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**LAND USE PLANNING—THE TWIN CITIES
METROPOLITAN COUNCIL: NOVEL INITIATIVE,
FUTILE EFFORT**

Carrie Daniel[†]

I. INTRODUCTION	1942
II. THE URBAN SPRAWL PREDICAMENT	1942
A. <i>Nationwide Phenomenon</i>	1942
1. <i>Definition And Effects</i>	1942
2. <i>Causes</i>	1944
B. <i>Urban Sprawl In Minnesota</i>	1946
III. APPROACHES TO SOLVING URBAN SPRAWL	1948
A. <i>Widespread Approaches</i>	1948
B. <i>The Metropolitan Council—Minnesota’s Approach to Curbing Urban Sprawl In The Twin Cities</i>	1950
1. <i>History</i>	1950
2. <i>Urban Sprawl Plan</i>	1952
3. <i>Effectiveness Of The Plan</i>	1955
IV. ANALYSIS	1956
A. <i>The Oregon Model</i>	1956
B. <i>Minnesota In Comparison</i>	1958
1. <i>Weak Enforcement Of Land Use Planning And The MUSA Line</i>	1958
2. <i>Overly-Restricted Jurisdiction</i>	1961
3. <i>Non-Elected Officials</i>	1963
4. <i>Weak Policies To Prevent Exclusionary Zoning</i>	1964
5. <i>Non-Integration Of Uses</i>	1966
6. <i>Lack Of Mass Transit</i>	1966
7. <i>Lack Of Citizen Support</i>	1967
V. RECOMMENDATIONS	1968
VI. CONCLUSION	1969

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I. INTRODUCTION

Urban sprawl is a tragic phenomenon that destroys valuable resources daily, costing Americans inordinate amounts of money each year. Urban sprawl is, in short, urban development "taking over" the countryside. Minnesota's Twin Cities metropolitan area is among the most sprawl-threatened cities in the nation.

Minnesota approaches the urban sprawl threat to the Twin Cities area through the efforts of the Metropolitan Council. Although the Metropolitan Council's unique initiative and composition mark an innovative land use planning mechanism, the reality is something short of spectacular. The current Metropolitan Council construction and authority stifle the potential of the organization. Statistics support that, in the Metropolitan Council's current state, it cannot be effective in urban sprawl prevention. Major structural, jurisdictional, and influential shortcomings create a futile effort, despite the novel initiative of the organization.

II. THE URBAN SPRAWL PREDICAMENT

A. *Nationwide Phenomenon*

1. *Definition And Effects*

Urban sprawl occurs when an urban area, through housing, transportation, development, and private and governmental decisions, expands in a myopic pattern toward the countryside.¹ Sprawl has also been defined as "low-density, segregated use, automobile-dependent development on the fringe of urban areas."² In short, urban sprawl is the "spreading-out" of a city into rural areas. Harmful economic, environmental, and social costs result from urban sprawl.³

Effects are evident in the inner city. As growth occurs on the outlying suburban areas, the inner city is left impoverished.⁴ Ill urban effects also include segregation⁵, lack of affordable housing,

1. William W. Buzbee, *Urban Sprawl, Federalism, and the Problem of Institutional Complexity*, 68 *FORDHAM L. REV.* 57, 63 (1999).

2. Matthew W. Ward et al., *National Incentives for Smart Growth Communities*, 13 *NAT. RESOURCES & ENV'T* 325, 325 (1998).

3. *Id.*

4. Buzbee, *supra* note 1.

5. For a thorough discussion on segregation in the Twin Cities metropolitan

employment redistribution, increased dependence on the automobile, air pollution, decreased park and green areas, and increased infrastructure costs.⁶

Effects are also evident in the countryside. Rural effects include environmental destruction, loss of prime agricultural growing areas and open space, loss of the family farm, and loss of historical heritage.⁷ The world is entering a tighter food supply caused in part by prime farmland being devoured by urban sprawl.⁸

Destruction of farmland threatens food security and affects rural aesthetics, recreation, open space, and animal life.⁹ In addition, the existence of farmland is economically important for all members of society. Farmland contributes fiscally to the economy, producing more than 500 million dollars worth of products and approximately 7000 jobs per year.¹⁰ Farmland "more than pays its way in property taxes."¹¹ This can be best explained by way of example. For every tax dollar raised by residences in Farmington, Independence, and Lake Elmo, Minnesota, one dollar and four cents was spent on *urban* infrastructure costs.¹² Yet only fifty cents of that tax dollar raised was spent for *rural* farmland public services. It can be said, then, that farmland taxes actually help support urban infrastructure.

