



THURSDAY, MAY 4 10:00 a.m. – 11:45 a.m.

**LAND USE AND ENVIRONMENTAL GROUP:
THE ROLE OF THE PRIVATE SECTOR IN REDEVELOPING
MAJOR AREAS IMPACTED BY CATASTROPHIC EVENTS**

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Sprawl

How We Got There

**Lessons for Rebuilding:
Will Urban History Repeat Itself?**

Gideon Kanner
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S p r a w l

How We Got There, and Why There's No Going Back in the Foreseeable Future

By Gideon Kanner
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INTRODUCTION

In attempting to discuss the rebuilding of American cities, whether after a disaster or otherwise, it is essential to understand and reflect on the urban conditions of today. In other words, if we are to rebuild cities, what should we [re]build? Replicas of what had been destroyed? Vertical cities patterned after Hong Kong? Or what? What will be appealing to the population that in the end has to form the body of inhabitants of the new cities. I leave to others the plumbing of these questions, and what I have to offer is an insight into what happened to American cities in the half century since the end of World War II, and why. Since suburban living is the only realistic alternative to city living, I believe it is essential to understand the causes of sprawl, why Americans have been leaving cities in large numbers and migrating to the suburbs. That understanding is essential to forming a judgment on what is likely to work and fail respectively in the rebuilt cities.

Amazing as it may seem, in spite of the fact that it is being bandied about a great deal, I have not been able to find a concise, workable definition of the term "sprawl" upon which the speakers agree. See, e.g., Dan DeWitt, *Scrambling to Define Sprawl*, St. Petersburg Times, Oct. 6, 2003 (reporting that neither developers nor regulators can define or agree on the meaning of "sprawl.") One man's growth -- "smart," or otherwise -- is another man's sprawl. Ordinary middle class housing tracts at the urban periphery are often viewed as sprawl incarnate, while similarly located tracts of expensive luxury homes, built on land-gobbling large lots are presented as environmentally desirable. The word "sprawl" has come to be used as a sort of an all-purpose pejorative term that upon examination usually turns out to be a characterization of new suburban development at the urban periphery beyond that currently occupied by the critic of the moment. New housing of which the speaker approves is "smart growth," whereas new housing he or she disapproves of is "sprawl."

Rather than involving myself in this semantic hunt for the Snark, I use the term "sprawl" here to designate horizontal suburban growth whose natural

tendency is to expand the urbanized/suburban/exurban periphery by catering to the market's desire for new housing and associated facilities and amenities required to accommodate natural population growth and immigration.

The principal point of this presentation is that whether you approve or disapprove of it, sprawl has had a profound impact on American cities. It is nothing more than the natural consequence of policies and laws implementing them, that were consciously adopted, beginning a half-century ago. In the outline that follows, I examine the origins of the sprawl problem, namely, the government policies, the social, demographic and economic events, as well as the laws that have led to the present condition. The bottom line is that without government intervention, sponsorship and financing, there would be no sprawl - at least not to the extent it exists today -- but few are willing even to acknowledge, much less consider a change in the policies and laws that have motivated people to act in ways that have given us the dreaded sprawl.

What we need to face is that sprawl is like tobacco. On the one hand government policies denounce it and make it expensive, but on the other hand government subsidies encourage its cultivation and production. Go figure.

In preparing this outline and the accompanying lecture my purpose was to provide a panoramic picture, and to recognize the effects on the population of the events I discuss, with specific regard to the creation of incentives to move out of cities and into the suburbs, as well as disincentives to remaining in or moving back into the cities.

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SOMETHING TO THINK ABOUT BEFORE WE BEGIN

It is ironic that this [urban] disorganization and sprawl should have been co-terminous with the very period in which urban planning has bloomed, in the number of practitioners, in the amount of funds expended and in the powers and means of control available. It is not unfair, therefore to question whether planning is not partially a cause for our present troubles, rather than merely a response to them.

Jerry Lloyd

Quoted in Richard F. Babcock
The Zoning Game, at 55 (1966)

Sprawl may not be what. . . a growing segment of the population wants, but it is what our zoning codes demand, so it is what we have and what we will continue to have until we change our codes.

Chad Floyd, Hartford Courant, Oct. 16, 2005

I.

THE AMERICAN DREAM

The Pied Piper Wore an Uncle Sam Hat -- How the Government Bribed Your Mom and Dad to Leave the City and Move to the Suburbs

The GI Bill, the FHA, and the post-World War II rise of the new home owning middle class - Government subsidies for new suburban housing.

Pursuit of "The American Dream" as official policy -- Widespread home ownership becomes favored public policy, a birthright and a social imperative that acquires the force of law -- 42 U.S.C. § 1441 -- (" . . . [R]ealization as soon as feasible of the goal of a decent home and a suitable living environment for every American family.")

"Run for the Hills, The Nukes Are Coming!" - Decentralization as housing policy -- 12 U.S.C. § 1701n -- ("The Department of Housing and Urban Development and any other departments or agencies of Federal Government having powers, functions, or duties with respect to housing under any law shall exercise such powers, functions, or duties in such manner as, consistent with the requirements thereof, will facilitate

progress in the reduction of the vulnerability of congested urban areas to enemy attack.”)

Emergence of the suburban home: better and cheaper than the city apartment – Nicer environment for raising children.

