unavailable or grossly inconvenient, and suburban rail systems often are prohibitively costly.

\textsuperscript{37} Landis, \textit{supra} note 32, at 494, 498.
\textsuperscript{38} Id. at 494.
\textsuperscript{39} KUSHNER, \textit{supra} note 5, § 6.0316.
\textsuperscript{41} Construction Indus. Ass'n v. City of Petaluma, 522 F.2d 897, 901 (9th Cir. 1975), \textit{cert. denied}, 424 U.S. 934 (1976).
\textsuperscript{43} See, e.g., ADVISORY COMM’N ON REGULATORY BARRIERS TO AFFORDABLE HOUS., “NOT IN MY BACKYARD”: REMOVING BARRIERS TO AFFORDABLE HOUSING 2-1—2-5 (1991).
\textsuperscript{44} Kushner, \textit{Urban Transportation Planning}, \textit{supra} note 35, at 182-83 n.17.
to ride.45

Transit systems, like limited-access highways, may be based on a suburb-to-central-city route, a design out of synch with today’s increasingly common need for commutes from suburb to suburb and from central city residential neighborhood to suburb. The failure to plan for growth by linking housing districts and employment centers with efficient transportation systems discourages economic and job development in the region and substantially increases unemployment and homelessness. The suburban jobs-housing mismatch, where suburbs contain more jobs than affordable housing, also generates street congestion and air pollution.46

E. Segregation

Along with community design, community planning efforts also ignore the need to dismantle entrenched patterns of racial and economic class segregation, particularly in housing. Growth management systems fail to consider race, yet they contribute to the institutionalization of segregation. Suburban growth management may benefit regulating communities—since effective demand for costly new infrastructure partially abates while prestige and property values increase—but, as “white flight” from the city continues, large minority populations are trapped in the central city without the resources to provide good schools or full employment.

Racial segregation is the only universally consistent principle of American land planning. America’s cities have been systematically regulated to establish America’s equivalent of apartheid.47 The federal public housing program was administered on a strictly segregated basis from its inception,48 and despite antidiscrimination legislation49 and court decisions,50 the United States De-

45. See, e.g., Tom Gorman, Freebie Flyer—Metrolink’s Promotional Rides from Riverside Break Records, L.A. TIMES, July 1, 1993, at A3, A24 (noting that Los Angeles Metrolink’s $7.50 one-way fare discourages ridership to Riverside and San Bernardino); see also Aaron Curtiss, Rail System Ends 1st Year on Upswing, L.A. TIMES, Oct. 27, 1993, at B1, B6 (noting that, while Metrolink riders pay an average of $7.20 per trip, the public subsidy for each ride is another $12); Sharon Moeser, Fares Increased 21% for Valley Bus Commuters, L.A. TIMES, Sept. 8, 1993, at B14 (observing that bus fares from Antelope Valley are $2.73 for frequent bus pass commuters rather than proposed $3.25; also noting that $5 medical shuttle was approved).

46. Robert Cervero, Jobs-Housing Balancing and Regional Mobility, 55 J. AM. PLAN. ASS’N 136, 136-37, 144-45 (1989). See generally ROBERT CERVERO, AMERICA’S SUBURBAN CENTERS 1-10 (1989) (arguing that the single-use character of many suburban work centers is a root cause of suburban congestion).


Department of Housing and Urban Development (HUD) continues to administer its programs on a segregated basis.

Desegregation remains politically unpopular. HUD and the HUD-funded landlords, developers, and local housing authorities perpetuate segregation through tenant assignment practices and the universal practice of project site selection for affordable housing. These policies result in the location of all-minority projects within existing minority neighborhoods and in initial single-race occupancy; at best the project may integrate Blacks and Latinos. The most dramatic segregation force was the Federal Housing Administration’s (FHA) single-family policy under which the nation’s suburbs were developed following World War II. FHA policy required single-race subdivisions, mandating racially restrictive covenants as a condition for the availability of mortgage insurance and lower-than-conventional downpayments.

The stark pattern of racial separation also was supported by segregated war housing, urban renewal, and highway development projects that generated white displacement to the suburbs and the relocation of Blacks into minority resettlement patterns, together with school assignments on the basis of segregated neighborhood school attendance zones. The ultimate segregative irony is that the landmark decision of Brown v. Board of Education, which ordered the desegregation of public school districts, instead effected hyper-segregation by federal courts ignorant of the inevitable white and affluent flight from urban districts. Hyper-segregation refers to the pervasive urban geographical pattern of nearly complete racial isolation. The result has been devastating. Because property taxes generated from homes and businesses are the primary source of public school funding, minority urban school districts are unable to finance good schools and unable to cope with the special educational needs and problems of today’s urban students who lack the traditional preparation and familial support provided in many suburban districts.