Indeed, urban sprawl is a phenomenon that can best be explained by its effects.¹³ It undoubtedly has an "I-know-it-when-I-see-

area, see Myron Orfield, *Metropolitics: Coalitions for Regional Reforms*, 15 THE BROOKINGS REV. 6, 6-9 (1997).

6. Robert H. Freilich, *Urban Sprawl, "Smart Growth," and Sustainable Development*, SE11 A.L.I.-A.B.A. 137, 149-52 (1999) (discussing segregation, lack of affordable housing, employment redistribution, increased infrastructure costs, inadequate inner-city community facilities, traffic congestion, and agricultural and open space impacts due to urban sprawl); Buzbee, *supra* note 1, at 63, 69-75 (discussing traffic and air pollution, expensive governmental services, traffic congestion, destruction of agricultural land and open space, and abandonment of urban centers relating to urban sprawl).

7. Timothy J. Dowling, *Reflections on Urban Sprawl, Smart Growth, and the Fifth Amendment*, 148 U. PA. L. REV. 873, 874 (2000).

8. Luther Tweeten, *Food Security and Farmland Preservation*, 3 DRAKE J. AGRIC. L. 237, 237 (1998).

9. *Id.*

10. Dean Rebuffoni, *Worth Saving Farmland Puts More in Coffers Than it Takes, Study Shows*, STAR TRIB. (Minneapolis), Nov. 17, 1994, at 1B.

11. *Id.*

12. *Id.*

13. SIERRA CLUB NORTHSTAR CHAPTER, *SPRAWL AND LOCAL PLANNING IN MINNESOTA* 1 (1999) ("[S]prawl is difficult to describe in a concise fashion but can best

it" trait.¹⁴ Low-density growth, automobile dependence, haphazard suburban land-consumption, and non-contiguous development amidst an often deteriorating and forgotten inner city are clear signs.¹⁵

2. Causes

Seeking the cause of urban sprawl leads to an extremely complex analysis. In general, it arises from "a confluence of private and governmental decisions."¹⁶ In essence, it is caused by a grave failure of public policy (locally, state-wide, and federally).¹⁷ The striking irony is that the public adamantly values protection of open space, and clearly opposes sprawling development.¹⁸

More specifically, one major overarching cause of urban sprawl is the manifest destiny phenomenon.¹⁹ The American paradigm historically has viewed land ownership as an inalienable right, without restriction.²⁰ This paradigm is rooted in colonial times when the new Americans became obsessed with conquering the North American continent from the Atlantic to the Pacific.²¹

As the nation progressed, growth concentrated in cities for a short period in the late nineteenth century.²² However, as the roaring twenties introduced the automobile, the great wave of suburbanization began.²³ Decentralization surged after World War II.²⁴

be done by identifying its symptoms.").

14. Dowling, *supra* note 7.

15. *Id.*

16. Buzbee, *supra* note 1.

17. Dowling, *supra* note 7, at 877.

18. See DAVID L. WALL, ST. CLOUD STATE UNIV., CITIZEN ENVIRONMENTAL VALUES RESEARCH, AN ANALYSIS FOR THE MINNESOTA POLLUTION CONTROL AGENCY 5-12 (2000) (discussing Minnesotans' attitudes toward natural resource protection and urban sprawl).

19. Henry R. Richmond, *From Sea to Shining Sea: Manifest Destiny and the National Land Use Dilemma*, 13 PACE L. REV. 327, 327 (1993). "In America there is more space where nobody is than where anybody is. That is what makes America what it is." Larry Millett, *The Deep Roots of Urban Sprawl*, PIONEER PRESS DISPATCH (St. Paul), Nov. 19, 1996, at 1A (quoting Gertrude Stein).

20. Richmond, *supra* note 19, at 327.

21. *Id.*

22. *Id.* at 328 (explaining that America's population concentrated in urban areas as the economy shifted its focus away from agriculture to manufacturing beginning in 1870).

