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## The Politicization of Land Use in America

**Of all the powers wielded at the local level of government, it is the use of land, of private property, that stands out as distinct from the powers exercised by the federal and state governments.**

WE DWELL IN AN AGE of political corrosion, of ideological coarseness and crudity. But for the balloon-puncturing by the likes of Stephen Colbert and Jon Stewart it would be downright dispiriting. This extremism in the country's political culture and language kicked into high gear three decades ago at the national level, has since devolved increasingly to the state level, and now threatens the political discourse at the local level, which has remained largely immune to this phenomenon of immaturity and smallness. How did we arrive at this sorry state?

The explosion of political party primaries during the 1970s in the wake of the Vietnam War and Watergate, with their single-issue litmus tests for candidates of the two parties, coupled with ever-increasing numbers of gerrymandered legislative districts concocted by the two parties to insulate their incumbents, has brought us to this pivotal point in our national life, when it is extremely hard for a moderate voice to be heard, much less survive. Even a candidate for dog catcher better have a position these days on his religious beliefs. It is no wonder President Obama is turning prematurely gray after only two years in office. Increasingly, he is the only adult in the room in Washington.

Now, of all the powers wielded at the local level of government, it is the use of land, of private property, that stands out as distinct from the powers exercised by the federal and state governments. States certainly possess the sovereign authority to "guide" their localities when it comes to land use (and a few dare try), and the

feds get their nose under the tent through environmental regulation, but land use remains jealously guarded by local officials and those who voted them in. Indeed, no level of government likes the next level of government telling it what to do.

When it comes to land development proposals, the not-in-my-backyard (NIMBY) syndrome is a well-honed performance art in U.S. municipalities and counties. NIMBYism has been deeply ingrained in the local culture since the 1960s, when all forms of authority began to be questioned. We know it when we see it; we have learned how to deal with it. After all, people fear change. They are comfortable with what is already down the street. And can you really trust the government to do what is right?

When one surveys this broad landscape, then, not only locally but also nationally, an unsettling thought steals in. At what point might the local NIMBY pattern of navigating the land use world merge with the more recent rigid harshness of our national—and, increasingly, state—political worlds? Can such a merger be avoided in the land use game? Will it?

Back in the early 1990s, when I was chairman of a sizable, regional planning and regulatory agency in Maryland, I met one hot evening with a citizens advisory committee (CAC). The CAC had been assembled to advise the planning staff on the drafting of a new area master plan for heavily populated Montgomery County. A small rebellion had been brewing within the CAC; a rump faction—a kind of Tea Party, if you will—felt empowered

to use its advisory role to instruct the staff to delete all references in the plan to a highly controversial but long-planned regional highway that would traverse this particular area of the county. Staff members felt things beginning to spiral out of control. Members of the press were attending the CAC meetings and writing stories. Sometimes an elected legislator would attend and observe and, of course, be observed observing.

So I went that night to hear people out and then explain the facts about the process. The room was crowded: the media had gotten wind of what was up; legislators, pro and con on the highway issue, were there to watch, but not to speak; and other citizens showed up to listen. I spent the better part of two hours fielding questions and comments from the CAC, especially its rump faction, not all of it pretty, and then closed with a simple message: they could meet as often as they wished, but the master plan schedule would not be delayed, and the long-planned Intercounty Connector highway would remain in the new master plan. As I was leaving, a state legislator—a highway opponent—sidled up to me and very quietly said, "When are you going to get that highway built so I don't have to keep voting against it?"

I miss the days of that kind of ironic wit tinged with a dash of self-knowing cynicism in our politicians, especially at the federal level. We have gone in a single generation from Senator Daniel Patrick Moynihan to Representative Anthony Weiner. From a demigod



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to a demagogue, both of them, as it happens, products of the same state political party. The nation's bipartisan model of governance has been replaced by an ideological model. The goal is no longer to make a deal but to destroy the other side. The right is especially effective at using invective, but the left is trying to catch up. Their handicap is that the nation is, for the most part, center-right in its political orientation. Moderation has always been America's bed-rock strength.

Indeed, have you ever noticed that, when they speak, in small settings or large, liberals love "humanity," conservatives love "individuals," and moderates love "people?" And then reflect upon the fact that the Constitution carefully opens with the enlarged words, "We the People." The Framers naturally grasped a wisdom both timeless and true, a wisdom lost on too many leaders today.

Of course, the use of land—and by that I mean, for our purposes, the regulation of private property by local government—is not a left/right proposition, at least not in the eyes of the general public. There is nothing liberal or conservative, Democratic or Republican, about where to put a new office complex. But land use is certainly political in a small-bore sense. To be sure, the left may trust regulation more than the right, but when it comes to the use of land, regulation is an equal opportunity power wielded by populists and elitists alike. As with all things governmental, it comes down to whose ox is being gored and whose pot is being filled.