This pattern of apartheid created a segregated central city with limited hope.


51. Kushner, supra note 49, § 3.52 (collecting cases describing how Blacks are steered to Black community projects by devices such as racially separate waiting lists).

52. Id. § 7.02.


54. Id. at 30-37.

55. Id. at 37-44. See generally James A. Kushner & Frances E. Werner, Illusory Promises Revisited: Relocation Planning and Judicial Review, 8 Sw. U. L. Rev. 751 (1976).


59. Kushner, supra note 2, at 74-84.
and high unemployment for its inhabitants, which generated potential for civil unrest, endangered public safety, discouraged employment-generating investment, and motivated still more white and middle-class flight. The increasing concentration of an underemployed underclass, and its concomitant expanding prison population, present the greatest security concern of the 1990s.60

Controversy over strategies for integration persists. Dismantling the pattern of hypersegregation is pivotal to restoring a willingness to fund programs for the city. Integration strategies depend upon abating the special economic problems faced by inner-city minorities. Yet, opposition to integration initiatives appears in black as well as white communities. Politically feasible urban revival is not going to dismantle the institution of segregation. As current urban policy has a decidedly segregative impact, the issue is whether the city is to become more segregated or a bit less segregated.

III. TOWARD THE URBAN GROWTH MANAGEMENT STRATEGY OF ATTRACTION

Urbanization tends to attract, distract, or repel. In earlier writings, I have described how urban policies are universally segregative when they could be integrative61 and how they contain centrifugal forces that encourage an outward movement of economic activity and residential flight from the city.62 Similarly, contemporary urban policy repels investment and urban residence and encourages emigration for those who can afford to leave. Concentrations of low-income racial minority groups, rising crime, and decreasing quality of schools and other public facilities and services repel those with mobility. The dispersal typically is toward the bucolic suburbs—lower-density neighborhoods that are relatively quiet and safe and have schools that are perceived as “superior,” land available for housing, and campus-like sites for commercial and industrial development that attract investment and jobs. In recent years, many cities have seen employment centers shift away from downtown business districts to the suburbs. The pattern is stark and universal, rendering jobs inaccessible to the unemployed central-city resident.63 The pattern also results

63. See John F. Kain, The Spatial Mismatch Hypothesis: Three Decades Later, 3 Hous. Pol’y Debate 371, 436-38 (1992) (positing central-city economic decline and poverty as a result of discrimination and lack of access to employment opportunities); Michael H. Schill, Deconcentrating the Inner City Poor, 67 CHI.-KENT L. REV. 795, 799-804, 820-21 (1991) (reviewing the spacial mismatch literature and the successeses of deconcentration efforts); see also Mark Alan Hughes, Employment Decentralization and Accessibility, 57 J. AM. PLAN. ASS’N 288, 296-98 (1991) (advocating the improvement of transit, day care,
Growth Management and the City

in housing density too low to support either a transportation system to carry workers to job sites, or the tax base needed to support eroding urban services.

Growth management strategies must embrace the entire metropolitan area—both the central city and its suburbs. Strategies for the revitalization of central cities must also address the need for affordable housing and public services, particularly in the areas of public safety and education. Strategies must also ensure economic growth and stability in the form of inner city job creation and access to the regional employment base. Urban growth management must integrate city and suburb, share economic bases and resources, and integrate employment and housing. Most importantly, urban growth management systems must address the need of the city to attract investment and residents of all classes. Several planning initiatives, nine of which are outlined below, can make cities more attractive.

A. Transportation Corridors

Public transportation is highly efficient. It reduces congestion, public property ownership, and commuting costs. Mixed-use residence districts containing employment centers and housing, and supporting commercial and recreational facilities around transit stations, present a popular lifestyle.


But see generally New Initiatives for a New Los Angeles, Final Report and Recommendations of the Senate Special Task Force on a New Los Angeles (1992) (ignoring growth management and attraction policies; emphasizing the need for additional services for the central city with enhanced economic development and housing activity in minority communities).