23. *Id.* at 329. Recognize, however, that during the Great Depression, suburbanization waned temporarily until the economy healed. *Id.*

24. SIERRA CLUB NORTHSTAR CHAPTER, *supra* note 13; Richmond, *supra* note

In the 1950s, the great migration to the suburbs was in full force and has yet to cease.²⁵

The manifest destiny world view remains readily observable in modern times. Many Americans favor the suburban setting with *cul de sacs* and yards over high-density living.²⁶ The American dream is to have a house and lawn far away from neighbors.²⁷ The effect of this mind-set on urban sprawl is evident; as people migrate to the suburbs, urban geographic boundaries are expanded and wealth leaves the inner city.

In addition to the individualistic manifest destiny trait as a cause of urban sprawl, federal law is a major contributor to urban sprawl.²⁸ Federal environmental statutes²⁹ affect land use, as well as federal funding for uses such as road building and parking.³⁰ The Federal Highway Program “substantially influenced land development patterns in the United States,”³¹ by increasing the number and quality of roads. The ease of commute has increased automobile use, consequently promoting sprawl.³² Urban sprawl “forces people into their cars to go everywhere—work, grocery store, school, and even the neighborhood park.”³³ Walking is far from encouraged when highways are easy to access, and when parking lots are rampant, especially amid the strip mall craze.³⁴

Locally, private real estate markets play an instrumental role in causing urban sprawl.³⁵ Americans have relatively easy access to homeowner mortgages.³⁶ Further, home ownership is more easily

19, at 329.

25. Lynda McDonnell, *Urban Sprawl: The Invisible Crisis*, PIONEER PRESS DISPATCH (St. Paul), Nov. 18, 1996, at 1A [hereinafter McDonnell, *Invisible Crisis*]

26. Buzbee, *supra* note 1, at 65.

27. SIERRA CLUB NORTHSTAR CHAPTER, *supra* note 13.

28. Ward et al., *supra* note 2; Richmond, *supra* note 19, at 329.

29. Such environmental statutes include, but are not limited to, the National Environmental Policy Act of 1969, the Coastal Zone Management Act of 1972, the Clean Water Act, the Clean Air Act, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Ward et al., *supra* note 2.

30. *Id.* at 325-26; Buzbee, *supra* note 1, at 69.

31. Richmond, *supra* note 19.

32. Buzbee, *supra* note 1, at 64.

33. SIERRA CLUB NORTHSTAR CHAPTER, *supra* note 13.

34. *Id.*

35. Buzbee, *supra* note 1, at 64.

36. For example, starting in 1929, private banks issued mortgages secured by the Federal Housing Administration, which reduced bank risk and created lower interest rates. Richmond, *supra* note 19, at 330.

attainable due to tax incentives, thus more high-density rental housing (which detracts from urban sprawl) is not as necessary.³⁷

Another cause of urban sprawl is communal ownership of resources. Sprawl, which is basically a major resource overutilization, is the epitome of the "tragedy of the commons."³⁸ The tragedy of the commons results when a resource owned and used in common amongst a group of people is overused and thus subsequently depleted.³⁹ The benefits are internalized, while the harms are externalized.

For example, if a tribe of people own a forest, each benefit by cutting down as many trees as physically possible to sell. However, the group as a whole is harmed because the consequence is tremendously fewer trees. Thus, the group bears the burden as a whole.

Urban sprawl analogizes to the forest. Individuals are gobbling up land at the cost of the public as a whole. In America, one would think that the privatization of land would prevent the tragedy.⁴⁰ However, traces of communal ownership still exist because no "one" person or entity holds responsibility for land protection as a whole.

Taking responsibility for destruction cessation before absolute depletion occurs is essential, yet extremely difficult, where no *one* individual is to blame. Coordination among the "commons" to conserve resources is nothing less than challenging. Clearly, an active governmental role is essential to coordinate the "commons."

B. *Urban Sprawl In Minnesota*

Urban sprawl is destroying Minnesota's resources. A recent

37. Buzbee, *supra* note 1.

38. *See id.* at 85-86 ("The basic dynamics of resource overutilization described in Hardin's and Gordon's classic analyses of 'tragedy of the commons' also contribute to sprawling development."); *see also* CAROL M. ROSE, PROPERTY AND PERSUASION: ESSAYS ON THE HISTORY, THEORY, AND RHETORIC OF OWNERSHIP 105-62 (1994) [hereinafter ROSE] (discussing the tragedy of the commons as it relates to custom, commerce, and public property). Rose cites to and discusses at length ecologist Garrett Hardin's essay, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968), which introduced the Tragedy of the Commons phenomenon to modern thought. ROSE, *supra* at 106 n.5.

