

Town & Country: A New Approach to the Problem of Urban Sprawl

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Introduction

America began its transition to an urbanized society from its agrarian roots in the late nineteenth and early twentieth centuries and as such the concept of urbanization is not new.¹ However, what is new, and indeed a pressing concern, is the recent explosion of urban growth expanding outward from the cores of cities across the country. This hybrid growth form has come to be known as “Urban Sprawl.” While many commentators may debate the causes of urban sprawl, it is now unreasonable to deny its existence.² Moreover, its impact is certainly apparent in societal relationships, quality of life issues, economic and infrastructure concerns, and environmental degradations.³

In response to the concerns raised by urban sprawl, many state and local municipalities have taken actions to abate its negative impacts.⁴ Programs have ranged from strict enforcement

¹ Chris J. Williams, *Do Smart Growth Policies Invite Regulatory Takings? A Survey of Smart Growth and Regulatory Takings in the Southeastern United States*, 55 Ala. L. Rev. 895 (2004).

² See generally Timothy J. Dowling, *Point/Counterpoint: Reflections on Urban Sprawl, Smart Growth, and the Fifth Amendment*, 148 U. Pa. L. Rev. 873 (2000) (arguing that urban sprawl is in existence).

³ *Id.* at 874.

⁴ See Ed Bolen, Kara Brown, David Kiernam & Kate Konschnik, *Smart Growth: A Review of Programs State by State*, 8 Hastings W.-N.W. J. Env. L. & Pol’y 145 (2002) (offering a compilation of what each state is or is not doing to combat urban sprawl especially as such programs relates to smart growth).

of limitations on urban growth beyond certain boundaries⁵ to a pre-zoning laissez-faire approach.⁶ Many of the new strategies for combating urban sprawl have centered on the term “smart growth.”⁷ Smart growth involves a balancing of demands and competing wants among the local community and additional stakeholders and often results in legislative actions that tend to move away from traditional Euclidean zoning.⁸ Smart growth is a broad term that can encompass concepts as varied as “[t]ax incentives, brownfield redevelopment, elimination of

⁵ See generally Candida M. Ruesga, Student Author, *The Great Wall of Phoenix?: Urban Growth Boundaries and Arizona’s Affordable Housing Market*, 32 Ariz. St. L.J. 1063 (2000) (describing the concept of urban growth boundaries).

⁶ See generally Bernard H. Siegan, *Smart Growth and Other Infirmities of Land Use Controls*, 38 San Diego L. Rev. 693 (2001) (describing the Houston, Texas lack of any zoning regulations).

⁷ See James E. Holloway & Donald C. Guy, *Smart Growth and Limits on Governmental Powers: Effecting Nature, Markets and the Quality of Life Under the Takings and Other Provisions*, 9 Dick. J. Env. L. Pol. 421, 423 (2001) (defining smart growth and citing William A. Johnson, Jr., Speech, *Smart Growth and Regional Cooperation: A Tale of a City and County*, *State & Local Law News* (Kansas City, MO., Oct. 16, 1999) (This piece is a speech that was given by The Honorable William A. Johnson Jr., Mayor of Rochester, New York, at the “Smart Growth and Regional Cooperation” panel at the American Bar Association’s Section on State and Government Law Meeting)).

⁸ See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (The Supreme Court upheld the zoning ordinance of the Village of Euclid, Ohio holding that the ordinance was not clearly arbitrary and unreasonable. The term Euclidean zoning has come to describe the basic zoning scheme employed by Euclid and later by many American municipalities.)

sprawl-enhancing subsidies, urban growth boundaries, transferable development rights, and many other initiatives”⁹

This paper examines a new concept called Town & Country that incorporates many smart growth principles and purports to create a balance between development needs and sustainable growth.¹⁰ It has been touted as both pro-growth and pro-preservation.¹¹ However, there have been some criticisms from both land developers and rural property owners in the southeastern part of the county.¹² This paper analyzes the Town & Country plan in light of the above issues and draws conclusions on potential successes and pitfalls.

⁹ Dowling, *supra* n. 2, at 874-875.

¹⁰ See Richland County, SC, *Town & Country*, <http://www.richlandonline.com/information/vision/contents.html> (accessed April 22, 2005) (displaying the table of contents page for the entire Town & Country plan) [hereinafter *Town & Country*].

¹¹ *Id.* at <http://www.richlandonline.com/information/vision/choices4growth.html>

¹² See Shelley Hill, *Town and Country Hearing Draws 200*, The State Newspaper (February 11, 2004) (available at 2004 WL 69235800) (noting that Lower Richland residents fear not being able to sell or develop their land and that home builders foresee increased cost of building once the plan is fully implemented). In 2002, the Town & Country plan was challenged at the South Carolina Supreme Court by a landowner for not following proper procedure under 6-29-520(B) of the South Carolina Code and for violation of the State’s Due Process Clause but the Court disagreed with both arguments stating that, since it was just a plan and no zoning had yet been adopted, no rights had been violated. *McClanahan v. Richland County Council*, 350 S.C. 433. Thus, the Court ruled in favor of the plan. *Id.*

Background

Before addressing potential solutions, it is necessary to define urban sprawl, to identify its impacts, and to try and gain an understanding of likely causes.

Urban sprawl has been a difficult term to define. For sure, sprawl is “excessive spatial growth of cities” but the term certainly carries more weight than that definition.¹³ Perhaps because it is such a prevalent feature on the landscapes surrounding America’s urban centers and it encompasses such a broad array of issues, urban sprawl has taken on an I-know-it-when-I-see-it quality.¹⁴ One commentator defines urban sprawl in terms of its roots saying “urban sprawl is the demand of an increasingly affluent population to live in the spacious countryside, and yet enjoy the same level of services as would be available in a city.”¹⁵ Other definitions focus more on the apparent surface aspects of urban sprawl:

Sprawl refers to a particular type of suburban growth-it is development that expands in an unlimited and noncontiguous (leapfrog) way outward from the solidly built-up core of a metropolitan area. In terms of land-use type, sprawl can define both residential and nonresidential development. In sprawled areas, residential development comprises primarily single-family housing, including significant numbers of distant units scattered in outlying areas. Nonresidential development includes shopping centers, strip retail outlets along arterial roads,

¹³ See Jan K. Brueckner, *Urban Sprawl: Diagnosis and Remedies*, <http://www.igpa.uiuc.edu/publications/pdf/sprawl.pdf> (accessed Feb. 24, 2005) (writing for the University of Illinois Institute of Government and Public Affairs and offering one definition of urban sprawl).

