



Sustainable Urban Development and the Next American Landscape: Some Thoughts on Transportation, Regionalism, and Urban Planning Law Reform in the 21st Century

Author(s): Edward H. Ziegler

Source: *The Urban Lawyer*, Fall 2010/Winter 2011, Vol. 42/43, No. 4/1, A 2020 View of Urban Infrastructure: A Festschrift Symposium in Honor of Julian Conrad Juergensmeyer On the Occasion of His 45th Year of Teaching Law (Fall 2010/Winter 2011), pp. 91-103

Published by: American Bar Association

Stable URL: <https://www.jstor.org/stable/41307732>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



American Bar Association is collaborating with JSTOR to digitize, preserve and extend access to *The Urban Lawyer*

JSTOR

Sustainable Urban Development and the Next American Landscape: Some Thoughts on Transportation, Regionalism, and Urban Planning Law Reform in the 21st Century*

Edward H. Ziegler[†]

Metropolitan areas cannot resolve their challenges alone. Counties, cities, and suburbs operate within a national policy framework, and face challenges [bigger] than their own capacities. What is needed is a new partnership between federal, state, local, and private sector players to help metropolitan areas build on their economic strengths, foster a strong and diverse middle class, and grow in environmentally sustainable ways.¹

MOST PEOPLE IN THE UNITED STATES DO NOT LIVE IN MAJOR CITIES. Most Americans live, work, shop, and play in suburban areas, scattered about a metropolitan landscape far from any downtown urban core. We have become, as other affluent countries in Europe and Asia are becoming, a metropolitan (and even megapolitan) nation.

Despite the increasing importance of our metropolitan areas, since the United States Supreme Court's landmark 1926 decision, *Village of Euclid v. Ambler Realty Co.*,² local governments (some 40,000 strong) have exercised primary governing jurisdiction in the United States over

*Copyright 2010 Edward H. Ziegler. This article is based on a presentation prepared for the Festschrift Symposium held in honor of Professor Julian Juergensmeyer at Georgia State University College of Law in March of 2010. I am honored to have been invited to participate. The presentation and article is largely derived from my earlier work Edward H. Ziegler, *The Case for Megapolitan Growth Management in the 21st Century: Regional Urban Planning and Sustainable Development in the United States*, 41 URB. LAW. 147 (2009). I wish to thank Ms. Katy Michaelis for her helpful editorial assistance in the preparation of this article.

This article is dedicated to Professor Julian Juergensmeyer. His work in the field of urban planning law over the course of a long and distinguished career has served to influence a multitude of students, scholars, lawyers, judges, planners, and public officials. He has always been a generous scholar, gracious mentor, and good friend. We all owe him a great debt.

[†]Professor of Law and Robert B. Yegge Memorial Research Chair in Law, University of Denver, Sturm College of Law.

1. Brookings Institute, *Blueprint for American Prosperity*, Publications, <http://www.brookings.edu/projects/blueprint/publications.aspx> (last visited Jan. 16, 2010).

2. See *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

development of our built environment. They have not always done a splendid job. And now changes in this country's governing arrangement related to regional urban plans, housing, energy, transit, and supporting public and private infrastructure development are increasingly advocated as an antidote to the problems of automobile-dependent regional sprawl.³ This article discusses the need for reform of urban planning policy in the United States toward a more sustainable metropolitan urban growth policy. This type of increased regional focus is the transitional challenge for urban planning policy and practice in our metropolitan areas in the twenty-first century.⁴

Proposals for metropolitan, regionally coordinated approaches to urban planning policy, both in the United States and elsewhere in the world, appear to be based on the following four concerns: (1) awareness of the unsustainability of low density, automobile-dependent regional sprawl; (2) recognition that local low density zoning, parking, and growth management programs are a significant cause of regional sprawl, dominated as they are, especially in the United States, by local NIMBY (not in my back yard) concerns; (3) awareness of the critical importance of urban planning policy to related public and private built environment, transportation, and infrastructure investment decisions, as well as resource and energy consumption; and (4) growing awareness of the enormous economic and other benefits flowing from better designed and less automobile-dependent residential patterns of development.⁵

All of these concerns relate to the emerging role of urban planning at the regional level as an ever increasing "efficiency link" and "sustainability tool" in promoting the future economic prosperity of this country's metropolitan areas. In short, there is growing awareness of the importance of coordinated urban planning policy at the metropolitan level in creating less automobile-dependent and prosperous urban core areas in our metropolitan regions.⁶ What follows are some thoughts on the reform of local urban planning policy in the United States toward a more holistic, integrated, and regional framework for managing growth in the twenty-first century.

