

Stifling the Market Process with Land Use Regulation: An Analysis of Modern Trends in  
Land Use Regulation Applied to Redevelopment in Tysons Corner, Virginia

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## ABSTRACT

### STIFLING THE MARKET PROCESS WITH LAND USE REGULATION: AN ANALYSIS OF MODERN TRENDS IN LAND USE REGULATION APPLIED TO REDEVELOPMENT IN TYSONS CORNER, VIRGINIA

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This thesis analyzes the problems inherent in centralized land use planning. While planning officials can develop objectives for future land use in a given area, they lack the knowledge, and the capability to acquire the knowledge, to efficiently designate appropriate land uses that maximize scarce resources. Because they cannot attain the knowledge of the “right” plan, those in charge of development regulation turn to the political process to shape regulation. As a result, land use regulation systematically benefits vested interests at the expense of communities’ welfare. I propose that lifting land use restrictions and permitting self-governance within communities may offer potential for improved outcomes.



## Chapter 1

### Introduction

Many aspects of American public policy embrace the value of the free market to allocate resources to their most valuable use. This respect for capitalism and property rights allows for innovation and a consistently higher standard of living over time. Despite the importance of free markets to American prosperity, land use is allocated through the political process rather than the market process. Developers must compete for the approval of planning commissions in addition to their competition for consumers' dollars.

My thesis will examine the implications of current zoning policies and land use regulation from a market process perspective. Land use shapes the fabric of urban life, influencing the way that people live, travel, and interact with one another. Many citizens and politicians continue to advocate for ever-increasing political involvement in the determination of zoning and land use regulations. The political body responsible for determining land use is also increasingly removed from the local level.<sup>1</sup> What was once a policy area left to city officials is now becoming the domain of state and federal politicians as well. Several states have adopted state-wide growth plans, and the new federal Department of Urban Affairs is working to shape national policy for municipal

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<sup>1</sup> Anthony Downs, "Smart Growth: Why We Discuss It More than We Do It," *Journal of the American Planning Association* 71, no. 4, (December, 2005): 367 – 378.

development.

A broad, cross-disciplinary literature explores the costs and benefits of land use regulation from sociological, economic, and urban development perspectives. Various cost benefit analyses find both net welfare loss and net welfare gain from top-down urban planning.<sup>2</sup> In addition to this mathematical literature, many scholars have undertaken qualitative studies of urban development issues. Again this literature is divided both for and against land use regulation.<sup>3</sup> This thesis lies in the second category. I offer a demonstration of the inefficiencies inherent within land use regulations, an explanation for the necessity of planners' relying upon the political process to shape the legal environment, and a critique of the urban planning process.

Jane Jacobs was one of the first critics of common practices in land use regulation with her first book, *The Death and Life of Great American Cities* in 1961, and her work remains among the most well known and influential in urban scholarship. I rely heavily

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<sup>2</sup> For cost benefit analyses that find net benefit to land use regulation, see: Paul Chesire and Stephen Shepard, "The welfare economics of land use planning," *Journal of Urban Economics* 52, 2002: 242-249; Matthew A. Turner, "A simple theory of smart growth and sprawl," *Journal of Urban Economics* 61, 2007: 21-44.

For analyses that find net cost, see: James Clingermayer, "Distributive politics, ward representation, and the spread of zoning," *Public Choice* 77, no. 4, December 1993; J. Michael Pogodzinski and Tim R. Sass, "The Economic Theory of Zoning: A Critical Review," *Land Economics* 66, no. 3, August 1990. For a critique of the methodology used by Smart Growth advocates who calculate benefits in anti-sprawl regulations, see Peter Gordon and Harry W. Richardson, "Prove It: The costs and benefits of sprawl," *The Brookings Review* 16, no. 4, Fall, 1998.

<sup>3</sup> In 2004, the *Review of Austrian Economics* released a volume dedicated to land use planning, offering eight articles that discuss the public choice and market process criticisms of urban development regulation. See also Clint Bolick, "Subverting the American Dream: Government Dictated Smart Growth is Unwise and Unconstitutional," *The University of Pennsylvania Law Review* 148, no. 3, January, 2000. On the other side, scholars have used political and ethical arguments to support land use regulation. See Jeremy R. Meredith, "Sprawl and the New Urbanist Solution," *The Virginia Law Review* 89, no. 2, April 2003; Bruce Katz, "The Federal Role in Curbing Sprawl," *Annals of the American Academy of Political and Social Science* 572, November, 2000; and F. Kaid Benfield et al., *Solving Sprawl: Models of Smart Growth in Communities Across America*, Washington, DC: Island Press, 2001.

on the theories that she developed both to support this study's theoretical framework in Chapter 2 and to analyze land use challenges related to a specific case study in Chapter 4. Today, several prominent scholars are continuing her advocacy of minimal land use regulations to permit more bottom-up urban development, including Randall O'Toole, Sanford Ikeda, and Pierre Desrochers. I enlist their work in the development of my theoretical lens as well. However, this piece relates most directly to the academic proponents of land use regulation who advocate that if local governments would only adopt the "right" regulatory environment, development could be improved by meeting the specifications of arbitrary standards.<sup>4</sup> I argue that no local government has access to the knowledge necessary to direct land use efficiently. As a result, policy makers are forced to turn to the political process to shape the rules for development, creating a system that favors vested interests at the expense of communities' total welfare.

Almost every major city has zoning laws that dictate the sorts of buildings that are permissible on each parcel, and those that have not embraced zoning have regulations to serve the same purpose. Every large city in the United States has a zoning ordinance with the exception of Houston, Texas. However, Houston is merely a *de jure* exception because building restrictions govern much of the city's private property serving as *de facto* zoning. Despite the ever-increasing acceptance of wide-scale land use planning, the fact remains that centralized authorities can never attain, nor effectively utilize, the

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<sup>4</sup> See, for example R. Freilich, *From sprawl to smart growth: Successful legal, planning and environmental systems*. Chicago, IL: The American Bar Association (1999); T. Daniels, "Smart Growth: A New American Approach to Regional Planning, *Planning Practice and Research* 16, nos. 3&4, August 2001: 271 – 279.

requisite information to improve upon the development that would occur privately if the market process were permitted to unfold. When municipal planners observe their cities, they see an imperfect world and assume that they can improve upon it. The political temptation to speed economic growth through intervention is ever-present, but dangerous.

The Founding Fathers embraced the importance of property rights for economic and civic development. The Fifth Amendment to the United States Constitution reads, “No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”<sup>5</sup> The text is notoriously ambiguous, as exemplified in controversial eminent domain cases regarding the public acquisition of land for the good of a community at the coerced expense of an individual.<sup>6</sup> Some legal scholars interpret the Amendment as absolute protection of individual property rights to their land while others see more room for regulation that limits land use and possession rights. Regardless of the degree to which the Framers intended to protect property rights, a series of court decisions have given municipal governments extensive authority to dictate appropriate land use and building rights. Not only have local officials seized this power, but academics in urban development often support central planning on efficiency grounds, ignoring the information problems that arise when market signals are dampened.<sup>7</sup>

The courts have generally devolved the power to regulate land use to the municipal level, where local politicians have widely taken advantage of this power to

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<sup>5</sup> U.S. Constitution, Amendment V.

<sup>6</sup> See, for the most famous example of eminent domain, *Kelo v. City of New London*.

<sup>7</sup> Edwin S. Mills, “The Attrition of Urban Real-Property Rights,” *The Independent Review* 12, no. 2, Fall 2007: 199.

create comprehensive zoning plans, dictating the specific uses that are permitted on any parcel of land in their jurisdictions. The first land use regulations were implemented in New York City and San Francisco, and the east and west coasts are still the areas with the most intensive zoning codes. A large body of work details the inefficiencies and losses embedded in the land use regulation process, but local, state, and even the federal governments are consistently promoting more invasive regulations.

To support my analysis of the inherent problems in city planning, I will use a case study of the current development of new land use policy in Tysons Corner, located in Fairfax County, Virginia. There, planners are attempting to transform the area from its present state as the business center of Fairfax County—suburban development consisting of shopping centers and office parks bisected by large highways—to high-density, mixed-use urban development. Currently, planners across the country are following the redevelopment of Tysons Corner because of the many urban issues that this effort embodies. A *Time* magazine reporter writes, “The implications of this redevelopment project stretch far beyond Fairfax County, as suburbs and exurbs across the country look for ways to repair the damage from five decades of outward, rather than upward, expansion.”<sup>8</sup>

I will use the Tysons Corner case to demonstrate some of the challenges that top-down urban planning efforts face. This case study offers examples of the knowledge problems that urban planners encounter when trying to set development rules for their

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<sup>8</sup> Lisa Selin Davis, “A (Radical) Way to Fix Suburban Sprawl,” *Time*, June 11, 2009, available at <http://www.time.com/time/nation/article/0,8599,1904187,00.html>.

jurisdictions. Because planners cannot determine the most efficient land use without a price system to guide them, they must turn to the political process to help determine policy. This process leads to opportunities for interest groups to influence policy creation to benefit themselves at the dispersed costs to the community.

This thesis explores land use regulation in five chapters. Next, Chapter 2 offers a literature review of interventionist policies and their free market critique. Chapter 3 and 4 are a case study of the current Tysons Corner Redevelopment in Fairfax County, Virginia. First, Chapter 3 provides a history of this planning process followed in Chapter 4 by an analysis of its potential problems, and policy recommendations. Chapter 5 summarizes this research and concludes.

## Chapter 2

In this chapter, I will explore the impossibility of achieving efficiency through top down urban planning. I will demonstrate that the knowledge problems inherent in centralized planning lead urban planners to turn to the political process to shape the legal environment, in turn allowing special interests to influence policy to their benefit. Before detailing the factors that shape urban policy, I will explain the knowledge the urban planners would need to create the “right” plan and the limitations that prevent them from acquiring it.

### **The Use of Knowledge in Urban Planning**

All cities in the United States have extensive land use regulation regimes, most commonly carried out through comprehensive zoning ordinances. Despite the prevalence of these regulations, a robust literature portrays the problems with controlling urban development through top-down legislation. Jacobs advocates high-density, walkable development, and her development goals have been embraced widely by urban policy makers across the political spectrum. On the Left, many land use planners have employed her work to support the cause of sustainable development that minimizes automobile dependence and is therefore more environmentally sustainable.<sup>9</sup> At present,

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<sup>9</sup> See, for example, Rutherford H. Platt (ed.), *The Humane Metropolis: People and Nature in the 21<sup>st</sup> Century City*, Amherst & Boston: University of Massachusetts Press (2006).

two of the most prevalent trends in planning theory are Smart Growth and New Urbanism.<sup>10</sup> Both of these schools of thought are generally in accord with Jacob's vision of successful urban development. However, proponents of Smart Growth and New Urbanism generally miss an important Jacobian point, that this development will arise naturally in urban areas as an Invisible Hand mechanism leads residents and business owners to benefit others in the pursuit of their own self-interest. The high value of urban land leads to high-density and mixed-use development, which allows businesses to maximize profits from their real estate and also provides amenities that are easily accessible to residents. Jacobs explains that successful development can certainly be stifled by zoning codes, but that no rules can create vibrant urban development. Rather, this sort of neighborhood emerges from the ground up.<sup>11</sup>

Jacobs, who trained neither as an urban scholar nor as an economist, observed in her experiences in diverse cities that land use regulation distorts the market process. As others in her field suggested that architects and city planners could create urban utopias if only given the power to do so, Jacobs explained that instead, private interests could in fact build better cities than planners could create.<sup>12</sup> The "sidewalk ballet" she famously described outside her home in New York's Greenwich Village was a spontaneous civil

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<sup>10</sup> In this thesis I focus mostly on Smart Growth, approaching the issue with a market process critique. Smart Growth ideas first began to influence urban planning in the 1970s. The objectives of Smart Growth include: environmental sustainability, affordable housing, walkable neighborhoods, and increased public transit. Activists in this movement tend to support pursuing these objectives through long-term city planning as well as legislation at the city, state, and federal level. For more information on Smart Growth, see <http://www.smartgrowth.org/about/overview.asp>.

<sup>11</sup> Jane Jacobs, *The Death and Life of Great American Cities*, New York: Random House, 1961; Jane Jacobs, *The Economy of Cities*, New York: Random House, 1969.

<sup>12</sup> Jacobs' work ran counter to her contemporaries such as Robert Moses and advocates of Garden City design who falsely suggested that planning authorities and architects could build urban utopias if given the opportunity.



order composed of business and individual interests.<sup>13</sup> In her own neighborhood, she saw the problems with misallocation and corruption in land use regulation that plague market interference in general. Just as total centralized economic control leads to shortages and poverty, Jacobs found that centralized land use control prevents entrepreneurs from catering to residents' demands, preventing the natural growth and prosperity cities can achieve over time. She suggests that with appropriate street design and mixed-use zoning, cities will become vibrant places for life and business. On the knowledge problem, which prevents the creation of optimal master planning, she writes:

It is not enough for administrators . . . to understand specific *services* and *techniques*. They must understand, and understand thoroughly, specific *places*.

[. . .]

Only supermen could understand a great city as a total, or as a whole group of districts, in the detail that is required for guiding constructive actions and for avoiding unwitting, gratuitous, destructive actions.<sup>14</sup>

While city planners have only the blunt instrument of legislation with which to direct development, vibrant cities require the apparent chaos of entrepreneurs seizing opportunities to profit from their knowledge of consumer demands. This process requires the use of dispersed knowledge that cannot be centrally compiled, but can only be discovered through dynamic competition. Jacobs explains the contrast between this

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<sup>13</sup> Jacobs, *The Death and Life of Great American Cities*, 66.