Urban growth planning should provide for the establishment of transportation corridors around which new development and redevelopment can focus. Land use controls and incentives should encourage new housing, employment, and commercial centers to develop in a pattern served by such a corridor, and housing should be designed around rail or bus stops and attractive open spaces.

Transportation facilities provide an opportunity for redevelopment toward new forms of neighborhoods and an attractive urban environment. New patterns of industrial, commercial, and higher-density residential communities around transportation corridors allow for critical connections between residence and employment. Higher-density land use reduces rents and increased use of public transit results in lower fares. In turn, lower fares, along with reduced automobile ownership and operation costs, further reduce commuting expenses of workers and allow increased expenditures for high-quality public services and housing.

Mass transit, supported by sufficient land use density, can increase efficiency through lower commuting costs, reduced energy consumption, and reduced air pollution emissions. Current federal transportation funding encourages automobile and traffic reduction programs by promoting rail transit and encouraging local strategies, including capping parking development, imposing transit subsidy fees on urban development, and providing for an improved pedestrian environment. Transit alternatives and employment

---


67. See Kushner, supra note 32, at 199-204 (contrasting the successful policies of Stockholm and Berlin with the failed model of Los Angeles); see also Mary Jo Huth, Toward a Multi-Nodal Urban Structure, 37 Transp. Q. 245, 245-46, 253-57 (1983) (observing a move away from a single civic center to multiple nodes of intense development activity tied together by transit networks).


69. Id. at 162, 170.

70. Id. at 171.

71. Id. at 169.


73. Kristine M. Williams, ISTE A: New Directions for Transportation, 45 Land Use L. & Zoning Dic. 3, 8 (July 1993) (describing the Intermodal Surface Transportation Efficiency Act of 1991 and criticizing it for failure to integrate land use policy); see also Robert Cervero, Responding to Changing Commuter Markets: Preserving Mobility Through Public and Private Initiatives 26-31 (U. C. Berkeley Inst. of Urb. & Regional Dev. Working Paper No. 460, 1987) (describing broad range of strategies to accommodate new patterns of commuting, particularly intersuburban commutes by middle-class workers); Robert Cervero, Suburban Gridlock ch. 4 (1986) (exploring strategies to prevent suburban gridlock); Anthony Downs, Stuck in Traffic 102-03 (1992) (outlining strategies to mitigate jobs-housing imbalance including blocking the creation of jobs in area with surplus of jobs and a deficit of housing); Wolfgang Zuckermann, End of the Road: The World Car Crisis and How We Can Solve It chs. 1-3 (1991) (indicating the automobile-dependent transportation network); Robert
Growth Management and the City

access for those in the central cities would be enhanced by congestion pricing, whereby lower-density residences and automobile dependency are taxed more heavily than higher-density residences and those using transit. Access to central cities would also be enhanced through the development of minibus or jitney and van pooling services.

Land to be developed or redeveloped, but not served by transit, should be set at very low density. Owners of unproductive or low-density-zoned parcels might sell or transfer previously existing development rights to corridor parcels. Rather than a blight, higher-density residential development within the city is necessary to generate the excitement and creativity of the metropolis, generating book stores, art galleries, museums, theater, cafes, coffee houses, bistro, pubs, and restaurants; attracting artists, writers, other performers, and intellectuals. Density is an opportunity to develop living environments around urban amenities. Density may also allow for programs to enable urban pioneers to remain, protected from displacement caused by gentrification—redevelopment designed to accommodate the affluent.

The conversion from single-family homes to high-density apartment living may appear as anathema to the American dream. This conversion, however, is a matter of necessity. Many households cannot afford the rising price of a lifestyle that mandates the spending of disposable income on housing, utilities, and transportation. America's suburbs were heavily subsidized through a combination of expensive federal subsidies and tax shelters. Today, the inefficient low density of American suburbs is being subsidized by very low taxes (compared with the standard of advanced, developed western nations) and the failure to invest in the maintenance of America's infrastructure and public facilities and services. A high-density environment utilizing public transportation presents the potential for a dramatically improved quality of life by

allowing income to be used for vacations, leisure, education, and investment.