3. Edward H. Ziegler, *The Case for Megapolitan Growth Management in the 21st Century: Regional Urban Planning and Sustainable Development in the United States*, 41 URB. LAW. 147, 150 (2009).

4. *Id.*; see also SCOTT SHUFORD, SUZANNE RYNNE & JAN MUELLER, *PLANNING FOR A NEW ENERGY AND CLIMATE FUTURE* (2010).

5. Ziegler, *supra* note 3, at 150-51.

6. *Id.* at 151-52.

I. Without substantial reform (that includes a focus on metropolitan planning), local planning and zoning programs are likely to continue as a significant cause of unsustainable automobile-dependent regional sprawl and are unlikely to provide sustainable and affordable private options in regard to jobs, housing, energy, transit, and infrastructure.

Local zoning and growth management operate in the United States largely to expand our low density pattern of regional sprawl and accelerate this country's resource and energy consumption and infrastructure costs. Zoning, almost by definition, is exclusionary in nature, and this is and has been true even in many of America's major cities, many of which have been hollowed out to accommodate automobile-dependent development and whose neighborhoods have been depopulated by restrictive residential zoning. Excluded development simply locates (sprawls) further out away from an urban core area. Sprawl, in this respect, is the product of the very visible hand of local government urban planning policy.⁷ Cities that tout their green development initiatives should be at least honest enough to count their "zoning policy" responsibility for their "exclusion-driven GHG[green house gas] emissions" (as a result of the automobile driving of workers in the city who must find housing elsewhere, and from their own city residents who need to drive elsewhere to find jobs)⁸ as well as for their "indirect land conversion GHG emissions" (that result from the enormous costs and amounts of energy associated with "excluded" land development away from the urban core).⁹ Julian Juergensmeyer, Richard Babcock, Anthony Downs, and Robert Freilich all have long noted how local, low density zoning and growth management programs have the effect of scattering development throughout a metropolitan region.¹⁰ This has

7. *Id.* at 158; see also Edward H. Ziegler, *Urban Sprawl, Growth Management and Sustainable Development in the United States: Thoughts on the Sentimental Quest for a New Middle Landscape*, 11 VA. J. SOC. POL'Y & L. 26 (2003) [hereinafter Ziegler, *Urban Sprawl*].

8. Ziegler, *supra* note 3, at 158.

9. See Roman Keeney & Thomas W. Hertel, *The Indirect Land Use Impacts of United States Biofuel Policies: The Importance of Acreage, Yield, and Bilateral Trade Responses*, 91 AM. J. AGRIC. ECON. 895 (2008).

10. See Julian C. Juergensmeyer, *Foreword: An Introduction to Urban Sprawl*, 17 GA. ST. U.L. REV. 923 (2001); see also ANTHONY DOWNS, *NEW VISIONS FOR METROPOLITAN AMERICA* (1994); ROBERT H. FREILICH, *FROM SPRAWL TO SMART GROWTH: SUCCESSFUL LEGAL, PLANNING, AND ENVIRONMENTAL SYSTEMS* (2000); Richard Babcock, *The Egregious Invalidity of the Exclusive Single-Family Zone*, 35 LAND USE L. & ZONING DIG. 4 (1983).

been, and continues to be, a well recognized and important dynamic of local growth, zoning practice, and regional sprawl in the United States.¹¹ The truth of the matter is that cities are great at talking the “green talk,” but actually quite lousy at walking the “green walk” in local urban planning policy.

