

CAN 'PLANNING' DEREGULATE LAND USE?

To overcome NIMBY politics and development constraints, urban areas should consider binding, comprehensive, citywide plans.

♦ BY RODERICK M. HILLS JR. AND DAVID SCHLEICHER

New York City's deal with Alma Realty was a "game-changer," Mayor Bill de Blasio boasted in his November 2014 State of the City speech. The city, the mayor said, had shown that it can drive a hard bargain with real estate developers by demanding 456 units of affordable housing in exchange for approving Alma's 1,700-residential unit "Astoria Cove" mega-project in West Queens. His implication was that, through tough project-by-project bargaining, the city could force developers to solve New York's housing affordability crisis by supplying below-market-rate housing in exchange for greater building rights.

But upon more careful inspection, Astoria Cove looks a lot more like the same old big-city zoning game rather than a game-changer. Alma spent millions on well-connected lobbyists to dicker with the city over percentages of below-market-price units. The bargaining process took years. The mega-project was located on marginal land far from any "NIMBY" ("Not in my backyard!") neighbors who would pressure their council member to scotch the deal and keep out a horde of low-income residents. And it's not even clear that the project will be built because it hasn't qualified for the tax breaks necessary to make its numbers work.

The problem is not any specific deal, but rather the very idea of negotiating over each new building project. Astoria Cove is illustrative of a self-defeating zoning process—the process of cities engaging in individualized, parcel-specific bargaining to obtain affordable housing. The attractions of this process are undeniable. The goal of increasing housing supply is laudable. America faces a housing affordability crisis in its most economically dynamic cities, including metropolises like New York, San Francisco, Los

Angeles, and Boston, where prices are rising faster than construction costs. The result is that working- and middle-class people cannot afford to live where their labor would be most productive.

The solution to this housing crisis is economically simple but politically difficult. As a matter of economic rationality, local governments should deregulate their housing markets to allow increased supply to meet the rising demand. As a political matter, however, incumbent home owners vociferously and effectively protest against the reduction of zoning restrictions. The temptation, therefore, is to enter into protracted negotiations exemplified by Astoria Cove, where city leaders cajole developers into providing subsidized housing on lots far from angry neighbors.

In two important respects, this bargaining process defeats the very goal of land-use deregulation necessary for a lasting solution to the housing affordability crisis. First, individualized bargains increase the chance that NIMBY neighbors will hijack local land to exclude housing because the individualized bargaining process provides no way for politicians representing different parts of the city to strike bargains allocating locally unwanted land uses across neighborhoods. Second, individualized bargaining raises the costs of knowing what development rights one buys with the purchase of a lot. Those costs drive away real estate investors, depriving the city of capital sorely needed to remedy a desperate housing shortage.

Instead of such parcel-by-parcel deal-making, we recommend an unlikely cure for zoning regulations that are strangling our cities: binding, comprehensive, citywide plans. "Planning," a word with Stalinist connotations, seems like an odd way to rid cities of excessive zoning regulation. Indeed, influential economists like Dartmouth's William Fischel and the University of Maryland's Robert Nelson have argued that neighbors bargaining with developers over individual projects insures that zoning will be custom-tailored to maximize the joint value of the land to neighbors and newcomers buying housing. We argue, however, that binding plans can solve two causes of over-regulation that

RODERICK M. HILLS JR. is the William T. Comfort III Professor of Law at New York University School of Law. DAVID SCHLEICHER is associate professor of law at Yale Law School.

This article is adapted from the authors' paper, "Planning for an Affordable City," forthcoming in the *Iowa Law Review*, Vol. 101.



such individualized bargaining exacerbates. In contrast with individualized bargaining, a comprehensive citywide plan allows each member of a city council to make sure that her district will take no more than its fair share of market-rate housing and get no more than its fair share of the side payments that developers throw off, such as affordable units or parks. Comprehensive plans also promote transparency and marketability for use rights in much the same way that a simple grid system promotes a market in possession rights. By making it simple for outsiders to see what they are buying when they purchase a parcel, such plans attract more buyers, thereby increasing investment in housing. In these two respects, centralized and rigid planning can actually be a libertarian reform, while ostensibly more flexible bargaining can lead to the strangulation of a city's housing supply.