¹⁴ *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

¹⁵ Benjamin Krass, Student Author, *Combating Urban Sprawl in Massachusetts: Reforming the Zoning Act Through Legal Challenges*, 30 B.C. Envtl. Aff. L. Rev. 605, 607 (2003).

industrial and office parks, and freestanding industrial and office buildings, as well as schools and other public buildings.¹⁶

This definition seems especially descriptive of the dysfunctional growth that is visible in the suburban areas surrounding American cities.¹⁷

However, it is important not to confuse sprawl with growth. Indeed, growth, from which sprawl is an output, is very much encouraged and is a key indicator of American prosperity.

Moreover, the problems associated with sprawl primarily stem from its dysfunctional and inefficient nature. These adverse effects of urban sprawl cover a myriad of topical areas such as those identified by expert Robert Freilich:

(1) “deterioration of existing built-up areas (cities and first-and second-ring suburbs);” (2) “environmental degradation—loss of wetlands and sensitive lands, poor air and water quality;” (3) “over-consumption of gasoline energy;” (4) “fiscal insolvency, transportation congestion, infrastructure deficiencies, and taxpayer revolts;” (5) “agricultural land conversion; and” (6) “unaffordable housing.”¹⁸

¹⁶ Julian C. Juergensmeyer, *Symposium on Urban Sprawl: Local and Comparative Perspectives on Managing Atlanta’s Growth: Forward: An Introduction to Urban Sprawl*, 17 Ga. St. U. L. Rev. 923, 925 (2001) (citing Robert W. Burchell, *State of the Cities and Sprawl* 3 (Mar. 9, 2000) (unpublished manuscript presented at the Rocky Mountain Land Use Institute’s Ninth Annual Land Use Conference, “The Cost and Benefits of Sprawl”).

¹⁷ See Chad Lamer, *Why Government Policies Encourage Urban Sprawl and the Alternatives Offered by New Urbanism*, 13 Kan. J.L. & Pub. Pol’y 391, 396-397 (2004) (identifying five different components of sprawl found in North American cities).

¹⁸ Krass, *supra* n. 15, at 610-611 (citing Robert H. Freilich, *From Sprawl to Smart Growth: Successful Legal, Planning and Environmental Systems* 2 (1999)).

The deterioration of existing cities and suburbs as identified in (1) above is largely representative of the void left behind during the outward migration towards the suburbs associated with sprawl. This migration results as residents seek better schools, more freedom, and less dense development. The environmental degradation identified in (2) above results largely from the vast amount of open space that is taken up as sprawl expands outward. Mature forest land and its respective ecosystems are reduced such that they are no longer contiguous.¹⁹ When such forests are fragmented, opportunistic species often displace native species.²⁰ Additionally, watersheds are encroached which places increased pressure on regional hydrology. What is more, as further land is covered with impervious development, rainfall no longer infiltrates to re-supply the baseflow and instead flows overland leading to more flooding, bank erosion, and sediment deposition in streams.²¹ This urban expansion similarly parallels the loss of agricultural land identified in (5). During the 1990's, one study showed that America lost an estimated one million acres of farm land each year.²²

The over consumption of gasoline identified in (3) above results largely from the increased distances commuters must traverse as they travel from their homes to places of worship, employment, schooling, shopping, and entertainment. This issue touches on quality of

¹⁹ *Town & Country*, *supra* n. 10, at http://www.richlandonline.com/information/mission/defin_growth.html.

²⁰ *Id.*

²¹ *Id.*

²² Dowling, *supra* n. 2, at 875 (citing Sen. Comm. On Env't and Public Works, *Open Space and Environmental Quality*, 106th Cong. 155 (1999) (statement of Ralph Grossi, President American Farmland Trust, noting a 1997 American Farmland Trust study)).

life as commuters spend more money on fuel and spend more time in automobiles.²³ Over consumption of fuel also adversely impacts the environment as smog cover is increased at greater rates.

While the negative impacts of sprawl on the environment have received much of the attention from publications, it is the issues identified in (4) above, namely economic and infrastructure matters, that represent the greatest impetus for change. People readily see and are daily affected by increasing traffic congestion and ever increasing taxes.²⁴ Their children often attend school in trailers because facility funding cannot keep pace with development.²⁵ This problem results from what is the ultimate paradox with urban sprawl: residents want to live in a rural setting yet still enjoy the amenities of city life. Thus, infrastructure demands are pulled further outward from cities to serve a much less dense population. One study found that “ ‘the amount of land that is developed to meet that demand increases by five to ten times the rate of population growth.’ This means ‘the surface area covered by development in metropolitan areas increases by about 70% to 100% in order to accommodate a 10% increase in population.’ ”²⁶

²³ *Vermont Forum on Sprawl, Environmental Impact: How Sprawl Impacts Our Quality of Life*, http://www.vtsprawl.org/Learnabout/sprawl/effects_impacts.htm (accessed Feb. 24, 2005).

²⁴ See J. Celeste Sakowicz, Student Author, *Urban Sprawl: Florida's and Maryland's Approaches*, 19 J. Land Use & Envtl. Law 377, 386 (2004) (identifying negative impacts of sprawl).

²⁵ *Id.* at 378.

²⁶ Janet Kealy, Student Author, *The Hudson River Valley: A Natural Resource Threatened by Sprawl*, 7 Alb. L. Envtl. Outlook 154, 166 (2002) (citing John R. Nolon, *Well Grounded: Using Local Land Use Authority to Achieve Smart Growth*, at 2 (Envtl. L. Inst. 2001)).

The unaffordable housing problem identified in (6) relates to an overall exclusionary nature rooted in the fabric of urban sprawl. A general lack of adequate public transportation to the newly sprawled suburbs creates an impediment to people of lower income as do limitations on multifamily housing. Additionally “studies have shown that housing discrimination is more than twice as likely to occur outside of the city.”²⁷

The purported causes of urban sprawl are many and varied and, indeed, there is no shortage of debate on the subject.²⁸ However, most of the different ideas can be placed into one of two distinct elements, a dependant variable and an independent variable, of the urban sprawl equation. One might call these two elements respectively: The American Dream and Governmental Regulation. The American Dream element, which is the dependent variable, represents a broad array of concepts largely centering on freedom. Americans like the freedom to have larger houses on larger lots for less money with lower taxes.²⁹ Companies pursue less expensive developable tracts of land where taxes are lower and there is more skilled labor.³⁰ Indeed, the American love affair with the automobile is the very embodiment of this element as it exemplifies freedom and autonomy to travel where one pleases.³¹ Furthermore, Americans

²⁷ Juergensmeyer, *supra* n. 16, at 926.

