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# The Attrition of Urban Real-Property Rights

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EDWIN S. MILLS

Local governments have become such dictators of urban land use that they make a mockery of the notion that the United States is characterized by private urban real-property markets. Courts have enabled the dictatorship by giving governments almost unlimited power not only to seize, but also to regulate private urban property under common-law “nuisance” dicta. Urban planners have encouraged government controls by their enthusiasm for comprehensive planning and their lack of understanding of how competitive markets function.

Urban land-use controls are most stringent on the two coasts (Glaeser, Gyourko, and Saks 2005), least stringent in the South, and mostly moderate in the Midwest. Chicago is the laboratory for this article because of my familiarity with the details of its controls. Schwieterman and Caspall (2006), planners who believe that more control is invariably preferable to less, are the authors of a recent detailed history of Chicago land-use controls that I use as a backboard for this study.

## **Social Efficiency of Market Allocation of Urban Land Use**

The basic theory of competitive market allocation of urban land use has been known and such allocation has been recognized as socially efficient for more than two biblical generations (see Alonso 1964, Mills 1967, and Muth 1969; for more advanced analyses, see Mills 1998). Under conventional and appropriate neoclassical assumptions concerning producers and consumers, urban land use has the commonly ob-

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served characteristics of high-density production at the business center, surrounded by high-density housing adjacent to the business center and low-density housing, land-intensive manufacturing, and consumer services farther from the center.

Of course, workers and consumers must travel between places of residence and places of work and shopping. Hardly anybody doubts that governments should acquire transportation rights-of-way by eminent domain and should own or supervise transportation improvements.<sup>1</sup> Governments should also levy or supervise charges for the use of transportation vehicles. Fares can be set optimally for buses and fixed-rail commuter modes. Private vehicles can be charged by fuel taxes or by electronic systems. Electronic systems are more subtle—they can vary charges by place, day, and time—but they are more expensive to install and administer than fuel taxes, which are theoretically a good second-best alternative.

Competitive land allocation results in more intensive land use where land is more expensive—that is, close to the urban center—because structures can be substantially substituted for land in most urban activities. Likewise, for the urban transportation system, fees should be higher and right-of-way use should be more intensive (crowded) where land is more valuable—again, close to the urban center. Congestion means *excessive* crowding, and it would not occur with unrestricted private land development and optimum pricing of transportation. In fact, virtually all U.S. urban transportation is underpriced by governments. Transportation underpricing and government density controls cause pervasive congestion.

Analysis that implies social optimality of private land markets is inevitably about equilibrium land use, in which markets have adjusted densities and land uses to land values. Of course, urban land markets never adjust land uses and densities to reach an equilibrium configuration. The long durability of structures and transportation improvements means that markets never reach equilibrium in a world in which population, incomes, and technology change. Poorly informed commentators, most of whom are prejudiced in favor of government intervention, typically believe that private markets' inability to achieve equilibrium justifies almost any government intervention. This belief has no merit. Land owners, developers, and residents have powerful incentives to pursue equilibrium land allocations. There is no reason to believe that government controls can or do improve on the tendencies toward equilibrium in private markets. In fact, they invariably slow or halt such tendencies.<sup>2</sup>

## Background of Land-Use Controls

Governments have confiscated private land or subjected it to controls and extortionate taxation since governments and urban areas first came together. Throughout

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1. **Editor's note:** The few who do have doubts, however, have good arguments, and their numbers may be growing. See Benson 2005 and Roth 2006.

2. The analysis in this article is restricted to local government controls on urban land use, but government controls on rural land use (federal, for the most part) have become similarly harmful during recent decades (see Yandle 1995).

history, seizure of urban and rural land has been a major objective of military activity. Farmers or other land users could stay or go because they could easily be replaced by others living at or near the subsistence level. South and West Asia and Africa have long been particularly violent, and the violence was aided and abetted by technologically superior European powers (Polk 1980). Much the same was true in the Western Hemisphere, where violent seizures of land and people long predated Columbus's arrival (Fehrenbach 1995). In North America, as elsewhere, technologically superior European imperial powers seized the land from natives, occasionally engaging in land purchases in which the seller had little more claim to the land than the purchaser, as with the U.S. purchases of Louisiana and Alaska.