THE RISE AND FALL OF COMPREHENSIVE PLANNING

The idea that zoning should be controlled by citywide comprehensive planning used to be conventional wisdom. However, that convention never became common practice and it fell out of fashion

decades ago, done in by the skepticism of lawyers and economists alike. In the 1950s, the late Charles Haar, then a Harvard Law School professor, argued that courts should treat a city's master plan for land use as an "impermanent constitution" that would trump parcel-specific zoning changes. His support for planning was based on sunny optimism about the cognitive capacities of planners to set the course for every physical detail of a city. "The various land-uses and physical installations—the physical expression of the myriad activities in the city—are combined into a coordinated system," Haar declared. "In so far as possible, each piece of property is to be in the right location for its particular use."

The idea caught on in a few jurisdictions like Oregon, where state courts overturned zoning changes that were inconsistent with a local government's comprehensive land-use plan. There was, however, a problem with this judicial support for planning: courts usually enforced plans only when it benefited neighbors to do so, by stopping new development. The result was a one-sided sort of planning that provided one more tool for NIMBY-minded homeowners to stop new housing.

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Legal academics and economists began noticing that the justification for elevating comprehensive plans above parcel-specific zoning seemed thin. Carol Rose, a Yale Law School professor, noted that zoning regulations were not really a product of neutral professional expertise, but rather expressed local residents' idiosyncratic tastes. Two projects that look similar to an outside expert in terms of their effects on a community may seem very different to the local neighbor. In order to express these idiosyncratic tastes, local governments needed to make individualized and political determinations about proposed building projects rather than adhere to some expert blueprint drawn up by urban planners years before any project was ever proposed.

In the late 1970s, Nelson and Fischel independently and simultaneously developed the insight that zoning could be efficient so long as local governments could "sell" the zoning to real estate developers. They noted that neighbors had enormous influence over their local representatives' decision about whether zoning restrictions on a specific parcel were relaxed or maintained. By eliminating planning restrictions on zoning flexibility, the local legislature could respond to the neighbors' feelings about specific proposed new buildings, relaxing zoning restrictions whenever developers provided the neighbors with enough benefits (affordable housing, playgrounds, schools, etc.) to compensate the neighbors for the added bulk and accompanying people. Developers would reveal the preferences of potential purchasers of proposed structures in their ad hoc bids for development rights. If occupants of the new housing really valued the right to live in the neighborhood more than the incumbent owners wanted to exclude new buildings, then the former could pay off the latter to waive their objections. This method of revealing preferences through parcel-specific bids, however, required the rejection of comprehensive citywide plans that restrict ad hoc deals. The local legislature must enjoy the power to amend the zoning map parcel-by-parcel to accommodate the individual proposals of developers.

Between the academic criticisms and courts' lukewarm enthusiasm for enforcing plans, planning as a "constitution" for zoning never really caught on.

THE LIBERTARIAN CASE FOR PLANNING

We agree with planning's critics that planners lack both the information and political acumen to prescribe ideal cities. But comprehensive plans can nevertheless help cities resist excessive zoning restrictions on housing supply and expand the market for property in cities. First, citywide planning and mapping can provide cities lacking strong political parties with mechanisms for enforcing citywide deals on the allocation of land uses. Second, maps that make ex ante decisions about what can be built as-of-right reduce information costs for investors.

Planning in party-less cities / In most American cities, there is no party competition among city council members. Often, elections are nonpartisan. Elsewhere, city elections are partisan but totally

dominated by one party. Further, because of legal impediments on party rebranding and the heavy weight of national party identification in local voting patterns, one-party domination in such city legislatures is likely to continue.

The absence of competitive party "brands" has big implications for zoning. Local legislatures tend to be too disorganized to enforce complex deals for allocating locally undesirable land uses (LULUs) across legislators' districts. The result is excessive zoning restrictions created by a universal coalition against LULUs: each member votes for every other member's proposals to keep LULUs out in expectation that every other member will do the same. The problem of universal coalitions using distributive politics to reduce political risk is more familiar from the budget context. Members of a party-less legislature "distribute" pork spending broadly across electoral districts to minimize their risk of being excluded from the necessarily fluid and unpredictable winning coalition. Members may collectively, say, prefer lower taxes and lower spending to higher taxes and higher spending, but each member individually prefers pork in his district paid for by taxpayers across the entire jurisdiction. Absent a party leader interested in producing jurisdiction-wide goods to burnish a party brand, there is no one who can suppress individual efforts to secure district-specific spending. Legislators adopt an informal norm of approving each other's local expenditures as an insurance that they are not left out of the winning coalition for local benefits. The result is more spending than the legislature as a whole would prefer.