“No Money Down!” -- Mass building, merchandizing and financing of suburban homes made possible by government assistance, tax advantages and loan guarantees. Levittown and its imitators transform America.

Transportation – Getting from the suburbs to your job.

By Train? Nah! Railroad bankruptcies.

By Bus? Maybe. But not for long.

By Car? Yes Sir, That’s my baby! – Road Construction With Federal Aid – The Interstate Highway Network – Cheap Gasoline Stimulates Driving Which Increases Gasoline Tax Revenues that Can Then Be Used for Construction of More Highways.

The Rise of the suburban shopping mall and its impact on downtown commercial areas

Say “Hello” to the nice man from the IRS – He’s your friend -- The Deductibility of Home Mortgage Interest and Property Taxes, and the Deferral of Capital Gains Taxes Upon the Sale of One’s Home by Degrees Transform the Family Home From a Place to Live Into a Leveraged Investment, particularly as the price of homes soars. We will revisit this topic in discussing inflation in general and housing inflation in particular.

II.

THE AMERICAN NIGHTMARE

From the Grand Concourse to “Fort Apache” -- Disincentives to City Dwelling

As the white middle class snaps up the new homes and heads for the Suburbs, poor Rural Southerners, black and white, migrate into cities and fill the urban vacuum -- “White Flight” -- “Blockbusting” – The Abandonment of Entire Neighborhoods -- The Welfare Mess and the Rise of the New Urban Underclass

Deindustrialization and Loss of Manufacturing Jobs in Urban Areas Contributed to by Zoning.

The Destruction and Abandonment of Cores of Cities. The Sad Case of Detroit: Devil's Night¹ and the Rise of exploration of Detroit's Abandoned Commercial Buildings as a Hobby.

Destruction of Intraurban Transportation Systems.

Why Ride Old Fashioned Trolley Cars When You Can Have Shiny, Brand New, Smelly, Traffic-Congesting, Air-Polluting Buses, or Better Yet, Drive Your Nice Air Conditioned Car (With a Nice Stereo) on Which You Are Making Payments Anyway?

See Video Entitled *Taken for a Ride*, Produced by Jim Klein and Martha Olsen, New Day Films, Hohokus, NJ

Cecilia Rasmusen, *Did Auto, Oil Conspiracy Put the Brakes on Trolleys?* Los Angeles Times, Mar. 23, 2003, at p. B6

Deinstitutionalization of the Mentally Ill, Invalidation of Vagrancy Laws and the Rise of the Homeless as a Permanent Urban Phenomenon

Urban Riots of the 1960s and Their Implications – The Stark Choice: Armed Urban Camps or Mass Move to Suburbs? Lyndon Johnson's Suppression of HUD Studies Addressing the Problem. The People React to the Riots by Voting With their Feet and Continuing to Move to the Suburbs.

Roger Biles, *Thinking the Unthinkable About Our Cities, Thirty Years Later*, 25 Jour. Urb. History 57 (Nov. 1998)

Graffiti, Gangs and Drugs -- Decline of civics and civility, and the decline of cities as family habitats

David Frum, *How We Got Here – The 70s* (Basic Books 2000)

Whatever happened to the nice, laid back, hippie "Drop Out and Turn On" ethic? Or, how the "Caviar of Drugs" became cheap crack and metastasized into the inner city

The 1970s decline in law enforcement

¹ Devil's Night is the night before Halloween. It became the custom in Detroit for young people to set fire to abandoned houses during that night, with as many as 100 to 200 vacant houses burned annually. As of this writing there are still some 10,000 vacant houses in Detroit.

The New City Ambiance - Living Behind Razor Wire and Bars, Fancy Locks, Locked Gates, Security Lights, Motion Detectors, Remote TV Cameras, Buzzers and Electronic Alarm Systems - Ubiquitous Private Guards Outnumber the Police

For a concise summary of the conditions in New York in the 1970s and as recently as the 1990s, see Sam Roberts, *The Year New York Lived Really Dangerously*, N.Y. Times, May 15, 2005, at p. 4, Sec. 4 (Week in Review).

Surely you can't be so mean as to penalize underprivileged youths for expressing themselves artistically with spray cans?

Crispin Sartwell, *Graffiti Gets Philosophical*, L.A. Times, Aug. 25, 2003,

See Gideon Kanner, *The Law of La-La Land Meets the Dreaded Graffiti Menace*, California Political Review, Mar/Apr 1997, p. 2

Move of Corporate Headquarters from Cities to Suburban Campuses

Mass Destruction of Urban Dwellings, a.k.a. Redevelopment

See Bernard Frieden, *Downtown, Inc. - How America Rebuilds Its Cities* (MIT Press)

\$17 Per Room Rent? Wow! -- The *Berman v. Parker* Scam - Did the Supreme Court Get Snookered?

The Transmogrification of "Slum Clearance" and "Blight Elimination" Into Mass Low and Moderate Cost Housing Destruction for "Economic Redevelopment"

Judicial Failure to Enforce the Constitution -- Wild Bill Douglas Drives a Truck Through the Vanishing "Public Use" Clause

The Telescoping of Police Power and Eminent Domain Power Into Each Other

“1984” Plus Twenty, and Counting

“Use” Means “Purpose,” or “Benefit,” or
Whatever

Matter of M.C.D.A., 582 N.W.2d 596, 598
(Minn.App. 1998)

Kelo v. New London, 125 S.Ct. 2655, 2662 (2005),
public purpose said to be a “more natural
interpretation of “public use.”