Regular registration of private land and reliable enforcement of owners' rights developed gradually in a few western European countries, especially England, during the late eighteenth century and early nineteenth century, strongly influenced by Adam Smith's writings (Hohenberg and Lees 1985). The private-property rights of British North American colonists, but not of natives, had common-law protection from the earliest colonial settlements, and after the War of Independence Americans also enjoyed constitutional protection of their property rights once the Fifth Amendment was ratified in 1791. Nevertheless, some urban land-use regulations were imposed during the colonial period and later. In San Francisco in the late nineteenth century, commercial laundries were outlawed in certain residential neighborhoods, evidently to exclude the Chinese from predominantly Caucasian areas. And the first comprehensive zoning in the United States occurred in New York City, where the intent was clearly to exclude low-income workers from choice areas in lower Manhattan (Babcock 1966; Mills and Oates 1975).

Like government spending, government land-use regulations were limited until the early twentieth century. During the past century, however, U.S. courts have permitted almost unlimited government regulation of land use without compensation on the basis of a government's mere assertion that a "public interest" or a "nuisance" prevention justifies the control (see O'Hara's chapter in Yandle 1995). The primary goal of government land-use regulation has consistently been exclusion or limitation of low-income and minority residents from the best neighborhoods.

## Land-Use Controls in Chicago

In the United States, government intervention in formerly private matters often moves along the following path: government perceives or imagines an "unmet need" and intervenes in a modest way; the intervention fosters and frequently finances lobbyists, who benefit from it and organize to demand greater intervention; each intervention creates distortions that are themselves recognized as "unmet needs"; and further interventions follow. Private rights are progressively sacrificed to government control. Assistance for the elderly, health-care insurance, and environmental protection are good examples. Chicago's land-use controls fit the pattern perfectly.

Chicago's controls, following the 1871 fire and accompanying the burgeoning growth of the city, were tentative and sometimes of doubtful legality. They were also intended primarily to justify public works (water supply, sewage treatment, public transportation, and environmental protection). The city's first "comprehensive" zoning law was enacted in 1923, following a 1921 state-enabling law that broadened the city's power to control land use (Schwieterman and Caspall 2006, 20–25) and against a background of gradually increasing court tolerance of government land-use controls. The 1923 law and every zoning act after that were inspired, studied, drafted, and enforced by boards, committees, and commissions consisting mostly of local business leaders who stood to benefit from increasingly stringent controls. All zoning acts in general are accompanied by glowing propaganda about "city beautiful," "immeasurable benefits," and analogies between the city and an "anatomical body." Because intelligent people draft these laws and regulations, we must presume that such emotional appeals are dished up for press and public consumption. Lofty statements in land-use-control documents are never accompanied by analysis of which activities the city might be able to undertake better than the private sector and vice versa, what alternative government actions might substitute for police-power controls, what the benefits and costs of the land-use controls might be, or who will pay for them.

Virtually all land-use controls are intended to limit densities, whether they designate business or residential land uses. Controls commonly limit building heights, floor-area ratios, setbacks, and building bulk; have a minimum open-space requirement; and limit the number of dwelling units, with single-family, detached residential units being the prime designation.

To avoid charges of discrimination and violation of antimonopoly laws, the entire city of Chicago had to be zoned in the 1920s. Because most city property was already developed and the 1923 zoning ordinance for the most part mandated lower densities than already existed, the ordinance either had to force most property owners to demolish their structures or had to "grandfather in" existing structures that did not meet the ordinance's requirements. The former option was obviously impractical and could not conceivably survive legal challenges of uncompensated takings. Under the 1923 ordinance and most subsequent ordinances, a structure could be grandfathered in indefinitely, provided it was not altered substantially, in which case it had to be brought into full compliance. That provision was a major uncompensated taking in 1923, but it has become vastly more damaging in recent years as regulations have become much more detailed and demanding. The requirement that structures be brought into full compliance if significantly altered deprives owners of the right to improve their structures as they age and as rising incomes increase the demand for higher-quality structures. Owners are frequently induced to keep a dwelling in use after its normal life has ended because full compliance would require a more expensive but smaller replacement dwelling, thus reducing the value of the owner's asset.

