

ZONED OUT: REGULATION, MARKET, AND CHOICE IN TRANSPORTATION AND METROPOLITAN LAND-USE. By Jonathan Levine. Resources for the Future, 2006. 223 pp. ISBN 1-933115-15-7.

Are the problems of sprawl in metropolitan areas caused by free markets or government policies? Levine argues that density ceilings, by capping the amount of development in a given area, increase the amount of area that is developed, and is a prime, and too often neglected, culprit in the problems associated with sprawl, including congestion, air pollution, and even obesity. In nine chapters Levine takes aim not only at density, but also at the analysis of land use and transportation that has been put forth by the academic community.

Chapter 2, “Travel Behavior Research and the ‘Market,’” examines the analysis methods and assumptions of travel behavior researchers. Levine takes issue with the attempt to control for “self-selection,” arguing that self-selection is one way to better match persons with the locations that best satisfy their transportation and location preferences. He also criticizes researchers about considering policies that increase density without looking at the existing status quo in which density is limited by zoning regulations. When criticizing his colleagues, Levine does not fully explore what those academics he cites were responding to, claims by those in the New Urbanist community about the traffic benefits of new urbanism, associated with particular street patterns and land use configurations. Levine argues (p. 46), “The problem comes when the scientific conclusion—‘fail to reject the null hypothesis,’ which in the case of transportation and land use research is ‘no proven impact of urban form on travel behavior’—gets mapped onto a policy stance.” The alternative, which is all too often undertaken, is to develop policy without scientific input based on the claims of advocates (e.g., No growth neighbors or New Urbanists).

In Chapters 3, 4, and 5, “Market-like Interpretations of Land-Use Controls,” “The Harms of Regulatory Exclusion,” and “Is Zoning State Regulation or Property Right?,” Levine addresses the important question of whether density ceilings are a community property right or regulation, and argues that they are regulations that would be scorned by those who endorse them if administered by a higher level of government. The rise of homeowners’ associations that Levine describes may in the long run make zoning moot, as private contracts between individuals would surely establish the community property right in zoning that current interpretation of the law may make ambiguous.

The implicit assumption throughout is that we have a democracy where only resident voters, who desire low density to maintain property values, have an input into regulation. The notion of regulatory capture (by the regulated—in this case, developers) is not raised. Nor is the notion of developer influence on local governments considered. In many jurisdictions, the largest financial contributors to political campaigns are developers; surely this buys them some influence. While the Coasian idea of negotiation resulting in the same final outcome concerning negative externalities (independent of the initial allocation) was brought up (p. 55), the ideas of the public choice school of economics were not, and viewing both bureaucrats (who might retire to the private sector) and politicians (who need campaign financing) as distinct agents could help inform the reasoning.

The Tiebout hypothesis, which suggests that people vote with their feet and choose the level of services and housing stock that best matches their “preferences and pocketbooks” (p. 69), is judged and dismissed as unable to provide sufficient market choices in an environment with regulatory exclusion by zoning. In particular the Tiebout framework ignores transportation costs that travelers may face if because of regulation they must commute longer.

Chapter 6 considers “The Limited Power of Smart-Growth Regulation.” Unfortunately, there are some analytical errors in the text, notably Table 6-1 (p. 111), which suggests that density floors (minimum density requirements) cannot work, because if they result in lower profits than other sites (without floors), developers will choose those other sites. What is neglected is the price of land. If a developer finds a site with a density floor that might result in a lower profit, he can simply bid less for the land to equalize profits. Only if the floor is so high that the profits are so low that the profit-equalizing price of land becomes negative will density floors ensure no development.

One wishes Levine had provided original empirical evidence that density ceilings do in fact substantially affect market behaviors (rather than encoding behaviors in law). The evidence he provides, from an opinion survey of developers, suggests that some developers believe they were constrained by regulation, but one might ask, what are developers going to say? A more robust analysis would test if, after controlling for other factors, areas with density ceilings in fact have statistically significant lower densities than area with higher (or no) ceilings. Alternatively, evidence about the number of locations where development is at the zoning ceiling rather than below, would have made the case more convincing. The larger point that density ceilings are more common than floors in the United States, which must at some level affect ultimate densities, and restrict market choices, still holds.

Chapter 7, “Developers, Planners, and Neighborhood Supply,” examines the supply-side issue. This chapter seeks to understand what people want, rather than justifying “smart growth” on weak correlations between smart growth and travel behavior. The author wants more smart growth, and seeks to demonstrate that others do as well by reporting the results of a study conducted in Boston and Atlanta. Not everyone’s preference can be satisfied. In order for me to live in an area with a dense population, others must do so as well, while in order for me to live in a low-density area, others must not do so. I can’t have density without people, other people are creating positive externalities for me if I want to live in an urban core; other people are creating negative externalities if I want to live in a rural/suburban setting. So my preference for high-density transit-oriented living with a coffee shop on the ground floor can only be satisfied if a sufficient number of other people have the same preference. Levine’s study claims that 29 percent of Atlantans (and 40 percent of Bostonians) (p. 160) prefer transit and pedestrian-oriented neighborhoods, and that preferences in Atlanta in particular are unsatisfied. Though the details of the study were not presented in the chapter, if one were to take the results at face value, that should be enough to generate desired neighborhoods, if only the transit-oriented respondents could coordinate, and were not constrained by regulation.

The final chapter summarizes the work and presents policy recommendations.

Overall, the book is an interesting read, and raises some important topics and philosophical questions about the nature of property rights and the status quo. By turning

on its head the conventional idea that sprawl is a market construct that the government should remedy, rather than a government construct that a deregulated market could change, he opens up some new policy alternatives that can be pursued to affect the urban landscape.

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