B. Magnet Schools

Nothing repels prospective residents and investors from the city like the perception that public schools are deficient. Cities and their schools must attract like a magnet. In recent years, often in response to desegregation litigation, many school districts have established special enrichment programs that draw from a wide variety of ethnic groups and encourage gifted students to remain in the public city schools. 79

Support for these magnet schools 80 tends to outweigh criticism. 81 Critics argue that the morale of teachers at the bulk of the remaining non-magnet schools suffers when good students are transferred to magnets. 82 Those students selected for magnets, however, may benefit greatly and may opt not to flee the district for suburban schools. Faced with dwindling budgets and escalating costs, magnet schools may accelerate the decline of the larger system. Sufficient resources and initiatives must be allocated to the non-magnet schools to generate confidence in and enthusiasm for the program. The simple message is that the nation must spend sufficiently to assure an attractive quality education.

The magnet school concept should be extended to attract families in search of high-quality schools. The extension should focus not only on additional programs for gifted students, but also magnets for those students who fall just below the current definition of gifted and those who demonstrate a desire to learn. Additionally, school systems should provide programs for those in danger of failure in the traditional educational program. These programs should include alternative and technical schools, together with work-study, job corps, apprenticeship and other such programs established in conjunction with private enterprise. 83

C. Magnet Neighborhoods

Transit-based redevelopment should emphasize magnet neighborhoods and

80. See Price & Stern, supra note 79, at 292-93; Maloney, supra note 79, at 60-63; see also CHRISTINE ROSELL, THE CARROT OR THE STICK FOR SCHOOL DESSEGREGATION POLICY 111-45, 183-86, 203-07 (1990) (arguing that voluntary plans with magnet schools result in more desegregation than alternate approaches).
81. Maloney, supra note 79, at 60-63.
82. See id.
83. See Dreier, supra note 3, at 1387-93 (emphasizing the necessity of education, job training, and employment development).
magnet housing programs. Oscar Newman, in his study, *Defensible Space*, demonstrated how architecture influences crime. Public housing, Newman found, is dangerous because of its poor architectural design and site planning.\(^{84}\) His work, *Community of Interest*, further described architectural and planning initiatives to reduce crime, and also emphasized the need to establish a sense of "community" while developing an attractive physical neighborhood.\(^{85}\) Newman advocated neighborhoods designed around common interests. For example, housing with common exhibition or studio space could be developed for artists, or union or church membership could offer the basis for community. Communities designed around an interest in youth sports might exchange individual yards or traditional open spaces for homes that surround an interior playing field where teams could safely play. Neighborhoods also could be designed to accommodate families with children enrolled in magnet schools or reward those with demonstrated achievement in citizenship. For example, citizenship could be demonstrated by families whose children are successful in school and families who have members involved in community volunteer efforts in improving or supporting schools and other neighborhood activities, or for those participating in neighborhood or city government.

Los Angeles offers two examples of such programs. The Watts Community Housing Corporation (WCHC) sponsored a housing project for the elderly designed around art. The sponsoring corporation was formed and managed by artists and the project included a community room designed for art projects. Artists and art students served as supervisors for art classes and projects with the residents.\(^{86}\)

The Exxcel program, on the other hand, combines the need for affordable housing with the need for education.\(^{87}\) The project is designed around a community school room where—in exchange for reduced rent for volunteer parents and free housing for university graduate students—tutors and teachers regularly meet with residents to assist with their homework assignments and undertake education enrichment programs. In addition, resident students are rewarded with cash and other prizes for good grades. Successful graduates are offered a college scholarship under the program, which is jointly sponsored by the University of Southern California, the Los Angeles Unified School District, and the private developer. The projects are designed so that only half the units are below-market affordable housing. The projects also include security considerations such as security gates for parking and building entrances, and secured above-ground play areas for children.

\(^{86}\) The author served as counsel to WCHC from 1978 to 1980 when WCHC was represented by Southwestern University's law clinic.
HUD and the Bush Justice Department proposed “magnet projects” at integrated sites. The magnet projects would modernize existing public housing projects with enhanced security, landscaping, and tenant services, including medical treatment, day care, and meals. Under the proposal, public housing tenants would voluntarily participate in transfers to achieve public housing desegregation.\(^8\)

In the past, some neighborhood revitalization has resulted in widespread displacement of the poor to make way for transportation corridor redevelopments. This history also reveals an abandonment of declining inner-city neighborhoods not likely to be stabilized by an infusion of investment.\(^9\) For cities to stabilize, existing neighborhoods must be a part of the rejuvenation.\(^9\)

Existing inner-city neighborhoods should be identified for magnet status. In addition, redevelopment planning should accurately include relocation and housing replacement plans. Relocation planning can reflect the enhanced federal statutory standards providing for displacement planning\(^9\) and relocation assistance.\(^9\) Current relocation planning standards call for the minimization of displacement or one-for-one replacement of housing units removed from the market or gentrified for more affluent occupants.\(^9\)