The stated goals of the 1923 ordinance and of most subsequent ordinances were to make the city more beautiful, orderly, and, in early ordinances, less corrupt. (The

claim that increased land-use regulation would decrease city corruption has never been justified and has been omitted in postwar ordinances.) Building characteristics that would increase the city's beauty and orderliness presumably would cost money. Given that the less beautiful and orderly areas of the city are where low-income residents live and that those residents voluntarily pay for as much beauty and orderliness as they can afford, the stated goals can only be interpreted as glosses on legalized discrimination against the poor.

Reduced congestion has been a stated goal of each zoning ordinance since automobile use became common in the 1930s. How density limitations reduce congestion has not been spelled out. The general idea is that if the city has fewer residents, there will be fewer cars and the streets will be less crowded. But if developers are not allowed to build up, they must build out, in the suburbs, and if residents move there but businesses stay in the city, then total commuting actually increases, especially on arterial roads. This outcome indeed is the current situation that frustrates commuters. As workers and customers move to suburbs, many businesses are also induced to move there, as they have on a massive scale in recent decades. Of course, sufficient density restrictions will drive enough businesses and residents to the suburbs to eliminate congestion and, if the restrictions are carried to an extreme, the city itself. The city government is schizophrenic. Although it limits residential densities with a vengeance, it continues to try to attract businesses, but with only partial success. Zoning to restrict densities is simply not the solution to traffic-congestion problems. As noted previously, if governments supply and price transportation appropriately, market-based development will not cause excess densities or excess crowding of the transportation system. As a practical matter, Chicago has long required that off-street parking spaces be provided with new dwellings. That provision is obviously impractical for most existing units, so they are grandfathered in, again deterring owners from improving their structures. The city builds some parking garages, but not enough or in needed locations. The garage under Millennium Park, built recently by the city, was poorly designed and developed with long delays; when completed, it was far over budget and structurally defective. Of course, private garages are restricted by zoning rules. One suspects that the city tries to restrict private competition with its garages, but that suspicion is undocumented.

Land-use controls became much more complex and invasive shortly after the end of World War II as incomes and urban populations grew and as urban-planning ideology spread. The first and largest postwar government, urban, real-estate disaster was the Federal Housing Administration's (FHA) slum-clearance program, which rampaged through the country during the 1950s and 1960s. As a federal program, it was conveniently exempt from local zoning controls. It basically cleared urban slums and replaced the dwellings mostly with upper-income dwellings. Because little effort was made to provide alternative housing for the residents whose dwellings had been seized, the project was popularly known as the "federal negro removal program." It was massive in Chicago and many other large cities.

After long and intensive “study” (read “consultation between local government officials and interested parties,” mostly building owners), Chicago’s first postwar zoning code was adopted in 1957. It expanded zoning into a massive invasion of property rights. It introduced extremely detailed and complex designations of permitted uses. The intention and result were basically to sanctify existing land uses. The code conceptually introduced two new provisions. First, it initiated schedules by which nonconfirming uses had to be brought into conformity with zoning requirements, which invariably required lower densities and imposed complex rules for off-street parking (Schwieterman and Caspall 2006, 41–44). To require that structurally and economically sound structures be brought into compliance with arbitrary standards would have entailed massive disruption and capital losses for owners and society. By one means or another, the scheduled compliance requirements for existing structures were seldom enforced and were eventually abolished.