<sup>14</sup> *Ibid.*, 544.

process and government efforts to control development:

Cities are an immense laboratory of trial and error, failure and success, in city building and city design. This is the laboratory in which city planning should have been learning and forming and testing its theories. Instead the practitioners and teachers of this discipline have ignored the study of success and failure in real life.<sup>15</sup>

Jacobs famously pointed out that regulation in urban development falls prey to the same problems that have given regulation a negative connotation in general. She writes from her experience dealing with urban development issues, and observes on the ground the importance of local knowledge that cannot be centrally compiled:

What citizens say is worth listening to. The very earthiness and directness of their reasoning about concrete and specific local effects is the key, I think, to rescuing cities from destruction [at the hands of professional planners].<sup>16</sup>

Municipal determination of land use dampens citizens' "knowledge of the particular circumstances of time and place"<sup>17</sup> as market interference tends to do, but some collective action can help cities move toward optimal land use, given that neighbors' use of their property impacts those around them. The transaction costs involved in Coasean bargaining between neighbors may be prohibitively high for individual transactions to create an optimal outcome. To this end, Jacobs recommends a combination of local and regional government regulations, despite championing the organic life that cities can take

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<sup>15</sup> Jacobs, *The Death and Life of Great American Cities*, 9.

<sup>16</sup> *Ibid.*, 467-8.

<sup>17</sup> Hayek, "The Use of Knowledge in Society," *Individualism and Economic Order*, Chicago: The University of Chicago Press, 1948: 77.

on through their residents' independent actions. While she heavily criticizes zoning ordinances as they are carried out, she recommends "planning for vitality" by encouraging diverse land uses, short blocks, and similar façade sizes within blocks.<sup>18</sup>

Since Jacobs published her landmark work, varied economists and urban scholars have continued her work, advocating for minimal restrictions as many municipal governments and interest groups seem to be fighting for increased government control of development. Across the country, observant critics have witnessed city planners mismanaging cities with oppressive legislation. Sanford Ikeda, Pierre Desrochers, and Randall O'Toole, among others, have specifically applied market process theory to land use issues. Urbanities naturally evolve toward ever-improving states until and unless political actors attempt to control development to conform to their artificial standards.

Ikeda and Staley point out that, while New Urbanist advocates bemoan the actualized results of top-down planning efforts, such as highways and large parking requirements, they advocate achieving their ends of public transportation, high-density development, and pedestrian friendly streets and sidewalks through centralized control.<sup>19</sup> They criticize the urban sprawl that has resulted from the work of their predecessors at planning commissions who advocated for density restrictions, but assert that with merely different people playing the roles of planners, desirable results could be achieved.<sup>20</sup> Ikeda and Staley suggest that regardless of the objectives of those in charge of planning

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<sup>18</sup> Jacobs, *The Death and Life of Great American Cities*, Chapter 22.

<sup>19</sup> Sanford Ikeda and Sam Staley, "Introductory Essay for a Symposium on "Urban Interventionism," *The Review of Austrian Economics* 17, nos. 2/3, 2004: 152.

<sup>20</sup> Stephen Svete, "New urbanism seduces city planners," *California Planning & Development Report*, November 1, 2006.

efforts, the results of top-down plans will be less efficient than free market outcomes because planning is inherently riddled with knowledge and coordination problems.<sup>21</sup> The downfall of the past planning efforts that New Urbanists criticize is not that the planners were incompetent or malignant but, rather, that attempts to direct development through planning involve unintended, negative consequences.<sup>22</sup>

Sanford Ikeda employs Misesian logic about “piecemeal” intervention to demonstrate the inefficiencies of the political process compared to the market:

As long as public choosers persist in employing additional interventions, piecemeal fashion, to address the problems created by prior interventions, the tensions between political power and economic forces, which is at the heart of the interventionist dynamic, steadily grows. The interventionist logic expands the scope of state activity in a process that, in the absence of disruptions, could in theory eventually transform a catallaxy—the market economy—into a form of collectivism.<sup>23</sup>

Contrarily, Ikeda explains that the price system, which directs most market transactions, functions equally well in directing urban development. He writes, “A great city is a spontaneous order *par excellence*: a self-ordering, self-regulating, and self-sustaining phenomenon, the overall characteristics of which evolve over time without the need for

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<sup>21</sup> Ikeda and Staley, “Introductory Essay.”

<sup>22</sup> The basic argument for this problem with government intervention in the market dates back to economic philosopher Frederic Bastiat, “What is Seen and What is Not Seen,” *Selected Essays on Political Economy*, Seymour Calin, trans. Irvington-on-Hudson, NY: The Foundation for Economic Education, Inc. (1848). He explains that while we may only see the benefits of government policies, they also come with costs, of which the public is often unaware.

<sup>23</sup> Sanford Ikeda, “Urban Interventionism and Local Knowledge,” *The Review of Austrian Economics* 17, nos. 2/3, 2004: 248.

deliberate human design.”<sup>24</sup> Furthermore, a benefit of this organic city development is an emergence of cultural norms which lead to trust among citizens, permitting both personal safety in public places and increased potential for civic and business activity.<sup>25</sup> However, in American cities today, the price system is stifled in the land market, and therefore both citizens and policymakers must turn to the political process in order to deal with an evolving market and increases in population.

Randall O’Toole is an urban scholar who widely criticizes top-down urban development in general and Smart Growth objectives in particular. In his book *The Best Laid Plans*, he writes:

The worst thing about having a vision is that it confers upon the visionary a moral absolutism: only highly prescriptive regulation can ensure that the vision overcomes an uncaring populace responding to a free market that planners do not really trust. But the more prescriptive the plan, the more likely it is that the plan will be wrong, and such errors will prove extremely costly for the city or region that tries to implement the plan.

[ . . . ]

Correcting these problems will require more than improved research or better education. It will require a fundamental revolution in how we manage our cities and the regions that surround them: a change from a focus on design to a focus on

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<sup>24</sup> Ibid., 256.

<sup>25</sup> Ibid.

public finance.<sup>26</sup>

Here, O'Toole gets to the heart of the dangers of land use regulation: when problems arise in the existing policy landscape or as market conditions change, the ready solution for policymakers is to "fix" existing regulations with more regulation, an inflexible process.<sup>27</sup> He further asserts:

In the 125 years since modern planning began, there have been about five generations of planners. In that time, planners have been able to learn about as much from their mistakes and rare successes as developers can learn in about five years.<sup>28</sup>

With the ability to gauge their success and failures through profit and loss, developers quickly learn whether they are serving their markets effectively. Furthermore, competition between builders leads to opportunities for innovation as well as increased pressure for serving consumers at the lowest possible costs. If real estate entrepreneurs fail, they have two options: improve their practices or face certain bankruptcy. Planning commissions and community development departments face entirely different circumstances. They have neither the opportunities nor the pressure to learn and adapt

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<sup>26</sup> Randall O'Toole, *The Best Laid Plans: How Government Planning Harms Your Quality of Life, Your Pocketbook, and Your Future*, Washington, DC: Cato Institute, 2007: 158.

<sup>27</sup> Israel Kirzner offers a very clear explanation of the market process, driven by cognitive entrepreneurship. He writes, "Not only is it the case, as traditional economics has demonstrated since Adam Smith, that market efficiency can prevail in spite of the absence of centralized direction, it turns out, as it happens, that the market process approach shows that such absence of centralized direction is in fact *necessary*, if the kind of co-ordination (we have seen to be achievable through the market process) is to be attained at all." (Israel Kirzner, "The meaning of market process," *The Meaning of Market Process*, London: Routledge (1992): 38. For more on the entrepreneurial discovery process and the impossibility of replicating it in the public sector, see Kirzner's *Competition and Entrepreneurship*, Chicago: University of Chicago Press, 1978.

<sup>28</sup> O'Toole, *The Best Laid Plans*.

that their private-sector counterparts have. More importantly, the knowledge captured in the price system upon which private firms rely is not available to entities sanctioned by local government. Developers, as O'Toole explains, will cater to consumers' preferences, and, as Desrochers explains, will tend to minimize waste over time. These outcomes are the ever-present positive results of market competition. However, in a regulated market, benefits are skewed toward particular participants, whereas in the free market everyone benefits from exchange.

The institutions regarding land use in the United States have shaped the competitive environment for developers and buyers. Rather than pure profit as the sole motivation for entrepreneurs in the land market, the institutional environment makes political favor essential for developers as well. By shifting opportunities from the productive to the political, land use planners have built a system that benefits some people, but does not permit the productive potential that free trade fosters.<sup>29</sup> As for all goods, the "right" land use is unknowable to any central authority because the only mechanism for coordinating individuals' distinct preferences is necessarily decentralized.

Perhaps land's unique characteristics lead political actors to wrongly promote the superiority of planning. In *Man, Economy, and State*, Murray Rothbard points out that land is different from the other resources employed in economic development in a few important ways. Historically, as a stylized fact, labor has been scarcer than land,

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<sup>29</sup> For a detailed exploration of the importance of legal institutions in shaping entrepreneurial opportunities, see Peter J. Boettke and Christopher J. Coyne, "Context Matters: Institutions and Entrepreneurship," *Foundations and Trends in Entrepreneurship* 5, no. 3, (2009).

meaning that some land is best left unutilized.<sup>30</sup> City planners may think that they can direct property owners to use land in a better way than the owners choose to, but Rothbard points out the error of this claim—the market will direct land owners to put their property to its most efficient use, even if this use is sitting idle in the present to be put to use at a future date.<sup>31</sup> Federal authorities have delegated the power to states and municipalities to limit landowners' rights to their property when politicians decide that they can put land to use for "public good."<sup>32</sup> Because the market determines land value, landowners do not set its price; rather, consumers do. Political action cannot improve land allocation because the land's diminishing marginal value product, as determined by consumer demand, ensures that land allocation is moving toward optimality.

Every choice that people make in the United States with regard to where they live is influenced by zoning and other regulations that shape development, so we cannot know what development would look like in a free market system. Some people promote land use regulation as necessary to alter the existing land use order, which they assert has resulted from the free market. However, they fail to acknowledge that current land use decisions are based on the existing regulatory environment rather than a free system. Despite the flaws in would-be regulators' logic, their argument has been used to continually increase restrictions on development across American metropolises. Michael

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<sup>30</sup> Murray Rothbard, *Man, Economy, and State, A Treatise on Economic Principles (with Power and Market, Government and the Economy)* 2 ed. Auburn, AL: Ludwig von Mises Institute (2004): 569.

<sup>31</sup> Ibid.

<sup>32</sup> The Supreme Court set the "public good" standard in the case *Kelo v. City of New London* when it was determined that municipal authorities could legally take possession of private land for the purpose of comprehensive zoning or redevelopment, leaving the definition of "public good" open to subjective interpretation.



Storper and Michael Manville explain:

The standard approach to dealing with bundled goods . . . is to argue that preferences for them, like those for many private goods are ‘revealed’—that in the end we know what people want by observing what they have done. If a majority of people buy single-family homes on large plots and drive a lot as a result, then we can conclude that large-plot, auto-dependent life represents the majority preference for transport and land use. Approaches of this sort are outcome-based, analyzing results of *ex post* adjustments.<sup>33</sup>

Storper and Manville capture the fallacy on which much of land use regulation relies. Municipal governments argue that their regulations are necessary in order to ensure that developers provide what people want. In truth, government action dictates the options that consumers will have available to choose from, rather than allowing profit opportunities to direct entrepreneurial activity to meet consumer demands.

As explained above, the loudest voices currently advocating increased land use regulation come from advocates of Smart Growth and New Urbanism. Both of these groups generally argue that land use regulation should reverse course, away from limiting density, to promoting environmentally sustainable development based around higher-density housing, public transportation in favor of cars, and open public spaces. Activists within these movements often suggest that current land use trends are the result of unfettered capitalism, but in fact, we do not know what sort of land use capitalism would

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<sup>33</sup> Michael Storper and Michael Manville, “Behaviour, Preferences and Cities: Urban Theory and Urban Resurgence,” *Urban Studies* 43, no. 8, July 2006: 1263.

produce, because regulations have been steering the course of American development for its entire history as a nation.<sup>34</sup> The system of regulation and government subsidies has shaped large swaths of the country as low-density, suburban regions where people live far away from their daily needs and are highly dependent on their cars. Smart Growth and New Urbanist supporters suggest that further regulation (as opposed to deregulation) is the solution to these problems. However, like all economic progress, sustainable urban development is an evolutionary process that must happen organically. Both traditional land use regulations as well as Smart Growth and New Urbanist proposals succumb to a failure of ascertaining productive from non-productive uses of land.<sup>35</sup>

### **What Knowledge Would Government Need in Order to Plan Well?**

In centrally planned economies, leaders often assert that they can compile the economic data necessary to facilitate exchange as efficiently as individual consumers and producers could trade independently.<sup>36</sup> Just as history demonstrates that complete

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<sup>34</sup> For an overview of the early history of zoning, see Gordon Whitmall, "History of Zoning," *The ANNALS of the American Academy of Political and Social Science* 1931, no.155: 1-14.

<sup>35</sup> In Chapter 8 of *Cities and the Wealth of Nations*, Jacobs uses the Tennessee Valley Authority as an example of a failed effort to manufacture development. The area is rich with natural resources, so the New Deal effort to foster prosperity with government-provided capital and investment might seem as if it would have transformed the TVA region from an area of rural poverty to one in which people could prosper. However, such subsidies do not replace productive enterprise and in fact divert local economies from developing productive enterprises.

<sup>36</sup> In his essays "Economics and Knowledge" and "The Use of Knowledge in Society" (both published in *Individualism and Economic Order* (Chicago: University of Chicago Press): 1948, F.A. Hayek methodically critiques the knowledge problems in socialist economies. In this effort, known as the Socialist Calculation Debate, Hayek outlines the reasons that central planning cannot compile the information that emerges in the market. In *The Fatal Conceit*, he explains the impossibility of top-down planning:

There is no known way, other than by the distribution of products in a competitive market, to inform individuals in what direction their several efforts must aim so as to contribute as much as possible to the total product. The main point of my argument is, then, that the conflict between, on one hand, advocates of the spontaneous extended human order created by a competitive market, and on the other hand those who demand a deliberate arrangement of human interaction by central authority based on

socialist economies will fail, the information needed to efficiently direct urban development remains elusive to urban authorities. In order to create a redevelopment plan, governments need to compile vast amounts of data that are available to them, including: the demographic characteristics of the residents they are planning for; the locations where their residents work, shop, and go out for entertainment; residents' preferred types of housing; and residents' preferred modes and methods of transportation. This task would be monumental, and the costs of collecting such panel data would likely surpass any conceivable city planning budget. While city planners may have a good idea of the characteristics about their populations as a whole, they do not undertake the surveying necessary to determine individuals' habits for moving around in their daily lives. Furthermore, while city planners may know where their citizens live at a moment in time, they do not know their general housing preferences. Many housing demands may be latent and arise for consumers only as their personal circumstances or the housing market that they face changes. Predictions for future housing demands are correspondingly difficult or impossible to model accurately.

