

To What Extent and in What Ways Should Governmental Bodies Regulate Urban Planning?

A Response to
Charles C. Bohl

Mark Pennington
Lecturer in Public Policy
University of London

Introduction

Charles Bohl has presented a thoroughgoing critique of authors who portray the New Urbanism as part of an anti-market coalition seeking to impose its favored development pattern on an unwitting public. In doing so, Bohl has made an important contribution to the contemporary debate on planning and land use that should encourage the targets of his critique to refine their case. There is much in Bohl's analysis with which I agree. The following remarks, therefore, will concentrate on the aspects of his essay that I find wanting. These fall into three broad areas. First, Bohl misrepresents the practical emphases of those he seeks to criticize. Second, Bohl is far too enamored with the results from survey analyses, which he offers in defence of New Urbanism. Finally, Bohl misconstrues the theoretical arguments for "free markets" and hence, fails to outline a clear set of principles within which the role of New Urbanism in a market-driven approach to land use could properly be specified.

Defending the Critics of New Urbanism

In the opening section of his essay Bohl takes pains to distinguish the New Urbanism from the so-called "smart growth" movement. The former is a largely private sector phenomenon derived from attempts by a minority of developers to offer alternative urban designs to the low-density "strips"

characteristic of American cities. The latter, by contrast, is a political movement made up of environmentalists and city planners who seek to use governmental zoning laws to prevent development that they pejoratively dub as “sprawl.” While political campaigns for smart growth can be placed firmly in the “anti-market” camp, as Bohl points out, the attempts by New Urbanist architects to recreate the character of old town centers is simply a part of the process of market competition itself. New Urbanism is no more “anti-market” than are attempts by the growing organic food industry to wean consumers off factory-produced hamburgers—they are just a part of the competitive market process that helps to alert people to new ideas for better modes of living.

Strictly speaking, Bohl is right to criticize authors such as Gordon and Richardson when they lump together the ideas of the New Urbanism with the proponents of “smart growth.” That said, Bohl overstates his case considerably. While the New Urbanism is indeed a private sector phenomena, there is no shortage of New Urbanist developers and sympathizers who have resorted to political activism on behalf of their favored urban form. Indeed, Bohl himself cites a pertinent example when referring to the response of the architect Andres Duany to the experience of smart growth in Portland. Duany praises Portland’s efforts to control sprawl but complains that in the ever-decreasing number of locations where growth of any sort is allowed to proceed this growth is still predominantly of the “sprawling” variety. One must assume from these remarks that any growth that does not conform to New Urbanist principles is, according to Duany, a legitimate target for political action.

The latter point is of particular significance, for it is political activism on behalf of the New Urbanism that irks critics who are concerned primarily with the effect of governmental controls on the price of new housing.¹ Seen in this light, New Urbanist proponents frequently align themselves with the supporters of smart growth in order to slow down, if not prevent outright, forms of urban design that do not conform to their particular principles. Bohl counters this argument with data showing that New Urbanist settlements account for a mere 0.21 percent of new build, from which he concludes that New Urbanism does not constitute a significant political threat to lower density settlement patterns. Such data are, however, not sufficient to counter the thrust of the critics’ concerns. The principal effect of activism against “sprawl” is not so much on the proportion of “sprawling” to “nonsprawling” development but on the total level of new build that is allowed to proceed. It is perfectly possible to have very low levels of new build brought about by ever more restrictive zoning and planning laws—as in Portland—even though the “sprawl” quo-

tient of the development that is allowed to go ahead remains very high. The effect in terms of spiraling house prices brought about by a shortage of new build is clearly evident around those cities (including Portland) that have adopted a smart growth agenda.² One can, therefore, well understand why critics tend to confuse the New Urbanism with the smart-growth lobby when in practical terms the two are so frequently aligned.

The Limits of Survey Analyses

The second deficiency of Bohl's argument stems, in part, from an over-reliance on survey analyses. His purpose in using such evidence is twofold. On the one hand, Bohl wants to show that a large proportion of the population is unhappy with existing patterns of urban land use in order to challenge the "revealed preference" or "voting with one's feet" argument, which is frequently invoked to support the claim that consumers favor "sprawl." Second, Bohl wants to demonstrate that there is an unsatisfied public demand for New Urbanist development, which could readily be met if preferential treatment for sprawl and regulatory impediments to New Urbanism were removed.

On the first of these points, Bohl contends that apparent consumer satisfaction with low-density suburbs should not be viewed as an endorsement of American urban development patterns but should be interpreted as an indictment of a system that provides people with precious little choice. According to Bohl, the "choice" facing most residential consumers is one between a bland form of mass-produced suburbia and the declining core of inner cities blighted by various social ills. Suburban development itself meanwhile provides little in the way of choice in living space, with the conformity of much housing likened to Henry Ford's famous dictum that, "You can have any color so long as it's black." Bohl proceeds to cite a large amount of survey and interview data, which purports to show that Americans are thoroughly dissatisfied with the conventional low-density residential suburb and the "strip" pattern of much commercial development. According to this evidence a large majority of people exhibit a strong preference for mixed-used, town-centers with ready access to transit and green space.