Second, the code introduced planned development (PD) (Schwieterman and Caspall 2006, 45–54). PDs had roots in the FHA urban-renewal program. They basically expanded zoning controls to include very large developments, often inspired by plentiful federal housing subsidies and public-housing funds. Several PDs have been among the worst disasters of postwar Chicago housing. One was Lake Meadows, a massive development of identical residential towers near the lakefront on the near-south side and widely believed to be a city-government scheme to segregate the black population. A second disastrous PD was Presidential Towers, long the largest default of an FHA-insured mortgage. A third was the notorious Henry Horner Homes, built with federal financing to house low-income, almost entirely minority residents on the southwest side (Kotlowitz 1992). Consisting for the most part of the high rises typical of almost all public housing of the era, it was a terrible place to rear children. Because the area was gang infested, mothers living on upper floors could not permit their children to play outside without careful supervision because of sporadic violence in and near the project. Eligible residents were unwilling to live on the lower floors because frequent gunfire pierced windows and endangered them unless they sat or slept on floors.

Public housing has long been known to be an unmitigated failure, aside from its connection with zoning. It typically costs much more than comparable private housing (Struyk and Bendick 1986) and is administered at high cost and with political corruption.

What are PDs for, then? They enable the city to exercise detailed control over large and increasingly even over small developments, such as the IBM building on the north side of the main stem of the Chicago River. By the mid-1990s, the city had seized almost complete control of every detail of real-estate development.

A minor but indicative measure of the low quality of the city’s analytical ability concerns its population forecasts. From 1950 to 1990, the city’s population declined from 3.7 million to 2.8 million. Yet each of the four forecasts the city made during the period envisaged a growing population or, as predicted in 1974, a dramatically re-

duced population shrinkage. These forecasts represented either wishful thinking or, if we are less generous, political propaganda. The forecasting procedure never took into account the possibility that the city's increasingly stringent land-use controls were driving residents and businesses to distant suburbs. In contrast to the city, the Chicago metropolitan area experienced substantial population and employment growth during the entire period.

In 1990, modest population growth resumed in the city after forty years of decline. Reasons for the resumption of growth are uncertain, but beyond doubt they include a dramatic reduction in violent crime, which Chicago shared with other cities at that time, as well as gradual reductions in racial tensions and discrimination.

The 1957 zoning ordinance quickly became riddled with ad hoc changes, most made at the behest of city councilmen who had near-dictatorial control over zoning changes in their districts. Since the 1950s, the number and power of interest groups in Chicago have grown owing to higher incomes, more leisure, and improved communication technology. The 1957 ordinance imposed detailed and costly controls, so the benefits of lobbying for detailed modifications grew. Neighborhood associations became increasingly well organized in affluent areas and frequently petitioned councilmen for changes, in most cases some kind of downzoning. Claimed benefits of downzoning are offered ritualistically, such as reduced congestion, better protection of views and sunlight, and protection of traditional neighborhood quality. Councilmen's support for petitions comes not from analysis or evidence, but from nose counts and estimations of neighborhood groups' ability to get voters to the polls. Neither petitioners nor councilmen have the incentive or ability to take into account residents or businesses who might move to the district but cannot because of density controls.

By the late 1990s, dissatisfaction had mounted with the garbled controls, and the city set to work consulting the manifold and layered interest groups about a new ordinance. The first new ordinance since 1957 emerged in 1999. Other new ordinances then emerged in rapid-fire sequence, in 2002, 2004, and 2006. Substantive increases in controls from one ordinance to the next were moderate, but terminology, classifications, and detail changed, apparently to hide the increasing stringency of the controls. For example, it is extremely difficult to count the number, extent, and locations of downzones in the thick documents.

The 2004 ordinance is 527 pages long, not including 19 pages of advertisements, the table of contents, and 3 pages of index. A minor issue is that it is extremely rare and more than a little suspicious for an important legal document to contain advertisements by private organizations that are obviously interested parties in zoning matters. One wonders: What rates are charged for these advertisements? Is advertising space available to any group that agrees to pay the rates. Are the rates available for public inspection?