See Gideon Kanner, *The Public Use Clause:
Constitutional Mandate or “Hortatory Fluff”?* 33
Pepperdine L. Rev. 335 (2006)

“Use” Can Also Mean “Increased Tax
Revenues”

How Did Private Gain Become “Public Use”?
Does the Constitution Embody the Trickle-
Down Theory?

“Full and Perfect” Compensation Means
“Harsh” and Partial Compensation

The Rise of the New Robber Barons, and the Resulting
Looting of Public and Private Resources – Give Generously,
Folks. General Motors, Daimler-Chrysler, The New York
Stock Exchange, The New York Times and the Bank of
America Need a Municipal Handout.

Dana Berliner, *Public Power, Private Gain – A Five-Year,
State by State Report Examining the Abuse of Eminent
Domain* (2003) Institute for Justice, 1717 Pennsylvania
Ave., NW, Ste. 200, Washington DC 20006, tel. (202)
955-1300.

James C. McKinley, Jr., *Developer Seeks State
Guarantees for Planned Upstate Mall*, N.Y. Times, Jun.
11, 2003, p. A26

Charles V. Bagli, *Bank Is Close To a Deal For a Tower Off Times Square*, N.Y. Times, May 27, 2003, p. A24

Gideon Kanner, *Feeding "Times,"* Nat. L. Jour., Jan. 7, 2002, p. A29

Law, Thirty-Second Institute on Planning, Zoning and Eminent Domain, Publication 631, Release 32, (Matthew Bender 2002), § 2.02, pp. 2-15 through 2-20.

Municipal Handouts and Sweetheart Deals -- Land Writedowns and Tax Abatements, or, How About a \$200 Million Plant Site for \$6.5 Million, Plus a Dozen Years of Tax Abatement? Or, a Nice City Building Site For a Buck? Or How about a 99-year Lease of a 90-acre Waterfront Parcel for \$1 per year? Can the New York Times Buy a New High Rise Building and its Site For a "Nominal Consideration"? Of Course it Can.

Financing Private Enterprises With Tax-Free Municipal Bonds, or TIF (Tax Increment Financing) - How Diversion of Property Tax Revenues from Schools, Public Safety and Law Enforcement Into the Pockets of Redevelopers Somehow Became a Public Good.

Redevelopment Reality: Never Mind all that Pious Housing Policy Jazz -- Let's Tear Down Those Older Homes and Apartments, and Put Up a Big Manufacturing Plant, or Office Buildings, or Some Shopping Malls, or Car Dealerships, or Gambling Casinos, and Maybe Even some Expensive Condos.

How General Motors Saved Detroit.

See Armond Cohen, *Poletown, Detroit: A Case Study in "Public Use" and Reindustrialization*, Lincoln Institute Monograph #82-5, 1981, describing how in Detroit some 1200 homes , and over 400 local businesses, plus churches and a major 278-bed hospital were taken by the city in order to raze them all and turn the land over to General Motors for a Cadillac plant, that was supposed to employ some 6000 people but mostly employed less than half of that Number.

Or Did It?

Hector Tobar, *Suburban Rush Puts the Brakes on Motor City's Census Drive*, Los Angeles Times, Mar. 29, 2001, p. A1 (reporting that Detroit's Population Continues to Decline and Has Fallen Below One Million.)

Faced with a \$300 million budget shortfall, Detroit is about to close 34 public schools and lay off 700 police officers and firemen. Jeremy W. Peters, *Ailing Detroit Faces Threat: No Fireworks*, N.Y. Times, Jun. 7, 2005, at p. A18.

The Menacing Future - The Bonded Debt Overhang

California's Redevelopment Indebtedness - From \$5 Billion to \$48 Billion in Sixteen Years (1984 to 2000)

See *Redevelopment: The Unknown Government - What It Is. What Can Be Done*, Published by Municipal Officials for Redevelopment Reform (MORR), July 2001, 214 N. Yale Ave., Fullerton CA 92831, Tel. (714) 871-9756

Patrick McGreevy, *CRA Works on Plan to Avert Bond Default*, L.A. Times, Sep. 8, 1999, p. B4

Whatever Happened to Slum Clearance?

Why Does Redevelopment Redevelop Marginal Parts of Cities But Not the Bad Ones that Are Most in Need of Redevelopment? For the Same Reason Willie Sutton Robbed Banks -- That's Where the Money Is. People Who Live in Poor Parts of Town Cannot Afford to Shop in the Upscale New Malls that Are Usually Built on Redevelopment Project Sites

George Lefcoe, *Finding the Blight That's Right for California Redevelopment Law*, 52 Hastings L. Jour. 991 (2001)

Carol D. Leoning, Marcia Slacum Greene and Yolanda Woodlee, *D.C. Revitalization Promised, Not Delivered*, Wash. Post, Feb. 24, 2002, p. A1, and *Risky Ventures, Little Accountability*, Id., Feb. 25, 2002, p. A1

Andrew Jacobs, *A City Revived, but With Buildings Falling Right and Left*, N.Y. Times, Aug. 20, 2000, p. A14, Reporting

that in Philadelphia, in Spite of its Thriving Downtown, Old, Rotten Buildings Have been Literally Falling Down in Less Favored Parts of the City, Which Are Not Being Redeveloped.