The scale of data compilation necessary to fulfill this knowledge of residents for a large city is vast, but pales in comparison to the task of determining how a redevelopment plan would influence the lifestyles of these residents. For example, once a redevelopment plan is in place, the types and prices of housing will change, business development will change, and modes of transportation may change. Before the plan is in

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collective command over available resources is due to a factual error by the latter about how knowledge of these resources is and can be generated and utilized.

place, accurately predicting how players will react to changes in the rules of the development game is impossible for planners to foresee. Right now, the current trends in most urban redevelopment call for high-density, mixed-use development in areas where people can easily walk, bike, or use public transportation to get around. Going from suburban to urban development requires residents to make many changes including trading single family homes for multi-family homes and taking alternate forms of transportation to many of the places they used to drive to. In a case where planners are limiting land use or decreasing permitted density, they can use their power to reshape development. However, going from single use to multi-use and low-density to higher-density requires supply-side and demand-side support from private actors. City planners may be able to consult with developers to get them to support redevelopment goals, but they cannot know before redeveloping how consumers will react to a changing urban environment. If, for example, consumers have a strong preference for living in single-family homes and driving rather than using other forms of transportation, city planners would have to utilize extraordinarily extensive and distorting regulations to force the citizens to change their ways.

The lack of knowledge—knowledge that city officials need to implement efficient top-down development planning—leads to policies that damage cities by destroying the social and geographic networks that bind communities. Jacobs criticized the slum clearance efforts that began during the New Deal era and continue today, writing, “The cataclysmic use of money for suburban sprawl, and the concomitant starvation of all those parts of cities that planning orthodoxy stamped as slums, was what our wise men

wanted for us; they put in a lot of effort, one way and another, to get it.”<sup>37</sup> The current suburban sprawl that developers wish to turn into bustling urban neighborhoods is the result of their predecessors’ efforts to move citizens from urban centers to the fabled grassy paradise of the country. Through the decades, planning theory has changed, but planners’ ability to direct building in a way that will lead to vital cities has not. Later in her career, Jacobs applied her insights about urban planning to the study of broader economic development planning. In 1984 she published *Cities and the Wealth of Nations*. On government-led economic development she writes, “Failures can help set us straight if we attend to what they tell us about realities. But observation of realities has never, to put it mildly, been one of the strengths of economic development theory.”<sup>38</sup> In no area of development is this truer than in the urban theories upon which planners rely. Failure to understand the reasons for unintended consequences in past government planning efforts leaves current government officials doomed to repeat the mistake of creating plans for which they lack the necessary knowledge.

In the competitive market, exchange is always expected to be mutually beneficial *ex ante*; otherwise, two parties would not voluntarily trade. Even the most disadvantaged members of society have opportunities to improve their situation through trade.

However, in the current land market, agents’ expectations do not guide exchange because they operate within a restrictive regulatory environment. In the United States, land uses

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<sup>37</sup> Jacobs, *Death and Life*, 405. Here she is referring to government support of mortgage industry and road building that made it possible and profitable for millions of Americans to move to the outskirts of cities beginning in the 1940s. At the same time local and federal government forces were encouraging people to move to suburbs, they were also destroying urban centers by turning “slums” into open spaces.

<sup>38</sup> Jacobs, *Cities and the Wealth of Nations: Principles of Economic Life*, (New York: Random House), 1984, 7.

are not allocated by dollars, but rather by local government bureaucrats, meaning that land is not put to its most efficient use as determined by the Invisible Hand. Edwin S. Mills explains the historical pattern of land use regulation in the United States, which began in the Colonial Era:

In the United States, government intervention in formerly private matters often moves along the following path: government perceives or imagines an “unmet need” and intervenes in a modest way; the intervention fosters and frequently finances lobbyists who benefit from it and organize to demand greater intervention; each intervention creates distortions that are themselves recognized as “unmet needs;” and further interventions follow. Private rights are progressively sacrificed to government control.<sup>39</sup>

Assuming that regulators are benevolent and attempt to act in the interest of their constituents, we can conclude that they do not intentionally create policies that hamper market performance. However, their actions lead to inefficient land use because unlike private sector entrepreneurs, bureaucrats are unable to see through the “fog of uncertainty” in order to discover the best land use arrangements.<sup>40</sup>

### **Bootleggers and Baptists**

Through urban planning, officials attempt to create a rational organization out of the apparent chaos of market development. However, without a price system to direct resources toward their most valuable use, planners cannot possibly compile the

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<sup>39</sup> Mills, 201.

<sup>40</sup> In his 1973 *Competition and Entrepreneurship*, Israel Kirzner explains the cognitive process by which entrepreneurs see opportunities to profit by offering goods and services that markets demand.

knowledge they need to determine the appropriate allocation of land uses and building densities. They are left either to make totalitarian decisions based on the arbitrary opinions of public officials or to look to interest groups or private consultants to shape policy. Typically the latter option is used, as the former would unlikely secure reelection for incumbent officials.<sup>41</sup> This process of allowing interest groups to shape policy is an attempt to create “democratic planning.”<sup>42</sup> However, neither interest groups nor planning consultants, even those with the most advanced models, can incorporate individuals’ subjective knowledge into their planning recommendations.<sup>43</sup> The line of research that explains the knowledge failures in planning suggests that local government is far from the optimal body that can make land use decisions.

American public policy is moving toward delegating this important decision to state and federal governments, transferring knowledge problems present in municipal government to these farther removed authorities. Across the country, states are adopting development objectives and requiring their municipalities to adopt comprehensive zoning plans to carry these objectives to fruition.<sup>44</sup> Many states’ visions for growth are in line with Smart Growth goals such as development based around public transportation and preserving open space, which generally require increased political involvement.<sup>45</sup>

This movement is a classic example of Bruce Yandle’s bootleggers and Baptists

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<sup>41</sup> For an analysis of the incentives facing elected officials as they make policy decisions, see Duncan Black, *The Theory of Committees and Reelection*, New York: Cambridge University Press, 1958.

<sup>42</sup> Don Lavoie, *National Economic Planning: What is Left?*, United States: Cato Institute, 1951.

<sup>43</sup> Ibid.

<sup>44</sup> Samuel R. Staley, “Urban Planning, Smart Growth, and Economic Calculation: An Austrian Critique and Extension,” *The Review of Austrian Economics* 17, no. 2/3 (2004):265.

<sup>45</sup> Ibid., 266.

theory.<sup>46</sup> Yandle developed this method for explaining the evolution of regulation through his work on the Council on Wage and Price Stability and as an academic economist. He realized that, rather than pursuing regulations that promote economic efficiency and minimize costs to consumers, regulators generally approach issues from a self-interested perspective. From a regulator's point of view, industry lobbyists and labor interests are important factors in creating regulations, along with the public interest.<sup>47</sup> The name for this theory comes from a historical regulation supported by the two vested interests, bootleggers and Baptists, both of whom pressured lawmakers to ban alcohol sales on Sunday. While the bootleggers and Baptists were on opposite sides of the alcohol issue, their votes aligned on the regulation that they desired. Since developing this theory, Yandle and other economists have applied this logic to environmental, tobacco, trade, and antitrust issues as well.<sup>48</sup>

Within urban planning, environmentalists, affordable housing activists, and urbanists play the Baptists' role, championing the interests of those whom they allege the free market does not serve. Their goals may appear benign, but the increased regulation they demand opens the way for Bootleggers to shape and manipulate new rules to serve their advantage, gaining political monopoly and power. Zoning is necessarily distributive, so this political action creates winners and losers, though planners will advertise only the benefits of their efforts. Researchers who have studied the effects of current zoning practices, including incentive zoning and development impact fees,

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<sup>46</sup> Bruce Yandle, "Bootleggers and Baptists: The Education of a Regulatory Economist," *Regulation* 7, no. 3, May/June, 1983.

<sup>47</sup> *Ibid.*, 13.

<sup>48</sup> Bruce Yandle, "Bootleggers and Baptists in Retrospect," *Regulation* 22, no. 3, 1999.



observe that regardless of regulation's sophistication, it always "provide[s] mechanisms for exclusion based on economic or fiscal barriers to enter the community."<sup>49</sup> Regulation distributes development rights based on political objectives and citizens' savvy in manipulating the rules to their favor.

Randall O'Toole explains that bootleggers and Baptists commonly drive land use regulations as well as market regulations. He cites the example of the Metro opening in Los Angeles in 1996. Public transportation supporters played the role of Baptists in this case, while those who expected a financial windfall from the new system played the role of bootleggers:

When light rail was on the ballot in 1996, for example, two-thirds of the donations to the political committee supporting the measure came from electric companies that expect[ed] to power the vehicles (\$100,000); banks that expect[ed] to sell construction bonds (\$60,000); construction and engineering firms (\$42,000); construction unions (\$25,000); builders of subsidized transit-oriented development (\$25,500); and railcar manufacturers.<sup>50</sup>

O'Toole further explains that many redevelopment efforts undertaken in the name of Smart Growth are driven by similar rent-seeking motives. He points to parallel examples in Oregon in which powerful lobby groups are backed by federal government grants, including support from the U.S. Department of Transportation for bicycle and transit-

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<sup>49</sup> Richard C. Feiock, Antoni F. Tavares, and Mark Lubell, "Policy Instrument choices for Growth Management and Land Use Regulation," *The Policy Studies Journal* 36, no.3, 2008.

<sup>50</sup> Randall O'Toole, "A Portlander's View of Smart Growth," *The Review of Austrian Economics* 17, nos. 2/3, 2004: 211.

oriented development.<sup>51</sup> Because such redevelopment projects benefit vested interests at the expense of overall economic efficiency, these interests have an incentive to profit themselves at dispersed expense to taxpayers.

In this chapter I offer an overview of the literature regarding knowledge problems in urban planning—the subjectivity and dispersion of knowledge make it impossible for central planners to create efficient land use plans. Then, I discuss the knowledge that planners would need to develop the “right” land use plan, and the impossibility of compiling this knowledge centrally. Finally, I explain that because planners cannot access the information that could direct them to the most efficient land use plan, they rely on the political process to shape regulations, benefitting vested interests at the expense of total welfare. In Chapters 3 and 4 I will offer empirical support for this theory.

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<sup>51</sup> Ibid.

### **Chapter 3**

In order to demonstrate how the theory described in Chapter 2 unfolds in real life, I employ a case study of a redevelopment effort in Tysons Corner, an area of Fairfax County, Virginia. This current land use issue, which has achieved national prominence, provides an opportunity to witness the knowledge problems that planning authorities face and their reliance on interests groups within the local community to shape rules in the absence of knowledge. First, I will present a thorough background of the planning process to date, including the planning recommendations from the Fairfax County Planning Commission, private consultants, and interested parties. Then, I will examine the knowledge problems that market process theory predicts that Tysons Corner authorities will face in the implementation of their proposed plan. Next, I will analyze the bootleggers and Baptists who have helped shape this proposed redevelopment. Finally, I point out the costs that their suggested course of policy would impose on others in Tysons Corner, Fairfax County, and beyond.

#### **The Silver Line and Background of the Tysons Corner Redevelopment Process**

Fairfax County, Virginia, provides an ideal microcosm for examining the distortions created in the zoning process. This Washington, DC suburb is home to more than 1,000,000 residents. Of all U.S. counties, it has the second-highest median income, behind only Virginia's Loudon County which lays northwest of Fairfax. As per state law,

Fairfax growth is governed by a comprehensive plan, required to take into account both the county's development and natural landscape in planning for population and economic growth. Roughly nine percent of Fairfax County residents live in multi-family housing units. This is much lower than in neighboring Arlington County where mixed use and higher density development, particularly near Metro stations, is the norm.

At present, development in Tysons Corner is of a suburban nature although the area serves as Fairfax County's business center. In 2014, the Washington Metrorail will be extended through this area on a new Silver Line, the sixth line on this transit system. The County Board of Commissioners hopes to use the opening of the four new rail stations to urbanize Tysons Corner. The Redevelopment Plan envisions an evolution of this suburban area, which is currently comprised predominantly of retail and office space, into a dense, mixed-use downtown Fairfax County. Planners see that this transformation will require more residential development, pedestrian friendly streets, and increased public transit to diminish traffic and the requisite need for parking space.

The Fairfax County Board appointed a Task Force to make recommendations for the redevelopment plans designed to accommodate the opening of four Silver Line stations in Tysons Corner. The new rail line will eventually extend to Dulles International Airport (see Appendix 1 for a map of the future rail line in Tysons Corner). In October 2008, the Task Force released its "Transforming Tysons: Vision and Area Wide Recommendations," reflecting the consensus of Task Force members. The Board directed the Task Force to create these recommendations "expeditiously" with the following objectives comprising its mission:

- 1) Promote more mixed use
- 2) Better facilitate transit-oriented development (TOD)
- 3) Enhance pedestrian connections
- 4) Increase residential component
- 5) Improve functionality
- 6) Provide for amenities and aesthetics

These objectives are also designed to improve the environmental impact of Tysons Corner development by decreasing the amount of asphalt and increasing green space, which the Task Force asserts will improve air and water quality.