Precisely the same dynamic operates in the zoning context to keep America's cities over-regulated. The very term "NIMBY" suggests neighbors' preference not for the total exclusion of a use but merely its relocation elsewhere. Property holders and the city council members who represent them have incentives to limit development locally even where they support growth overall. Absent party discipline, such NIMBY preferences dominate the local legislature, where it is every member for herself. Lacking any more sophisticated way to allocate new growth, each member takes the safest path of observing an ironclad rule of "aldermanic privilege" under which everyone defers to the preferences of each member regarding land use in that member's district.

Here's a quick New York example. At the end of Mayor Michael Bloomberg's administration, the city considered a massive rezoning of "Midtown East." As the nation's premier office area, the size and shape of buildings has clear importance for the city and region. But focus immediately turned to Dan Garodnick, the councilmember for the neighborhood, and his rejection of the rezoning forced the city to go back to the drawing board. The interests of all the people who might have worked in newly taller towers, and all the schoolchildren who might have benefited from the new tax dollars that would have been generated by the new development, were largely irrelevant to the decision.

A public-spirited member could, in theory, dissent from this consensus by voting for a needed LULU to go into some other member's district. But she would risk retaliation from the rest

of the legislature and quickly find that her district has become the dumping ground for homeless shelters, group homes, bus depots, and other LULUs. Going along to get along becomes the most rational strategy.

Piecemeal zoning processes exacerbate the problem because individual zoning map amendments are too geographically specific to spread unwanted development across the city. Moreover, the time and cost of getting a project through the amendment process means that the local legislature will not vote for a package of many projects simultaneously. In a legislature reliant on parcel-by-parcel deals, members do not have any procedure by which to assure each other that each neighborhood will accept its fair share of new development. In the absence of political parties to whip such “fair share” deals into line, it is no wonder that councilmembers don’t agree to allow locally unpopular but needed growth to occur in their districts; they can’t be sure that other members will do the same.

Both plans and comprehensive remappings are mechanisms for solving this type of breakdown. First, by their very nature, they are citywide votes, thereby reducing (if not eliminating) the pressures for NIMBY-exclusion characteristic of *seriatim* decisions. Second, the typical process of citywide remapping can protect citywide interests against more parochial ones. Ordinarily, the mayor’s city planning department proposes a new plan or map to the city council after extensive hearings. The mayor faces the broadest electorate and thus has the greatest incentive to be responsive to citywide concerns. Particularly if the remapping is considered under a closed rule (i.e., no amendments are allowed), the mayor is in a position to propose a map that goes as far to protect citywide interests as the legislature collectively will bear.

Consider, as an example, the recent rewriting of the zoning code in Philadelphia. In 2011, the city revised the text of its zoning code (consolidating the number of zoning categories, which had not been substantially altered since 1962) and passed a new city plan. The impetus for the revisions was the impossibility of building new projects except by piecemeal variances or map amendments that gave individual councilmembers excessive power to decide which projects would go forward. The city created a zoning code commission to propose a set of recommendations to the city council that the council was required to approve or reject under a closed rule. The commission’s recommendation, enacted by the council, simplified and relaxed the zoning code by creating more as-of-right construction and allowing both taller downtown high-rises and taller row-houses. The revision process used an independent commission rather than the city planning department in order to overcome aldermanic privilege, inducing councilmembers to support greater density in their own neighborhoods with assurance that all parts of the city would accept some of the new construction.

Planning as transparency in property rights / Piecemeal zoning restricts housing not only because it prevents citywide bargaining, but also because it reduces the marketability of land by

making it costly to figure out what sorts of use rights one buys when one purchases a lot. Under a piecemeal bargaining regime, any prospective buyer has to figure out the preferences of local landowners and how the city’s politics works before the prospective buyer can decide whether to buy land in the city. A comprehensive map that transparently sets out what can be built as-of-right is a big cost saver, for which a rational developer should pay good money or (alternatively) build larger shares of affordable housing or any other “currency” that a well-planned city demands. Transparency is thereby directly linked to investment and community benefits.