Francis X. Clines, *Philadelphia's Mayor Seeks to Expand City's Revival*, N.Y. Times, Apr. 30, 2003, p. A10, reporting that Philadelphia Is Only Now Planning to Address Redevelopment of its Rotting Areas While the assertedly Experiencing a "Booming downtown Renaissance"

Francis X. Clines, *In Pittsburgh, a Redevelopment Too Far?* N.Y. Times, May 2, 2000, p. A14

Charles V. Bagli, *Doubts Rise On New Site for Market*, N.Y. Times, Jun. 6, 2000, p. A26

Lisa Chamberlain, *Cleveland Pulls Back From the Edge*, N.Y. Times, Sep. 28, 2005, p. C9. "[D]owntown Cleveland is almost completely devoid of major retailers, and the office vacancy rate has climbed from 10 percent in 2005 to 20 percent in 2005, even though not a single new commercial office building has been built in more than 10 years."

Patrick McGreevy and T. Christian Miller, *NoHo: A Lesson in Public Spending – Despite a \$117 Million Influx of City Money, Area is No Better Off than 10 Comparable Neighborhoods that Received No Redevelopment Funds*, L.A. Times, Jan. 30, 2000, p. A1

Displacing the Middle Class and Working Class Urban Population

Judy Pasternak, *Is It Urban Renewal or Removal?*, L.A. Times, Sep. 1, 1995, p. A1, reporting the filing of four lawsuits by the U.S. Department of Justice, charging that the defendant municipalities have been misusing the urban redevelopment process to displace minority populations.

Sonya Bekoff Molho and Gideon Kanner, *Urban Redevelopment: Laissez Faire for Poor, Welfare for the Rich*, 8 Pacific L. Jour. 627 (1977)

Modern American Downtowns – Urban Deserts, Parking Lots and Freeways

Downtown – There’s No “There” There

Commuters by Day, Cops and Robbers by Night

Downtown Redevelopment-Created High Rise Towers, Occupied During the Day Largely by Commuting Suburbanites Who Wouldn’t Be Caught Dead Living in the City.

Rent Control

How Not to Create New Urban Housing

Decline of Urban Public Schools

The Dominant Role of School Selection in Families’ Choice of Places to Live

Joel Rubin, *School Boundaries Often Lines in the Sand*, L.A. Times, Apr. 25, 2005, at p. A1, reporting vigorous responses from parents who learn of changes in school district boundaries, requiring their children to attend schools not of their choice.

The Social and Cultural Debacle

Don’t You Miss the Good Old Days of the “Blackboard Jungle” When there Were no Guns, no Drugs, no Metal Detectors and no Full-Time Police in Public Schools?

The Catastrophic Decline in School Discipline and Safety, and the Judicial Contribution to It.

The Catastrophic Decline in Quality of Instruction and Learning in Public Schools

The Emergence of “Good” Suburban Schools as the Perceived Haven From the Ills of Urban Schools

The Impact of *Serrano v. Priest* – Making Good Schools Worse

William A. Fischel, *How Serrano Caused Proposition 13*, 12 Jour. Of Law & Politics 605 (1996)

Busing and Its Discontents

Busing Was a Stark Raving Crazy Idea to Begin With -- It Damaged Public Education, Disrupted Lives, Squandered Fortunes, and Pitted the People Against their Government, With Nothing to Show For It. It Provided Additional Incentives to Middle-class Urban Dwellers to Move out of Cities.

Exporting Inner City Violence to Good Schools, Courtesy of Busing

"Not My Kids!" --The Disastrous Civic Effect of the Underlying Hypocrisy of American Leaders

David Frum, *How We Got There - The 70s*, at pp. 263-264

The Middle Class Flight to the Suburbs Continues, Motivated by Perceptions of Comparative School quality.

"Los Angeles' underfunded, overcrowded and violent schools, according to a recent report by Harvard researchers, currently fail to graduate the majority of their black and Latino students, as well as one-third of whites. Parents, as a result, are willing to make extraordinary sacrifices to move their children to suburbs with functioning public schools." Mike Davis, *The Bubble, Then the Blues*, L.A. Times, Apr. 19, 2005, at p. B13

"A major increase in absences is reported amid rumors of gang violence. L. A. Unified [School District] fears loss of hundreds of thousands of dollars." L. A. Times, May 6, 2005, at B3

Immigration - The Good, the Bad and the Ugly

Victor Davis Hanson, *Mexifornia - A State of Becoming* (Encounter Books 2003)

Expanding Immigrant Communities Crowd Out Inhabitants of Established Working Class and Lower Middle Class Urban and

Near Suburban Neighborhoods, as *barrios* Replace Working Class Neighborhoods, and Provide Additional Incentives to Moving to More Remote Suburbs

III.

HOME \$WEET HOME - HOW \$WEET IT IS

Sophie Tucker Was Right: Rich Is Better than Poor

Wendell Cox, *How the Suburbs Made Us Rich*, PA Township News, Jan. 2006, at p. 40, 42: "Without the Levittowns, our parents and grandparents would have paid rent most of their lives, and the equity that so much of the American Dream depends on would simply not have developed."