²⁸ See Sakowicz, *supra* n. 24, at 383-386 (offering a rather detailed history and background on the cause of American sprawl).

²⁹ *Id.* at 383.

³⁰ *Id.*

³¹ *Id.*

have a general dislike of density and a love of open spaces.³² This ideal can be traced as far back as the first settlements of the American Colonies and the settling of the West. The paradox is, as noted above, that Americans now also want to add the benefits of urban life to the rural freedoms.

The Governmental Regulation element, which is the independent variable of the urban sprawl equation, relates directly to governmental action (or inaction). Such action can take place at the national, state, or local level. It is at the national and state levels that subsidies for growth are often distributed.³³ However, state and local governments will most often be the channel through which the regulations flow because of the general police power states possess and confer on local governments.³⁴ This power is exercised to varying extents in many different ways in efforts to promote, channel, or corral growth. The heart of the debate over the causes of and solutions to urban sprawl often centers on the Governmental Regulation element. That is, whether there is too much funding, not enough funding, or misdirected funding; or whether there is too much regulation, not enough regulation, or the wrong type of regulation.

The funding aspect often concerns dispersals for infrastructure such as roads, highways, utilities, education, and other social services. Some critics argue that it is these government

³² *Id.* (citing *Gus Bauman, Smart Growth - Development, Environment, and Land Use*, 2 ALI-ABA Course of Study Materials SF08, 598 (2000)).

³³ *See generally* Jason C. Rylander, *The Emerging Federal Role in Growth Management*, 15 J. Land Use & Envtl. Law 277 (2000) (discussing the function of the federal government in the area of sprawl).

³⁴ *See* Lamer, *supra* n. 17, at 392 (explaining the police power of the states).

subsidies that promote automobile dependence.³⁵ “American government, at virtually every level, has contributed heavily to sprawling development by creating highways and increasing the convenience of driving to the point that there is little incentive to live in the urban core.”³⁶ Lack of viable public transportation further exacerbates these problems.³⁷ Thus, these government decisions have acted as a conduit for expanding sprawl.

The regulation aspect ultimately deals with what has been the traditional way of controlling growth, namely zoning. In the United States, most municipalities handle decisions concerning land use through some type of zoning.³⁸ States have general police powers and they often confer this power in limited ways on local municipalities.³⁹ In turn, these local governments often enact zoning ordinances to control and channel growth.⁴⁰ Euclidean zoning is

³⁵ Thomas Benton Bare III, *Recharacterizing the Debate: A Critique of Environmental Democracy and an Alternative Approach to the Urban Sprawl Dilemma*, 21 Va. Env'tl. L.J. 455, 459 (2003).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Lamer, *supra* n. 17, at 392

³⁹ *See e.g.* S.C. Code Ann. § 4-9-25 (2004) (conferring “authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State” on South Carolina county governments); *see also* Lamer, *supra* n. 17, at 392 (explaining the police power of the states).

⁴⁰ *See e.g.* Richland County, SC, Ordin. 074-04HR (effective July 1, 2005), <http://www.richlandonline.com/information/town/LandDevelopmentCode110904.pdf> (accessed April. 22, 2005).

the model most governments adopted over the years such that allowable land uses follow a hierarchical structure and are designated in specific districts.⁴¹ The residential district is the most restrictive followed by the commercial district and then the industrial district.⁴² However, “[t]oday most cities do not have tru[e] cumulative zoning . . . in that they only allow for specifically permitted types of land-use within a given zone.”⁴³ One criticism of zoning as a cause of sprawl (which relates to the Government Regulation element) is that it is not flexible enough to properly channel growth (which relates to the American Dream element).⁴⁴ This is to say that growth is forced via zoning into one of the defined zones which are completely separate from one another. Thus, the very foundation of sprawl is apparent as people are zoned into working in one area of town, living in another, and shopping in still another.

Potential Solutions

As time has progressed since Euclidean zoning was first introduced in the 1920’s, it has only recently become widely apparent that such zoning practices have deficiencies when it comes to controlling urban sprawl.⁴⁵ As a result, commentators, think-tanks, and activist groups

⁴¹ Lamer, *supra* n. 17, at 392, 395.

⁴² *Id.* at 395; *see generally* Grant S. Nelson, William B. Stoebuck & Dale A. Whitman, *Contemporary Property* 1161-94 (2d ed., West 2002) (offering detailed history of Euclidean zoning and the police power).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Holloway, *supra* n. 7, at 449.

have churned out a plethora of new ideas for dealing with sprawl, and even some limited state and local governments have begun to experiment with new concepts for controlling sprawl. Most of the action at the state level has taken one of three forms: statewide zoning,⁴⁶ statewide growth management systems,⁴⁷ or lack of any statewide policy.⁴⁸ The statewide growth management systems typically require local governments to pass ordinances in line with statewide principles and then have the ordinances approved at the state level.

At the local level, ordinances are either independently derived to combat sprawl or are in conjunction with a statewide growth management system. Increasingly, governments are turning away from traditional zoning and towards a set of principles embodied in the term “smart growth.”⁴⁹ Smart growth is a term that is more descriptive of an anticipated end result than of any particular means. The goal of smart growth is to slow or even to stop the rate of sprawl while the means of achieving that end vary significantly depending on the place of application.

⁴⁶ Madalyn Purcell, *Residential Use of Hawaii's Conservation District*, 14 Hawaii L. Rev. 633, 635 (1992).

⁴⁷ Daniel R. Mandelker, *Managing Space to Manage Growth*, 23 Wm. & Mary Envtl. L. & Pol'y Rev. 801, 811-12 (1999).

⁴⁸ See generally Bolen, *supra* n. 4, (It is evident from this nationwide, state by state survey that some states have produced moderate statewide growth management systems while very few have attempted statewide zoning.).