To understand the value of transparency to housing markets, it is useful to start with the death of a popular legal metaphor—the “bundle of sticks” popular from first-year property classes. In this metaphor, each separate “stick” in the “bundle” stands for each of the rights that an owner enjoys against other individuals, with the idea that the bundle can be untied and each stick sold, used, taken by the government, or regulated by law without affecting the other “sticks.” As law professors Tom Merrill (Columbia) and Henry Smith (Harvard) famously argued, the metaphor is misleading because property claims run not only against some specific individual (as do contract rights) but also against the entire world. This universal quality of property rights requires them to have much simpler informational content. Somehow, complete strangers must be able to obtain information easily about whether and when they are trespassing or committing a nuisance and to whom they should apply to purchase a parcel at the corner of Main and Elm. Because of this quality of defining the rights of total strangers, property rights must be packaged in a limited menu of standard forms that cannot be unbundled at the wishes of individual buyers and sellers. Infinitely varied, contract-style customization of the rights and forms of ownership over a piece of property would increase information costs for third parties, whether travelers or potential purchasers, often beyond any possible gain to the parties to a particular custom-tailored transaction.

Merrill and Smith’s insight—“keep it simple (for third parties), stupid”—applies not only to the rights permitted by the common law of property, but also to the rules defining the physical shapes of lots. The easier it is to tell who owns how much land, the easier it is for outsiders to figure out how to behave in relation to it and determine whether they want to buy it. A clearly demarcated piece of property with boundaries that are easily determined thus should be worth more than a similar piece of property with less clearly demarcated boundaries, as outsiders will be able to figure out what the former parcel contains without first obtaining specific local knowledge. The cost of investigation is lower, so the number of potential purchasers is higher.

In fact, Dean Lueck (University of Arizona) and Gary Libecap (University of California, Santa Barbara) have confirmed empirically that the existence of easily ascertained boundaries can substantially increase property values. Comparing “metes and bounds” lots (the boundaries of which are defined by irregular

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and individualized lines often following natural boundaries like hills, trees, and streams) with “rectangles and squares” (a system that originally allocated properties in standardized rectangular and square lots), Lueck and Libecap determined that “rectangles and squares” demarcation results in property values that are roughly 30 percent higher than “metes and bounds”—an effect persisting 200 years after the original demarcation. Lots defined by rectangles and squares attracted more population, urbanized more quickly, and—despite the property owners’ power to customize their lots after the initial demarcation—retained their geometrical boundaries long after they were initially demarcated.

Manhattan’s street grid suggests a similar effect of simple, uniform, and rectangular lot lines. In 1811, when New York was a city of just under 100,000 people residing almost entirely south of Houston Street, the state legislature authorized three street commissioners to create a uniform street grid covering almost all of Manhattan Island. With few deviations, the result was a

uniform grid of numbered streets and avenues that, according to the commissioners, would lower the cost of construction because “strait-sided and right-angled houses” were cheaper and easier to build. The grid had another advantage: rectangular lots made property rights easy to ascertain, reducing property disputes between neighbors and making it easier for outsiders to buy, sell, and improve real estate. Trevor O’Grady, a post-doctoral fellow at Harvard University, has confirmed that properties on gridded blocks are both more valuable and more densely developed than properties with irregular boundaries in non-gridded areas.

Where local zoning laws define plain as-of-right entitlements to build, it is easier for outsiders to determine the value of lots. Seriatim and parcel-specific zoning amendments impose very high informational costs.

Rectangular boxes in the air above each lot that are defined by local zoning laws should have the same benefits as rectangular lots. Where local zoning laws define plain as-of-right entitlements to build, it is easier for outsiders to determine the value of lots. Simplicity and predictability in zoning enlarge the market for urban land. In contrast, seriatim and parcel-specific zoning amendments defended by Fischel and Nelson impose very high informational costs on buyers and developers. Imagine a municipality that followed a pure Nelson/Fischel style zoning process. There would be no as-of-right building at all. If a developer wants to build, she would have to negotiate with the local government by proposing a specific use for the lot, paying off the city for any negative effect on incumbent neighbors. Nelson and Fischel argue that the develop-