### D. Housing Production

Magnet neighborhoods will require the resumption of an aggressive housing production program patterned on the model of successful middle-class housing initiatives, rather than on the traditional “no-frills” government subsidized housing. The question of who should take charge of such a program is an important one. Unfortunately, HUD’s reputation over the last generation has been consistently poor: the agency has been associated with program failure, housing default, segregation, neighborhood destabilization, excessive red tape, and cost inflation.\(^9\) Indeed, only the private sector has succeeded in develop-

---

\(^8\) HUD, Justice Department Draft Options for PHA Desegregation, 20 Housing & Dev. Rep. (WGL) 519 (1992) (describing draft guidelines prepared by HUD and Justice Department task force recommending voluntary desegregation options).

\(^9\) See Kushner, supra note 62, at 222 (describing the “triage” rationale for abandonment, whereby resources are targeted to neighborhoods that could stabilize and generate private investment while ignoring already stable neighborhoods and neighborhoods not likely to stabilize despite investment).


\(^9\) Kushner, supra note 49, § 6.01 nn. 15 & 17.

Growth Management and the City

...ing stable communities in America. However, government housing programs have been targeted to poor communities largely because of the absence of the private sector. Under the private market, glaring needs—detailed in other subsections—remain unfulfilled. A private/public partnership, drawing on the virtues and diminishing the defects of each, is desperately needed.

The private sector has not adequately or significantly addressed the need for affordable housing. Those few affordable housing units built during the last generation rarely have been integrated into the larger community. States and cities and the federal tax credit program have not been able to generate needed units on a scale approaching earlier federal efforts. Indeed, local government largely has focused affordable housing efforts on either excluding and discouraging such projects or assuring that they are segregated in impacted neighborhoods. Even in urban communities committed to expanding affordable housing opportunities, land economics has generated a pattern of segregated site selection, residential sites that are typically inaccessible to job sites and quality services.

The federal role in housing is needed as only Congress can fairly tap the nation’s tax base and generate the resources needed to build quality housing. HUD’s role should focus on the development and execution of local planning to assure jobs-housing-transit consistency, economic integration, and adequate project design and construction standards.

E. Jobs-Housing-Transit Coordination

Stable, efficient communities require access between housing, employment, shopping, entertainment, and recreation. The stability of America’s urban centers also requires the deconcentration and dispersal of a significant portion of its poor and minority residents. The low density of America’s suburbs makes integration of affordable housing unattainable. Indeed, the traditional sprawl suburban pattern of development makes mass transit and access through means other than by automobiles unlikely. Only by conversion to high-density residential development along transit corridors can mass transit be efficiently developed and services and amenities offered to make economically and ethnically integrated communities attractive.

Urban revitalization will require the establishment of employment and commercial centers within the central city and within transit corridors. Such

95. DAYE ET AL., supra note 94, ch. 3; see also Janet Stearns, The Low-Income Housing Tax Credit: A Poor Solution to the Housing Crisis, 6 YALE L. & POL’Y REV. 203, 206 (1988) (observing that the Reagan Administration’s dramatic curtailment of HUD housing was not countered by private investment).

96. This article has eschewed a discussion of economic development and job development investment, the key to urban stability, choosing to discuss the precondition planning criteria essential to accommodate and attract economic development investment.
centers could be encouraged by enterprise zones
and other incentives and subsidies, such as job training and retraining. The key to the Jobs-Housing-Transit mixed-use consistency is high-density, high-quality desirable communities.

F. Safe Streets

Critical to urban revitalization are enhanced urban amenities and services, including security programs funded in part by facilities districts paid for from fees and assessments imposed on residents and developers within the benefitted community, and supported by revenues from federal, state, and the suburban regional area. Magnet communities could include provision for community policing by resident foot patrols. Most urban and suburban streets in America are virtual ghost towns by night, while by day, pedestrians move quickly and cautiously to avoid crime and escalating harassment by the increasingly aggressive homeless. The provision of adequate police presence and protection to assure safety in public places is a precondition for stability. Regrettably, public safety calls for paramilitary escalation of law enforcement and an overhaul of the criminal justice system from prosecution policy to sentencing.