39. Buzbee, *supra* note 1, at 85-86.

40. ROSE, *supra* note 38, at 105-6; John A. Humbach, *Law and a New Land Ethic*, 74 MINN. L. REV. 339, 341-42 (1989) (stating that the American land-base is a shared resource, and that "private land [use] is never an entirely private affair.")

study concludes that sprawl consumes over sixty-five acres of open space and farmland each day in Minnesota.⁴¹ In 1960, there were 2,451 people per square mile, compared to 1,956 in 1990.⁴² Since 1970, more than 150,000 acres of farmland has been urbanized in Minnesota.⁴³ In the metropolitan area of the Twin Cities, the amount of time spent in traffic increased 178 percent from 1982 to 1994.⁴⁴

The Twin Cities metropolitan area is clearly a focal point of the problem. The Minneapolis-St. Paul region is in the top ten areas in the nation threatened by urban sprawl.⁴⁵ The Twin Cities became the nation's fourth fastest "ghettoizing" region during the 1980's.⁴⁶ If current development trends continue at their existing pace, St. Cloud and Rochester will become the outer edges of the metropolitan area.⁴⁷ Woodbury is a prime example of myopic outward growth; it is the fastest growing suburb in the state.⁴⁸

Much of the sprawl problem in Minnesota can be attributed to a lack of integration of uses.⁴⁹ Further, developers are initiating what will be built and when, as opposed to a comprehensive plan supposedly created to curb sprawling development.⁵⁰ There is a significant pattern of weak land use planning.⁵¹ An additional problem is the Twin Cities' lack of any mass transit option. No light

41. SIERRA CLUB NORTHSTAR CHAPTER, *supra* note 13.

42. McDonnell, *Invisible Crisis*, *supra* note 25.

43. Rebuffoni, *supra* note 10.

44. SIERRA CLUB NORTHSTAR CHAPTER, *supra* note 13.

45. Bill Salisbury, *In Fight Against Urban Sprawl, Maryland Tries Smart Growth, Twin Cities May Learn From New Set of Policies*, PIONEER PRESS DISPATCH (St. Paul), Feb. 24, 1999, at 1A [hereinafter Salisbury, *Fight*].

46. Orfield, *supra* note 5. Ghettoizing, or polarization, occurs when the inner city descends into poverty while development occurs in the suburbs, spurred by "white flight." *Id.* According to Orfield, metropolitan polarization "indisputably showed up right here at home" in the Twin Cities. *Id.*

47. SIERRA CLUB NORTHSTAR CHAPTER, *supra* note 13, at 4.

48. *Id.* at 15. Woodbury added 11,183 people to its population count in just five years. *Id.*

49. *Id.* at 23 (stating that five of the major sprawl-threatened cities in Minnesota lacked integration of uses). Integration of uses includes locating stores, residences, places of employment, and entertainment within a single community. Integration of uses promotes reliance on walking rather than on cars, and it makes effective use of space. *Id.* at 2.

50. *Id.* at 23.

51. *Id.* Yet metropolitan-area planners did not intend for low-density sprawl to occur. The plan was to have large, compact clusters of stores, offices, houses and recreation, linked to one another by mass transit. Dan Wascoe Jr., *Growth, Sprawl, or Just Home?*, STAR TRIB. (Minneapolis), Jan. 22, 2000, at 1A.

rail or subway exists in the metropolitan area. The following analysis provides a more in depth discussion of Minnesota's approach to stunting urban sprawl.

III. APPROACHES TO SOLVING URBAN SPRAWL

A. *Widespread Approaches*

Despite the profound effects of urban sprawl, the federal government does not have a national land use plan to prevent further resource destruction.⁵² Thus, the struggle is left to the states.⁵³ The states have taken various approaches.⁵⁴

The first attempts at land use planning promulgated the advent of the zoning era.⁵⁵ Zoning⁵⁶ became "the basic instrument of municipal land use planning."⁵⁷ The nation's first comprehensive zoning plan was adopted by New York City in 1916.⁵⁸ Contemporary zoning places its roots in the landmark decision *Village of Euclid, Ohio v. Ambler Realty*,⁵⁹ in which zoning survived constitutional attack in the United States Supreme Court. After *Euclid*, zon-

52. Richmond, *supra* note 19, at 333.

53. *Id.* at 334.