The Suburban Home as the Goose that Lays Golden Eggs

Surprise! -- The Suede-Shoe Boys of the 1950s Were Right -- Buying a Suburban Home and Paying off the Mortgage in Installments *Will* Make You Rich in Your Old Age

Buy Cheap – Sell Dear – Buy a Family Home for \$68,500, and sell it for \$575,000 Twenty Years Later -- What a Deal!

The Family Home as a Leveraged Investment – The More You Spend (and Borrow), the More You Make. Overconsumption of Housing and Its Centrifugal Effect. To Make the Most of Your Investment You Have to Buy the Most House You Can Afford, and Affordability Is Determined by the Monthly Payments, not the Price

Gregory J. Wilcox, *Homes' Biggest Leap – California Median Price Hits Stratosphere With 26.5% Bounce*, [Los Angeles] Daily News, Jun. 26, 2004, p. 1.

Marcia McAllister, *Developers Say They Can't Meet Housing Demands*, TimesCommunity (Virginia), Apr. 6, 2005

Say Hello Again to the Nice Lady From the IRS and Don't Forget to Thank Her for that Half-Million Dollar Tax-Free Nest Egg

The Effect of Inflation

You Want a Nice House? Buy It Now or Never – Remember All those Folks Who Camped before Real Estate Tract Sales Offices Overnight to Buy a Suburban Home?

But Good Stuff is Not Readily Available in Cities or Close In, Except at Very High Prices Unaffordable to Most. However, Good Stuff Is Available and Cheaper in the Suburbs. The Rest Is a No-brainer.

Inflation Meets Women’s Rights – Mom’s Got a Great New Job and Adding Her Salary to Dad’s We Can Now Buy That Neat House.

Elizabeth Warren and Amelia Warren Tyagi, *The Two-Income Trap* (Basic Books 2003)

Is the ongoing housing boom a good thing or a prelude to disaster?

David Leonhardt, *Is Your House Overvalued?* N.Y. Times, May, 28, 2005, at p. B1.

Gretchen Morgenson, *Housing Bust: It Won’t Be Pretty*, N.Y. Times, July 25, 2004, Sec. 3, at p. 1

Daryl Kelley and Daniel Yi, *Home Prices Statewide at Record Level*, L.A. Times, Jun. 13, 2005, at p. B3

The NIMBY Phenomenon – Why New Housing Tracts are increasingly on the Urban Periphery

See Bernard Frieden, *The Environmental Protection Hustle* (MIT Press 1979)

NIMTOO Loves NIMBY, and BANANA and NOPE

The Economic Push Behind The Centrifugal Force, or, If You Want to be Rich in Your Old Age, Buy as Much House as You Can, in a Good Neighborhood, Limit or Stop New Construction, and Thus Keep Others Out

Edward L. Glaeser, Joseph Gyourko and Raven E. Saks, *Why Have Prices Gone Up?* Harvard Inst. of Econ. Research, Discussion Paper No. 2061, Feb. 2005: at p. 19: "Over the past 30 years, the dispersion in prices across American markets has increased substantially. In much of the country, new housing units are still abundant and housing prices remain low. In contrast, new construction has plummeted and housing prices have soared in a small, but increasing number of places. These changes do not appear to be the result of a declining availability of land, but rather are the result of a changing regulatory regime that has made large-scale development increasingly difficult in expensive regions of the country.

William A. Fischel, *Regulatory Takings: Law, Economics and Politics* (Harvard U. Press, 1995), see particularly Chap. 6, pp. 221-223, discussing the effect of land-use regulations on the California housing market.

Amanda Covarrubias, *Cities Join to Fight Housing Project*, L.A. Times, May 28, 2005, at p. B1, reporting that the cities of Los Angeles and Santa Clarita are joining forces to block the construction of a 5800-home project north of Los Angeles.

The U.S. Supreme Court Comes Out in Favor of Sprawl and Endorses Use of Large Lot Suburban Subdivisions as a Proper Means of Combating the Dreaded Menace of Urbanization. Why?

Agins v. City of Tiburon, 447 U.S. 255, 261 (1980)

The Pragmatic Individual Solution: Cries of Sprawl Be Damned. Move Beyond the Urban Periphery Where there Are No NIMBY-shouting Neighbors, and Where Land and Housing Are Cheaper and Where You Can Get a Nice, Big House that You Can Afford.

William A. Fischel, *Takings: Law, Economics and Politics* (Harvard U. Press 1995), at pp. 248-249

Infilling -- So, Are You Ready to Move to Downtown Hartford? Why Not?

David Lamb, *Once-Gilded City Buffing Itself Up*, Los Angeles Times, Jun. 15, 2003, p. A26, describing the deterioration of Hartford.

Stephanie Simon, *Detroit's Core Is Working on a Comeback*, L. A. Times, Jul. 14, 2003, at p. A12, reporting Detroit's effort to "come back" largely by building casinos – while some 10,000 vacant buildings remain in that city whose population has dropped below 1 million.

Jill Leovy, *Builders Driving a Boom in South L.A.*, L.A. Times, Jun. 13, 2005, at p. B1. Reporting an upsurge in low-rent residential construction in Los Angeles areas that had been shunned by developers up until now. But it also reports that this construction is plagued by gang extortion and violence.

You Can't Have a Burg Without Burghers

Burghers (middle class families with children) Won't Live in the Burg Without Adequate Safety, Decent Affordable Housing, Reliable Intra-Urban Transportation, and Reasonably Good and Safe Schools -- These Essential Ingredients of a Viable Habitat of the Urban Middle Class Have Gone AWOL.