ers’ proposals and local governments’ demands would efficiently reveal the relative preferences of neighbors and non-resident buyers or renters. But they ignore the market-shrinking effect of such custom-tailored zoning. The market for development would be limited to developers and investors with inside knowledge of what the local government and neighbors would likely charge for the proposed development. Developers also need expertise in local politics and bureaucracy. Just as tourists are intimidated by bazaars where all prices are negotiated, so out-of-town developers are intimidated by cities where all building rights are negotiated parcel by parcel. Nelson and Fischel’s parcel-specific amendments create information costs that reduce the value of property because the costs decrease real estate’s capacity for being traded as a commodity in an impersonal market.

Fischel and Nelson’s proposal, in other words, can be attacked on the same grounds that Smith and Merrill invoke against the “bundle of sticks.” Property law balances the private desire for customization against the information costs that customization imposes on outsiders. Zoning law must likewise balance the benefits and costs of customization. Negotiations between a landowner/developer and neighboring landowners (represented by the local government) may lead to an optimal amount of development in that particular case because the cost of negotiating is low. But the general practice of such ad hoc bargaining increases the costs borne by third parties who might otherwise have invested in the jurisdiction but are deterred by the information costs imposed by the zoning system as a whole. By shrinking the market of buyers as well as preventing scale economies in construction, these information costs reduce overall property prices within any jurisdiction that uses Fischel and Nelson’s bargaining regime. The implication is that lots with as-of-right building rights based on only a few simple zoning categories should have higher property values and more development than lots on which the city allows the exactly identical amount of building through a *seriatim* amendment process.

There is undoubtedly a tradeoff between the gains from reducing third parties’ information costs and the gains from the fine-grained, lot-specific information acquired through custom-tailored zoning. Having a few types of zoning (e.g., just residential, commercial, and manufacturing, with common rules about uses and heights for each) will reduce third-party investor information costs. But such parsimony has a cost with respect to tailoring lot regulation to conditions peculiar to a neighborhood or block.

The problem with a zoning process that lacks binding comprehensive plans, however, is that the city cannot practically make such a tradeoff in favor of lower information costs and less custom-tailoring. To reduce information costs through comprehensive planning, such plans have to be difficult to change even when there could be gains from tweaking the plan to improve

regulation of a specific lot. None of the parties immediately involved in an effort to custom-tailor a lot's zoning, however, have any incentive to safeguard the general value of transparent zoning. Thus, absent some legal mechanism by which the city can tie its hands, there is always a hydraulic pressure by parties with the most immediate interests to deviate from plans. A binding plan or map allows a local government to overcome the temptation to bend the rules for a particular developer and parcel, thereby reducing information costs for everyone.

MAKING PLANS STICK: SOME RECOMMENDATIONS

Our revised defense of planning does not rest on planners' superior information or Olympian impartiality about how an ideal city ought to grow. Instead, we offer a defense based on local governments' needs to make binding commitments across neighborhoods and time that the ordinary legislative process does not provide. Implementing plans, therefore, means creating legal mechanisms for making such commitments. Plans must be "sticky" in the sense that they must resist the individual legislators' constant temptations to defect from the commitment when pressured by neighborhood activists. They also must resist pressures to "fine tune" the plan from developers or neighbors whose ad hoc proposals threaten to make the entire process for future and potential buyers and developers more opaque.

How can plans be made to "stick"? Here are a few ideas, intended neither as exhaustive nor exclusive proposals, but merely as illustrative examples of how a plan can help overcome NIMBY neighbors' outrage and developers' blandishments to sweeten the pot for a little extra density.

Create a citywide zoning 'budget' / Recall that local legislatures typically lack party leadership capable of forcing individual members to accept local costs for the common good. Plans that "stick" can facilitate cross-neighborhood bargains by giving the parties confidence that costs will be equitably distributed and citywide benefits will ultimately be achieved. It is helpful to think of such a plan as a "zoning budget" in which regulatory restrictions play the role of money—valued but costly goods that must be allocated among competing legislators. Such a budget would specify an overall quantity of some controversial land use—say, number of housing units—that the entire jurisdiction must achieve, and allocate those land uses across neighborhoods, seeking to allay concerns from council members about being dumping grounds for new construction.

