

THE LAW OF UNFORESEEN CONSEQUENCES

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Despite the fact that the cities, towns and even suburbs stretched across the United States occupy only about 2-3 percent of the total land area, many people are extremely concerned that development is "consuming" far too much of our open space and land ideally suited for agriculture. They observe, correctly, that public policy has favored land expansive rather than land intensive development. Town centers at one time grew up around stops on railway lines, but an explosion in the number of automobiles owned by families corresponded with and stimulated the construction of new roads and highways. As congestion increased into and out of the nation's major cities, new highways were constructed to -- by design -- by-pass existing congestion only to create new areas of congestion as residential and commercial development followed into previously undeveloped areas now served by this network of limited access highways.

Highway construction changed the definition of distance from a measurement based on miles to one based on time. People accustomed to an hour door-to-door commute by train, living twenty miles from their place of employment began purchasing homes in more distant suburban areas because the automobile permitted them to cover the distance in the same or less time (and not even have to walk from the central train station to their work place). That happy circumstance was, as most commuters know all too well, short-lived. One response of business owners was to relocate their businesses closer to where they lived. Soon, suburban communities were filling up with industrial and office parks, creating new employment hubs. With the next phase of more distant residential development, sprawl moved into far more distant rural environments where there was as yet almost none of the infrastructure required to support a large population and few, if any, regulations on where and what type of development could occur.

The long-time residents of rural and agricultural areas were slow to react to the changing face of the landscape. One after another, farmers sold off pieces or all of their acreage to developers and moved on or simply retired from farming. Gradually, rural residents began to come together to discuss what they might do to slow the loss of acreage under cultivation and the open spaces they had come to take for granted. They were often joined in this concern by more recent arrivals fearful of the rising taxes levied to pay for schools, water and sewer systems and other public infrastructure associated with a growing population. Ironically, many of the measures adopted by these communities only contributed to the leap-frogging of development into more distant and more rural areas.

One such measure is minimum lot size zoning (i.e., requiring that a housing unit must be built on a minimum of one or two or three acres of land). The effect is to reduce the number of housing units that can be constructed in the community; however, the law of unforeseen consequences comes along with this attempt to minimize density in this way. The cost per household of roads, sewer lines, utilities, water lines, libraries and other

forms of public infrastructure is increased. Compliance with Federal and state pollution control regulations may require the imposition of heavy taxes. The net result is far less land preserved for community use, for preservation of wildlife and natural habitat than if, say, a maximum lot size zoning were imposed to require at least eight housing units constructed on one acre of a three-acre site, with the remaining two acres left undeveloped.

Another response has been the slow but steady creation of land trusts all across the United States, created as not-for-profit stewards of land acquired by purchase or donation. Some land trusts are national in scope with members who contribute annual dues to provide funds so that the trust can acquire title of environmentally-important or sensitive land thought to be threatened by development or resource extraction. Other trusts are created for purposes of farmland preservation, acquiring acreage that is leased to farmers at an annual ground rent based on agricultural (rather than "highest and best") use. Farmland closest to growing metropolitan areas falls into this category. State governments have increasingly come to the taxpayers to approve the sale of bonds (i.e., of state debt) to investors, the proceeds to be utilized to purchase the future development rights from landowners, thereby ensuring that the land is utilized for farming purposes in perpetuity.

And, finally, there are more and more land trusts being formed for the purpose of creating permanently affordable housing for lower income households. The land trust essentially takes the land cost component out of the purchase price of housing, leasing the land to the homeowner for an annual ground rent based not on market ground rent but on what the homeowner can afford to pay. To counter the operation of the market (i.e., the capitalization of the imputed ground rent income to the homeowner), the land trust generally imposes restrictions on how much the house can be sold for and to whom. For example, the homeowner may be permitted to recover all non-depreciated costs for any improvements made to the house and be required to sell to a buyer with an income no greater than 80% of the area median.

A new strategy being adopted to close the door on development is being undertaken in Colorado, where local ranchers -- not generally known for their concern over how the land is treated -- are working closely with preservationists and environmentalists to protect ranch lands from commercial and residential development. In less than a decade, nearly 100,000 acres of agricultural and ranch lands have been lost to development in just one county. Voters in Routt County have responded by approving new taxes to finance the purchase of conservation easements. Moreover, there are now seven active land trusts in the county, one of which was established by the Colorado Cattleman's Agricultural Land Trust -- the first land trust created by ranchers.

Which brings us back to the law of unforeseen consequences. The private and (continued on page 7)

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public policy reaction to sprawling development has been to move as quickly as possible to remove the remaining supply of less intensively-developed or undeveloped land from the market. All things being equal (e.g., the Federal and state governments stop subsidizing even more rural infrastructure), demand must turn inward to land that remains in the market. To the extent the imputed rental value of these locations is not collected via local taxation, land prices will climb, encouraging landowners of long standing (who are paying low carrying costs) to hold on to their acreage until they feel a need to convert their land asset into cash. Rising prices or the expectation of rising land prices also attracts investors who actively speculate in land over shorter periods (investing to "flip" land to developers typically at enormous gains).

It is hard not to sympathize with people who are experiencing the negative effects of the existing system of land tenure and taxation. Given the widespread absence of real civic leadership to solve the problem by a sound and just system for raising public revenue, they are taking advantage of what the law does permit. Certainly, there are many parts of the landscape that deserve being set aside, preserved in a natural state and as habitat to protect biodiversity. Just as certain is that the consequences of reducing the supply of developable land are quite predictable -- as would be the benefits of treating location rental values as public revenue.