⁴⁹ Holloway, *supra* n. 7, at 423

One of the first applications of smart growth was in an Oregon growth management system as exemplified by ordinances in the city of Portland.⁵⁰ This is a system that regulates growth and sprawl through land use ordinances. “The Oregon planning structure relies on the use of comprehensive plans drawn up by cities and towns”⁵¹ These plans rely on seven factors identified by the state such that enough growth is designated within an urban growth boundary to provide land for twenty years of growth.⁵² Portland applied this urban growth boundary concept which is essentially a line drawn around the city beyond which dense urban growth cannot proceed. The effects have been dramatic leading some commentators to hail it as a success for the smart growth movement⁵³ while others have criticized it as a gross limitation on the free market that “requires exclusion of people from places where they want to live.”⁵⁴ With a few exceptions, urban growth in Portland has been limited to areas within the boundary, thus

⁵⁰ Terry J. Tondro, *Sprawl and Its Enemies: An Introductory Discussion of Two Cities' Efforts to Control Sprawl: Ninth Gallivan Conference on Real Property Law April 24, 2001*, 34 Conn. L. Rev. 511, 534 (2002).

⁵¹ Krass, *supra* n. 15, at 628.

⁵² Mandelker, *supra* n. 47, at 812.

⁵³ Tondro, *supra* n. 50, at 534-35.

⁵⁴ Siegan, *supra* n. 6, at 698. Here, Prof. Siegan argues that urban growth boundaries violate “a freedom most cherished in this nation: the right to migrate and settle in places of one’s own choosing.” *Id.* He argues that such programs violate the right to travel, the privileges and immunities clause, and the equal protection clauses, as well as the takings clause. *Id.*

preserving open space and farmland outside the boundary, but the growth has been of a lower density than anticipated at inception.⁵⁵

Another example of a smart growth system in practice is found in the state of Maryland.⁵⁶ The Maryland plan is radically different from the Oregon plan in that it relies not on land use regulation but on control of government subsidies that encourage sprawl.⁵⁷ The Maryland statute does not identify requirements for local governments but instead focuses funding on infrastructure for sustainable communities.⁵⁸ “Development is not prohibited outside [of existing communities], but by limiting state financial assistance outside of these areas, the statute creates a strong incentive for localities to guide growth to existing communities.”⁵⁹ The channeling of state funds affects areas from highway construction to funding for renovation of existing schools.⁶⁰

Another interesting smart growth program out of the state of Maryland is “The Live Near Your Work Program.”⁶¹ It “provides incentives for employees to buy homes within biking or

⁵⁵ Mandelker, *supra* n. 47, at 814.

⁵⁶ See generally Parris N. Glendening, *Smart Growth: Maryland's Innovative Answer to Sprawl*, 10 B.U. Pub. Int. L.J. 416 (This is an article by the Governor of Maryland describing Maryland’s smart growth plan.).

⁵⁷ Oliver A. Pollard, III, *Smart Growth: The Promise, Politics, and Potential Pitfalls of Emerging Growth Management Strategies*, 19 Va. Env'tl. L.J. 247 at 256-57.

⁵⁸ *Id.* at 257 (citing Md. Ann. Code State Fin. & Proc. 5-7B-10 (Supp. 1999)).

⁵⁹ *Id.*

⁶⁰ Glendening, *supra* n. 56, at 423.

⁶¹ *Id.* at 424.

walking distance of their place of employment.”⁶² This program represents a codification of another smart growth principle that can be found in current literature that has come to be known as “New Urbanism.”⁶³ The goal of new urbanism is to change the way communities are built so that they have centers of activities, shopping, education, and residences all within a close radius.⁶⁴ New urbanism fosters ideas that are pedestrian friendly like narrow streets and public transportation.⁶⁵ Of course, for new urbanism to take hold, zoning laws must be changed to allow more flexibility for mixed use development.⁶⁶

Critics of zoning and smart growth concepts such as urban boundaries, growth subsidy control, and new urbanism have generally coalesced around a free market approach where there is a complete absence of any government regulation such that new growth simply takes on the forms that the market will bear.⁶⁷ The American Dream element is allowed to progress checked only by market forces. The only major city in America that has consistently held such a position over the years has been Houston located in Harris County, Texas.⁶⁸ The argument is that land use planning is not fundamentally different from the economic central planning employed in

⁶² *Id.*

⁶³ *See* Lamer, *supra* n. 17, at 401 (defining new urbanism and identifying its inception in 1993 by The Congress for The New Urbanism).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 402.

⁶⁷ Siegan, *supra* n. 6, at 694.

⁶⁸ *Id.*

communist countries which have proved to be a failure.⁶⁹ On the other hand, the market based approach relies on price signals to keep individuals informed in making decisions on a decentralized basis.⁷⁰

A criticism of the market approach relating to environmental protection can be reflected in current regulations that would prevent the development of wetlands. Under a pure market approach, because of the complexity in understanding the global values in protecting wetlands, the value of the wetland would not be adequately reflected in the price signal. However, a market advocate would counter that a possible solution to this dilemma is allowing entities to “enter the market place with resources and seek to purchase the necessary rights to preserve the critical wetland.”⁷¹ Thus, the decision would stay in the market place and the price signal would accurately reflect the demand for the wetland.⁷²

One tool for dealing with sprawl that has recently been proffered is known as concurrency.⁷³ “The fundamental weakness of [traditional] controls is that they do not address

⁶⁹ Andrew P. Morriss & Roger E. Meiners, *The Destructive Role of Land Use Planning*, 14 Tul. Envtl. L.J. 95, 96-97 (2000).

⁷⁰ *Id.* at 113.

⁷¹ *Id.*

⁷² *Id.*

⁷³ S. Mark White & Elisa L. Paster, *Creating Effective Land Use Regulations through Concurrency*, 43 Nat. Resources J. 753, 753 (2003).

the timing of new development or the timing of development in relation to location.”⁷⁴

Concurrency regulations are designed to ensure that adequate infrastructure comports with new development by way of timing, not by location.⁷⁵ Some smart growth advocates criticize concurrency by arguing that it encourages low-density development patterns.⁷⁶ However, concurrency advocates counter that the plan merely paces development at sensible levels and can be tailored to fit the needs of particular communities to promote efficiency. Thus, concurrency can be used in conjunction with others tools such as new urbanism to achieve goals of smart growth.⁷⁷

The Town & Country Solution

Town & Country represents a novel solution to the problem of urban sprawl in Richland County, South Carolina.⁷⁸ The sprawl in South Carolina is representative of the sprawl situation currently affecting metropolitan centers and their outlying areas nationwide. In South Carolina, seventy percent of the population lives in the state’s eight metropolitan areas but just thirty

⁷⁴ Joel P. Dennison, Student Author, *New Tricks for an Old Dog: The Changing Role of the Comprehensive Plan Under Pennsylvania’s “Growing Smarter” Land Use Reforms*, 105 Dick. L. Rev. 385, 392 (2001).

