If At First You Don’t Succeed, Rename Your Program

By Robert H. Nelson, Ph.D.

We are often reminded that those who forget the past are condemned to repeat it. The existing pattern of suburban sprawl is a product of past actions of local governments seeking to act for their own benefit at the cost of others. In the end they fail but in the short run they are the cause of high housing costs, traffic jams and other urban maladies. Although many have tried, no local government can solve its own problems in isolation from the larger needs of a metropolitan area.

The latest example of this misconceived strategy is Loudoun County, with a new comprehensive plan that rezones two-thirds of the county for either one house per twenty acres, or one house per fifty acres. Using Loudoun as a model, other counties in Virginia are considering similar drastic measures. They are destined to fail in their efforts as many have before them.

It was well recognized after zoning was first adopted in New York City in 1916 that control over the use of land was a powerful instrument to give to politicians. By limiting development, zoning could deprive an owner of land of most of its value. Or by allowing intensive development instead, zoning could bestow large financial windfalls on a fortunate few or the politically well connected. By zoning out most forms of land use, a local community could preserve large areas of open space for the benefit of existing residents, even as housing prices elsewhere in the region might soar. Allowing local politicians control over the use of zoning powers resulted in their use for a variety of promiscuous purposes.

Recognizing these concerns, the early designers of the zoning system in the 1920s and 1930s took pains to insist that all zoning be “in accordance with a comprehensive plan.” It was thought that by requiring zoning to follow a formal plan, the authority for zoning would be placed in the hands of land use experts. It was assumed that these professionals would accommodate the needs of a full metropolitan area in their planning efforts.

For many reasons, however, zoning never worked according to this utopian ideal. Following World War II, “exclusionary zoning” spread across the burgeoning suburbs of America. In the 1950s, Harvard law professor Charles Haar, who would later become a top housing official in the Lyndon Johnson administration, declared that the defenders of zoning substituted “shibboleths for reasoning and used liberal shibboleths to attain an illiberal result … which can only still further distort the problem arising from the complex relationship of city and county.” The National Commission on Urban Problems declared in 1968, “It could hardly be clearer that formal plans are not furnishing a unifying basis for most local regulations and other needed development guidance measures.”

Summary

The history of land use regulation is a history of repeated failure. But no matter. Past efforts are renamed, new buzz words come into vogue, and we try the same old policies again and again – apparently to make sure they still don’t work.

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By 1982, the President’s Commission on Housing found that “excessive restrictions on housing production have driven up the price of housing generally,” creating concern for “the plight of millions of Americans of average and lesser income who cannot now afford homes or apartments.”
By the 1970s, “exclusionary zoning” had come into wide disrepute and was blamed for bottling the poor into dysfunctional inner cities. The resulting changes in land use regulation were mostly cosmetic, however. As “large lot zoning” was discredited, “environmental protection” became the rage. Suburban secession from the metropolitan region now took new names – various forms of “growth controls” to protect the environment, or new regulations to “preserve agricultural land.” Of course, absent any effective land use plan – and comprehensive regional planning fared no better in the 1970s – the change in name did little to alter the realities of local autonomy in land use regulation.

By 1982, the President’s Commission on Housing found that “excessive restrictions on housing production have driven up the price of housing generally,” creating concern for “the plight of millions of Americans of average and lesser income who cannot now afford homes or apartments.” In 1991, yet another national study group, the Commission on Regulatory Barrier to Affordable Housing, found a widespread suburban use of “complicated and redundant permitting procedures, excessively high impact fees, restrictive zoning and subdivision ordinances, counterproductive growth controls, and uncoordinated development approval and permit processing” that were being applied with a “special zeal” in high growth areas. Law professor Joel Kosman declared in the Catholic University Law Review in 1993 that the United States faced “an unprecedented low-income housing crisis caused by the barriers erected through suburban zoning ordinances.”

It was increasingly recognized that there was little to differentiate the “growth controls” and “growth management” of the 1970s and 1980s from the “exclusionary zoning” of the 1950s and 1960s. Once again, however, the resulting changes would be mostly cosmetic. If suburban restrictions were once defended in the name of “comprehensive planning,” and then in the name of “environmental protection,” now they are defended in the name of “smart growth” and “the new urbanism.”

If it were not so important, the history of land use regulation would make for good comedy. Suburban selfishness has assumed all manner of disguise over the years – designed to fool judges, among others. Given the lack of real understanding of land use, it should not come as a surprise that land restrictions often have failed. The communities that adopted exclusionary zoning and growth controls we typically find at higher densities a few decades later. Land use restrictions can delay the inevitable, but the demand for land and housing eventually prevails. In the meantime, there will be significant dislocations and other high transitional costs born by many people.

Fairfax County was the Loudoun County of the 1970s. In the face of rapidly growing populations, a new slate of growth-control advocates was elected to the Board of Supervisors. A new “PLUS” land use program to manage and direct growth was announced with great fanfare. In 1973, the population of Fairfax County was 530,000; today it is 950,000. Despite all the promises for better planning and growth management, few people today think of Fairfax County as a model.

It is time for local politicians, land use planners, and environmentalists to abandon the latest empty shibboleths such as “smart growth” and realistically address the opportunities and challenges of suburban growth and development.

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(Robert H. Nelson is a professor of public policy at the University of Maryland and a member of the Board of Scholars of the Virginia Institute for Public Policy. A senior fellow with the Competitive Enterprise Institute, his book, Zoning and Property Rights, was published by MIT Press. Permission to reprint in whole or in part is hereby granted, provided the author and his affiliations are cited.)