The nation must demand rigid gun control, immigration reform and en-

---


98. Kushner, supra note 5, §§ 6.05-06.


100. OSHA Gray Davidson, Under Fire 121 (1993) (study of gun lobby citing 30,000 annual gun deaths in nation). See generally The Gun Control Debate (Lee Nisbet ed., 1990) (presenting divergent studies and viewpoints about “how much” and “what kinds” of gun regulation there ought to be); Carl T. Bogus, Race, Riots, and Guns, 66 S. Cal. L. Rev. 1365, 1383-84 (1993) (arguing that the Second Amendment was not intended to guarantee to individuals the right to bear arms outside of the context of slavery); Keith R. Fafarman, State Assault Rifle Bans and the Militia Clauses of the United States Constitution, 67 Ind. L.J. 187, 189-92 (1991) (noting that Americans own 140 million rifles and 70 million handguns, many of which are unsuitable for sporting use); James D. Wright & Peter H. Rossi, The Armed Criminal in America: A Survey of Incarcerated Felons, Res. Rep. (U.S. Dep’t Just./Nat’l Inst. Just.), July 1985, at 1 (observing that violent crime, much of it involving guns, victimizes many Americans and contributes to a general feeling of fear in our society).
Growth Management and the City enforcement, and radical modification of policies generating poverty and homelessness. Public safety may also require the legalization of recreational drugs and the increased availability of education and treatment programs. Government profit on the taxation of private drug transactions might also generate additional resources to help fund an urban revival.

G. The Magnet City

During the 1960s, an interesting initiative called Model Cities was developed as part of the "Great Society" program. Originally, the initiative called for a few experimental neighborhoods to receive all existing federal urban aid as well as funds to design new programs aimed at improving neighborhood stability. Often unfairly criticized as ineffective, the program was never launched as designed. Instead, funding was slashed and demand skyrocketed as most members of Congress wanted a handful of Model Neighborhoods for their constituents. Indeed, toward the end of the program, cities were allowed to expand such neighborhoods to cover the entire inner city, dissipating limited funding and frustrating aspirations. The Model Cities program is an example of excessively lofty objectives—legislative goals unattainable due to the legislative authorization, appropriations, and administrative implementation processes.


104. Frieden & Kaplan, supra note 103, at 214-17, 222-24.

105. The program was subsumed by § 116(a) of the Housing and Community Development Act of 1974, 42 U.S.C. § 5316 (1982).

106. After reading a draft of this article, one reader cautioned pursuit of the proposals herein contained. He warned of the "universal experience with public programs that those with sweeping goals fail more often than those with limited, manageable, objectively verifiable goals" and that today "even traditional Democrats are embarrassed to advocate bigger government." Letter from George LeFcoe, Professor of Real Estate Law at the University of Southern California Law Center, to James A. Kushner
Had the Model Cities experiments been allowed to occur as originally proposed, they may have resulted in urban successes deserving of replication and continued funding. Instead, the program was tossed into the failed-programs hopper, thus justifying the conservative national agenda for reduced spending on transportation, housing, schools, employment, and justice. The failure of the Model Cities program presents an example of how many government programs fail to generate their promised goals. And, as indicated, this pattern has provided the justification for the conservative agenda of the past generation.

The magnet city proposal should be patterned after the Model Cities program. Magnet neighborhoods could establish programs to provide a wide array of needed services. Such services could include preschool Head Start, day care, after-school sports, and cultural and educational enrichment programs, together with neighborhood security including community policing and health care. Additional programs could include innovative systems of neighborhood government and housing management such as the development of justice centers that utilize alternative dispute resolution. Neighborhoods might engage in buying cooperatives and marketing cooperatives for goods and services produced by residents. Indeed, communities of interest might be designed around a community economic enterprise, with residents contributing their talents. Additionally, the burgeoning population of female heads of household may require a new type of living arrangement—high-density, transit-served housing with common areas for dining, recreation, and child care.107

H. Diversity

Growth management initiatives must include programs to assure that magnet projects and neighborhoods are racially, ethnically, and economically diverse. Unlike traditional publicly assisted programs, neighborhoods should not be stigmatized as being solely for those of very low income, nor identified by ethnic or racial composition.