Moreover, local zoning programs seldom utilize their site orientation and design controls in regulating land development to promote solar or other renewable energy systems.¹² In some areas, wind turbines and their support facilities may be prohibited by local zoning from locating and operating within an entire community.¹³ Even this country’s electric transmission grid is badly in need of upgrading and is proving inadequate for our renewable energy needs due in part to local NIMBY opposition to infrastructure expansion or replacement. Clean energy systems, such as wind turbines (representing hundreds of millions of dollars in capital investments), are actually being shut down in some areas of the country due to the inadequate capacity of the electric grid network.¹⁴ This is a national problem that is expected to get worse. The United States’ inadequate electric transmission grid has the potential to significantly affect investment in renewable energy technologies (wind and solar energy technology now produce less than one percent of this country’s energy).¹⁵

Local urban planning and zoning programs, however, are likely to remain operationally dominated by a local regime that embraces the NIMBY mantra “think globally but exclude locally”—as its low-density pattern of land development in many communities seems to be increasingly set in stone.¹⁶ Whatever the original wisdom of this low density, automobile-dependent zoning policy, that time is past. The potential benefits of more compact urban areas have been known and discussed for years.¹⁷ Higher density areas can be designed to greatly reduce environmental impacts, consume far fewer resources and energy, provide for more economical and efficient infrastructure and public services (particularly public transit options) and can be

11. Ziegler, *supra* note 3, at 160.

12. See Erica Heller, *Urban Wind Turbines*, ZONING PRAC., July 2008, at 2.

13. *Ecogen v. Town of Italy*, 438 F. Supp. 2d 149 (W.D.N.Y. 2006).

14. Matthew L. Wald, *Wind Energy Bumps into Power Grid’s Limits*, N.Y. TIMES, Aug. 27, 2008, at A1, available at <http://www.nytimes.com/2008/08/27/business/27grid.html>.

15. Ziegler, *supra* note 3, at 176.

16. *Id.* at 163.

17. *Id.* at 173.

designed to accommodate a wide mix of housing types and a broad array of people-friendly nearby uses and amenities, all at a human scale not possible or practical in a landscape of low-density sprawl.¹⁸ The twenty-first century dilemma here is how to turn local urban planning and zoning, which is now “a large part of this country’s sustainability problem, into a tool for sustainable metropolitan growth.”¹⁹ This transformation seems unlikely without the creation of some new regional governing arrangement.

II. Without substantial reform (that includes a focus on metropolitan planning), the higher density housing expected in our metropolitan areas in the years ahead will likely be built on scattered and isolated buffer sites, without mixed uses, and will continue to be largely, if not completely, automobile dependent.

Despite talk about an “urban renaissance” in America during the 1990s (usually referring to the central business districts of American cities), census data make clear that population densities have continued to decline in nearly all regions of this country.²⁰ Most new development continues to be in newer outlying suburban areas, and nearly all residentially zoned land in nearly any metropolitan region will usually be legally restricted to the development of detached single-family homes, with multifamily zones largely continuing to serve as buffer areas along interstate highways, pod commercial strips, or at other even more undesirable locations, nearly all of which are automobile dependent.²¹ However, to accommodate future population growth and new development, there is likely to be increasing densities over time in this country’s metropolitan areas through infill and redevelopment of both newer and older suburban areas. Rising oil prices, changing demographics, rising demand for multi-unit housing, and restricted private financing options will support this trend.²²

18. *Id.*

19. *Id.* at 163; see also TERRY MOORE ET AL., *THE TRANSPORTATION/LAND USE CONNECTION* (2007).

20. Ziegler, *supra* note 3, at 176.

21. *Id.* at 163-64; see also Edward H. Ziegler, *Les Stratégies de Lutte Contre le Réchauffement Climatique des Villes Américaines*, Presentation at Climate Change and Spatial Planning Conference, University of Paris (May 27, 2008); see also National Association of Home Builders, *Annual Housing Starts (1978-2010)*, <http://www.nahb.org/generic.aspx?genericContentID=554> (last visited Jan. 16, 2010).