Gideon Kanner, *Downtown L.A. Is an Urban Myth*, [Los Angeles] Daily News, Nov. 21, 1999, p. 1 (Viewpoint)

Joel Kotkin, *The City: A Global History* (2005)

Downtown Revivals – The Increasing Construction of Apartments in Cities -- Sea Change or a Flash in the Pan? New Urban Dwellings, or Something Fashionable for Trendy Yuppies and Empty Nesters? Time will tell, so stay tuned.

The fastest growing segment of the population that is moving to the cities consist of the elderly (age bracket of 65-74). Newsweek, *Seniors and the City*, Oct. 11, 2004, at p. 44. That does not bode well for the future.

Modern American cities are refocusing their efforts on "providng playpens for the idle rich, the restless young, and tourists" instead of becoming more competitive in terms of jobs, attracting skilled

workers, and middle class families, noting that the former strategy may work for cities perceived as attractive or “hip,” but not for others. Joel Kotkin, *The Rise of the Ephemeral City*, Metropolismag.com, Apr. 18, 2005, <http://www.metropolismag.com/cda/story.php?artid=1260>

Timothy Egan, *Vibrant Cities Find One Thing Missing: Children*, N.Y. Times, Mar. 24, 2005 p. A1, reporting that successful American cities that are staging a comeback with the aid of empty nesters and young professionals, have a severely below average population of children.

Daniel Yi, *Home Builders Look Inward*, L.A. Times, May 24, 2005, at p. B1. Reporting on increased urban infilling, but noting concerns of urban critics that this phenomenon will not stem the outflow of families out of cities.

Joel Kotkin, *L.A.'s Core Already Has a “There” There*, L.A. Times, Oct. 26, 2003, p. M1, noting that attempts at urban revitalization through construction of downtown civic arts centers have consistently failed in San Jose, San Francisco, and Cleveland.

New York, mostly Manhattan and better parts of Brooklyn have been staging a revival. At one time the City of New York owned 10,000 abandoned buildings. But after a 10-year, \$5 billion capital improvement program aimed at rehabilitation and reduction of the stock of abandoned municipally-owned buildings, the city has reduced it in the South Bronx, East New York, Bushwick and Jamaica, and expects to reduce it further by next June to 800. But Manhattan and better parts of Brooklyn are increasingly unaffordable to all but the affluent. The problem is that the newly rehabilitated buildings as well as the older ones in areas where people want to live, are increasingly unaffordable to middle class city inhabitants.

David W. Chen, *As One Housing Problem Was Solved, a New One Emerged*, N.Y. Times, Dec.21, 2003, at p. 36

Jennifer Steinhauer, *Residential Tenants Rush In as Businesses Are Cool to Lower Manhattan*, N.Y. Times, April 15, 2005, p. ____

But not so fast. The urban NIMBYs are at it too. The latest dispatch is that the returning suburbanites may not be welcome in the city.

Janny Scott, *In Fast-Growing New York, More Neighborhoods Are Seeking to Slow Things Down*, N.Y. Times, Oct. 10, 05, at p. A 18

Cara Mia DiMassa, *Crowded Out by Luxury Lofts, Poor Seek Relief*, L.A. Times, Oct. 12, 2005, at A1, reporting that the Los Angeles City Council is considering a moratorium on loft conversions to protect existing low-cost housing.

Will \$5.00/Gallon Gasoline Reverse the Trend? – Or Will it Only Accelerate the Move to the Suburbs and the Construction of Suburban Commercial structures to Compete With the Urban Ones?

IV.

GENERAL FACTORS

Failure of Leadership

Pandering to the Activists – The Instructive Recent Case of the Would-Be Widening of the US 101 Freeway in Encino, California, and Tales of Other Freeway Wars

See Sharon Bernstein, et al., *Freeway Builders Run Into Wall of Politics and Protests*, L.A. Times, May 23, 2003, p. A1, Caitlin Liu, *Panel Submits Scaled-Down Plans for 101*, L.A. Times, Jun. 8, 2003, p. B3, Caitlin Liu, *Valley's Silver Bullet Hits Mark*, L.A. Times, Jun. 8, 2003, p. B1.

David Haldane, *I-5 Widening Upsets Many Landowners*, Los Angeles Times, Apr. 9, 1997, p. A3

Todd S. Purdum, *Where Freeways Were Welcome, A Fight Over a Road's Final Miles*, N.Y. Times, Oct. 4, 1999.

Adam Nagourney, *Revising Westway, With Designs Bordering on the Ambitious*, N.Y. Times, Mar. 3, 2002, p. 28 (Part I)

Hypocrisy of Leadership – From the Vietnam War to Busing and Housing -- I've Got Mine. Screw You.

Co-opting the Wealthy Suburbanites – Reaping the Whirlwind Sowed in *Euclid v. Ambler Realty* -- Why Captains of Industry Who Rail Against Regulation of their Businesses are Rabid Supporters of Strict Zoning and Far-Reaching Government Regulations in their Exclusive, Tree-Shaded, Pricey Suburbs

The Judicial *Jihad* Against Property Rights and Against Housing Construction, that Makes It All Possible

William A. Fischel, *Takings: Law, Economics and Politics* (Harvard U. Press 1995) pp. 251-252

Remember the Clarence Thomas Confirmation Hearings? No, Not *that* Part; the Part Where Senator Biden Brandished Richard Epstein's Book on Takings and Demanded to Know If the Nominee Gave Credence to the Heresies Contained There.