The Task Force, comprised of business interests, environmental activists, and residents of Fairfax County, was designed to facilitate citizen participation. Since the release of the Task Force report, the County Board has held twice-monthly meetings to gather further citizen input as well as analysis from transportation analysts and public service providers. At the first Tysons Corner Committee meeting, Chairman Walter Alcorn explained that the committee would serve as an “integrator” between the Task Force and the Fairfax Planning Commission while providing a platform for members of the public to voice their opinions and recommendations for redevelopment.<sup>52</sup> In the creation of their plan, the staff is responsible for considering the Task Force recommendations along with transportation consultant recommendations. The Virginia Department of Transportation sought insight from two consulting firms: Cambridge

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<sup>52</sup> Tysons Corner Committee, Meeting Minutes, November 6, 2008.

Systematics and Post, Buckley, Schuh and Jernigan.<sup>53</sup> These analyses were not fully completed at the time that the Planning Commission released the first draft of its plan in February 2009, but they will carry significant weight in the final plan. Also, the Task Force sought both land use and transportation recommendations from the George Mason University Center for Regional Analysis.

The most recent draft of the Planning Commission's proposed amendment suggests a level of density about halfway between that recommended by the consultants and the level for which the Task Force is lobbying. The Task Force is aiming toward its vision of a bustling urbanity: the transportation consultants analyze the realities of traffic; and the Planning Commission is attempting to strike a balance that will both achieve its redevelopment objectives and be politically passable. The plan will be implemented by a Zoning Ordinance Amendment. A proposed version of this amendment is already available.<sup>54</sup> In April 2010, the Planning Commission will hear public comment on the draft, and in May 2010 the amendment will go before the County Board of Supervisors, potentially receiving final approval.

### **Task Force Plan Summary**

On November 19, 2008, Clark Tyler, Chairman of the Tysons Corner Land Use Task Force presented redevelopment recommendations to the Tysons Corner Committee. The consulting firm PBPlacemaking, contracted by the Task Force to put together the groups' recommendations for land use and transportation, created detailed plans for

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<sup>53</sup> Tysons Corner Committee, Meeting Minutes, February 5, 2009.

<sup>54</sup> Planning Commission, Staff Report: Proposed Zoning Ordinance Amendment, Amend Articles 2, 6, 8, 9, 11, 12, 13, 16 and 18 to Establish the PTC – Planned Tysons Corner Urban District, Fairfax County, March 23, 2010, <http://www.fairfaxcounty.gov/dpz/zoningordinance/proposed/tysonsurbandistrict.pdf>.

density, transportation, and the mix of land use in the eight geographic areas comprising Tysons Corner. Throughout these recommendations, environmental concerns are prevalent, including reduced use of the automobile, improved storm water management, and incentives for using Leadership in Energy and Environmental Design (LEED) building standards. The Task Force advocates green space in the form of both large parks and pocket parks as well as athletic fields to both enhance the quality of neighborhoods and to promote better storm water management by reducing the amount of paved land.

The Task Force designated seven different types of land uses for the area: mixed-use, retail mixed-use, office mixed-use, office, residential mixed-use, arts/civic/public facility, and parks/open space. This land use pattern, with the highest densities in the “Station Core Zones” nearest Metro stations, is designed to transform Tysons Corner from its current suburban development (the opposite of a bedroom community) to an urban center. The Task Force report explains, “The availability of these amenities will make Tysons Corner a self-sufficient center: a place that will draw people to live because it will have all the components of a healthy community.”<sup>55</sup> The Task Force does not provide a detailed budget for funding its goals, including infrastructure improvements, civic spaces, and affordable housing. It does suggest, however, that these amenities should be provided by a mix of developers, public-private partnerships, and taxpayer-funded public works projects.

The Task Force suggests that 20 percent of total residences should be affordable

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<sup>55</sup> PB Placemaking, *Transforming Tysons: Vision and Area Wide Recommendations*, Prepared for Tysons Land Use Task Force, Revised October 10, 2008, 42.

to households making between 60 and 120 percent of the Area Median Income. It does not suggest that any public funding will be necessary to achieve these affordable housing objectives, but rather that this provision should fall to developers as a requirement for them to earn density bonuses.<sup>56</sup> The Task Force describes workforce housing as an essential piece of their plan to transform Tysons Corner into a place with activity that extends beyond office hours. Additionally, if the Silver Line is going to reduce the number of people who drive to work in Tysons Corner, the Task Force points out that workers must be able to easily access Metro stations from their homes.

Arguably, the most complex aspect of the redevelopment is the creation of the grid of streets. The Task Force created a proposal for this grid that would improve the area's accessibility to modes of transit other than cars. This proposal is shown in Appendix 1, adjacent to a map of Tysons Corner's streets as they are today. Route 7 and Route 123 will remain the major thoroughfares for crossing Tysons Corner, according to this recommendation. In order to facilitate easy use of the Silver Line, the Task Force suggests a system of circulator buses to carry people to the stations from the surrounding areas without relying on cars. This transformation of Tysons Corner into an area in which people do not necessarily need automobiles is called Transportation Demand Management within planning theory. This strategy includes means for people to use alternate forms of transportation as well as requiring development that will encourage fewer car trips.

In order to make Tysons Corner a place that pedestrians want to be, the Task

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<sup>56</sup> PB Placemaking, Transforming Tysons: Vision and Area Wide Recommendations, 43.



Force outlines specific urban design guidelines. Many of these focus on “pedestrian space,” the area between buildings and streets. The report does not give specific design standards for this space, but it does suggest that the final redevelopment plan include requirements for elements such as lighting and signage that will make this area visually appealing to walkers.<sup>57</sup>

While the Task Force does not have the power to make any changes to the rules regarding Tysons Corner’s development, it does hold an influential place in the process. The Planning Commission took these Task Force recommendations into consideration in the creation of the Draft Plan, and the Task Force also submitted comments on this Draft. While all interested parties have had ample opportunities to express their input at public hearings with the Committee, the Planning Commission provided the Task Force a direct inroad in the process.

### **George Mason University Study**

The George Mason University (GMU) Center for Regional Analysis modeled forecasts for Tysons Corner’s growth in jobs and residents through 2050. The study relied on the Washington Council of Governments Cooperative Forecasting estimates of population growth for Fairfax County, under the assumption that the Silver Line would lead Tysons Corner to have an increasing portion of the county’s residents. The average household in Fairfax is 2.0 persons, and the study assumes that this will remain constant and will hold for Tysons Corner as well. The study conducted estimates for low, medium, and high growth, but reports only the high estimates in the results section:

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<sup>57</sup> PB Placemaking, *Transforming Tysons: Vision and Area Wide Recommendations*, xii.

For 2010 to 2050, Tysons would see a growth of 97,300 jobs and 67,400 people and in 2050 would have 209,900 jobs and 85,900 people (High Forecast). These forecasts of growth represent almost a doubling of jobs, or 86%, while the population would grow by 364%.<sup>58</sup>

At a February 24, 2010 Tysons Corner Committee meeting, a board member emphasized that the GMU estimates were based on Task Force recommendations. If some of these recommendations do not come to pass, including the grid of streets, increased density allotments, and increased use of public transit, the report could be extremely inaccurate. Stephen Fuller and John McClain who created the GMU Report also served on the Land Use Task Force. While their specific involvement on the Task Force is not reported, they are in the dual positions of lobbyists on the Task Force and objective analysts on the GMU study.

### **Draft Plan**

The Proposed Zoning Ordinance Amendment primarily formalizes the recommendations of the Task Force, with more specific regulations and lower densities. The Planning Commission advocates that the land within one-half-mile of each of the Tysons Corner Metro stations should be permitted higher-intensity building.<sup>59</sup> These areas are specifically designated for Transit Oriented Development, but the Commission advocates that all of Tysons Corner should include increased mixed-use going forward. The primary redevelopment objective as related to the future Silver Line is “tiered

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<sup>58</sup> Stephen S. Fuller and John McClain, George Mason University Center for Regional Analysis, “Forecasts for Tysons Corner to 2050, Prepared for Fairfax County,” September 17, 2008.

<sup>59</sup> Zoning Administration Division, Proposed Zoning Ordinance Amendment, Amend Articles 2, 6, 8, 9, 11, 12, 13, 16, and 18 to Establish the PTC—Planned Tysons Corner Urban District, March 23, 2010, 1.

development,” in which higher densities directly surrounding the Metro stations will gradually lead into lower densities in Tysons Corner and even lower densities in the areas surrounding Tysons Corner.<sup>60</sup>

The Planning Commission also furthers the Task Force’s recommendation for environmentally sound development, specifically “implementing green building design and incorporating low impact development strategies, such as innovative storm water management and green roofs.”<sup>61</sup> Under the Draft Plan, all new building in Tysons Corner would be required to meet LEED Silver Certification. Building that achieve higher LEED certifications could earn density bonuses. Density bonuses are also proposed for affordable housing provisions and the provision of public facilities, including open space and land for the grid of streets.<sup>62</sup> Accounting for these potential bonuses, the Planning Commission staff predicts that under the permitted density of the Staff Plan, Tysons Corner could grow from 46 million developed square feet to 116 million square feet in the 40 year planning horizon.

As part of its sustainability objectives, the Planning Commission includes plans for urban parks to provide both local opportunities for recreation and to promote a canopy of trees for wildlife habitat.<sup>63</sup> Types of parks suggested include stream management parks with trails along waterways, pocket parks, and larger parks and athletic fields. The Planning Commission explains that because Tysons Corner residents will be living in high-density units, they need access to public open space to maintain a high quality of life

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<sup>60</sup> Ibid., 2.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid., 24.

<sup>63</sup> Ibid., 96.

(see Appendix 1 for a map of proposed green space).

The Draft Plan goes into more detail than the Task Force about the land uses that will be permitted. In addition to specifying permitted uses, the plan also goes into greater detail than the Task Force as to what types of businesses will be permitted. The Commission seeks much more urban-style development: “Small scale structures containing one or more uses shall only be permitted when the applicant has demonstrated that such development meets the urban design guidelines.”<sup>64</sup> Additionally, drive-through restaurants will no longer be permitted in Tysons Corner, although existing establishments are permitted to remain. A much-debated issue at public hearings for the plan has been the need for parking, given the expected change in transportation patterns.<sup>65</sup> The Commission recommends increasing the number of required parking spaces moving away from Metro stations, with a range 1.0 to 2.7 for dwelling units and fewer for office and commercial.<sup>66</sup> This runs in opposition to the recommendation that some Task Force members proposed at a public hearing, suggesting that some commercial development near Metro stations need not provide any parking.<sup>67</sup>

### **Landowner and Developer Perspectives**

Both current landowners in Tysons Corner and developers who hope to build there generally support increased density in the area. As they see it, a legal environment that allows for taller buildings will increase land value and profit opportunities. One of

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<sup>64</sup> Ibid. 9.

<sup>65</sup> See Tysons Corner Committee, Meeting Minutes, February 24, 2010.

<sup>66</sup> Zoning Administration Division, Proposed Zoning Ordinance Amendment, 14.

<sup>67</sup> Author's notes from Tysons Corner Committee, Fairfax County Board, Overview of Draft Tysons Zoning Ordinance Amendment Meeting, February 24, 2010.

the most involved developer interests is West\*Group. West\*Group employee Keith Turner presented the firm's Master Plan for 42 acres of the land near the future Tysons Corner East Metro station and for 100 acres for the company's Westpark property. West\*Group has been involved in the redevelopment planning since the creation of the Task Force, supporting the Commission's vision of a high-density, mixed-use downtown Tysons Corner. However, owner Gerald T. Halpin, 88, is looking to sell his assets. In January 2010, a potential deal to sell the properties to another Fairfax developer fell through as the prospective buyer failed to secure sufficient financing.<sup>68</sup> For now, West\*Group remains active in the planning process.

Because of its large investment in Tysons Corner and its corresponding importance in the development process, West\*Group has had special involvement in the redevelopment process. Implementing the proposed grid of streets relies heavily on West\*Group properties and other major developers cooperating to minimize the need to use eminent domain to achieve the infrastructure requirements to facilitate increased density and pedestrianism.

For other commercial and lobbying interests, the Committee held a meeting on December 17, 2008 where representatives from several key area businesses presented their insights and input for redevelopment.<sup>69</sup> Most sought either to express approval for the Task Force objectives or to explain how their individual properties could be put to valuable use in redevelopment. Aside from West\*Group, commercial property owners

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<sup>68</sup> Lisa Rein, "Financing problem kills sale of Tysons property," *The Washington Post*, January 15, 2010.

<sup>69</sup> Tysons Corner Committee Presentations, Citizen Presentations, December 17, 2008, Available at <http://www.fairfaxcounty.gov/planning/tysonspresentations.htm>.

who have expressed support for the plan objectives include Capital One, The Penrose Group, and Tysons Galleria. Tysons Central 7, which owns a large portion of the land adjacent to the eponymous station, was the only commercial interest to express concerns about some of the Task Force suggestions at a public hearing, including the presence of Route 123 making pedestrian access to the future station difficult. Also, their presentation suggested that the proposed 3.5 acres of civic space is too much for the total size of Tysons Corner, and that smaller parks throughout the area would be more appropriate.<sup>70</sup>

### **Citizen Participation**

At the December 17 meeting, dozens of individual residents and representatives of community organizations also made presentations. Some of the most vocal citizens in the redevelopment process have been those who live in Fairfax outside of Tysons Corner. Resident Penelope Firth expressed the other major concern among dissenters from the Draft Plan: “Please protect against concentrating the benefits for Tysons Corner land owners and distributing the costs to local neighborhoods, the Chesapeake Bay Watershed, [and] future generations.”<sup>71</sup> Some Fairfax residents are not opposed to an urban transformation of the county, but they are concerned that the costs of infrastructure improvements will result in increased taxes for all residents, not just those who live in Tysons Corner and benefit from these public services.

On March 11, 2010, dozens of interested citizens attended a public hearing to

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<sup>70</sup> Ibid.