22. Ziegler, *supra* note 3, at 170.

In this respect, local low density zoning and exclusionary growth-management programs are becoming increasingly dysfunctional in view of the changing market demographics and demand for multi-unit housing in the United States. That is, of course, no guarantee of their immediate demise. Under existing low density zoning regimes, these higher density developments are likely to be poorly planned and relegated to isolated and residual buffer zones. By default, they are likely to be designed under existing zoning regimes with densities that are still completely automobile dependent. They are unlikely to be planned and developed as green communities within a regional growth management framework. In short, the higher densities expected in this country in the years ahead will not alone result in more sustainable urban areas in our metropolitan regions.²³

Higher density development simply provides the opportunity to plan for green development.²⁴ Unless planned and designed otherwise, our communities and regions are likely to remain automobile-dependent places, where, like Los Angeles (the highest density urbanized area in the United States), Americans will live their lives in poorly planned, high density, and automobile-dependent environments.²⁵ Los Angeles is fast becoming like traffic plagued Jakarta and everywhere else in America is fast becoming like Los Angeles. If this continues to occur, life in America will surely be poorer and planned largely around high fuel costs and traffic congestion.²⁶ This pattern of development clearly seems unsustainable and it seems equally clear that electric cars may not be the answer here.²⁷ Without the initiation of some regional policy framework that establishes sustainable goals and standards for local urban planning and zoning, this may be the future of America's metropolitan areas.²⁸

23. *Id.* at 165-66.

24. *Id.* at 171-72; see also U.S. ENVTL. PROT. AGENCY, ESSENTIAL SMART GROWTH FIXES FOR URBAN AND SUBURBAN ZONING CODES (2009), available at http://www.epa.gov/dced/pdf/2009_essential_fixes.pdf.

25. Ziegler, *supra* note 3, at 172.

26. *Id.*; see also James van Hemert & Peter Pollock, Op-Ed., *Connecting the Tracks: Transit for a Front Range "Megalopolis,"* DENVER POST, Nov. 26, 2006.

27. Ziegler, *supra* note 3, at 172; see also LINCOLN INST. OF LAND POLICY, VISUALIZING DENSITY (2010), available at <http://www.lincolninst.edu/subcenters/visualizing-density/>.

28. Ziegler, *supra* note 3, at 172.

III. Without substantial reform (that includes a focus on metropolitan planning), we are probably wildly optimistic about the extent and benefits of light rail transit-oriented development (TOD) in our metropolitan areas in this country, as TOD will likely be severely limited in both scope and density and will likely provide few opportunities for automobile-free living arrangements, particularly for the less affluent.

In the United States, regionally important TOD areas are nearly always under local zoning control and more compact and intensive development is often prohibited or substantially scaled back when opposed by neighbors, which it often is.²⁹ TOD that consists, for example, of a park-and-ride lot, a pod shopping plaza, or a Taco Bell, and a nearby two- or three-story apartment or office building is not an alternative sustainable development vision but merely an expensive attempt at traffic mediation.³⁰ TOD sites, also, are too often just that—undersized, individual sites—when what is needed is space for whole neighborhoods and communities. Given the expected low density and limited scope of these projects, we are probably wildly optimistic about the potential benefits of planned TOD in this country.³¹

Too much of the space and expense of the built environment we are developing today, even under the banner of “smart growth,”³² is still devoted to the parking, housing, and movement of automobiles.³³ Some light rail systems, as in Denver, are operating at only about 10% capacity, and some estimates report that light rail TOD in this country may capture only about 10% of all regional housing growth in the years ahead.³⁴ If this is the case, we may easily have another 100 million cars clogging our nation’s roads by 2050 and TOD will not have had a substantial impact on our country’s sustainability problems related to automobile-dependent development.³⁵ TOD areas are truly Smart Growth when neighborhood density and mixed uses allow many

29. *Id.* at 168; see also Robert Steuteville, *We Can't Let NIMBYs Sink Reform*, NEW URB. NEWS, June 2008, at 2.

30. Ziegler, *supra* note 3, at 168-69.

31. *Id.* at 169.

32. *Id.*

33. See DONALD C. SHOUP, *THE HIGH COST OF FREE PARKING* (2005).

34. See Sam Newberg, *Failing the Density Test: Our Biggest Goblin*, CITIWIRE, Oct. 30, 2009, <http://citiwire.net/post/1446/>.