Although there are advocates for improving the segregated central city,108

---

108. See, e.g., John O. Calmore, Spatial Equality and the Kerner Commission Report, 71 N.C. L. REV. 1487, 1516-18 (1993); see also Richard T. Ford, Urban Space and the Color Line, 9 HARV. BLACKLETTER J. 117, 143-47 (1992) (eschewing both a "black nationalist segregation" and a "1970's integrationist" strategy and advocating a "freedom of movement and of choice" ideology). It is the author's opinion that "empowerment policies" designed to give greater political control to neighborhoods characterized by hyperpoverty and hypersegregation in lieu of greater resources and desegregation policies is doomed to failure as a palliative. Effective communities and their citizens need to be involved in all processes of government. Just as effective suburban and affluent schools are marked by strong parental involvement, citizens need to focus on the planning commission, city council, redevelopment agency, transportation agency, hospital, school board, and other decisionmaking authorities to assure policies that serve and improve the community. Empowerment, however, will only come where metropolitanwide growth policies
Growth Management and the City

there is no theoretical or empirical evidence supporting urban renaissance based solely on increased aid to the impacted inner city. Indeed, there are some who appear to embrace segregation policies by arguing that erosion of the economic base of the central city has been exacerbated by the loss of the Black professional and middle class to the suburbs. Social indicators continue to point to the increasing poverty and decreasing economic activity of the unattractive, segregated central city. Increasing minority urban political leadership and participation does not appear to have improved the urban environment or the economic condition and welfare of central-city minority group members. Under the Reagan and Bush Administrations, central cities experienced dramatic disinvestment and neglect because of massive cuts in federal infrastructure and other subsidy programs. Indeed, racial segregation has been cited as the primary cause of central-city concentrated poverty and the crisis of the minority community. The obvious course and sole option for the revitalization of America’s cities is to promote diversity, opportunity for integrated living, and spatial deconcentration of urban minority neighborhoods.

are directed to rational policies of transportation, housing, school, and employment integration.

109. See, e.g., John Charles Boger, Race and the American City, 71 N.C. L. REV. 1289, 1311-12 n.106 (1993); Calmore, supra note 108, at 1504-07, 1512-14 (associating integration with a lack of “community” for Blacks, nevertheless endorsing integration initiatives while seeing them as tokenism, and fearing integration will be pursued to the exclusion of policies to seek the achievement of equality in existing minority communities).


111. Boger, supra note 109, at 1343-45; Schill, supra note 63, at 817.

112. See supra note 3 and accompanying text.


114. See Galster, supra note 110, at 1453-54; see also ANTHONY DOWNS, OPENING UP THE SUBURBS 115-30 (1973) (arguing that, due to poverty concentration, improving the inner-city requires opening up the suburbs); ARTHUR M. SCHLESINGER, JR., THE DISUNITING OF AMERICA 118 (Norton ed. 1992); John Charles Boger, Toward Ending Residential Segregation, 71 N.C. L. REV. 1573, 1616-18 (1993); Chester Hartman, A Universal Solution to the Minority Housing Problem, 71 N.C. L. REV. 1557, 1561-63 (1993) (endorsing both integration and “in place” improvement of the minority community as advocated by the Kerner Commission and this article). But cf. ROY L. BROOKS, RETHINKING THE AMERICAN RACE PROBLEM 120-28 (1990) (advocating integration for middle- and upper-class Blacks while espousing separatism as
One of the most successful experiments in integrated living is the Starrett City program in Brooklyn. This large subsidized housing project—home to nearly 17,000 persons—was operated with integration maintenance quotas that assured a racial mix within each building and floor of the project. The development's public schools were also integrated as a result of the housing policy. The program's success in sustaining a stable, integrated affordable housing community is notable, since the surrounding neighborhoods are all racially segregated. Starrett City is now fighting a battle to remain integrated following a successful campaign by the Reagan Justice Department to challenge integration maintenance and affirmative action. The revitalization of integration initiatives spearheaded by aggressive fair housing enforcement could be effective in achieving a process of desegregation and urban reinvestment.

I. Regionalism

Regional growth management initiatives could be supported by regional reorganization of local governments. Such reorganization should focus on tax revenue and burden sharing with regional growth management cooperation. This would include fair-share allocation of burdens for providing affordable housing, unpopular facilities such as waste disposal and jails, and innovative housing systems such as congregate and group housing for the elderly, homeless, disabled, and other special populations.