Mystery: Why Are Liberal American Jurists Who Profess Fidelity to an Expansive Interpretation of the "Living Constitution," and Pride Themselves on Being Committed to Protection of the Underprivileged, at the Forefront of a Relentless, Cruel War Against the Creation of Desperately Needed Affordable Housing? Who Speaks for the Families Unable to Buy Homes and Move Into a Community, and thus Never Get to Vote on Its Housing Policies?

William A. Fischel, *Id.*, p. 227

V.

CONCLUSION

Yogi Berra Said it Best:

"If the people don't want to come to the ballpark, how are you going to stop them?"

Are There Practical Ways to Stop the People From Refusing to Live in Cities and Choosing Suburbs Instead? Should Such an Effort be Undertaken? Are there ways to Make Cities More Attractive as Family Habitats? Are there Ways of

Effecting Change in Attitudes? Perhaps. But Who Wants to Change? -- Six Factors to Keep in Mind:

First. For Most People, Especially Those With Young Children, Living the American Suburban Life Is Safer, Cheaper and Much More Agreeable Than the Urban Alternative, Certainly the Urban Alternative as it Exists Now. The Promising Embryonic Revival of Cities is Based Largely on an Influx of Affluent Singles and Empty Nesters, and is not Attracting Families. Query Whether it Will Have Staying Power.

Second. It Took a Half-Century of Government Policies, Subsidies, Loan Guarantees and Financing to Evolve the Present Situation, and There is No Reason to Believe that We Can Change Things Quickly, Assuming We Want to Change, and Assuming that New Government Policies Favoring Reurbanization and Disfavoring Suburban Growth Will Somehow Emerge. Living the City Life Can be Civilized, Provided so Is the City.

Third. How About Economic Disincentives to Sprawl? How About Doing Away With Subsidies to Commuters? Shall We Replace Urban/Suburban Highways With Toll Roads? Where Is It Written that the Federal Government Must Subsidize *Local* Highways?

Fourth. The Economic Experience of the Last Half-Century Encourages Perpetuation of the Present Trends that Are Enthusiastically Supported by the People. What New Economic Incentives (or Disincentives) can be put in Place that Will be Accepted by the Polity of a Democratic State to Reverse the Trends of the Past Half Century?

For Example: How about Confronting the Full Cost of Suburban Living? How Do You Feel About Doing Away With the Income Tax Deduction For Local Taxes and Interest on Home Mortgages, Thereby Eliminating a Huge Incentive to the Quest for Oversized Homes on the Urban Periphery? How About Fully Taxing Capital Gains on the Sale of One's Home, the Same as Other Assets?² Or, How about Limiting These Tax Benefits to People Who Really Need Them? Isn't the Idea of Affluent People Living in Million-dollar Homes that Are Subsidized by Taxpayers who Largely Earn Less than the Subsidized Homeowners Do, Utterly Absurd Morally?

² I am not in favor of increasing taxes. I only raise the question whether the 1940s vintage policy of encouraging home ownership among members of the middle class through a favorable tax policy continues to make sense in an era where *average* suburban homes go for close to a half-million dollars apiece? In other words, should that policy be used to subsidize millionaires?

How About Large Scale Rezoning to Increase Urban and Suburban Density? How About Allowing Duplexes and Triplexes, and perhaps even – Gasp! – 1950s Style Garden Apartments in Good Parts of Town Now Zoned Only for Single Family Residential?

And How About Them Folks in Houston? If They Can Manage Without Zoning, Why Can't the Rest of Us? Some Office Buildings in Residential Areas Would Cut Down on Commuting Traffic, Wouldn't They? And If You Must Have Zoning, What's so Sacred About *Euclidian*, Horizontal Zoning? How About Vertical Zoning, With Commercial Uses on the Lower Floors and Residential Ones Above them? Or Allowing Selected Consumer-oriented Commercial Uses in Residential Areas (Convenience Stores, Cafes, Restaurants, etc. -- Sort of Like in Those Charming European Cities) to Make Urban Living More Pleasant and More Convenient, and to Reduce Traffic?

Fifth, Parkinson's Third Law States that It's Easier to Get Into Things than Out of Them. It Took a Lot of Time and Effort to Condition People to Embrace the Present Situation as Their Preferred Lifestyle. Because Policy Choices Were Made Decades ago and they Have Influenced People's Thinking and Behavior. The Present Generation Does Not Remember and does not Realize that Things Don't Have to Be the Way They Are. Assuming that a Change to the Old, Dense, Urban Living Patterns is Desirable, it Will Take a Similar if Not Greater Effort on the Part of the Leadership to Educate the Populace and to Change Things. Changes Can Only Occur by Providing Leadership as well as Appropriate Incentives and Disincentives. They Will Not be Accomplished by Preaching or Repetition of Fashionable Slogans that In Reality Seek to Place the Burden of Change on Other People, and – as ion the Case of the “New Urbanism” largely Favor the Well-to-do.

And Speaking of Leadership, You Don't See Elite Members of the Establishment Abandoning their Posh Homes in Fashionable Suburbs and Moving Themselves and their Children Into the City, Do You? Maybe they Will -- Time will Tell. But in the Meantime I suggest you Not Hold Your Breath While Waiting for this to Occur.