<sup>71</sup> Penelope Firth, Comments to Tysons Redevelopment Committee, December 17, 2008.

address the Committee, primarily with concerns about the Draft Plan. Suzette Zablitz, representing The Rotunda, a condominium complex in Fairfax County, expressed opposition to a bike path proposal that would cut through the facility's park space. She explained that "No one at the Rotunda is opposed to change and development; however, it should not be done by altering our way of life nor our property line."<sup>72</sup> Although she references a specific, local concern, Ms. Zablitz's concerns are representative of many Fairfax residents' feelings. While they may not oppose the prospect of increased development and population growth in the county, they wish to maintain the amenities of their suburban residences. Ms. Zablitz also touches on the controversial issue of eminent domain, which the plan relies on not only for bike paths, but also for widening roads<sup>73</sup> and creating the all-important grid of streets.

The McLean Citizens Association (MCA) seems to be the most unified and active group of residents expressing concerns about the Draft Plan. They held a meeting in March 2010, which was dedicated specifically to discussing this issue. MCA President Rob Jackson summarized the group's concerns:

MCA supports increased density only at the four new stations, as long as new public services are provided and paid for by the Tysons Corner land owners. The current plan requires funding by Fairfax and Loudon County in exchange for

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<sup>72</sup> Suzette Zablitz, "Citizen Comments to Committee," Tysons Draft Plan, March 11, 2010.

<sup>73</sup> Fairfax County Department of Planning and Zoning Department of Transportation, Transforming Tysons Prepared for the Planning Commission's Tysons Corner Committee Fairfax County Department of Planning and Zoning Department of Transportation Tysons Corner Urban Center Areawide and District Recommendations DRAFT Plan Amendment *Markup Version With Changes from Previous Draft*, March 24, 2010, page 86. The plan suggests widening large roads including I-495 and Route 7. Widening Route 7 would presumably make creating pedestrian access even more difficult.

increased density. We cannot accept the plan as is.<sup>74</sup>

Mr. Jackson expresses the concern held by many Fairfax residents that they will bear the cost of redevelopment through increased taxes, increased use of their public goods, greater potential environmental degradation, and increased traffic. From this perspective, the value of increased density in the county will benefit only landowners and residents in Tysons Corner.

Chapter 3 offers a detailed summary of the Tysons Corner redevelopment case study and the Silver Line which will bring mass transit to the area. Because of this construction, the Fairfax County Board of Commissioners directed the Planning Commission to update the land use regulations governing Tysons Corner. I explain the Task Force recommendations which have shaped the Planning Commission Draft Plan. Also I provide an overview of citizen and landowner participation in shaping development policy. Next, Chapter 4 will explore some of the challenges that market process theory predicts in this redevelopment effort.

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<sup>74</sup> Rob Jackson, Opening Remarks, McLean Citizens Association Meetings, March 3, 2010.



## Chapter 4

### Potential Problems in the Tysons Corner Redevelopment

For the most part, the goals expressed by the Task Force, the county Board, and the Planning Commission are in line with the Jacobian vision of thriving urbanities, but not all urban scholars would agree that they are valid objectives for planners to impose on their residents. For example, Randall O'Toole reminds us that, while facilitating convenient automobile transit is not currently in vogue in urban planning, driving provides enormous value.<sup>75</sup> He advocates that consumers' preferences for driving should in part dictate planning visions rather than top-down efforts to minimize automobile traffic. Despite the potential criticisms of the Tysons Corner redevelopment objectives, this thesis takes no issue with planners' goals, but rather with the process they advocate using to achieve these goals. As Ludwig von Mises writes in his treatise *Human Action*, praxeology is not suited to judge political objectives, but rather to evaluate the means by which people hope to achieve these goals.<sup>76</sup>

In this line of critique, there are several flaws in the Tysons Corner redevelopment plan. First, the planners lack the knowledge necessary to appropriately zone land parcels for use and density. In order to create an appropriate plan for zoning, planners would

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<sup>75</sup> Randall O'Toole, *The Best Laid Plans*, 152.

<sup>76</sup> Ludwig Von Mises, *Human Action: A Treatise on Economics*, San Francisco: Fox & Wilkes, 1949.

have to know their constituents subjective preferences for residential and commercial land use both at present and in the future. The planning process thus far provides evidence that this effort is falling prey to the problems that public choice economics predicts in the political process. As Peter Boettke and Edward Lopez explain, delegating the determination of resource allocation to a bureaucratic process will benefit successful rent-seekers at the expense of overall welfare. As they explain: “Modern democracies are large scale, in which voter-constituents face an exacerbated knowledge problem in making collective choices. This increases the base on which to disperse the costs of rent seeking, and creates voter apathy. Inefficient policies arise, and they persist due to specific forms of large-scale democratic mechanisms that exacerbate knowledge problems.”<sup>77</sup> The remainder of this chapter will explore the dangers facing the implementation of the Tysons Corner redevelopment plan, both because the planners lack the needed knowledge and because the planning process is being driven by special interests.

### **Missing Knowledge in the Tysons Corner Redevelopment Effort**

Tyson’s Corner is coveted real estate that could clearly be put to many valuable uses as commercial, residential, or mixed-use development. Any critics of Tysons Corner’s current development should remember that building is restricted at present by the 2007 edition of the Fairfax Comprehensive Plan.<sup>78</sup> That the area currently has few

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<sup>77</sup> Peter J. Boettke and Edward J. Lopez, “Austrian Economics and Public Choice,” *The Review of Austrian Economics* 13, nos. 2/3, (2002): 113.

<sup>78</sup> Although the most recent Draft plan (available at <http://www.fairfaxcounty.gov/dpz/comprehensiveplan/area1/area1frontmatter.pdf>) proposes the largest historical changes to Tysons Corner, the area has a history of intensive and complex planning. In 1975, the

residents is a result of both the market and the regulatory environment. Planners may subjectively say that the current land use is problematic, but they do not have the counterfactual knowledge necessary to determine what development would look like without the density and use restrictions that have influenced it.

Mark Zetts of the McLean Citizens Association suggested that the plan does not leave room for the development of single family homes, while the Task Force would point out the single family homes may not be conducive to the type of high-density development they are striving for.<sup>79</sup> However, both parties are basing their recommendations on their own opinions of ideal redevelopment, without the knowledge of what types of people (singles, families, retirees, etc.) will actually want to live in Tysons Corner after redevelopment and what types of housing they will demand. Attempting to predetermine the types of housing to be permitted in Tysons Corner limits the potential for flexibility for entrepreneurs to seize profit opportunities as the housing market in Tysons Corner changes with the arrival of the Silver Line and the redevelopment plan. Charlie Hall, representing a Fairfax County neighborhood outside of Tysons Corner criticized the Task Force recommendations because they were not based on professional consultant models of population growth. Such modeling plays an important role in the Planning Commission's recommendations for population densities

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Fairfax County Board of Supervisors designated Tysons Corner as "a special study area requiring continual monitoring and restudy" (Draft Plan, 3). In 1978, the Board of Supervisors adopted a Comprehensive Plan to shape Tysons Corner's growth, which framed the legal environment until a 1994 amendment to the countywide Comprehensive Plan established the goal of making Tysons Corner the downtown of Fairfax. This amendment was based on the expectation of three Metro stations in Tysons Corner. More than fifteen years later, the area still has no Metro stations, but expects four by 2014.

<sup>79</sup> Tysons Corner Committee, Meeting Minutes, December 11, 2008.

and transportation infrastructure, but Hall and others who rely on sophisticated modeling to guide planning miss the essence of the knowledge problems inherent in top-down planning. The knowledge problem is not a computing challenge, but rather an issue that can only be addressed with decentralized actions of entrepreneurs.<sup>80</sup>

Aside from the housing issue, Tysons Corner redevelopment is likely to suffer from knowledge problems in infrastructure and public goods provisions. With regard to the need for new schools, Mary Ann Tsai of county public schools suggested relying on the GMU study which predicts that student populations in Tysons Corner will near those in Arlington County and Montgomery County.<sup>81</sup> However, these population estimates cannot accurately reflect the as-yet-undetermined decisions about allotted density, and how these policies will impact the demographics that move into new Tysons Corner housing. While higher residential densities will obviously allow more people to live in the area, high-density housing will unlikely attract a high proportion of Fairfax County's families (those more likely to live in single family homes). Plans in different policy areas are unlikely to dovetail as they are concurrently shifting and influenced by various interest groups, and planners do not know how people will react to the institutional changes that they enact. The Wastewater Management plans presented by Shahram Mohsenin exemplify this challenge. The Tysons Corner Committee directed this county division to create plans for the future wastewater needs of Tysons Corner residents. The

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<sup>80</sup> For an in-depth exploration of the impossibility of planning for human economic actors, see Philip Mirowski, *Machine Dreams: Economics Becomes a Cyborg Science*, New York: Cambridge University Press, 2002. Mirowski explains that if humans behaved as automatons, advances in computing technology could allow for a centrally planned economy. But in the reality of subjective knowledge and preferences, even the most advanced system of equations could never coordinate economic activity.

<sup>81</sup> Tysons Corner Committee, Meeting Minutes, January 14, 2009.

estimates were based on the full realization of the allotted density suggested by the Task Force, but as of this writing, the wastewater needs predictions look highly unrealistic, as this Planning Commission Draft Plan proposes significantly lower permitted densities.<sup>82</sup> Furthermore, the legality of some aspects of the redevelopment plan is uncertain, meaning that if County authority to enforce some of the suggested changes is challenged, the plan and predictions based around it could be greatly altered. The aspects of the redevelopment that the Planning Commission may not have the authority to enforce include using eminent domain to complete some portions of the grid of streets and the proposed requirement that 20 percent of Tysons Corner housing to be affordable.<sup>83</sup> The uncertainty of the legal environment surrounding aspects of the plan compounds the knowledge problems and the cost to the county of implementing desired policy changes.

One common justification that planners use to explain the need for top-down urban planning is the need for a unified system of infrastructure.<sup>84</sup> In Tysons Corner, future developers indeed face a significant collective action challenge to move forward given the existing infrastructure characterized by long blocks, curving boulevards, and highways that divide the area. This design is far from the urban ideal that Jane Jacobs recommends for pedestrian friendly, high-density development.<sup>85</sup> Assuming that suppliers wish to create high-density development to take advantage of the new Silver

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<sup>82</sup> Tysons Corner Committee, Meeting Minutes, January 22, 2009.

<sup>83</sup> Tysons Corner Committee, Meeting Minutes, September 30, 2009.

<sup>84</sup> See, for example, Paul Chesire and Stephen Sheppard, "The welfare economics of land use planning," *Journal of Urban Economics* 52, 2002. In a study of the costs and benefits of urban planning, these authors argue that one benefit is the organization of streets and other public infrastructure goods.

<sup>85</sup> See Jane Jacobs, *The Death and Life of Great American Cities*, Chapter 9, for a detailed explanation of the short blocks on a regular grid of streets that represent her urban ideal.

Line, and in doing so create spaces that their consumers can easily access, they too will want a more conducive street layout than that which currently exists in Tysons Corner. However, before turning to Fairfax government as the solution to this problem, one must recall that local planning authorities are responsible for creating the current infrastructure. Before adopting the latest trend in urban design (Smart Growth), these planners favored more traditional suburban road building standards which, in hindsight, appear to be a questionable design choice. While trends in building have changed, planners offer no evidence that they have an improved ability to utilize local knowledge to create efficient infrastructure. Having access to this dispersed information is an essential component of improving the status quo. Later, I will address alternative possibilities for street development that do not succumb to these same problems.

The justification for redesign of Tysons Corner streets at the county level is that the area must be made more accessible for pedestrians, bicyclists, and transit users. However, the planners cannot foresee how the redevelopment plan will impact residents' driving habits in actuality. Throughout the Draft Plan, the authors rely upon language suggesting that after the redevelopment, citizens will prefer to take public transit instead of driving. However, planners do not know the function of current consumers' demand curves for driving, and they certainly do not know how the redevelopment will alter these existing preference sets. By making alternative forms of transportation more accessible and allowing for less parking, planners can foresee that, *ceteris paribus*, Fairfax residents will drive less. Their estimation of how much less, based on consultant recommendations, are unlikely to have a high level of accuracy. This complex decision

made at the individual and household levels cannot be accurately predicted centrally because the decision will be based on a wide variety of factors that planners cannot identify with certainty.<sup>86</sup>

By redesigning existing infrastructure, Fairfax planners are favoring centralized control over allowing for an emergent solution to come from the firms involved in the redevelopment. An even less justifiable intervention from these planners comes in their top-down direction for street level building. The Task Force made specific development suggestions for eight sections of Tysons Corner, four of which are the areas surrounding each of the future Metro stations. These recommendations include specific amounts of residential, commercial, and civic land uses to be either permitted or required in these eight areas. The Planning Recommendations, based closely on those that the Task Force created, are outlined in the Draft Plan and include such proposed regulations as directing 75 percent of new development to the four areas immediately surrounding the Silver Line stations.<sup>87</sup> These areas are known as transit-oriented development (TOD) parts of the redevelopment. By attempting to funnel development to these designated areas, planners are working to minimize driving. However, they make no effort to weigh the costs of this decision against the benefits to citizens who might otherwise be able to drive and park their cars with relative ease near these future stations. The Draft Plan implements essentially the Task Force recommendations for land use at the block level. Both the

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<sup>86</sup> Hayek, "Economics and Knowledge."

<sup>87</sup> Fairfax County Department of Planning and Zoning Department of Transportation, Transforming Tysons, Prepared for the Planning Commission's Tysons Corner Committee Fairfax County Department of Planning and Zoning Department of Transportation Tysons Corner Urban Center Areawide and District Recommendations DRAFT Plan Amendment *Markup Version With Changes from Previous Draft*, January 15, 2010, Transportation, 21.

Planning Commission and the Task Force suggest “mixed-use development” throughout Tysons Corner, but go on to specify which “mixed uses” will be permitted. At first glance, this language suggests that planners advocate market-determined land use, but in reality they break Tysons Corner down into seven types of allowed development: Retail Mixed Use, Office Mixed Use, Office, Residential Mixed Use, Residential, Park/Open Space, and Civic Use/Public Facility.<sup>88</sup> The Task Force and planners relied upon the Jacobian recommendation of mixed use in order to make it appear as if they favor market-determined development, but in actuality this plan, like traditional land use regulations, delegates to them the authority to determine the allowable uses for each parcel of land. After releasing the Draft Plan, the Planning Commission expounded upon the permitted land uses, going into even greater detail on the types of development to be allowed, including the specific types of entertainment and commercial uses to be permitted.<sup>89</sup>

Suggesting such specific land uses will very likely distort the Tysons Corner land market and reduce development efficiency. However, an even greater challenge of the Draft Plan is the specific recommendations for residential and employment growth. The ratio of residential-to-employment growth that the planners advocate is based on a number between that suggested by the consultants and by the Task Force.<sup>90</sup> This number,

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<sup>88</sup> Ibid., 25.