In highlighting the relatively limited range of choices facing residential consumers, Bohl is right to urge caution on those who infer from purchasing decisions that consumers are necessarily "getting what they want." He is, however, misguided when implying that the alternative to a relatively circumscribed set of housing options is a much greater variety of choices with little

in the way of extra costs. The primary advantage of conventional suburban development against which the New Urbanists rail is that, like other mass-production systems, it provides a relatively cheap though uniform product. Analogies with Henry Ford are particularly revealing in this regard, for when mass production was first brought into automobile manufacturing, the alternative to the uniform black was not mass-produced variety, but a more expensive vehicle. Mass production, therefore, did not operate to restrict choice; it made available to the masses the opportunity to purchase an inexpensive vehicle that would otherwise have been beyond their means.³ It is in precisely this vein that suburban housing development has extended the range of choices available to people by providing widespread access to an affordable though uniform product. As incomes rise, however, and consumers begin to place a higher premium on variety, one would expect the market in residential design to evolve toward greater diversity in much the same manner that the automobile market has evolved. As Bohl himself seems to be aware, the rise of the New Urbanism as an alternative design movement and other real estate trends, such as the growth in private contractual communities, is part of this competitive evolution of tastes.

While recognizing that consumer tastes are evolving, Bohl suggests that real estate markets are not keeping pace with the changing pattern of public preferences. It is in this context that he cites survey evidence indicating an overwhelming consumer desire for mixed-use development within easy reach of transit and open space. Survey data is, however, far from adequate when seeking to determine the trade-offs between different consumer tastes because the options presented do not come with a price tag attached. Surveys amount to little more than a “wish-list” on which respondents can specify what their “dream home” or “dream community” would look like without having to make any sort of material trade-off in order to realize such dreams. It is all too easy to respond in a survey saying that one prefers the aesthetic appeal of small, town-center, retail outlets to the bland exterior of a suburban mall when no material sacrifice in terms of higher prices or reduced convenience need be made. All decisions involve incremental trade-offs between one good and another, in which a little more of one thing may require a little less of something else. Respondents to surveys, however, do not have to make choices “at the margin” in this way.

A related deficiency of survey evidence stems from the problem of so-called “tacit knowledge”—time-and-place-specific information that cannot be articulated. Seen in this light, the difficulty of revealing consumer valuations in surveys applies even in situations where a trade-off is specified in the ques-

tionnaire. When asked to place a value on the different elements that make up a given basket of goods, an individual may not be able to explicate how she values one good in relation to another. To what extent are high-density developments preferable to low-density developments? Does the convenience of shopping malls outweigh the aesthetic appeal of small-town outlets? Such knowledge can only be revealed by means of the lived experience of people and when they make real choices. It may not be revealed by responding to a set of hypothetical choice scenarios, which may or may not arise. As Sowell has put it,

The real problem is that the knowledge needed is knowledge of subjective patterns of trade-off that are nowhere articulated, not even to the individual himself. I might think that, if faced with the stark prospect of bankruptcy, I would rather sell my automobile than my furniture or sacrifice the refrigerator rather than my stove, but unless and until such a moment comes, I will never know even my own trade-offs, much less anybody else's.⁴

For all its limitations, therefore, there are good grounds for attaching greater weight to the evidence derived from patterns of actual consumer behavior ("voting with one's feet") than to responses derived from surveys. Evidence suggests that while one should not discount the possibility of a growing preference for New Urbanist settlements, Bohl may be exaggerating the extent of this demand. In both the United Kingdom and Europe, for example, where regulation specifically designed to counteract low-density suburban development and to favor New Urbanist-style schemes is much more prevalent than in the United States, the shift toward lower density suburbs is well under way.⁵

The Case for Markets in Land-Use Control

The third and final weakness in Bohl's analysis pertains to the proper relationship of New Urbanism to the market process. Current patterns of urban development are, from Bohl's perspective, largely the result of "market failure." Market processes may, he argues, only be judged to deliver development patterns that enhance the general standard of living if they meet a very restrictive set of assumptions. These include perfect information, perfect competition, and the absence of externalities, and are the standard fare of microeconomics textbooks. Bohl contends that because real estate markets rarely meet such criteria, the results emerging from actual market processes and, in particular, the tendency toward urban sprawl, should be treated with suspicion.

In advancing this argument, Bohl fundamentally misconstrues the theoretical basis for relying on market processes. The case for the market economy set out most forcefully by Hayek manifestly does not rest on the notion of a “perfect market” derived from Economics 101.⁶ No such market exists anywhere, or ever could—any more than the notion of a “perfect government” or “perfect-planning department” could ever exist. All economic decisions occur under conditions of imperfect information and with the distinct possibility of error. It is in precisely such a context, however, that the strength of an unregulated market system, relative to governmental planning, is revealed.