Each recent ordinance starts (1A in 2004 and 2006) with a list of purposes and intents. The 2004 and 2006 ordinances contain the same fourteen purposes (see Index Publishing Corp. 2002–2006 for both ordinances). The list is obviously not

substantive: its items are platitudinous and include almost every goal that any business or resident might favor. No indication is given as to which goals may conflict or what the priorities should be in case of conflict. No indication is given as to which goals would be better achieved by private-market-oriented actions and which require government intervention and why. In fact, nowhere in the document is the private sector mentioned or any needed protections of ownership interests indicated. Nowhere is the Fifth Amendment mentioned. Finally, and most important, nowhere in the document is there an indication of which of the hundreds of requirements are intended to further which of the fourteen listed purposes.

It appears that the list of fourteen purposes is included because courts increasingly have taken the position that they will refrain from second-guessing the government if it says a restriction is needed (O'Hara in Yandle 1995). Logically, the situation is appalling. Everyone with at least minimal knowledge of zoning knows that ordinances are designed, administered, and modified at the behest of local interest groups, especially affluent and well-organized business and residential groups. Courts show no interest in ascertaining what private real-estate markets can do better than local governments. Density restrictions betray no concern for people and businesses that would locate in the city if its restrictions were reduced. Courts are apparently terrified of the burden that would be imposed on them if they had to evaluate every change in density controls, so they have washed their hands of the problem unless controls involve a physical seizure of private property or leave owners no legal use of their land.

## The Present Situation

The 2006 zoning ordinance contains more than 500 pages of detailed regulations that limit every lot, structure, and use of private property. Although I concentrate on residential uses in this article, similar regulations apply to every other possible use of land in the city. Within the residentially zoned category, I concentrate on controls that limit population density because I claim that density limitation is residential zoning's primary purpose. My intent here is not to describe the controls in detail, but to give the flavor of important controls to demonstrate their extent.

First, two preliminary remarks. The 2006 ordinance is approximate. (It makes reference to a more detailed source.) The many maps it includes are so crowded with zoning detail that many relevant geographical facts are omitted. For example, the map of the part of Lincoln Park where I lived for many years (68B) is so crowded with zoning designations that many street names, including the one on which I lived (W. Roslyn Place), are omitted. Second, although aldermen have no official concern with zoning, three pages (ix–xi) are devoted to a map of council areas and to the names, addresses, and phone numbers of councilmen.

All the land in the city is zoned for an exclusive use, either residential or one of many nonresidential categories. Among the important controls on places zoned for residences are the following: density (single-unit detached house, two-flat, lot area,



and floor-area ratio restrictions for each of ten categories of high rises that may be permitted); use restrictions; parking requirements; frontage limits; lot area per residential unit requirements; wall separation requirements; front, rear, and side setback requirements; on-site open space requirements; building height limits; dwelling-unit size limits; and number of buildings permitted. In addition, special requirements are imposed in overlays (which supersede but do not replace all requirements on area covered by the overlay) and in landmark, historic, floodplain, lakefront, and special districts. Finally, there are restrictions on materials, signs, lighting, windows, and doors.

The result is a mockery of the notion of private rights or market determination in urban real property. No owner of Chicago real estate, whether the property is developed or undeveloped, can make any alteration of the property, except minor interior redecoration, without being forced to comply with dozens of regulations imposed by the local government. Even minor modification of a developed property requires that the property be brought into conformity with all the requirements that would be imposed if the property were developed from scratch.

### Measuring the Damage

Although there is no metric for the stringency of urban density controls, we can identify at least two measurable effects on residential property. First, density controls artificially limit housing supply, making housing more expensive than it otherwise would be. This effect has been well documented (Mills 2005c). Every study I have seen concludes that controls raise housing prices (and, of course, rents).

In Chicago, the government has divided the city into seventy-seven community areas, each with a year 2000 average population of somewhat fewer than forty thousand residents. The lakefront is the city's prime amenity and naturally attracts the city's high-income residents. The lakefront neighborhoods north of downtown house the city's highest-income residents. The lakefront community areas south of downtown, in contrast, include Lake Meadows (discussed earlier), where low-income, mostly minority populations were artificially placed by public housing starting in the early 1950s. Even in 2006, the south lakefront is the home of many low-income and minority people.