<sup>89</sup> Fairfax County Department of Planning and Zoning Department of Transportation, Permitted Uses for the Tysons Zoning District (DRAFT), February 18, 2010.

<sup>90</sup> See Fairfax County Department of Planning and Zoning Department of Transportation, Transforming Tysons Prepared for the Planning Commission’s Tysons Corner Committee Fairfax County Department of Planning and Zoning Department of Transportation Tysons Corner Urban Center Areawide and District



based on some concept of ideal urban development, has little or no relation to how many people will actually move to Tysons Corner or begin working there. The Planning Commission seemed to arrive at this suggestion based on the consultant recommendation and the higher growth level favored by interest groups. Regardless of their proposal, however, planners will not be able to control the number of people who choose to move to Tysons Corner short of forcing the required number to move there.

As stated, most of the objectives of the redevelopment as expressed both by the Task Force and the Planning Commission fit very well with Jane Jacobs' ideals for cities. For example, they advocate that pedestrian-friendly development requires short blocks, narrow streets, and small setbacks so that ground level retail and public spaces are easily accessible to foot travelers.<sup>91</sup> However, as much as Jacobs champions this Urbanist sort of development, she emphatically does not suggest that it is best implemented by planning commissions. Rather she made clear throughout her works that private firms will engage in this sort of development provided that municipal governments do not prevent them from doing so. In an essay about her work, Pierre Desrochers and Gert-Jan Hospers write that Jacobs taught:

Economic development is a "do-it-yourself" process that cannot be bought, sold,

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Recommendations DRAFT Plan Amendment *Markup Version With Changes from Previous Draft*, January 15, 2010, Transportation, 23.

<sup>91</sup> Jane Jacobs recommends this sort of development in *The Death and Life of Great American Cities*, Chapter 9. She writes:

Long blocks, in their nature, thwart the potential advantages that cities offer to incubation, experimentation, and many small or experimental enterprises, insofar as these depend upon drawing their customers or clients from among much larger cross-sections of passing public. Long blocks also thwart the principle that if city mixtures of use are to be more than a fiction on maps, they must result in different people, bent on different purposes, appearing at different times, but using the *same* streets.

packaged, anticipated or centrally planned. Effective solutions . . . must not have any preconceived idea of what will work or not. Nothing can be done to help a region that does not have a creative economy of its own.<sup>92</sup>

Tysons Corner, the business center of one of the wealthiest counties in the wealthiest nation in the world, certainly has a “creative economy” of its own. It has been built in spite of the restrictions to development that local planning authorities have imposed and in spite of the ill-conceived government-built streets that residents must navigate in order to reach their offices and Tysons Corner’s world-class shopping. Jacobs would likely advocate that, rather than attempting to achieve her vision of a vital city through more land use regulations, Fairfax County authorities should instead lift the density and use laws that currently prohibit the style of building that they now wish to see.

The Task Force suggests, “Like Rome, the transformation of Tysons will not happen in a day. The new Tysons will reveal itself organically and incrementally over the next 30 to 50 years.”<sup>93</sup> The authors portray the evolution of cities as they are built by entrepreneurs and citizens evolutionarily over time and from the ground up. However, all planning bodies—the Task Force, the Planning Commission, and the GMU Center for Regional Analysis—advocate for top-down management of growth and construction. They seek a vibrant and unique free market development, but refuse to support the institutional environment that allows for this sort of urban living. The planners believe

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<sup>92</sup> Pierre Desrochers and Ger-Jan Hospers, “Cities and the Economic Development of Nations: An Essay on Jane Jacobs’ Contribution to Economic Theory,” *Canadian Journal of Regional Science* 30, no. 1, Spring 2007: 120. The authors here reference Jacobs’ 1984 *Cities and the Wealth of Nations: Principles of Economic Life*.

<sup>93</sup> PD Placemaking, Report for Tysons Land Use Task Force, 114.

that they know the sort of construction that residents desire better than developers do, ignoring the fact that developers have all of the incentives and access to the necessary knowledge to create residences, offices, and commercial buildings that people want to use and access as efficiently as possible.

The Jacobian argument suggests that knowledge problems will plague the implementation of the Draft Plan as it stands because it advocates specific uses for the eight different sections of Tysons Corner and prevents market supply and demand from moving the actual development toward the optimal development. Despite this potential problem, County Commissioners do not go far enough to regulate the style of future building, including architecture, color schemes, and signage. At a February 24, 2010 meeting, one commissioner said, “The next iteration of the current interim guidelines are likely to have more specific building design guidelines.”<sup>94</sup> The idea that bureaucrats can compile the market knowledge necessary to determine optimal design is questionable at best, so in this case planners justify their interventions with their authority to enforce unified design standards. However, top-down implementation of unified design standards prevents the potential for an emergent solution without the same market distortions that centralized control will create. This sort of coordination between businesses and urban developers is a task best left to independent organizations, commonly called Business Improvement Districts (BIDs). While BIDs can succeed in any commercial district, they are most easily established in affluent, retail-centric areas

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<sup>94</sup> Author’s notes from Tysons Corner Committee, Fairfax County Board, Overview of Draft Tysons Zoning Ordinance Amendment Meeting, February 24, 2010.

like Tysons Corner, and entrepreneurs would likely establish such an organization there independently if local government would leave room for one to be effective.<sup>95</sup>

### **Bootleggers and Baptists are Shaping Tysons Corner's Regulatory Environment**

Despite the inability of the Committee or the Planning Commission to obtain the necessary knowledge to create an efficient 40-year plan, this remains their objective. They lack the resources to collect the extensive demographic data that would be needed, and worse, development will depend on changing consumer preferences, market conditions, and technologies over the course of this time period. This information is certainly not available to urban planners or any other experts. The planners have a vision of Tysons Corner moving toward a utopian city – a vibrant, safe community that is bustling at all hours of the day with residents, workers, shoppers, and children.<sup>96</sup> However, they are set about implementing this objective from the top down. As previously stated, because the planners do not have the knowledge that would be needed to plan for this vision accurately, they have turned to a political lobbying process to inform the plan's creation.

The bootleggers and the Baptists are readily apparent in the Tysons Corner case. The bootleggers are those who stand to profit from the redevelopment: the landowners, developers, and businesses who wish to enter the new market. The Baptists are those interested parties who support the redevelopment but not for potential monetary gain. They include environmentalists, bicycle lobbyists, affordable housing supporters, and

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<sup>95</sup> For much more on the importance and efficacy of Business Improvement Districts, see Robert Nelson, Kyle H. McKenzie, and Eileen Norcross, "Lessons from Business Improvement Districts: Building on Past Successes," Mercatus Policy Series: Policy Primer no. 5, June 2008.

<sup>96</sup> Jacobs, *The Death and Life of Great American Cities*, Chapter 2.

Urbanists. By creating the Task Force, the Committee provided an ideal platform for these interests to align themselves and work together to influence policy. In May 2008, the Washington Post reported on the synthesis of these interests:

Property owners stand to make huge profits. But they also argue for the environmental benefit of high-density development, particularly around Metro.

People drive less when they live and work in urban areas and when parking is less abundant, they say. Their homes, with shared walls, cost less to heat and cool.

They require fewer feet of water and sewer lines. Their carbon footprints shrink.<sup>97</sup>

By working with the environmentalists, businesses are able to present their development goals to the public in a politically palatable way.

Meeting minutes over the past two years paint a clear picture of the most involved bootleggers in the planning process. In particular, West\*Group has played a very influential role, acting as both a lobbyist and a consultant to the Committee.<sup>98</sup> Additional land owners prominently involved in the planning include Capital One, and the department stores of the Galeria, Macy's, Saks Fifth Avenue, and Neiman Marcus. They also play a key role in the implementation of the grid of streets, as much of it will go through the existing Galeria and its parking lots. Other business interests include the developers Washington Real Estate Investment Trust, who have submitted proposals to build new, high-density housing and commercial units. JPI proposed development near the future Tysons West station and is willing to donate land for the future street grid in

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<sup>97</sup> Amy Gardener, "Plan to Remake Tysons Corner Envisions Dense Urban Center," *The Washington Post* Thursday, May 29, 2008.

<sup>98</sup> Authors notes, Tysons Corner Committee Meeting, Overview of Draft Tysons Zoning Ordinance Amendment, February 24, 2010.

exchange for an expected density allotment of a Floor Area Ratio 6.0 after incentives.<sup>99</sup>

As active as these “bootleggers” have been throughout the creation of the Task Force recommendations and the public hearing processes, the Baptists have taken the lead, at least publicly, in creating the official Task Force recommendations. For the Committee wishing to implement these recommendations, this is an ideal presentation to take to the public. While it is clear that both land owners and developers support the redevelopment plan, the primary purpose of redevelopment can be presented as a need for environmental stewardship, a pedestrian-friendly Tysons Corner, and a pleasant urban area. Clark Tyler, the Task Force chairman, is a retiree who has no personal business interest in the redevelopment and does not stand to profit from increased density allotments. He is an ideal figure to represent the Task Force, as he supports the redevelopment because of his belief in the need to protect the environment in Fairfax and his desire to live in an area that can easily be traveled on foot or on bicycle. He is also a convincing person to be leading the effort as a former businessman and federal political appointee. The *Washington Post* quotes, “‘I’m calling this the audacity of change,’ Clark Tyler, chairman of a county-appointed study panel, told a group of business leaders recently. ‘This is our last chance to get it right.’”<sup>100</sup> Like Clark, most of the Baptists in this case are environmentalists and, like Clark, general supporters of Smart Growth tenets.

The Task Force’s policy suggestions reflect the interests of land owners and

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<sup>99</sup> Tysons Corner Committee Presentations, Citizen Presentations, December 17, 2008, Available at <http://www.fairfaxcounty.gov/planning/tysonspresentations.htm>.

<sup>100</sup> Amy Gardner, “Plan to remake Tysons Corner envisions dense urban center,” *The Washington Post*, May 29, 2008.

environmentalists who both support increased density. Another major priority for the Baptists is the inclusion of low cost housing in new residential development.<sup>101</sup> The bootleggers appear prepared to support this objective as well, with some reservations about the cost to developers of providing below market-value housing.<sup>102</sup> By remaining vague about funding for transportation and infrastructure initiatives, the Task Force provides political cover for the Planning Commission to implement its recommendations without drawing attention to the costs of doing so. While some of these changes will certainly require tax dollars such as new transit modes and bicycle and pedestrian facilities, the Task Force emphasizes that developers would be required to pay for some of the suggested changes to streets.

Not all of the Fairfax County vested interests fall into the bootleggers and Baptists categories. To the credit of the County Board of Commissioners, these opposing interests have also had a voice in the planning process because the plan has been drafted transparently with many options for citizens to express their concerns at public hearings. Because the final plan has not been created as of this writing and remains far from the implementation stage, it remains to be seen whether these dissenting voices will be represented in the final result. Those against the redevelopment plan include many Fairfax County residents who reside outside of Tysons Corner. As they see it, increased density in Tysons Corner and the requisite infrastructure improvements will mean higher taxes, worse traffic, and higher use of public services such as schools and parks.

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<sup>101</sup> PBPlacemaking, "Report for Tysons Land Use Task Force," 37.

<sup>102</sup> Lynne Strobel, Comments to Tysons Redevelopment Committee, December 17, 2008.

While the goals identified by the Tysons Corner bootleggers and Baptists appear benign, it is important to remember that these policies will not only come with benefits but with considerable costs as well. Even as the Planning Commission is preparing to hold meetings to gather public comment on the staff's fourth iteration of its Draft Plan, no county agency has made efforts to quantify the costs of Tysons Corner's redevelopment or to propose specifically how infrastructure improvements will be funded. The Task Force suggests requiring developers to provide funding for many of the public goods that they advocate, and the Planning Department staff seems to support relying on this funding source. However, even relying on private funding for many of the redevelopment goals comes with costs that will be paid by Fairfax County residents both within and outside Tysons Corner.

Take, for example, the low cost housing requirement. Baptists on the Task Force thoroughly explain the benefits of this policy, both as a matter of social justice and as an environmental matter of allowing people to live near their jobs in the retail and service sectors, thereby reducing their commutes. However, neither the Task Force nor the staff have evaluated the cost of this requirement. Michelle Krocker, a member of the Task Force and an advocate of affordable housing spoke on the issue to the *Washington Post*:

Michelle Krocker, a housing advocate and member of the Tysons Land Use Task Force, said the guidelines are meant to give some of Tysons Corner's restaurant, hotel and retail workers an opportunity to live there, too. Affordable housing is essential, she said, especially because the real estate slump, coupled with the arrival of Metro, will probably drive up rents.



"We know that the cost of living here is extraordinary, and we know there will be more pressure on the rental market," Krocker said. "If all of the apartments are [too costly] to rent, we're going to have the same problem of all of these people commuting in."

Krocker said the task force has discussed partnering office and retail developers, who are the majority of Tysons landowners, with affordable housing builders to help create a mix of housing choices.