⁷⁵ White, *supra* n. 73, at 754.

⁷⁶ *Id.* at 756.

⁷⁷ *Id.* at 773.

⁷⁸ *Town & Country*, *supra* n. 10.

percent actually live inside cities.⁷⁹ South Carolina is the tenth fastest growing state in the country⁸⁰ and a study has shown that by the year 2010 the state population will be 4.3 million which represents an almost twenty-eight percent increase in population since the year 2000.⁸¹

South Carolina's capital city, Columbia, is located in Richland County and is the core urban area of the county. Outside of the city, Richland County has traditionally been rural in character with a few outlying small towns. It has in recent years experienced accelerated growth in the I-26 corridor towards the town of Irmo and in the northeast area of the county. Richland County is also home to the large US Army installation, Fort Jackson⁸², as well as to Congaree National Park.⁸³ Studies have shown that if present growth trends were allowed to continue

⁷⁹ Cindi Ross Scoppe, *Bills Could Begin Long-Overdue Conversation on Need for Strong Cities* ¶ 6, <http://www.thestate.com/mld/state/news/opinion/10958985.htm> (accessed Feb. 26, 2005).

⁸⁰ *Local and Regional Infrastructure Planning in South Carolina: A Pocket Guide for Local Officials* 1, (Center for Environmental Policy, USC Institute of Public Affairs, and Lowcountry Council of Governments 1999) (copies available from Center for Environmental Policy USC Institute of Public Affairs (803) 777-4568).

⁸¹ L. Douglas Dobson, Robert W. Oldendick & Claire H. Prince, *Growth in South Carolina: A Public Perspective* 5, (unpublished report, University of South Carolina Institute of Public Affairs).

⁸² See generally US Army, *Fort Jackson, SC*, <http://www.jackson.army.mil/> (accessed Feb. 26, 2005) (providing information about the installation).

⁸³ See generally National Park Service, *Congaree National Park*, <http://www.nps.gov/cosw/> (accessed Feb. 26, 2005) (providing information about the Park).

unabated, urban growth would continue until almost all of Richland County is classified as urban.⁸⁴

An additional issue facing any municipality seeking to attack sprawl in South Carolina is that of a history of strong support for private property rights in the state.⁸⁵ Indeed, one of the founding fathers, the South Carolinian John Rutledge, said during the Federal Convention of 1787 with respect to private property rights that “property was certainly the principal object of society.”⁸⁶ In 1894, South Carolina was one of the first states to recognize that property owners could be entitled to due compensation for deprivation of property rights by the passage of restrictive laws.⁸⁷ As a result of such a history, much of rural South Carolina remains unzoned to this day. More recently, citizens have pushed for increased home rule so that regulation is less centralized at the state level and more accountable at the local level.⁸⁸ However, the extent of

⁸⁴ *Town & Country*, *supra* n. 10, at <http://www.richlandonline.com/information/vision/choices4growth.html>.

⁸⁵ Nancy Bloodgood, *History of Private Property Rights in S.C.*, Carolina Morning News On The Web (Nov. 18, 2001) (available at <http://www.lowcountrynow.com/stories/111801/LOCvoices.shtml>).

⁸⁶ *The Records of the Federal Convention of 1787 Revised Edition* vol. 1, 534 (Max Farrand, ed.)

⁸⁷ Bloodgood, *supra* n. 85 (noting the due compensation case before the South Carolina Supreme Court, *McCullough v. Brown*, 41 S.C. 220 (1894)).

⁸⁸ Blease Graham, *All Grown Up: South Carolina Cities Want the Keys to the Car*, Uptown: Legislative Priorities For Municipalities 3 (Municipal Association of S.C. January 2004) (available at http://www.masc.sc/Resources/Uptown_jan2004.pdf). Prior to home rule, SC followed Dillon’s Rule such that local governments were held to be tightly dependant on the

home rule that has thus far been obtained is rather weak and incomplete.⁸⁹ Therefore, a tradition of strong individual property rights combined with a moderately weak grant from the state can act as a hindrance to any proposed regulation from the outset.

The state of South Carolina first began action to curb sprawl with the passage in 1994 of the Local Government Comprehensive Planning Enabling Act.⁹⁰ “The act required counties and municipalities that plan and zone to develop a comprehensive plan conforming to the 1994 act by December 31, 1999.”⁹¹ A deficiency in the plan is that it still leaves the decision as to whether or not to plan for growth to the local governments, but those municipalities that do zone or plan, must set uniform standards via a comprehensive plan.⁹² A comprehensive plan “is an official document adopted by the local government and serves to guide decisions regarding land development.”⁹³ Adoption of a comprehensive plan is only a first step which is followed through with the second step of implementation.⁹⁴ Tools for implementation can “include the zoning

state for permission to exercise judgment independently. *Id.* In 1975 home rule was granted in SC and a sharp deviation from Dillon’s Rule began. *Id.* However, today many local governments still feel constrained by having spending and revenue issues tied to the state. *Id.*

⁸⁹ *Id.*

⁹⁰ S.C. Code Ann. § 6-29-310 et seq. (2004).

⁹¹ Dobson, *supra* n. 81, at 4.

⁹² *Id.*

⁹³ Philip Slayter & Charlie Tyer, *Planning Our Communities Series: Local Officials Guide to Zoning 2* (2d ed., U. of S. C. Center for Governance 2000).

⁹⁴ *Id.* at 3.

ordinance and map, development regulations . . . an official map, the capital budget and capital improvements programs.”⁹⁵

It was in response to this mandate by the South Carolina General Assembly and to the growing threat of urban sprawl that Richland County Council began its comprehensive plan.⁹⁶ County officials originally flirted with the idea of an urban growth boundary, like the one in Portland, Oregon,⁹⁷ but soon decided that they wanted to go in a different direction.⁹⁸ They felt that the urban growth boundary while preserving open spaces in the county would be too artificial in delineating urban from rural.⁹⁹

Thus, the County hired consultant Jim Stansbury of Florida to help develop a comprehensive plan.¹⁰⁰ To begin the planning process, workshops and forums were held throughout the county “with diverse stakeholders representing business, residential, rural, urban, suburban, conservation, transportation, safety, appearance and other interests.”¹⁰¹ The planning

⁹⁵ Philip Slayter & Charlie Tyer, *Planning Our Communities Series: Local Officials Guide to Comprehensive Planning 4* (U. of S. C. Center for Governance 2000).