54. Wim Wiewel et al., *Private Benefits and Public Costs: Policies to Address Suburban Sprawl*, Jan. 1, 1999 POL'Y STUD. J. 96114, available at 1999 WL 31668244 ("A wide variety of policies now are being implemented that aim to reduce suburban sprawl or the inequities in the distribution of its benefits and costs.")

55. Richmond, *supra* note 19, at 334 (stating that in the 1920s, state legislatures enabled local governments to implement zoning schemes).

56. See 101A C.J.S. *Zoning & Planning* § 2(a) (1979).

Zoning is the separation or division of a municipality into districts, the regulation of buildings and structures in such districts in accordance with their construction and the nature and extent of their use, and the dedication of such districts to the particular uses designed to subserve the general welfare.

Id. Ebenezer Howard founded zoning's theoretical roots. JESSE DUKEMINIER & JAMES E. KRIER, *PROPERTY* 942 (4th ed. 1998) (citing EBENEZER HOWARD, *TOMORROW: A PEACEFUL PATH TO REAL REFORM* (1898) (rev. in 1902 as EBENEZER HOWARD, *GARDEN CITIES OF TOMORROW* (1902))).

57. *Amcon Corp. v. City of Eagan*, 348 N.W.2d 66, 74 (Minn. 1984) (quoting 1 ARDEN H. RATHKOPF & DAREN A. RATHKOPF, *THE LAW OF ZONING AND PLANNING* § 12.02, at 12-5 (4th ed. 1975)).

58. DUKEMINIER, *supra* note 56, at 948.

59. 272 U.S. 365 (1926). The Village of Euclid enacted a comprehensive zoning ordinance through a legislative body that restricted property uses according to a master plan. The Court held that the comprehensive zoning plan was not a violation of Due Process and Equal Protection. *Id.* For an explanation of the structure of Euclidean zoning, see DUKEMINIER, *supra* note 56, at 959.

ing laws were presumptively valid.⁶⁰

The essence of zoning is to regulate uses in given areas. The typical scenario is that a state legislature enacts enabling legislation that bestows power to local governments to enact comprehensive plans.⁶¹ Among the components of comprehensive plans are zoning regulations. Unfortunately, local zoning regulations alone are no longer effective to prevent the myopic growth that is plaguing the nation.⁶²

The current trend in land use planning is much more complex than the classic zoning regulation. Today, land use planning⁶³ encompasses environmental and open space protection,⁶⁴ community revitalization,⁶⁵ and transportation planning.⁶⁶

Like zoning, state legislatures enable local governments to create and implement local land use plans, or in some instances the state creates the plan and allows local governments to realize it.⁶⁷

60. Note, however, that zoning ordinances are only valid if they do not deprive the affected property of reasonable use. *E.g.*, *Alevizos v. Metro. Airports Comm'n*, 298 Minn. 471, 216 N.W.2d 651 (1974) (holding that the property owner may be deprived of reasonable use when confronted with substantial airport noise, vibrations, and fumes); *Hendrickson v. State*, 267 Minn. 436, 127 N.W.2d 165 (1964) (holding that property owner may be deprived of reasonable use when he does not have access to at least one thoroughfare onto highway after it was rebuilt).

61. 101A C.J.S. *Zoning & Planning* § 2(b) (1979) (stating "A comprehensive plan is a general guideline to the legislative body of a locality for its consideration of the program of the locality for land utilization").

62. *Richmond*, *supra* note 19, at 334 (citing Robert H. Freilich & Linda Kirts Davis, *Saving the Land: The Utilization of Modern Techniques of Growth Management to Preserve Rural and Agricultural America*, 13 URB. LAW 27, 30 (1981)). *But cf.* *Humbach*, *supra* note 40 ("[E]xisting zoning provides a direct and forthright way to preserve the line between urban and non-urban land use.").

63. BLACK'S LAW DICTIONARY 880 (6th ed. 1990) (defining "land use planning" as a "generic term used to describe activities such as zoning, control of real estate developments and use, environmental impact studies and the like. Many states have land use planning laws which are implemented by local zoning and land use laws and ordinances.>").