Krocker and the Task Force do not consider the economics of the housing market. In a free market, developers would not build housing units in Tysons Corner if they did not believe there was a demand for them. However, mandating affordable housing will not serve to increase the population that lives in Tysons Corner. This policy will lead developers to charge more for market price housing in order to cover their losses, leading to fewer Tysons Corner residents. This affordable housing policy would benefit housing advocates among the Baptists and residents who are able to secure below market-price housing at the expense of Fairfax County residents who are unable to obtain market price housing due to the shortage this policy will create. While the bootleggers on the Task Force were originally supportive of the affordable housing requirements as a part of incentive zoning, now some are saying that meeting the requirements will be prohibitively costly, jeopardizing the implementation of this development objective without the support of taxpayer dollars.<sup>103</sup>

The proposed policy likely to impose the greatest cost on Fairfax residents is the

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<sup>103</sup> Roger K. Lewis, "Affordable housing needs public funding," *The Washington Post*, March 13, 2010.

infrastructure changes and improvements that the Tysons Corner redevelopment will necessitate. Both the Task Force and the Draft Plan rely on a circulator bus which will bring 95 percent of Tysons Corner development within 600 feet of a circulator stop.<sup>104</sup> Neither the Task Force report nor the planning staff makes estimates of the cost of this amenity, which will presumably be paid by a combination of user fees and county subsidies. Changes to existing streets will also necessarily be an expensive endeavor. While the Draft Plan suggests that much of the proposed street grid will be provided by land owners and developers, some of the cost will have to be publicly funded, particularly parts of the street grid that will rely on taking privately held land by eminent domain to change the layout of streets. These neighborhood roads will be used by a relatively small number of people, but they will be paid for by some combination of Fairfax and broader Virginia taxpayers. Additionally, with the increased number of people working and living in Tysons Corner, new and improved major thoroughfares will be necessary for those who are not going to be relying on the Silver Line to access the area. The Virginia Department of Transportation may cover some of these expenses, dispersing the costs of redevelopment even beyond county lines, but, otherwise, Fairfax taxpayers will be responsible for the cost of new road building.<sup>105</sup>

These costs are politically passable, for the most part, because they will be spread thinly across all Fairfax residents, and in some cases they will be dispersed to the state or federal level. A reasonable assumption is that these improvements will be a net benefit

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<sup>104</sup> PBPlacemaking, "Report for Land Tysons Land Use Task Force," v.

<sup>105</sup> Editorial, *The Washington Post*, September 21, 2008.

for those who live or work in Tysons Corner, while they will be a net cost for other county and state residents. Increased traffic congestion, however, is likely to be most felt by those who frequently traverse Route 7 and Route 123 – Tysons residents as well as those who live in Vienna, McLean, and other parts of Fairfax County. While the Draft Plan includes considerable measures to minimize increased automobile use by encouraging walking and public transit options instead, driving is still expected to increase with the higher number of residents and workers in Tysons. Calculating these costs is a difficult task riddled with uncertainty. While the number of people who benefit from the Tysons Corner will grow over time as this area gains residential population, many of the costs for infrastructure improvements will have to be paid prior to this population growth.

In addition to the monetary costs of providing increased public services and the cost of increasing traffic congestions, the Tysons Corner redevelopment will also come with unseen costs for county residents in that the plan proposes development incentives that will alter building from what would otherwise occur. In their efforts to manage future development, history demonstrates that urban planning authorities are likely to do more harm than good. The current Draft Plan supports the Task Force recommendation of creating a civic center, which will include a large, centrally located park, performing arts space, and potentially a library and a museum.<sup>106</sup> This mode of compartmentalizing

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<sup>106</sup> Fairfax County Department of Planning and Zoning Department of Transportation, Transforming Tysons Prepared for the Planning Commission's Tysons Corner Committee Fairfax County Department of Planning and Zoning Department of Transportation Tysons Corner Urban Center Areawide and District Recommendations DRAFT Plan Amendment *Markup Version With Changes from Previous Draft*, March 24, 2010, 100.

civic life geographically has been known to be both inconvenient and potentially crime-fuelling.<sup>107</sup> In this case Fairfax County residents may pay the price to build this public good supported by the bootleggers and Baptists, only to find out that these plans turn out to be a public bad if top-down development results in negative, unintended consequences for the area.

The Task Force report explains that their recommendations were based on the opinions of “thousands of interested citizens and stakeholders.”<sup>108</sup> However, the report downplays the selection bias of these stakeholders—all people who have vested interests in the redevelopment policy. Those who were invited to serve on the Task Force and those with the incentives to dedicate their time to the planning process are by definition those who stand to benefit financially from shaping development rules or those who wish to see a specific policy outcome. Neither the Task Force nor the Planning Commission offer any estimates of the costs of redevelopment

### **Policy Recommendations**

At a McLean Citizens Association meeting, the organization’s president Rob Jackson said that the Planned Tysons Corner Urban District is the most complicated land use issue in current urban policy. While this statement is difficult or impossible to verify empirically, the proposed plan is undeniably ambitious and complex. Many aspects of the Tysons Redevelopment plan are likely to enhance the area’s development efficiency. The land in this Northern Virginia suburb is valuable, and increasing allowed density will

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<sup>107</sup> Jacobs, *The Death and Life of Great American Cities*, Chapter 2.

<sup>108</sup> PBPlacemaking, “Report for Tysons Land Use Task Force,” 23.

permit developers to better serve the market demand for residential and commercial space in this area. In this sense, the aspects of the plan that allow for increased density are land use *deregulation*.

However, the plan is overly ambitious in its attempts to direct specific types of new building. Planners are relying on their vision for what the area should be to determine legislation rather than allowing the market to direct land allocation to its most valued and efficient uses. By requiring mixed use development, planners could be skewing development toward either commercial or residential while the other could be more efficient. Furthermore, by creating specific requirements for the amount and location of affordable housing, planners are artificially distorting the housing market and creating deadweight losses. Jacobs prescribes housing vouchers as a better solution for people who are unable to afford adequate market price housing. By pursuing this option instead, Fairfax County could offer residents the opportunity to live near where they work without directing low-income residents to live in a specific place and without distorting market development.

Another potential problem with affordable housing requirements is that the mandate increases the cost of residential building relative to other land uses.<sup>109</sup> Planners allege that they are trying to create a downtown that will be active all day and most of the night,<sup>110</sup> but this type of activity requires high density residential development to

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<sup>109</sup> Kafia A. Hosh, "Housing plan might not change Tysons; Developers fear Fairfax guidelines on affordable residences are costly," *The Washington Post*, March 7, 2010.

<sup>110</sup> Fairfax County Department of Planning and Zoning Department of Transportation, Transforming Tysons Prepared for the Planning Commission's Tysons Corner Committee Fairfax County Department of Planning and Zoning Department of Transportation Tysons Corner Urban Center Areawide and District

maintain vibrancy during nights and weekends. By making residential construction more expensive, officials are creating contradictory regulations. Again, a voucher system would give control to consumers rather than manipulating developers' insights into profitable land use. It would allow for more lucrative residential construction while allowing low-income residents to live in Tysons if they choose to take their voucher there.

A risk factor for Tysons is that the planning process epitomizes Yandle's description of bootleggers and Baptists working together. The Task Force that provided the foundation for the Planning Commissions proposed amendment is comprised entirely of vested interests. Although Task Force members see the issue from different sides, they have worked together to support high-density, mixed-use *requirements* for building. As opposed to an approach of striking density and use limitations from the plan, this redevelopment method allows Smart Growth and development interests to work together to see that their desires are met in the redevelopment. The cost of this manner of redevelopment will be borne by Fairfax County residents who do not have enough incentive to make their voice heard in the process, but whose taxes are likely to rise to support infrastructure redevelopment.

As it stands, the plan is likely to benefit Tysons land owners whose property values will rise with increasing density, developers who profit from new buildings, and residents who are now increasingly able to live near their workplaces and public

transportation. However, it will come at a cost infrastructure improvements paid for by tax dollars. The County could achieve the same benefits more fairly by removing density and use limits without setting requirements for certain building types. The “Baptists” in this situation would likely assert that this would jeopardize air and water quality, but this environmental protection could likely be achieved through a free market that permits higher density urban development rather than a regulated process that require it. Before adopting the Planning Commission’s Draft Plan, the Tysons Corner Committee should require a cost-benefit analysis. As it stands, county officials have no estimations of either the direct costs or the opportunity costs of this redevelopment—the political process of its creation has allowed bootleggers and Baptists to advertise only its benefits.

The proposed street grid in Tysons poses the most difficult policy challenge. While a street grid of short blocks better facilitates pedestrianism and use of public transit, imposing a street grid on the existing landscape will be an extraordinarily expensive method of achieving this goal. At present, the proposed street grid will require the use of eminent domain against 75 properties. At a McLean Citizens Association meeting, one woman who owns a condo that is the sight of a future seat asked if she should be contacting a lawyer about the issue. President Rob Jackson, an attorney himself, joked that there were plenty in the room. The use of eminent domain should be kept to an absolute minimum in redevelopment planning because property rights are one of the most important ways that a county can assure thriving development, and eminent domain puts those rights at great risk. However, interested parties from every side of the issue have stressed that the plan will not work without a street grid, and this assertion is

in line with Jacobs' vision of healthy cities. The Rosslyn-Ballston corridor so often referenced as the model for Tysons luckily rested on essentially a grid before the construction of Metro's Orange Line, and its possible that its success will be impossible to emulate in other Northern Virginia counties without a similar road layout. There may be no right answer to this problem other than to emphasize that to the greatest extent possible, Fairfax County should create the grid without using eminent domain and should consider land owners' rights very heavily when doing so.

Aside from attempting to craft the least coercive and destructive policy, officials should also consider that political action is not always necessary to solve collective action challenges. Elinor Ostrom has done extensive work in documenting successful non-government solutions to collective action challenges and the factors allow for this success. Her 2009 Nobel Memorial Prize in Economics is a tribute to the validity of her line of research and its importance in policy implications. Ostrom demonstrates that when communities exist in an institutional environment that allows them to do so, they will often arrive at voluntary solutions to collective action challenges. In the context of urban externalities, residents or business owners may form organizations to set and enforce rules regarding land use. They could also work together to provide infrastructure for the community. She writes, "Because the individuals involved gain a major part of their economic return from the [common pool resource], they are strongly motivated to try to solve common problems to enhance their own productivity over time."<sup>111</sup> The

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<sup>111</sup> Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action*, New York: Cambridge University Press, 1990, 26.



challenges which such community organizations may wish to solve could include unifying design standards as well as common pool resources such as streets and sidewalks, both of which are now commonly governed coercively by government planning agencies. These agreements which stem from a shared desire to profit from common resources leads parties to discover solutions that rely on local knowledge rather than top-down policy prescriptions.<sup>112</sup> While Ostrom makes clear that not all instances of self-governance result in the optimal efficiency of resource use, they are less likely to suffer from knowledge problems inherent in top-down planning efforts. Furthermore, they are likely to be more adaptable to change than government enforced solutions because they have profit incentives and often simpler bureaucratic structures.

Like many current redevelopment authorities across the country, the Tysons Corner Committee is relying on Smart Growth theories to both set their objectives and as the best method for achieving them. The objectives such as minimizing human environmental impact and traffic congestion appear benevolent, but in part this is because Smart Growth proponents do not acknowledge the cost of achieving these goals. O'Toole explains:

Smart-growth planning is based on the unproven notion that certain urban designs will lead people to drive less. Planners reason that, before the automobile was invented, people lived in dense housing often mixed with retail shops, offices, and other uses. If cities mandate the construction of dense, mixed-use developments, planners hope it will reduce congestion, air pollution, and other detrimental

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<sup>112</sup> Ibid.

effects of driving.<sup>113</sup>

Modern urban activists who support the sort of high-density, transit-based development that O'Toole questions are often supporters of the Smart Growth movement. This trend in urban development began in the 1970s when some planners and environmentalists began to question the conventional wisdom of automobile-based street and neighborhood design. Unlike Jane Jacobs, however, this branch of urban scholars advocates implementing their vision through local, state, and even federal government rather than allowing it to happen through organic urban development. In addition to environmentalists, Smart Growth advocates include pedestrians, bicyclists, public transit supporters, and many who support the Jacobian neighborhood vision, but look to government rather than the market process to supply it. Like economic planning, however, land use planning is rife with inefficiencies stemming from the impossibility of government officials acquiring the knowledge and finding the opportunities for improvement that entrepreneurs in the private sector are capable of discovering.

This insurmountable problem with central planning dooms Smart Growth to be inefficient compared to the market process. This remains the case regardless of the capabilities and objectives of the people who are controlling the planning process. Furthermore, some scholars suggest that planners, including those acting in the Smart Growth method, are not always benevolent. In a case study of zoning regulations in Florida, economists suggest that “growth management practices are motivated by

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<sup>113</sup> O'Toole, *The Best Laid Plans*, 162.

exclusionary goals.”<sup>114</sup> They find that the density limitations, the accepted planning practice of earlier decades before the rise of Smart Growth, were often used to drive up land prices in designated areas, making them too expensive for some residents. This theory has been widely explored.<sup>115</sup> However, this study suggests that exclusionary motives drive second-generation land use regulations, like Smart Growth, as well. Incentive zoning, such as the density bonuses slated to be offered to Tysons land owners and developers, will increase land values, benefitting owners at the expense of those who want to move into area but cannot afford the artificially high prices.<sup>116</sup>

Throughout the planning process, redevelopment advocates have referenced the Roslyn-Ballston Corridor in Arlington County as an example of successful development based around Metro stations. A key distinction between the RBC and Tysons, however, is that these neighborhoods were built on essentially a street grid before their Metro stations were added. Despite the challenge of imposing a grid on the current irregular and large blocks in Tysons, the developer “bootleggers” seem for the most part prepared to comply by providing land for these new streets. The willingness with which many landowners are prepared to give their land to the county suggests that they foresee high future potential profits as they are permitted to increase building density according to the redevelopment plan.

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<sup>114</sup> Richard C. Feiock, Antonio F. Tavares, and Mark Lubell, “Policy Instrument choices for Growth Management and Land Use Regulation,” *Policy Studies Journal* 36, no. 3, August 2008: 461.

<sup>115</sup> See, for example, W.A. Fischel, “An Economic History of Zoning and a Cure for its Exclusionary Effects,” *Urban Studies* 41, no. 2, February 2004; Harold A. McDougall, “From Litigation to Legislation in Exclusionary Zoning Law,” *Harvard Civil Rights-Civil Liberties Law Review*, 1987; and J. Gyourko, “Impact fees, exclusionary zoning, and the density of new development,” *Journal of Urban Economics* 30, no. 2, 1991.