The competitive market acts as a discovery procedure in which contradictory ideas (about what to produce, in what quantities, and who should be engaged in production) widely dispersed across individuals and firms are constantly tested against one another. In turn, it is the profits and losses generated by the interactions between consumers and firms that gradually spreads information across the market—as neighboring actors imitate the behavior of the successful and learn not to make the same errors as the unsuccessful.

Viewed from the abstract standard of “perfect competition,” such markets will always appear “imperfect.” What matters for policy analysis, however, is the inability of a governmental planning mechanism to provide an effective substitute for such “imperfections.” Planners can never perceive and respond to all the different contradictory ideas that exist “in the heads” of a diversity of market participants. Government-mandated controls, therefore, will not be reflective of the same amount of information as a set of “imperfect” market prices.

The latter point is crucial for, even on Bohl’s own analysis, most deficiencies attributed to United States urban land markets stem from “government failures” or “planning failures” and do not relate to issues of “market failure.” Large-lot zoning ordinances, prescriptive requirements for car-parks and road widths and, one might add, a heavily subsidized interstate highway program, are all examples of governmental regulations and interventions that have encouraged a low-density form of development to the neglect of alternatives.

Moreover, each of these interventions has previously been defended on precisely the “market failure” grounds that Bohl now cites in defense of the New Urbanism. Without appropriate regulation, so it was argued, markets would produce excessively high-density development with overcrowding and pollution.⁷ The “market failure” argument is, it would seem, a man for all seasons to be recited in defense of regulations requiring lower densities, higher densities, or whatever the favored alternative of the planner concerned.

In making the case for a “free-market” approach, it is important to recognize that this is not to challenge the need for “planning” per se but, rather, to question the legitimate sphere over which any particular “planning model” (high-density or low-density, et cetera) should be extended. In situations where urban land-use decisions may exhibit a variety of “knock-on” effects or “network externalities” associated with pollution or transport patterns there may well be a need for institutions that can plan the character of land development within a particular area.

What is at issue is the existence of institutions that can subject such attempts at “planning” to a process of competition in precisely the same way that the “planning” activities of firms are subject to competition from their rivals. As Hayek put it, “Most of what is valid in the argument for town planning is, in effect, an argument for making the planning unit for some purposes larger than the usual size of individually owned property. Some of the aims of planning could be achieved by a division of the content of property rights in such a way that certain decisions could rest with the holder of the superior right...”⁸

There are already signs in the United States that the property rights alternatives of which Hayek speaks are evolving to internalize land-use externalities in spite of regulatory impediments. The growth of private contractual communities in particular, arguably as a response to the failures of conventional models of urban planning, illustrates the potential of market processes to develop solutions to a variety of land-use problems. Market innovations such as homeowners associations, condominium developments, and private communities have developed rapidly in recent years. According to Nelson, in 1962 there were only five hundred such associations across the United States, but by 1998 there were some 205,000 private contractual associations deploying devices such as restrictive covenants and involving some forty-two million people.⁹ These range from relatively small-scale associations of property owners working at the level of an individual street or neighborhood, to much larger developments where entire towns, such as Reston, Virginia, have been developed on the basis of private contractual planning. The primary advantage of such private planning models is that they facilitate competition between different communities and lifestyles (high- versus low-density, et cetera) offering various bundles of property rules that must be able to survive a market test.

In view of the failures of government land-use regulation, the time is surely ripe to consider proposals for the radical deregulation of urban land markets and to instigate private property approaches that may facilitate competitive experimentation in urban design.¹⁰ Decisions on which the future character of

towns and cities will depend should rest with the choices of consumers in a competitive market and not on the hopeless faith that planners will some day “get the regulation right.” It is within such a context and only in such a context that the New Urbanism may yet find a place in the evolution of urban form.

Notes

1. See, for example, R. Staley and G. Mildner (2000) “The Price of Managing Growth,” *Urban Land*, vol. 59, no. 2.
2. Ibid.
3. See, for example, B. Lindsey (2002) *Against the Dead Hand: The Uncertain Struggle for Global Capitalism* (London: John Wiley).
4. T. Sowell, *Knowledge and Decisions* (New York: Basic Books, 1980), 217–18.
5. See, for example, M. Pennington, *Planning and the Political Market: Public Choice and the Politics of Government Failure* (London: Athlone/Continuum, 2000).
6. See, for example, the essays in F. A. Hayek, *Individualism and Economic Order* (Chicago: University of Chicago Press, 1948); and “Competition As a Discovery Procedure,” in *New Studies in Politics, Economics, and the History of Ideas* (London: Routledge, 1978).
7. See, for example, A. Harrison, *Economics and Land-Use Planning* (Newbury: Policy Journals, 1977).
8. F. A. Hayek, *The Constitution of Liberty* (London: Routledge, 1960), 351–52.
9. R. Nelson, “Privatizing the Neighborhood,” in D. Beito, P. Gordon, and A. Tabarrok, *The Voluntary City* (Ann Arbor: University of Michigan Press, 2002).
10. For a more detailed account of such approaches, see M. Pennington, *Liberating the Land: The Case for Private Land-Use Planning* (London: Institute of Economic Affairs, 2002).