Differences in zoning restrictions between the north and south lakefront areas have been dramatic. Between 1971 and 2001, a total of 285 downzonings (decreases in bulk and densities permitted) were applied to residences in the north lakefront community areas, but only twelve were applied to residences in the south lakefront community areas. From 1970 to 2000, therefore, the overall population of the Lincoln Park Community area three miles north of downtown decreased and its black population decreased from 7.3 percent to 5.7 percent of its total population. Moreover, Lincoln Park income levels went from near the lowest in the city in 1970 to the highest in 2000 (Mills 2005a).

No high-rise residence has been built on or near the lakefront in the north lakefront community areas during the past forty years. These areas' total population has decreased 25 percent. Decreases have continued even since 1990, when the city's overall population resumed slow growth.

Appeals regarding zoning provisions are highly complex and detailed, and they require arcane legal actions (Daniel and Magdziarz 2005). This procedural complexity is obviously intended to make the city's authority unchallengeable.

Inferring intent from repeated actions, one may safely conclude that the city's intent with density controls during the past thirty-five years has been to raise housing prices and rents and to decrease minority and low-income populations in the city's most desirable locations.

The second effect of urban density controls has been to cause sprawl—that is, excessive suburbanization.<sup>3</sup> The basic analysis is simple, although the details are somewhat complex. If density controls prohibit developers from building at competitive densities, they must extend their activities to the suburbs in order to house the population. The Chicago metropolitan area is extremely simple topologically. It is almost exactly a half circle, the omitted half being Lake Michigan, and it is extremely flat, with almost no natural barriers to expansion, such as lakes, hills, swamps, and so forth. The population of the Chicago metropolitan area is approximately 8 million, and the urbanized portion includes approximately two thousand square miles, or a radius of about fifty miles. I have estimated elsewhere (Mills 2005b, 2005c) that density controls have added at least three of the fifty miles of radius to the metropolitan area, or about four hundred square miles. Large costs of the government-imposed sprawl are the time and money involved in the resultant excessive commuting. It is extremely difficult to estimate these excess commuting costs, mainly because density controls not only drive residents to distant suburbs, but also have similar effects on businesses. My crude estimate is that density controls increase Chicago commuting costs by at least 3 percent of workers' earnings per year. This estimate applies only to the cost of commuting in excess of an upper bound that may be welfare improving. It takes no account of the costs of depriving residents of the freedom to choose residences of the type and in the locations they prefer or of similar costs imposed on businesses.

## Why?

The burden of the preceding survey has been that local governments have usurped control over ostensibly private urban real estate. Why have they done so?

Beyond doubt, governments invent and misconstrue problems. They show almost no understanding of what private markets can do or of the effectiveness of

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3. Sprawl results from density controls not only in the city, but also in the suburbs. Although this article does not include an analysis of suburban density controls, it is clear that they are just as stringent in high-income suburbs, especially north of the city (on or near the lakefront) and in some western suburbs as they are in the city.

alternatives to government actions. Furthermore, most government actions cause distortions of resource allocation, which governments seize as excuses for further intervention, typically pushed by interest groups that stand to benefit from intervention, even though the overall effect is net social loss.

Local governments are at the end of the government food chain. They have no national constitutional existence. They are created by state governments and are regulated and subsidized by federal and state governments. Nevertheless, courts and state governments have given urban governments almost unlimited power to regulate land uses without compensation; the courts have virtually abolished the Fifth Amendment as it applies to urban real estate.<sup>4</sup> The system of fragmented local-government jurisdictions implies that each local government is beholden to relatively few citizens, and organized local interest groups can have a strong influence on their local governments.