<sup>116</sup> Feiock, et al., “Policy Instrument Choices,” 466.

This potential for profit suggests that Tysons could be an ideal place for self-governance to work effectively, as Ostrom points out the financial incentives are important for encouraging cooperation. Because business owners support the idea of creating a street grid, BIDs could be a viable solution to improve the current Tysons infrastructure usability without necessitating government coercion. While large scale infrastructure plans have not often been undertaken by private organizations in the past, local governments do not offer a tough act to live up to. Evidence from government failures in street design suggest that the local knowledge, available to businesses rather than planning authorities, is a key component of successful urban design. Self-governing organizations may not implement the perfect infrastructure, but we must remember that the alternative is not perfection, but rather a government designed solution.

The Bootleggers and Baptists Theory, along with this political analysis of the Tysons case demonstrate that Smart Growth supporters fill the Baptists' role in political planning issues ideally. Furthermore, Smart Growth advocates seek government implementation of goals that require the sort of dispersed knowledge that government cannot attain, creating an opening in the policy development process for special interests to shape policy.

The previous analysis does not question the Smart Growth objectives.<sup>117</sup> Rather, I've shown that because development can only be efficiently implemented through reliance on the market process, Smart Growth is necessarily a political undertaking in

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<sup>117</sup> In fact, as Jacobs explains most thoroughly in *The Economy of Cities*, these objectives are likely to be achieved when the free market determines urban development to the greatest extent possible.

which vested interests gain at the expense of other residents and to the detriment of communities' long run economic development.

In Chapter 4, I explore some of the potential challenges facing the Tysons Corner redevelopment. These problems originate with the insufficient knowledge on which regulators are relying to shape their plans. Because the Planning Commission does not have the ability to discover the appropriate land uses throughout the area, they appointed the Task Force, comprised of local bootleggers and Baptists, to influence the legal changes. I suggest that instead of creating exclusionary policies that will benefit these interest groups, planners should lift the regulations which have shaped the current Tysons Corner land use, allowing entrepreneurs to create the development which will best meet consumer demand. Chapter 5 will summarize my findings and conclude.

## **Chapter 5**

### **Conclusion**

This thesis uses a current redevelopment case study to examine the challenges that local government authorities face in top down redevelopment efforts. In Chapter 1, I gave an overview of the distinguishing characteristics of land use regulation. In Chapter 2, I used market process literature to analyze knowledge problems within land use regulation and the bootleggers and Baptists that arise when urban planners turn to the political process to shape land use policies. In Chapter 3, I used the Tysons Corner example to demonstrate the presence of these issues in real world planning endeavors. Then, in Chapter 4 I analyzed potential challenges to the Tysons Redevelopment and offered policy recommendations that could help urban planners in Tysons and elsewhere avoid policies that compromise community welfare for the sake of political gain.

The market process critique has thoroughly denounced the viability of central planning taking the place of a market system. The information problems that cause market distortions and inefficiency in socialist economies plague land use regulations as well. Furthermore, when government, rather than dollars, determines land use, opportunities for vested interests to seek favoritism and to profit at their neighbors'

expense abound.<sup>118</sup> Jane Jacobs made famous the problems that local politics create in cities' natural order. Although she advocates certain zoning regulations to facilitate coherent street designs, Jacobs points out many of the problems with existing land use regulation which are consistent with the Austrian theoretical prediction of interference in the market's emergent order. Jacobs recognized that government regulation interferes with the organic development processes. No political action can improve upon the natural order of cities because urban development relies upon dispersed knowledge and a wide variety of divergent interests which can best be met by competitive suppliers.

Jacobs describes the manifestation of the knowledge problem in the urban environment:

In truth because of the nature of the work to be done, almost all city planning is concerned with relatively small and specific acts done here and done there, in specific streets, neighborhoods and districts. To know whether it is done well or ill—to know what should be done at all—it is more important to know that specific locality than it is to know how many bits in the same category of bits are going into other localities and what is being done with them there. No other expertise can substitute for locality knowledge in planning, whether the planning is creative, coordinating or predictive.<sup>119</sup>

Land use determines the character of urban life and helps create each city's individuality.

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<sup>118</sup> For a more detailed description of the Austrian answer to specific planning suggestions, see Mark Pennington, "Citizen Participation, the 'Knowledge Problem' and Urban Land Use Planning: An Austrian Perspective on Institutional Choice," *The Review of Austrian Economics* 17, nos. 2/3, 2004.

<sup>119</sup> Jacobs, *The Death and Life of Great American Cities*, 544.

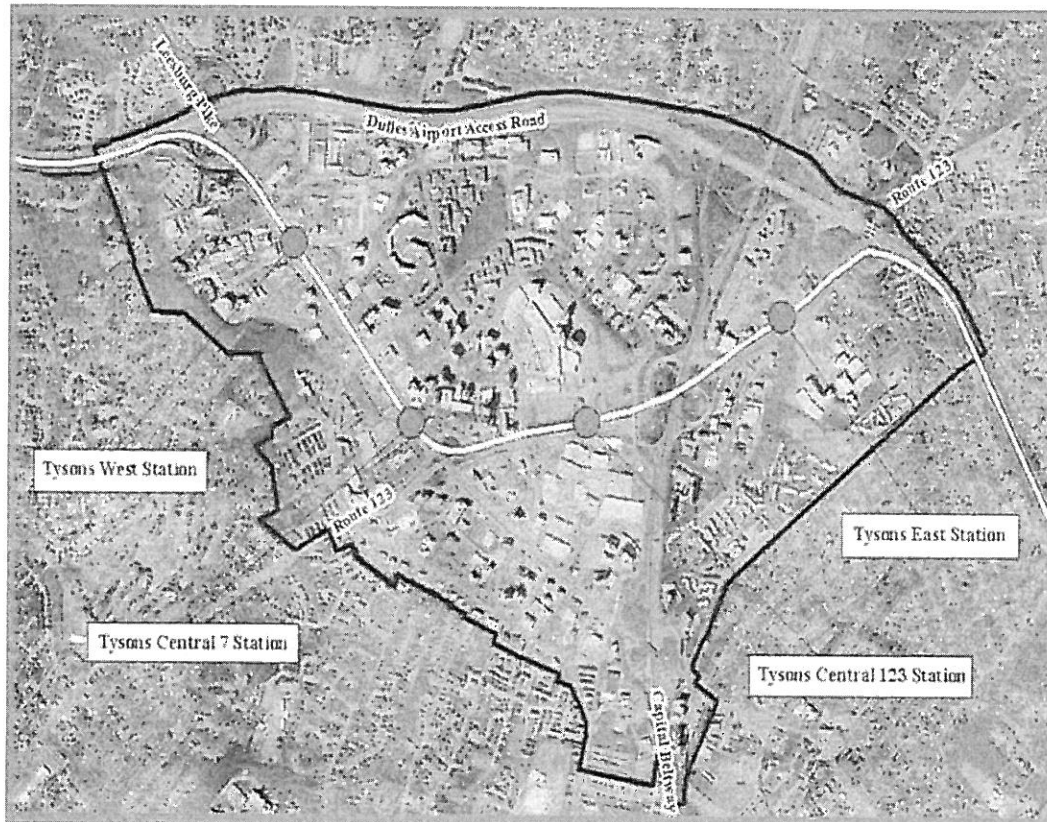
This emergent order is determined by human action rather than human design.<sup>120</sup> When central planners attempt to improve upon market efficiency, they compromise this order. Rather than attempting to move cities toward artificially constructed ideals, public officials can best help their residents by allowing them to determine the design of their own cities that only dispersed knowledge can tailor to an urban population's needs.

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<sup>120</sup> Hayek, "The Results of Human Action but Not of Human Design," *New Studies in Philosophy, Politics, Economics*, Chicago: University of Chicago Press, 1978.

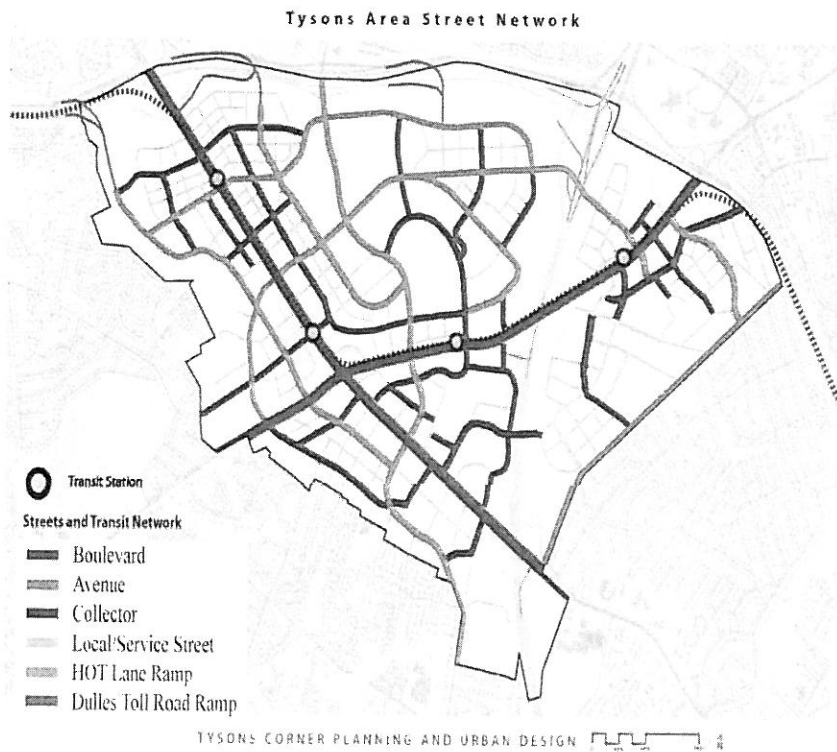


## Appendix 1



Source: Fairfax County Planning Commission,  
[http://www.fairfaxcounty.gov/dpz/tysonscorner/drafts/tysons\\_draft\\_plan\\_032410\\_tc.pdf](http://www.fairfaxcounty.gov/dpz/tysonscorner/drafts/tysons_draft_plan_032410_tc.pdf)

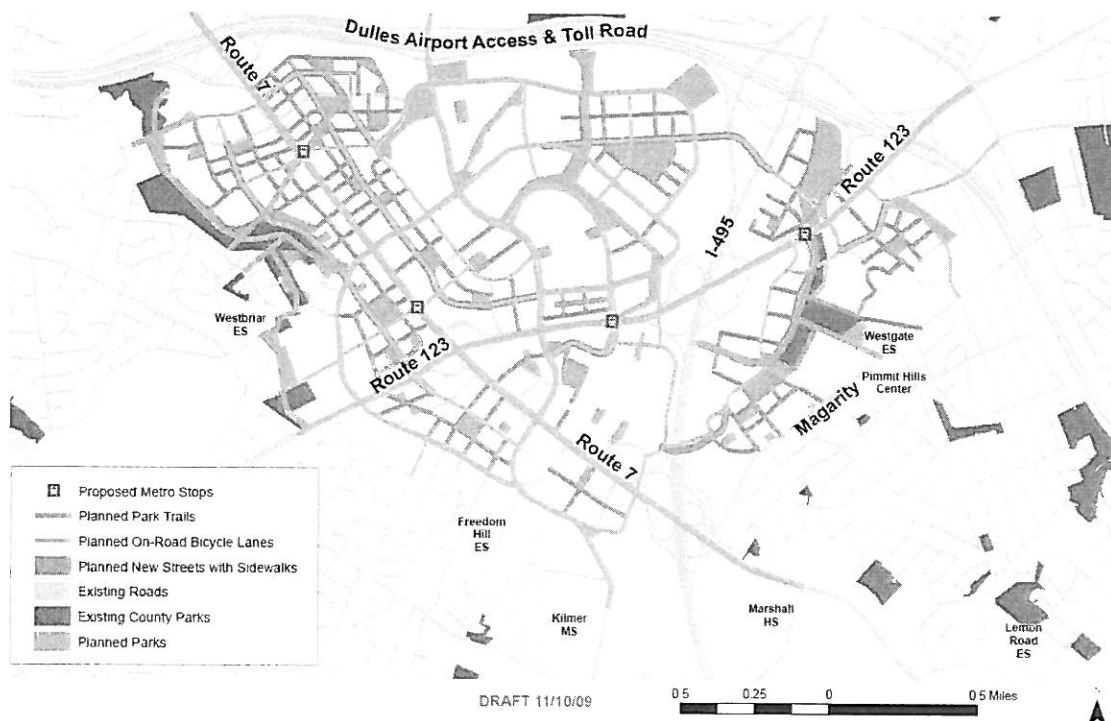
This map illustrates the future placement of Tysons Corner Silver Line Metro stations on the existing street grid.



Source: Fairfax County Planning Commission,  
[http://www.fairfaxcounty.gov/dpz/tysonscorner/drafts/tysons\\_draft\\_plan\\_032410\\_tc.pdf](http://www.fairfaxcounty.gov/dpz/tysonscorner/drafts/tysons_draft_plan_032410_tc.pdf)

This map illustrates the proposed “grid of streets,” deemed essential to the success of Tysons Corner’s redevelopment.





Source: Fairfax County Planning Commission,  
[http://www.fairfaxcounty.gov/dpz/tysonscorner/drafts/tysons\\_draft\\_plan\\_032410\\_tc.pdf](http://www.fairfaxcounty.gov/dpz/tysonscorner/drafts/tysons_draft_plan_032410_tc.pdf)

The Planning Commission staff recommends a network of parks for recreation, quality of life, and stormwater management.

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## Curriculum Vitae

Emily Washington was born in 1986 in Grand Junction Colorado, where she graduated from high school in 2004. She then moved to the East Coast to attend Goucher College, graduating summa cum laude in 2008 with a Bachelors of Arts degree in economics. For the past to years she has worked as a Research Assistant at the Mercatus Center. Emily will graduate from George Mason Univeristy in May 2010 with a Masters of Arts degree in economics.