⁹⁶ Amanda Mays, ‘*Town and Country*’ Plan Unveiled for Richland, *The State A1* (February 14, 1999).

⁹⁷ Tondro, *supra* n. 50 at 534.

⁹⁸ Mays, *supra* n. 96.

⁹⁹ *Town & Country*, *supra* n. 10, at <http://www.richlandonline.com/information/vision/choices4growth.html>.

¹⁰⁰ Mays, *supra* n. 96.

¹⁰¹ *Town & Country*, *supra* n. 10, at <http://www.richlandonline.com/information/vision/stakeholder.html>.

process took nearly a year¹⁰² and in the end, the team recommended a model called Town & Country.¹⁰³

The model proposes a balance of future land development and open space preservation. It is both pro-growth and pro-preservation. With coordinated planning, the projected residential and employment growth can be accommodated while at the same time preserving farmland and open space. This approach offers a variety of lifestyle options: urban center mixed-use neighborhoods, urban villages, suburban villages and neighborhoods and freestanding hamlets and villages in rural landscapes.¹⁰⁴

Thus, the basic model for the county consisted of a strong urban core in the city of Columbia along with nodes of urban and suburban development at strategically located sites in the rural parts of the county. By restricting growth to the urban core and nodes, corridors of contiguous open space are maintained without halting all development.

Additionally, the model was based on three key factors:

- (1) “the natural environment as defined by mature forest tracts, stream corridors, watershed divides and existing hydrology”;
- (2) “the transportation system, supporting facilities that encourage desirable distribution of new development”;
- and
- (3) “the neighborhood as the basic building block, and the village as the focus for new growth.”¹⁰⁵

With respect to the environmental basis identified in (1) above, naturally occurring environmental features are used to delineate areas suitable for development from those marked

¹⁰² Mays, *supra* n. 96.

¹⁰³ *Town & Country*, *supra* n. 10, at <http://www.richlandonline.com/information/vision/choices4growth.html>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at http://www.richlandonline.com/information/vision/defin_growth.html.

for preservation.¹⁰⁶ Four river systems surround Richland County including the Broad, Congaree, Saluda, and Wateree Rivers. “The streams and the associated riparian forests can be the basis for a contiguous countywide greenway system.”¹⁰⁷ The watershed divides, that is, the high ridges between watersheds, offer potential for development of infrastructure linking together the nodes of urban towns with less adverse impact on the environment. Further, the plan recommends that “large tracts of mature forests should be identified for preservation to retain what is left of the original native” ecosystems.¹⁰⁸

With respect to the transportation basis identified in (2) above, the Town & Country plan utilizes numerous small, two-lane roads as opposed to a few large thoroughfares in order to create a grid system of alternate routes of travel.¹⁰⁹ Thus, under the Town & Country model, travel “is largely characterized by natural green space with intermittent villages instead of a constant bombardment of commercialism and asphalt.”¹¹⁰

The neighborhood concept identified in (3) above is purely a new urbanist approach. “The recommended neighborhood building block is well defined by a physical edge, with an identifiable center that is animated by a lively mix of activities and a well-defined public environment. The neighborhood is walkable because it is limited in size”¹¹¹ Additionally,

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at http://www.richlandonline.com/information/vision/transportation_basis.html.

¹¹⁰ *Id.*

¹¹¹ *Id.* at http://www.richlandonline.com/information/vision/neighborhood_concept.html.

in areas of existing urban development, infill and redevelopment is noted as a key to establishing a solid urban core.¹¹²

In summation, the detailed Town & Country concept attempts to reign in urban sprawl and to protect natural resources and open spaces by concentrating urban growth to the existing city core and to specifically demarcated village nodes. The plans seeks to accomplish this through the use of mixed-use development of tight neighborhood building blocks, targeted infrastructure development that emphasizes transportation grid patterns, and limitations on new urban development outside of existing urban areas that constrain development to sustainable communities within defined borders.¹¹³

The Town & Country plan was first released in February 1999 and was unanimously adopted by Richland County Council on May 4, 1999.¹¹⁴ In December 2003, the planning commission forwarded a set recommended land use rules to the council which began discussing them in January 2004.¹¹⁵ These rules were to be the first step towards implementing the Town

¹¹² *Id.* at http://www.richlandonline.com/information/vision/growth_strategies.html.

¹¹³ *See generally Id.* at <http://www.richlandonline.com/information/vision/contents.html> (displaying the table of contents page for the entire plan).

¹¹⁴ *What's Happened?*, The State Newspaper (Jan. 15, 2004) (available at 2004 WL 56220081).

¹¹⁵ *Id.* The long delay between adoption of the comprehensive plan and consideration of rules was due in large part to initial opposition of the plan including a law suit which eventually was appealed to the South Carolina Supreme Court. *McClanahan, supra* n. 12. Interim land use rules that were intended to implement the plan's goals were adopted in September 1999 but were failed to be extended in September 2001. *What's Happened?*, *supra* n. 114.

and Country plan.¹¹⁶ On November 9, 2004, the Richland County Council adopted a revised set of rules that are to become effective this summer on July 1, 2005.¹¹⁷

Analysis

In the end, the Town & Country comprehensive plan is a novel approach that is indeed a hybrid model because it includes many varied smart growth concepts. It was arrived at only after a detailed planning process that included many potential stakeholders.¹¹⁸ Richland County should be given high marks for including the stakeholders because such a plan more accurately reflects the desires and needs of the varying consistencies.

With respect to the urban sprawl equation derived above, the Town & Country plan clearly takes on government regulation and land use planning as a means of channeling the growth towards sustainable communities. The differentiating factor is the combinations in which those regulations are applied. Accordingly, to the extent that traditional zoning is seen as a cause of sprawl, the plan radically changes the old cycles by clearly defining criteria for new urban growth. Plainly defined boundaries demarcate urban and suburban from rural land uses.

¹¹⁶ Richland County, SC, *Land Development Code*, <http://www.richlandonline.com/information/town.asp> (accessed April 22, 2005).