35. See DANIEL SPERLING & DEBORAH GORDON, *TWO BILLION CARS* (2009).

residents to live, work, shop, and play without owning an automobile or without having to use public transit on a daily basis.³⁶

There are, perhaps, some lessons to be learned here from our brethren across the Atlantic. America is not Europe, of course, but we should keep in mind that their cities have much more experience with public transit development and, generally being less wealthy countries, they are likely, perhaps, to be more sensitive to the costs and benefits of infrastructure investment and transit related housing development.³⁷ Under European transit models, a TOD area might include a one-mile or more radius around a transit stop and have blended densities of twenty-five to one hundred units per acre. Densities in Europe often are related and commensurate to the purpose and policy of public infrastructure and transit investment.³⁸ That is still a novel idea in America. Yet true automobile-independent TOD needs to be initiated in this country nearer the beginning, rather than toward the end, of this century.³⁹

This type of coordinated and planned TOD is unlikely to occur in this country, however, without regionally coordinated growth management goals, plans, and standards supporting that development. For example, both the Bay Area Rapid Transit (BART) rail transit system in San Francisco and the Washington D.C. Metro rail system, each constructed over thirty years ago, are still anticipating the development of European style densities at many TOD sites in nearby station areas.⁴⁰ Growth management plans with respect to areas selected for TOD, or for other intensive urban core area development, will likely require regionally coordinated designation of both “growth” and “no growth” areas. These plans, of course, would need to be regionally integrated and coordinated with major public transit and infrastructure investment decisions.⁴¹ None of this seems possible, however, without some new regional governing arrangement.⁴²

36. Ziegler, *supra* note 3, at 182.

37. *Id.*, at 167; see also COMM’N OF THE EUR. CMTYS., COMMISSION STAFF WORKING DOCUMENT ACCOMPANYING THE GREEN PAPER: TOWARDS A NEW CULTURE FOR URBAN MOBILITY (2007), available at http://ec.europa.eu/transport/clean/green_paper_urban_transport/doc/2007_09_25_gp_urban_mobility_working_doc_en.pdf; Leila Aboud, *Building Blocks: For Countries Looking to Reduce Their Energy Use, Europe Offers Some Valuable Lessons*, WALL ST. J., Feb. 11, 2008, at R15.

38. See Philip Langdon, *Europeans Struggle to Revive Traditional City-Making*, NEW URB. NEWS, July 9, 2008, at 8.

39. Ziegler, *supra* note 3, at 167; see also *Energy Costs Push Families Back to Cities, GROWTH/NO GROWTH*, July 2008.

40. See SMART GROWTH IN A CHANGING WORLD (Jonathan Barnett ed., 2007).

41. Ziegler, *supra* note 3, at 167.

42. *Id.*

IV. Without substantial reform (including a focus on metropolitan planning), this country is unlikely to be rich enough in the future to afford two world class transit systems—a public light rail/bus transit system and a private-automobile transit and infrastructure system.

Many metropolitan areas in the United States have regional transportation planning for light rail or high speed bus service. However, so called TOD at station stops, or key transit nodes, and along key corridors is often not occurring in this country at true transit-friendly densities. This is due, in part, to local low-density, NIMBY-dominated zoning schemes and to the profusion of alternative development sites within a region allowed in the absence of regional TOD urban building plans.

TOD densities today seldom actually justify the enormous financial infrastructure investment in fixed rail public transit, nor do they make possible neighborhoods where many households can live, work, shop, and play without daily use of an automobile. Moreover, infill and re-development projects in the United States seldom have densities that are sufficient to support any kind of efficient public transit, even good bus service.⁴³ With sufficient (European-style) densities, extensive intra-urban core regional transit like light rail becomes feasible within a metropolitan area, as does light rail to regional airports, and even high speed inter-regional transit as billions in car dollars are transferred to public transit development dollars.⁴⁴ Population density controls transit efficiency and affordability. European-like metropolitan rail networks make sense only when supported by adequate regional core area densities.