64. Twenty-five states have some form of farm protection programs, while twenty states recognize conservation easements. *Sierra Club, Solving Sprawl*, at <http://www.sierraclub.org/sprawl/report99/intro.asp> (last visited July 14, 2000).

65. One important aspect of community revitalization is brownfield development. Brownfields are polluted and frequently abandoned former industrial sites in urban areas. John Chihak et al., *Developing Brownfields*, 19 HAMLINE J. PUB. L. & POL'Y 254, 254 (1997). Brownfield re-development can add valuable space to urban areas and can help revitalize destructed inner-city areas. *Id.* at 258.

66. *Sierra Club*, *supra* note 64.

67. Eleven states have comprehensive acts, allowing for comprehensive local

The key, however, lies in coordination among the local units to effectively curtail sprawl and conserve resources. As the ensuing analysis will show, coordination is an extremely difficult task.

B. The Metropolitan Council—Minnesota's Approach To Curbing Urban Sprawl In The Twin Cities

Minnesota does not have a state-wide land use plan. Instead, land use planning is left to local governments (typically cities). Local governments cannot exercise influence outside their jurisdiction. In the Twin Cities area, the operating body through which the state attempts to control metropolitan area urban sprawl is the Metropolitan Council.⁶⁸ The Metropolitan Council is solely responsible for the Twin Cities' land use plan through the power vested by the Metropolitan Land Use Planning Act.⁶⁹

1. History

The Minnesota State Legislature created the Metropolitan Council (hereinafter "Metro Council") in 1967.⁷⁰ The Metro Council is a unique government body in the seven-county⁷¹ Twin Cities metropolitan area of Minneapolis and St. Paul, Minnesota. The Metro Council's character lies somewhere between an agency and a unit of local government.⁷² The Metro Council is similar to an agency in that it was created by the legislature, yet it has a unique

planning according to state-wide standards. *Id.*

68. ARTHUR NAFTALIN, MAKING ONE COMMUNITY OUT OF MANY, PERSPECTIVES ON THE METROPOLITAN COUNCIL OF THE TWIN CITIES AREA 1 (Metro. Council No. 310-86-093, 1986) [hereinafter NAFTALIN, MAKING ONE COMMUNITY OUT OF MANY].

69. Metropolitan Land Use Planning Act, ch. 127, 1976 Minn. Laws 292 (enacted Apr. 2, 1976) (originally codified as MINN. STAT. §§ 462.355, 473.121, .175, .851-.872 (1976)).

70. See MINN. STAT. § 473.123 (1994) (noting in subdivision 1 that the Metropolitan Council is established); see generally *The Metropolitan Land Use Planning Act*, 3 WM. MITCHELL L. REV. 305 (1977).

71. The seven counties include Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. MINN. STAT. § 473.123; Metro. Council, *About Metro Council* at <http://www.metrocouncil.org/about/index.asp>. (last visited July 19, 2000). There are 189 cities and townships in the Twin Cities metropolitan area. *Id.*

72. According to the 1967 Minnesota Attorney General, the Metro Council is a unique form of local government "somewhere between state and local government." NAFTALIN, MAKING ONE COMMUNITY OUT OF MANY, *supra* note 68, at 2 (quoting Letter from Douglas Head, Minnesota Attorney General (Oct. 6, 1967)).

unique regional purpose. While the Metro Council serves as a policy-maker, it does not serve as an operating body to implement those policies.

However, the Metro Council can implement its own policies in select situations. The state has enacted enabling legislation directed toward the council in a number of matters.⁷³ For instance, one pertinent matter to this discussion is land use planning.⁷⁴ Thus, because of its policy-making role *and* select implementation authority, the Metro Council is somewhat like a unit of local government with exalted authority. Whatever its categorization, the Metro Council's main purpose is to set regional policies as directed by the legislature and then to mandate that other organizations⁷⁵ implement the policies.