The critical challenge is designing an enforcement mechanism that can resist the centrifugal tendencies of "aldermanic privilege." Once developers propose any specific new structures for particular neighborhoods, the neighbors so targeted have an incentive to enlist a universal coalition against the proposal. Can any enforcement mechanism resist these pressures?

Planners led by a mayor with a citywide constituency can help. By bundling together a package deal of zoning changes

that must be passed under a "closed rule" without amendments, planners can make it difficult for any single member to unravel the package. If the package benefits a powerful constituency, then that constituency can provide sufficient political cover for each legislator to abstain from disrupting the deal with parcel-specific amendments intended to appease angry neighbors or take advantage of well-connected developers. As an example of such a successful "zoning bundle," consider New York City's creation of a Special Theater Subdistrict in 1982. Adopted in the wake of the demolition of the historic Morosco and Helen Hayes Theaters, the subdistrict eventually subjected 28 theaters to landmarking that prohibited their demolition or alteration. The theater owners responded by enlisting various theater workers' organizations like the Broadway Initiative and Actors Equity to lobby for compensating the theaters by allowing them to transfer their unusable air rights to any lot within the subdistrict, selling the air rights to other landowners. Eventually, theater owners sold the right to build 450,000 square feet to various buildings on the West Side of Manhattan, to the ire of those buildings' neighbors. The nondiscretionary character of the transfer system set up by the subdistrict law, however, insured that the neighbors could eliminate the extra development in their neighborhoods only by overturning the entire theater compensation scheme—an option that powerful theater-oriented constituencies blocked. Manhattan Community Board 5, representing the Hell's Kitchen/Clin-ton area where the extra construction was transferred, ruefully acknowledged how the tying of commercial real estate to the cause of theaters immunized the former from effective political attack.

Could cities engineer a similar bundling of issues at the citywide level to protect housing construction from NIMBY pressures? As with the Theater Subdistrict, the basic enforcement mechanism should bundle some generally popular citywide benefits with locally unpopular site-specific up-zonings. With housing, the traditional benefit is "affordable housing," promoted through some sort of system of inclusionary zoning, although it could just as easily be transportation benefits or tax breaks. Inclusionary zoning systems differ importantly in their details, but their essential characteristic is that, in return for some sort of right to construct market-rate units, developers provide units sold or rented below market rate to persons who otherwise could not afford the housing. The ratio of market-rate to subsidized units is critical. Set the ratio too high, and nothing gets built because the demand for the market-rate units does not suffice to cover the costs of the subsidized units. Set the ratio too low, and the city loses the political cover necessary to overcome local opposition to new construction.

Planners provide an escape from this dilemma. Rather than the legislature attempting to devise the ratio themselves, they could delegate the task to an expert planning staff led by the mayor. The staff provides additional political cover for legislators in sensitive districts, allowing them to endorse the general idea of inclusionary zoning while feeling free to rail against the formula that the planning staff ultimately presents. The areas where the

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plan proposes new development can be spread around the city to avoid suspicions of dumping. Further, planners can help break up an anti-development coalition by designating general criteria for growth areas where developers would presumptively be entitled to build upon by proffering the staff-determined amount of affordable housing. This would make opposition take the form of opposing the goodies as well as the development. Finally, to ensure that the legislative attacks go no further than railing, the legislature could agree to debate the planning staff's proposal under a closed rule barring amendments: the price of opposition would thus be scuttling the entire deal.

Affordable housing is far from the only goodie that could be tied in fixed packages for zoning approvals. Consider the idea of tying packages of transportation upgrades to increases in the zoning envelope along the path of the upgrade. For instance, a mayor could propose to the city council the development of an express train or rapid bus transit line, but make clear that the upgrades are contingent on a zoning amendment allowing increased development along the entire line. The city council, of course, could order the mayor to engage in the transportation upgrade even if it does not approve the set package of zoning changes. But the mayor's ability to control the operation of the transportation system (and the threat that she would not let the project work without the full package) may be enough to hold together a whole set of zoning changes against opposition in individual neighborhoods. Further, if some form of "value capture" is used so that revenue from new construction would fund the transportation upgrades, residents' desire to get the transportation upgrade may be enough to make the council approve the entire package of zoning changes.