Without sufficient, supporting TOD density, the United States may very well go broke attempting to finance both roads and light rails in the years ahead. In light rail friendly Portland, Oregon, for example, road improvement spending has declined, residential density is about half

43. See Genevieve Giuliano, *The Weakening Transportation-Land Use Connection*, 6 ACCESS 3 (2005); see also Randal O'Toole, *Vanishing Automobile Update No. 43: Rail Transit Won't Reduce Congestion*, Sept. 30, 2003, <http://ti.org/vaupdate43.html> (updating RANDAL O'TOOLE, *THE VANISHING AUTOMOBILE AND OTHER URBAN MYTHS* (2000)).

44. Ziegler, *supra* note 3, at 167; see also MARK L. HINSHAW, *TRUE URBANISM: LIVING IN AND NEAR THE CENTER* (2007); Trevor Boddy, *Vancouverism vs. Lower Manhattanism: Shaping the High Density City*, ARCHNEWSNOW, Sept. 20, 2005, <http://archnewsnow.com/features/Feature177.htm>; Julie Grimm, *New Urbanism or Same Old Sprawl?*, SANTA FE NEW MEXICAN, May 25, 2006, available at http://www.freewmexican.com/story_print.php?storyid=44093.

that of Los Angeles, transit ridership is less than expected, and the number one issue for citizens is traffic congestion.⁴⁵ In a compact city like Barcelona, Spain, that city's fixed rail transit network can efficiently and affordably serve about 2 million people in the metropolitan area. In a sprawling metro area like Denver, a similar transit system serving 2 million people might have to cover an area about 10 times larger than the area served by the Barcelona transit system.⁴⁶

One thing seems certain; we are not rich enough now, and surely will not be rich enough in the future, to finance two costly and efficient transit networks (both private auto and public transit) in our expanding metropolitan areas.⁴⁷ Regional transit planning is, in all likelihood, unaffordable and unsustainable without regional urban planning. This may ultimately prove to be a hard lesson for us to learn.⁴⁸

America's low density automobile dominated landscape is made possible only by avoiding consideration of life-cycle pricing for our long term automobile related infrastructure costs. The United States presently has nearly a \$2 trillion infrastructure maintenance deficit that increases by about \$100 billion each year.⁴⁹ We are passing along to the next generation an infrastructure of bridges, highways, tunnels, viaducts, rail lines, port facilities, levies, and transmission grids that are all badly in need of replacement and repair.⁵⁰ Despite this deficiency in largely road related infrastructure maintenance, no country now spends more per capita on transportation than the United States.⁵¹

45. See Ziegler, *Urban Sprawl*, *supra* note 7, at 60; Posting of Jim Karlock <http://citiwire.net/post/1329/> (Sept. 24, 2009) (commenting on William Fulton, *What We Can Really Learn From Portland*, CITIWIRE, Sept. 18, 2009).

46. Compare Denver, Colorado, City-Data.com, <http://www.city-data.com/city/Denver-Colorado.html> (last visited Jan. 16, 2010), with Barcelona, Spain, City-Data.com, <http://www.city-data.com/city/Barcelona-Spain.html> (last visited Jan. 16, 2010). Denver is about four times the size of Barcelona but has only about one-third of Barcelona's population.

47. Thomas Downs, *Driving on to Irrelevance: That or a 21st Century Train System*, CITIWIRE, Oct. 9, 2009, <http://citiwire.net/post/1391/> (last visited May 27, 2010); ERIC BRUUN, *BETTER PUBLIC TRANSIT SYSTEMS: ANALYZING INVESTMENTS AND PERFORMANCE* (2007).

48. See Vincent Carroll, Op-Ed., *Carroll: Avoid High-speed Rail Boondoggle*, DENVER POST, Sept. 9, 2009, available at http://www.denverpost.com/search/ci_13293681.

49. AM. SOC'Y OF CIVIL ENG'RS, REPORT CARD FOR AMERICA'S INFRASTRUCTURE 2003 PROGRESS REPORT: AN UPDATE TO THE 2001 REPORT CARD 7 (2003), available at <http://www.asce.org/reportcard/pdf/fullreport03.pdf>.