The most common legitimate defense of residential-density controls is that residents simply prefer low densities (see references in Mills 2005c). Crude public-opinion polls confirm this hypothesis, to be sure, but controls never impose limits on maximum lot size, so anyone can have as low a density of surrounding residents as he is willing to pay for. The preference for low density, however, is usually interpreted to mean preference for open space, which translates to preference with regard to land use beyond one's immediate neighborhood. Open spaces, broadly conceived, are public goods, and governments can and do acquire as much open space as citizens are willing to pay for to be used for parks, athletic fields, and so forth. In any case, as previously noted, my estimate of the costs of government-imposed sprawl refers to an upper bound to the sprawl that can possibly improve residents' welfare. The upper bound recognizes that rational residents cannot be made better off with controls than they would be in the absence of controls if they located at the same density but with longer commutes (Mills 2005c).

The only plausible explanation of the dramatic increase in density controls since around 1970 is that upper-income residents, mostly in naturally high-amenity areas, have become better organized and much better at lobbying. The 1965 National Housing Act began to acquire sharp teeth by around 1970. Racial discrimination in housing sales and rentals became increasingly risky for owners, real-estate agents, and lenders subject to both civil and criminal prosecution, so, to put it crudely, they handed their precious Fifth Amendment rights to willing local governments to do their dirty work for them.

Of course, upper-income residents revel at cocktail parties over the resulting capital gains in their housing prices of 10–20 percent per year. These gains, however, are of a largely illusory benefit. Unless Californians sell their expensive houses there

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4. The administrative costs of density controls that residents bear directly in lobbying, political action, and so forth and the much larger costs they bear in taxes to support the army of clerks and lawyers who formulate, administer, and litigate zoning are almost entirely hidden from public view.

and move to Phoenix or Missoula, as a few do, the gain from a sale is eaten up by the similarly high cost of their next purchase. Even if they remain in their expensive house until they die or retire to a nursing home, their gain is eaten up by their children's or other heirs' next purchase.

### What to Do?

Chicago land-use controls have gradually become more stringent since 1953 or, depending on one's interpretation, since 1923. Much of the city's real-estate capital has been developed with these controls taken into account. In a democracy, it would be inappropriate—and probably politically infeasible—suddenly to abandon controls on whose existence so much has been invested in good faith. This constraint, however, does not mean that nothing can or should be done.

The first step in remedying the situation should be to cease making the controls more stringent: place a moratorium on further controls. Second, many minor controls can and should be abolished immediately with a few strokes of a few pens. Detailed requirements with regard to the number and placement of doors and windows, landmarks, and driveways, for example, might be scrapped. Third, the city should undertake a citizens' education program to confirm the errors of its ways and to promise reform. Fourth, the city should begin to relax density controls selectively. Permission might be granted for immediate high-density developments near highway interchanges, public transit stops, and commercial land uses. The result would be not only to introduce obviously desirable reforms, but also to make possible modest reductions in commuting. Fifth, the city should abolish the requirement that a residential building be brought into full compliance with current controls if the owner modifies it significantly in any way. Finally, and most important, the city should commit itself to a series of five-year reforms to abolish almost all land-use controls.

Anyone remotely familiar with the past half-century of Chicago land-use controls will immediately recognize my proposals as pipe dreams. They go against all the long-term trends and clash with the psychological orientation of almost everybody who matters in connection with the city's land-use controls. Certainly, there is no hope of significant reform from any realistically imaginable city government. Several national organizations understand the damages of excessive government regulation, both in real estate and in other sectors, but they have no influence in Chicago. In light of these political realities, I fall back on the common academic advocacy of more education of citizens with regard to the costs they are bearing because of vastly excessive land-use controls.

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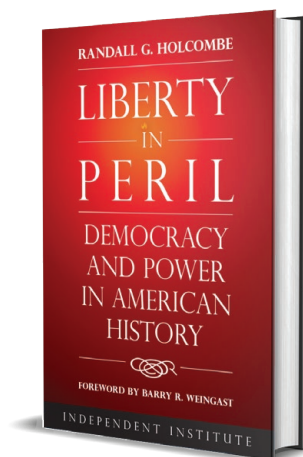
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