Planners, in short, can advance the zoning budget by relieving the legislature of the politically sensitive task of designing the zoning budget tradeoffs by presenting the legislature with "take-it-or-leave-it" packages that are designed to be taken rather than left.

Planning a standard 'price sheet' for density bonuses / A second proposal emanates from the insight of recent property theory that customization of property rights imposes costs on third parties. A comprehensive plan should serve the function of such a customization-limiting constraint on zoning. One could imagine such a plan as a standard price sheet for use rights, defining in minute detail the conditions entitling a parcel's owner to a particular land use just as a menu specifies the price of an entrée. Current uses and uses "as-of-right" would have a price of zero, as they could be unconditionally undertaken. Uses that would be conditional on the fulfillment of some condition—building a plaza, donating money to a mass transit trust fund, widening a road, installing sewage lines, and so forth—would specify the exact sort of amenity to install or the precise sum of money to pay for the right to build. Such a plan might also contain a time table, specifying a schedule for enlarging uses or changing prices upon the occurrence of certain contingencies. The plan, for instance, might specify that if the vacancy rate for rental housing declines to a particular level,

the permissible floor-area ratio for residential apartments shall automatically increase by a particular percentage. The critical characteristic of such an idealized plan-as-uniform-price sheet is transparency: anyone could see the uses accompanying title to land without haggling or making an ad hoc offer to enlarge the uses in exchange for an unlisted amenity.

While obviously an impractical fiction when taken to an extreme, such an idealized price sheet would be a useful heuristic to exhibit the costs of customization. The advantage of transparency is that it allows land use markets to dispense with the costly machinery of negotiation—the lawyers, consultants, fixers, lobbyists, and accompanying hearings and negotiations—that clog up the process by which land is bought and sold. Further, it allows purchasers to make comparisons between investment opportunities in different cities. Like the expensive and time-consuming title searches obviated by a simple grid, the expenses of the zoning negotiation game are a deadweight loss that serves neither the local government nor the real estate owner in a world in which the plan revealed the local government's ideal allocation of uses.

Why not dispense with this cost by plainly stating what can be built? The standard price sheet would sacrifice some extra information yielded by ad hoc bargaining: in theory, each developer could place a unique valuation on each parcel that a comprehensive plan would ignore. Some of that information, however, is unreliable. Recall Alma Realty's promise to set aside 27 percent of its units as affordable in return for the right to build 1,700 market-rate units on a desolate patch of West Queens industrial waterfront. Mayor de Blasio crowed about eking out a few extra percentage points of affordable housing above that which the Bloomberg administration had demanded from Halletts Point, another mega-project that was Astoria Cove's immediate neighbor on the same stretch of waterfront. If it turns out that Alma cannot afford to build the Astoria Cove project at all, then the extra information yielded by the city's hard bargaining about what a particular developer's project can bear would not be useful information at all.

Why not instead rely on simple categories and schedules, established in advance, that set the price in terms of affordable housing for each extra unit of floor-area ratio? The schedule could make allowances for market demand in different neighborhoods, such that the price increases with objective criteria like residential rents per square foot, proximity to transit, and the like. The critical points are that these criteria be set out in advance by planning staff under the mayor's leadership for the entire city, to be approved by a simple up-or-down vote by the local legislature, without allowing individual developers to vary the standards by making individualized offers.

Such a scheme, like Manhattan's famous grid of streets and avenues, seems rigid and centralized. Paradoxically, sometimes rigidity and centralization of a general framework for buying and selling land is more market-friendly than the bargaining free-for-all that keeps everyone guessing—and paying lobbyists to improve the odds of their guesses. R

BIGGER BANG FOR THE BUCK?



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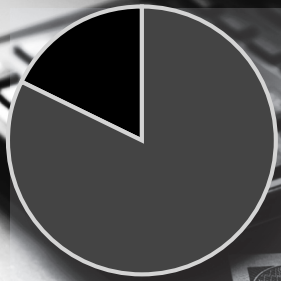
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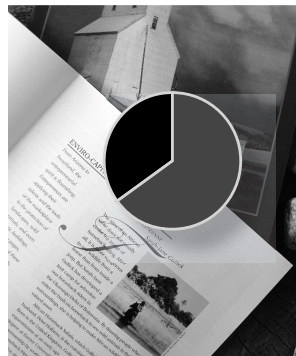
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