50. BRUCE KATZ ET AL., AMERICA'S INFRASTRUCTURE: RAMPING UP OR CRASHING DOWN, CONFERENCE REPORT #21, at 1 (2008), available at http://www.brookings.edu/~media/Files/rc/papers/2008/01_infrastructure_katz_puentes/01_infrastructure_katz_puentes.pdf.

51. URBAN ENERGY TRANSITION: FROM FOSSIL FUELS TO RENEWABLE POWER 215 (Peter Droege ed., 2008).

By a large measure, the United States consumes more oil than any other country in the world.⁵² Together, rising oil prices, worsening traffic congestion, and a crumbling infrastructure pose a serious threat to our continuing economic prosperity. Higher oil prices will make all of us poorer through rising prices for gasoline, food, commodities, building materials, pharmaceuticals, computers, and nearly all consumer products and services. Rising prices, moreover, will slow job creation, decrease investment, dampen consumer spending, and act as a drain on economic growth.⁵³ Already we spend about six billion person hours stuck in traffic each year (at an estimated sixty billion dollar loss in economic productivity).⁵⁴

Moreover there is little prospect of all of this changing in the near future. Consumption of oil will likely increase in the years ahead largely as a result of population growth, an increased built environment of automobile-dependent homes, offices, and businesses, and the one-hundred million additional vehicles that are likely to congest this nation's roads by midcentury.⁵⁵ Depending on how fast the price of oil rises, there is the real potential for urban and economic collapse both in the United States and other industrialized nations of the world.⁵⁶

Higher densities that are likely to occur in this country's metropolitan areas in the years ahead hold the potential for addressing many of our sustainable development problems, but only if this new development embodies a green design policy that provides transit-friendly and automobile-free lifestyle options. Urban planning policies need to be crafted to support regional transit planning with new growth in designated urban core areas within a region at densities that allow many residents the choice of automobile-free living arrangements. Without this type of regional reform, urban planning will likely be an impediment

52. Ziegler, *supra* note 3, at 157.

53. See Pat Minczeski et al., *Oil Rise to \$100: Tighter Spigots*, WALL ST. J., Jan. 3, 2008, at A7; DARRIN NORDAHL, *MY KIND OF TRANSIT* (2009).

54. See Bob Tedeschi, *Cyber Scout: Monitoring Traffic*, N.Y. TIMES, July 20, 2003, available at <http://query.nytimes.com/gst/fullpage.html?res=9C00E6DA153CF933A15754C0A9659C8B63&sec=travel&pagewanted=1>.

55. FED. HIGHWAY ADMIN., U.S. DEP'T OF TRANSP., *OUR NATION'S HIGHWAYS* 11 (2000), available at http://www.fhwa.dot.gov/ohim/onh00/our_ntns_hwys.pdf; see also Edward H. Ziegler, *China's Cities, Globalization, and Sustainable Development: Comparative Thoughts on Urban Planning, Energy, and Environmental Policy*, 5 U. GLOBAL STUD. L. REV. 295, 307-08 (2006).

56. Ziegler, *supra* note 3, at 157; see also VACLAV SMIL, *ENERGY AT THE CROSSROADS: GLOBAL PERSPECTIVES AND UNCERTAINTIES* (2003); Edward H. Ziegler, *American Cities, Urban Collapse, and Environmental Doom*, 60 PLAN. & ENVTL. L. 7, 8 (2008) [hereinafter Ziegler, *American Cities*].

to, rather a critical tool supporting, the development of sustainable metropolitan regions in this country.