¹¹⁷ Richland County, SC, Ordin. 074-04HR, *supra* n. 40 at 334. It is yet to be seen how this new land development code will succeed in implementing the Town & Country plan but it has thus far been received warmly by the public. Hill, *supra* n. 12.

¹¹⁸ *Town & Country*, *supra* n. 10 at <http://www.richlandonline.com/information/vision/stakeholder.html>; Mays, *Supra* n. 87 (noting that over 2000 residents provided input).

However, unlike the stark arbitrary boundaries found in the Portland, Oregon plan¹¹⁹, the Town & Country plan includes urban growth not only in the core city, but also in existing villages in the countryside and in new nodes of development that can be shown to be sustainable.¹²⁰ The simplicity in the Portland plan, that growth is limited by a single boundary, is lost in the Town & Country plan but what is gained may perhaps be more important, namely more freedoms and choices as to where and how to live. On the surface, this part of the plan appears to be a refinement of the Portland plan such that urban growth is corralled but in a more flexible way. The real challenges present in the boundaries portion of the Town & Country plan will be implementation to insure that boundaries are indeed demarcated as called for in the plan and that new nodes or villages of development are indeed sustainable.

Perhaps the strongest elements in the plan are those sections which call for new urbanist ideas like multi-use districting,¹²¹ neighborhood concept development,¹²² contiguous green space linkages,¹²³ and traffic grid infrastructure development.¹²⁴ These ideas are in accordance with

¹¹⁹ See Tondro, *supra* n. 50 at 534 (explaining the Oregon plan).

¹²⁰ *Town & Country*, *supra* n. 10, at http://www.richlandonline.com/information/vision/growth_strategies.html.

¹²¹ See *id.* (calling for multi-use districting).

¹²² See *id.* at http://www.richlandonline.com/information/vision/neighborhood_concept.html (calling for a neighborhood concept development).

¹²³ See *id.* at http://www.richlandonline.com/information/vision/defin_growth.html (calling for contiguous green space linkages).

¹²⁴ See *id.* at <http://www.richlandonline.com/information/vision/transportation.html> (calling for development of a traffic grid as opposed to traditional arterial highways).

such programs as Maryland's "Live Near Your Work Program" and other new urbanism concepts that promote tight sustainable communities which reduce commuter mentalities.¹²⁵ Further, the Town & Country plan has specific elements dealing with roadway, mass transit, and pedestrian systems that are clearly in accordance with new urbanism.¹²⁶ However, like the boundaries above, the problem here will also be implementation. The county needs to take the initiative in following through and actually approving multi-use districts and implementing adequate transportation systems.

Maryland's smart growth infrastructure and subsidy allocation plan is really more appropriate as a statewide initiative to direct resources towards sustainable development but it does have some bearing at the county level.¹²⁷ In that respect, the Town & Country model does tangentially touch on these ideas with guidelines concerning transportation and park system infrastructure. However, to make the plan more in line with the particular smart growth

¹²⁵ See Glendening, *supra* n. 56, at 424 (describing the Live Near Your Work Program).

¹²⁶ See *Town & Country*, *supra* n. 10, at <http://www.richlandonline.com/information/vision/transportation.html> (describing plan for alternative travel means). The plan's emphasis on transportation infrastructure is in accordance with that of the Urban Land Institute which has called transportation infrastructure a "critical factor" in promoting higher quality growth on the urban fringe. *Smart Growth on the Fringe: Report of the ULI/Joseph C. Canizaro Public Officials' Forum* 9 (Victoria R. Wilbur ed. 2003) (available at <http://www.uli.org/AM/Template.cfm?Section=Research&CONTENTID=11035&TEMPLATE=/CM/ContentDisplay.cfm>).

¹²⁷ See Glendening, *supra* n. 56, at 418 (describing the Maryland plan).

principles that have proven effective in Maryland, more emphasis could certainly be placed on other infrastructure funding aspects like water, sewer, and education.

One possible adaptation to the infrastructure allocation issue could be to interpolate more concurrency and timing related elements to any infrastructure plan.¹²⁸ Such elements could be attached to sustainability guidelines for infrastructure thus making the infrastructure growth more efficient and taxpayer friendly.

As the Town & Country plan implements government land use regulations and smart growth principles, it goes in the opposite direction from the pure free market land system of Houston, Texas.¹²⁹ As such, it will likely draw criticism from traditional foes of smart growth. However, it should be noted that the Town & Country approach is significantly more pro-growth than many other plans by way of its flexible nature in adapting to new sustainable growth developments thus allowing residents more choices.

Most of the six adverse impacts of urban sprawl as identified by expert Robert Freilich and reported above do receive treatment under the Town & Country plan.¹³⁰ With respect to deterioration of pre-existing urban development, the plan makes a strong case for infill and even provides specific examples for the redevelopment of certain underutilized existing urban

¹²⁸ See White, *supra* n. 73, at 753 (describing the importance of the concurrency system).

¹²⁹ See Siegan, *supra* n. 6, at 694 (explaining Houston's lack of zoning and the benefits of the free market system).

¹³⁰ See Krass, *supra* n. 15, at 610-611 (describing six adverse impacts of urban sprawl and citing Robert H. Freilich, *From Sprawl to Smart Growth: Successful Legal, Planning and Environmental Systems* 2 (1999)).

corridors.¹³¹ Infill and revitalization projects will go a long way to turning the tide of urban core and suburban deterioration.

The problem of environmental degradation receives some of the strongest treatment under the Town & Country model.¹³² Preservation of wetland and riparian corridors is a priority as is preservation of open space through contiguous green space reserves. By clearly demarcating urban growth to the urban core and certain identified villages of development, growth in these sensitive areas will be controlled.

The over-consumption of fuel through automobile transportation is a problem that is not easily overcome especially since it evokes the very heart of the freedom to travel. However, the new urbanism elements of the plan certainly promote shorter commute times as well as alternative systems of transportation like walking and cycling.¹³³ These steps taken together, if properly implemented as described in the plan, can help reduce some of the problems related to over-consumption of fuel.

As noted above with the comparison to the Maryland plan, the Town & Country plan may be a little light when it comes to issues of infrastructure, especially non-transportation infrastructure. The net result of the plan should improve current infrastructure problems by channeling dense urban growth into sustainable areas and by working towards alternate

¹³¹ *Town & Country*, *supra* n. 10, at http://www.richlandonline.com/information/vision/burbs_demo.html.

¹³² *Id.* at http://www.richlandonline.com/information/vision/defin_growth.html.