The most promising strategy for planning reformation is the establishment of statewide planning obligations that provide incentives for compliance through state subsidies for local infrastructure and public services to accommodate growth. The obligation can also be enforced through litigation or the

---


120. See generally KUSHNER, supra note 5, § 2.15 (surveying statewide planning laws and commentary); DAVID RUSK, CITIES WITHOUT SUBURBS 90-102 (1993) (outlining state governmental initiatives); Scott A. Bollens, State Growth Management: Intergovernmental Frameworks and Policy Objectives, 58 J. Am. Plan. Ass'n 454 (1992) (contrasting intergovernmental structures and development goals of state
Growth Management and the City

withholding of state benefits or authority to make land use planning decisions. State land planning initiatives in Florida and Oregon appear to be successful and New Jersey and Massachusetts have been successful in generating affordable housing through statewide planning initiatives.121

Central cities have become less attractive to business development as suburban incomes rise while city incomes plummet in the face of expanding service delivery costs.122 Sharing the regional tax base is critical for urban survival as cities are forced to raise revenues and cut services that make them less attractive, hastening economic flight and urban decline. Those in the suburbs, rather than being immune from urban problems, depend on the urban center both for services and national economic stability.123 Having failed to support policy initiatives to improve the central city, American suburbs around troubled central cities are themselves struggling with uncontrollable urban problems.124

The national budget and America’s disinflicted cities reflect the rise in the political hegemony of the suburbs during the past two decades. The suburbs enjoyed the perception of security from the problems of urban America. Today it is obvious that the suburbs are dependent on a stable and secure urban center. Converting the nation’s underclass to an educated workforce able to reinvigorate America’s industrial life must be a national priority. Conversion will require initiatives in education, apprenticeship, and job development as well as attractive living environments. At the same time, halting the rapid deterioration of the quality of suburban life depends on a radical change in the partnership between suburb and city, between tax bases and a society able to secure the American dream.

IV. CONCLUSION

Revitalizing America’s cities will be slow and costly. However, the current nonpolicy of disinvestment and deterioration is more expensive, both economically and morally; America’s cities face increasing concentrations of the poor,

---

121. See generally Kushner, supra note 5, §§ 2.15 (statewide planning programs), 3.06(2) (New Jersey affordable housing obligations), 3.06(6) (Massachusetts administrative review and preemption for affordable housing).
123. Dreier, supra note 3, at 1358-59; see also Lewis, supra note 1, at 1; Alex Schwartz, Subservient Suburbia, 59 J. AM. PLAN. ASS'N 288, 288-89, 302-03 (1993).
unsafe streets, and school systems ill-equipped for their evolving mission. Further, the loss of jobs, tax base, and borrowing power to finance even minimal public services add heavy weight to our cities' already burdened shoulders. Our least attractive neighborhoods and cities will require enormous public investment. More attractive cities and neighborhoods may find that private developers, business investors, and the public take over the redevelopment initiative and speed up the process of revitalization.

It is critical to understand that cities, like nations, are dynamic, and thus are either in a process of decline or ascendance. Where cities can point to urban successes such as stabilized schools represented by improved student test scores, stabilized neighborhoods represented by lower crime rates, or exciting new commercial, entertainment, and recreation districts, the trend becomes self-fulfilling. Investors and residents make more investments in the community, making it even more attractive and conducive to additional investment. Declining cities offer little hope or incentive for investment or settlement by any but the poorest, thus exacerbating the apparently pyrrhic quest for urban renaissance.

Our cities are in need of a vision and a plan, and our failure to embark on a quest for that vision surely will continue their inexorable terminal decline. Today, America must pay an enormous price for its failure to help the residents of its urban neighborhoods. The higher costs of disinvestment of the central cities include a threat not only to the stability of the city, but to its suburban fringe as well.

American growth management has failed largely because of public sentiment toward individualism and the perceived wisdom of reducing personal obligations to, and responsibility for, the greater community good. By contrast, a philosophy of social solidarity calls for a shared commitment toward improving the welfare of society. Social solidarity represents a willingness to sacrifice one's individual welfare to benefit the group as a whole. Urban revitalization, rather than being tied to uncontrollable global economic conditions, may be more dependent upon public understanding and endorsement of policies designed to advance the good of all; policies which in turn can achieve greater levels of social welfare than traditionally conservative policies enacted in pursuit of self interest.

Urban growth management calls for a new definition embracing regional planning needs. This approach must promote investment, employment growth and access, economic and racial integration, and social equity for all residents of the city. Only then will our cities become attractive again.

125. Anthony Downs, Notes on a Short Trip to Sweden 3 (undated, unpublished manuscript, on file with the Yale Law & Policy Review).