V. Toward a Conclusion

Despite the talk in this country about sustainability and green development, we have been continuing a low density and automobile-dependent growth paradigm that is inconsistent with the economic, energy, and environmental realities of the twenty-first century.⁵⁷ The recent downturn in the economy and housing market in the United States may have a silver lining in giving this country some pause to rethink the future growth of our metropolitan regions. Frankly, we are on a collision course with a harsh reality and (despite the talk in this country about electric cars) there appear to be no easy and feasible technological solutions on the near horizon for this country's transit problems.⁵⁸

Public management of the built environment in the United States throughout most of the twentieth century may have been, in this perspective, a great malfeasance.⁵⁹ Americans mortgaged our children's future in the design of our landscape and ignored warnings about the sustainability of our urban areas in favor of short term convenience and leveraged consumption. Today, discussion about how we manage the built environment needs to turn away from the false problem of devising policies to support and subsidize individual preferences that carry enormous and unsustainable externalized costs. Our urban planning policies in this century need to focus on devising and implementing growth strategies that provide people in this country with affordable and sustainable housing and transportation options.⁶⁰

Providing an automobile-free built environment as a widely available lifestyle option for day-to-day living would seem to make great sense

57. URBAN ENERGY TRANSITION, *supra* note 51.

58. Ziegler, *supra* note 3, at 181; *see also* Ziegler, *American Cities*, *supra* note 56 ("Building greener at higher densities and reducing automobile-dependence holds the promise of finding real and sustainable solutions to these problems. The cleanest and cheapest power plants and cars are the ones we don't have to build or use due to smart urban planning.").

59. Ziegler, *supra* note 3, at 181.

60. *See* JEFFREY LUBELL & EMILY SALOMON, HOW TRANSPORTATION REFORM COULD INCREASE THE AVAILABILITY OF HOUSING AFFORDABLE TO FAMILIES WITH A MIX OF INCOMES NEAR PUBLIC TRANSIT, JOB CENTERS, AND OTHER ESSENTIAL DESTINATIONS (2010), available at http://www.nhc.org/pdf/Surdna_Transportation_Reform.pdf; *see also* EMILY SALOMON & LYNN ROSS, REGIONAL COORDINATION IN ATLANTA METRO AND IN THE TWIN CITIES: UNDERSTANDING THE CHALLENGES AND OPPORTUNITIES OF COORDINATING HOUSING, TRANSPORTATION AND WORKFORCE POLICIES (2010), available at www.nhc.org/pdf/Surdna_Coordination_ATL_MSP.pdf.

in an age of rising energy prices, of increasing congestion and road related infrastructure costs, and where the traditional low density built environment paradigm is fast becoming a fading and disfavored vision in our housing markets.⁶¹ Our urban planning policies, quite simply, need to be crafted to support regional transit planning for the development of neighborhoods that provide households affordable choices in automobile-free living arrangements.

There is perhaps some hope for this kind of substantial change now on the horizon. The new presidential administration's "Federal Inter-agency Partnership for Sustainable Communities" is a first step in the direction of creating a new "green urban" policy in the United States.⁶² This program brings together the coordinated expertise of four major federal agencies, the United States Departments of Transportation, Energy, Housing, and Environmental Protection, in an attempt to move federal policy toward greater national funding and support for public transit and non-automobile mobility in urban areas, including regional rail transit systems, and enhanced metropolitan planning.⁶³ This effort also could provide greater coordination of regional transportation planning with supportive urban planning for pedestrian friendly and Smart Growth housing developments.⁶⁴ Whether this initial national policy shift will bear the fruit of this promise remains to be seen. It clearly, though, is a first step in the desired direction of needed change in urban planning policy in the United States.

61. Ziegler, *supra* note 3, at 167; *Boston To Adopt Green Standards For Private Buildings*, GROWTH/NO GROWTH, Jan. 2007, at 1; Thaddeus Herrick, *Why Some Cities Think Developing at Rail Stops Is a Mighty Good Road*, WALL ST. J., Dec. 6, 2006, at B1.

62. Elana Schor, *Obama's Partnership for Sustainable Communities Will Put the Feds' Weight Behind Smart Growth*, GRIST, Feb. 24, 2010, available at www.grist.org/article/2010-02-24-obama-admin-wants-to-green-your-local-community.

63. *Id.*

64. See APA'S OVERVIEW OF FEDERAL INTERAGENCY PARTNERSHIP FOR SUSTAINABLE COMMUNITIES PROGRAMS IN THE FY 2011 BUDGET PROPOSAL (n.d.), available at <http://www.planning.org/features/2010/pdf/fy2011budgetsustainabilityoverview.pdf>.