¹³³ *Id.* at <http://www.richlandonline.com/information/vision/transportation.html>, <http://www.richlandonline.com/information/vision/pedestrian.html>, & <http://www.richlandonline.com/information/vision/bicycle.html>.

transportation systems and grid patterns. However, as noted above, there is still room for some more definite provisions.

With respect to agricultural land conversions, there are a couple of provisions in the Town & Country plan that may produce some results in curbing such conversions.¹³⁴ On one level, restrictions on urban growth certainly keep agricultural lands from becoming urbanized, but those restrictions do not in and of themselves protect the agricultural aspects of the land. One element of the plan recommends that “prime agricultural soils should be identified for preservation of their agricultural uses.”¹³⁵ However, that statement is the extent of protection specifically afforded agricultural lands. Richland County should consider adding provisions specific to agricultural lands like tax incentives or purchase of development rights on threatened lands.

The problem of lack of affordable housing that often accompanies urban sprawl is indirectly addressed in the Town & Country plan.¹³⁶ The hope is that through concepts of new urbanism like multi-use development districts and better utilization of public and personal transportation means, some housing will become more affordable as the distance between societal elements like places of work, worship, shopping, and entertainment becomes shorter. Thus, more avenues of potential lower cost housing will open as markets demand. In addition,

¹³⁴ See Elisa Paster, *Preservation of Agricultural Lands Through Land Use Planning Tools and Techniques*, 44 Nat. Resources J. 283, 283 (2004) (noting the importance of preserving agricultural resources).

¹³⁵ *Town & Country*, *supra* n. 10, at http://www.richlandonline.com/information/vision/environt_sensitive.html.

¹³⁶ *Id.* at http://www.richlandonline.com/information/vision/growth_strategies.html.

as sprawled development slows and urban development coalesces, multifamily housing will increase as well.

Finally, no analysis of smart growth and this Town & Country solution would be complete without at least addressing one potential Constitutional hurdle, namely regulatory takings.¹³⁷ Generally, whenever an individual is forced to bear the costs of policies enacted for the broader public good, the individual may challenge the regulations.¹³⁸ This challenge comes via the Takings Clause of the Fifth Amendment.¹³⁹ The Fifth Amendment provides that “private property [shall not] be taken for public use, without just compensation.”¹⁴⁰ Justice Black said that the Takings Clause “was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”¹⁴¹ In 1922, the Court first identified a regulatory taking when it “stated that ‘while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a

¹³⁷ See generally Timothy J. Dowling, *Reflections on Urban Sprawl, Smart Growth, and the Fifth Amendment*, 148 U. Pa. L. Rev. 873 (2000) (arguing that courts have rejected takings challenges to smart growth initiatives); *contra* Clint Bolick, *Subverting the American Dream: Government Dictated “Smart Growth” is Unwise and Unconstitutional*, 148 U. Pa. L. Rev. 859 (2000) (arguing that smart growth initiatives that involve regulation are not likely to pass constitutional muster).

¹³⁸ See Williams, *supra* n. 1, at 897.

¹³⁹ U.S. Const. amend.V.

¹⁴⁰ *Id.*

¹⁴¹ *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

taking.’”¹⁴² Since that time, and particularly since the 1970s, the Supreme Court has heard a number of cases and has developed a varied jurisprudence when it comes to regulatory takings claims.¹⁴³ “Ultimately, the cases leave us with a doctrine in which courts usually make their decisions on a case-by-case basis.”¹⁴⁴ Indeed, Justice Sevens has stated that “even the wisest lawyers would have to acknowledge great uncertainty about the scope of this Court’s takings jurisprudence.”¹⁴⁵

With respect to Town & Country and a potential takings issue, Richland County Council wisely included a wide array of stakeholders in the planning process which should tend to reduce the number of citizens inspired to bring a takings challenge. That is, because more residents’ needs were taken into account in the plan, fewer residents should feel a negative burden. However, the plan, though not yet even implemented through regulations, has seen some serious opposition from land owners.¹⁴⁶ It only takes one land owner to bring an “as-applied” challenge¹⁴⁷ and there will very likely be many land owners dissatisfied with increased

¹⁴² See Williams, *supra* n. 1, at 904 (citing Pa. Coal Co. v. Mahon, 260 U.S. 393, 415 (1922)).

¹⁴³ See generally *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992); *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825 (1987); *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978).

¹⁴⁴ See Williams, *supra* n. 1, at 905.

¹⁴⁵ *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 866 (1987) (Stevens, J., dissenting).

¹⁴⁶ Hill, *supra* n. 12.

¹⁴⁷ See Williams, *supra* n. 1, at 906 (citing Jerold S. Kayden, *The Constitution Neither Prohibits Nor Requires Smart Growth*, in *Smart Growth: Form and Consequences* 158, 172 (Terry S. Szold & Armando Caronell eds., 2002)).

regulations. Indeed, in 2002, one takings challenge to the comprehensive plan made it to the South Carolina Supreme Court which held that because it was just a plan and no zoning had yet been adopted, no Due Process rights had been violated.¹⁴⁸ The result of any challenge to future regulations under the plan is clearly uncertain given the current jurisprudence. The extent of potential new regulations probably weighs against the comprehensive plan in favor of a constitutional taking while the elements of flexibility and adaptability probably lend more credence to the opposite position against a constitutional taking.

Conclusion

In conclusion, the Town & Country Comprehensive Development Plan of Richland, South Carolina is an innovative approach to dealing with the important problem of urban sprawl. The plan combines many elements from leading models around the country that have proven successful and offers the new idea of sustainable development nodes or villages. Thus, with full implementation of the plan and enforcement by the county, residents should be afforded many different choices in addition to traditional urban life without many of the negative side effects

¹⁴⁸ *McClanahan*, *supra* n. 12; *see also* David J. Harmon, Student Author, *Problems and Opportunities for Progressive Comprehensive Land Use Planning in Richland County, South Carolina After McClanahan v. Richland County Council*, 54 S.C. L. Rev. 837, 858-59 (2003) (explaining the court ruling and the intensity with which the landowner pursued the case).

often associated sprawl. Such flexibility may be the key to the success of the Town & Country plan.¹⁴⁹

¹⁴⁹ See Bolen, *supra* n. 4, at 230 (concluding that, after surveying all smart growth programs of the 50 states, “the most effective . . . policies emphasize flexibility”).