For close to a century, ever since New York City adopted the nation's first zoning ordinance in 1916, land use regulation has meant—in its most fundamental guise—the separation of uses through zoning. Very often, the separation of uses has really meant the separation of classes or races of people when it comes to where they live and where their children go to school.

After all, it was a conservative U.S. Supreme Court in 1926 that ruled zoning constitutional despite the pressing issue of property rights precisely because the justices intuited that zoning effectively separated classes of people in terms of their housing—into apartment districts, small-lot districts, and large-lot districts. Longstanding private covenants supplemented the new zoning tool by ensuring that races, nationalities, and religions could be excluded by residential neighborhood, including within apartment co-ops, regardless of a household's income or class. Despite a 1948 Supreme Court decision that such covenants would not be enforceable in court, they remained very much alive until the civil rights legislation of the 1960s.

So land use regulation, or zoning, has been political since its inception, and there is nothing inherently wrong with that in a democracy as long as individual rights are protected and due process is accorded when the majority acts. Life is political. As practitioners, we understand that behind every land use fight lie private property values. We are frequently told that "development" is bad and "community" is good. Do you know what the difference is between a development and a community? Twenty years—the time it takes for trees to grow and memories to fade. And some 50 years after that, a push will quite often be made to get that once-objectionable development or building designated as historic. (It takes about 50 years because no one seems to like the architecture of his or her parents' generation.)

I learned this after witnessing or mediating many conflicts over proposed projects and requested historic designations. One struggle in particular sums up the local land use dynamic. An inner suburban downtown was dying—it was the 1970s and 1980s, a rancid period for the American city (captured perfectly in *The*

*French Connection*)—and at that downtown's core, its heart, lay an abandoned art deco movie theater and a rapidly emptying, adjacent shopping center. Revitalization proposals began emerging during the 1980s and 1990s: either tear down those old, decaying, single-story structures and begin anew with gleaming towers, or preserve and restore the historic center and build great things upon that foundation. It is the classic four-query land use dilemma: What does the property owner want? What does the community desire? What will the market say? What role should government play?

Presenting itself front and center, then, was the iron triangle of land use: the applicant proposes, the neighbor opposes, the government disposes. Thus, through struggle and compromise over several years, a viable, acceptable agreement emerged that involved a shared vision of saving some downtown buildings in Silver Spring, Maryland, and sacrificing others for new development and uses, with both private and public investments in the bargain as well as in the shared outcomes.

We presently find ourselves in the fourth year of the Great Recession, which—despite official announcements to the contrary—is still very much affecting the lives of most Americans. And its stranglehold shows no sign of relaxing. This

structural economic dislocation is something we have not endured for some 70-plus years. Except for health care (thank you, baby boomers), every sector of the economy—private and public—is retrenching.

Sour times such as these serve to reinforce and magnify political fringes as they take advantage of a fearful situation and assault both reason and civility. The Great Depression had radio's Father Charles Coughlin—conspiratorial, anti-Semitic, far right—and the Great Recession has radio's Glenn Beck, which even the "fair and balanced" television network of "truthiness" could no longer tolerate. Take his latest outrageous pronouncement about the recent slaughter of scores of Norwegian youths by a far-right gunman at a summer camp sponsored by Norway's Labor Party, in which Beck somehow managed to equate the campers to the Hitler Youth. Beck is obviously beyond the pale, but he is by no means an isolated phenomenon. He is the proverbial canary in society's coal mine. He is the id to the egomania that is corroding our national politics by elevating discord and belittling compromise.

So will this long-running, acrid political farce seep down from the national capital, as well as from some of our statehouses, reaching into our localities and infecting them as well? Will the familiar NIMBY syndrome morph into something much



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more sinister, as happened in the disturbingly metaphorical *Invasion of the Body Snatchers*?

It is incumbent upon us to make sure that does not happen. It is our mutual responsibility as citizens of a republic and a community to prevent that infection. We should vow, at least to ourselves, "Not on my watch." Land use regulation in our multifaceted communities faces enough challenges already. Take just three common dynamics:

- ▷ People say they dislike sprawl, but they hate density. (We can work on that sentiment.)
- ▷ Folks everywhere are for transit so long as the next guy uses it. (We can talk about that.)
- ▷ Everyone supports "smart growth," as long as it is restricted to the city. (We need some more time with that one.)

**The politicization of land use in America is still a relatively manageable affair. Let us strive to keep it that way.**

At the end of the day, all the nuttiness we sometimes experience in the land use game does not come close, by and large, to the relentless, irresponsible extremism we see on television and hear on the radio emanating from our various capitals.

The politicization of land use in America is still a relatively manageable affair. Let us strive to keep it that way. Or do something even more daring: Let us embark upon an effort to undo the 30 years of ideological warfare in America before it also overwhelms our local governments, not to mention our shared sense of community.

Now that would be a truly radical notion. If nothing else, such an effort would at least instill hope, badly needed, of returning us to the path toward a more perfect union. **UL**