Sixth, People Do Not Change Lifetime Habits in Response to Preaching. It Takes Leadership and Imposition of Appropriate Incentives and Disincentives to Conduct You Mean to Alter -- But in a Free, Affluent, Democratic Society Those Who Would Inflict Economic Pain on the Electorate, Act at their Peril, and Accomplishing the Would-be Sprawl

Controllers' Objectives is a Lot More Difficult than the Repetition of Benign-Sounding, Fashionable Slogans.

"Controlling sprawl in New Jersey is a universally popular idea in the abstract but becomes politically fraught when it comes to telling builders where to build, towns how to zone, and residents where they can live." Iver Peterson, *War on Sprawl in New Jersey Hits a Wall*, N.Y. Times, Oct. 21, 2003 (reporting New Jersey Governor's abandonment of his ambitious anti-sprawl plan in the face of widespread opposition).

"[] [A]fter weeks of talking tough about passing bills that would put teeth into Florida's 20-year-old growth management act, Gov. Jeb Bush, Senate President Tom Lee and other leaders haven't been able to figure out how to pay for it - and time is running out." Mark Hollis, *Halting Sprawl Is No Easy Task*, Sun-Sentinel (Tallahassee Bureau), Apr. 7, 2005.

Peter Applebome, *Sometimes, a Pipeline Is a Lightning Rod*, N.Y. Times, Jun. 20, 2004, at p. 27, reporting that Kiryas Joel, a fast-growing, 691-acre, Jewish Hasidic community in Orange County, New York, is being reviled by its neighbors because of its anti-sprawl policy that favors compact, garden apartments over detached houses, and makes it possible for its inhabitants to walk to their daily destinations.

So what's the score?

"Roughly 51% of Americans, according to recent polls, prefer to live in the suburbs, while only 13% opt for life in a dense urban place. A third would go for an even more low-density existence in the countryside. . . . Despite widespread media exposure about a massive "return to the city," demographic data suggest that the tide continues to go out toward suburbia, which now accounts for two-thirds of the population in our large metropolitan areas. Since 2000 suburbs have accounted for for 85% of all growth in these areas." Joel Kotkin, *The War Against Suburbia*, The Wall Street Jour., Jan. 14, 2006, at p. A8

"The exodus of Los Angeles County residents to surrounding counties and nearby states accelerated significantly during the past year. . . . [R]esidents left L.A. at an average net rate of 9,621 per

month between July 1, 2003 and last July 1. . . .” Beth Barrett, *People Leaving County In Drove*, Daily News (Los Angeles), Apr. 15, 2005, p. 1 (News Sec.)

“Census data shows people leaving Los Angeles at an accelerating rate, while San Francisco’s population suffered the steepest drop in the state, despite an improving Bay Area economy. “ Ray Haynes, *Leaving Los Angeles; Rushing to Riverside*, Calif. Political Review on line, Apr. 18, 2005, <http://www.cppf.us/PfrndlyFiles/Columns/2005/04April05/041805RHPF.html> (Comment by a California Assemblyman and former State Senator on the wholesale population exodus from Los Angeles and San Francisco and the simultaneous growth of adjoining suburban counties.)

Daniel Yi and Seema Mehta, *Inland Empire Is True to Its Name*, L.A. Times, Apr. 15. 2005, at p. A26, reporting that in the past year San Francisco lost nearly 8000 people, while adjoining suburban Santa Clara County gained more than 9000.

John Yellig, *City’s Population Decline Sharpest in State*, Daily Progress (Charlottesville, VA), Apr. 15, 2005, reporting that Charlottesville, up until now reputed to be the best place to live in America, is losing population (down 8.7% between April 2000 and July 2004) while surrounding suburban counties are growing apace.

Rachel L. Swarns, *The Nation’s Capital Struggles to Lure Residents to the City*, N.Y. Times, Jan. 1, 2006, at p. 12 (Sec. 1), reporting that in spite of local prognostications of population growth, Bureau of Census figures indicate that in the past year Washington’s population fell by 20,52.-

People Go Where the Housing Is Affordable, Even If it Means Moving to Remote Places

“The fastest rates of [population] increase are occurring where housing is more affordable, state says.” Daryl Kelley, *Outlying Areas Lead Region’s Growth Charts*, L.A. Times, May 10, 2005, p. B2.

Patrick O’Gilfoyl Kelly, *Far Flung Houses For Very Young Buyers*, N.Y. Times, Jan. 1, 2006, at p. 12 (Sports Sec.), reporting that young,

first-time home buyers are increasingly moving away from cities to remote areas where housing is affordable.

Motoko Rich and David Leonhardt, *Saying Goodbye California Sun, Hello Midwest*, N.Y. Times, Nov. 7, 2005, p. A1.

The Bottom Line:

“Go ahead and denounce the soullessness of planned communities and condo villages and exurban developments. But it’s way out there, amid the new towns and barely charted byways, that the American dream is most largely lived.” David Brooks, *Our Sprawling Supersize Utopia*, N.Y. Times Magazine, Apr. 4, 2004, p. 45.

David Brooks, *A Nation of Villages*, N.Y. Times, Jan. 18, 2006, at p. A27, noting that the “new urbanism” is no different than old suburbia, except with more of a commercial-residential mixed use locales added to the mix.