Another role the Council is responsible for is providing select everyday services for the region. The Metro Council is charged with running the Twin Cities' bus system, wastewater collection, housing and redevelopment, park and trails planning and funding.⁷⁶ The Metro Council also plans for future development in the Twin Cities. Facets of future planning include strategies for aviation, transportation, parks and open space, water quality and management, and comprehensive land use plans.⁷⁷

The Metro Council's complex structure and unique relationship to government and the Twin Cities community is a novel idea.⁷⁸ Most other major urban areas have not been able to find an effective approach to tackling regional coordination while finding

73. The Metro Council can realize its objectives through select means. Such devices include: the Metropolitan Development and Investment Framework chapter of the Metropolitan Development Guide, administration of the Metropolitan Land Planning Act, authority to review plans and suspend projects of the regional commissions, and authority to review proposals involving federal and state directives. NAFTALIN, MAKING ONE COMMUNITY OUT OF MANY, *supra* note 68, at 31.

74. MINN. STAT. §§ 462.355, 473.121, .175, .851-.872 (2000) (enabling the Metro Council to implement a regional land use plan and controls). *See also infra* section III(B)(2) for a full discussion on this topic.

75. Such organizations include regional commissions, cities, counties, and more. NAFTALIN, MAKING ONE COMMUNITY OUT OF MANY, *supra* note 68, at 1.

76. Metro. Council, *supra* note 71.

77. *Id.*

78. The Metro Council has been regarded as a major breakthrough in urban planning. NAFTALIN, MAKING ONE COMMUNITY OUT OF MANY, *supra* note 68, at 1 (stating that the Metro Council arrangement "represents a major breakthrough in metropolitan governance").

an effective way to implement the policies at a local level.⁷⁹ Instead, individual municipalities act insulated from one another. The Metro Council is a means to provide regional planning while maintaining the continuity and structure of existing local units of government.

The organizational arrangement of the Metro Council includes a regional administrator, a council chair, seventeen council members (including the chair),⁸⁰ five standing committees,⁸¹ six advisory committees, six special committees, task forces, and work groups,⁸² and a unique relationship with four regional metropolitan commissions.⁸³ The council has 3,700 staff, and twenty-one departments.⁸⁴ Its 1998 operating budget was about 294 million dollars, with a majority allotted to operation of the transit and wastewater systems and the Metro HRA.⁸⁵ The budget size of the Metro Council is only surpassed by the state legislature and Hennepin County.⁸⁶

2. *Urban Sprawl Plan*

The Metropolitan Land Use Planning Act of 1976⁸⁷ required

79. Similar efforts in other major metropolitan areas in the United States have been unsuccessful. *Id.* at 73.

80. Council members are gubernatorially appointed from specially created districts for staggered, four-year terms. *Id.* at 39-40. Currently there are 16 districts. METRO. COUNCIL, 1999 ANNUAL REPORT 8 (2000).

81. The five standing committees include: the Transportation Committee, the Environment Committee, the Rail Transit Committee, the Livable Communities Committee, and the Management Committee. METRO. COUNCIL, STATE OF MINN., METROPOLITAN COUNCIL POLICYMAKING STRUCTURE (2000).

82. Among the six are: the Audit Committee, the Litigation Review Committee, the Aviation Policy Task Force, the Rural Issues Work Group, the Investment Review Committee, and the Southwest Transit Task Force. *Id.*

83. The four regional metropolitan commissions include: the Metropolitan Parks & Open Space Commission, the Metropolitan Airports Commission, the Metropolitan Sports Facilities Commission, and the Metro Radio Board. *Id.*

84. *Id.*

85. Metro. Council, *About Metro Council—General Information*, at <http://www.metrocouncil.org/about/general.htm>. (last visited July 16, 2000).

86. Sierra Club, Minnesota Chapter, *What is Your Sprawl Quotient?*, at http://www.sierraclub.com/chapters/mn/sprawl_quotient.html. (last modified Oct. 22, 2000).

87. *Supra* note 69; see generally *The Metropolitan Land Use Planning Act*, *supra* note 70. Enactment of the Metropolitan Land Use Planning Act was founded on two purposes: 1) a role for the council to “establish requirements and procedures to accomplish comprehensive local planning with land-use controls consistent with planned, orderly and staged development,” and 2) “to provide assistance to local

all local governmental units in the seven-county metropolitan area to adopt comprehensive land use and development plans that would be reviewed by the Metro Council.⁸⁸ For the plans to be adopted, they must coincide with Metro Council policies, including long-term airport, park, transportation, and sewer plans.⁸⁹ Through its review process, the Metro Council coordinates the land planning of communities within the region.⁹⁰ The Metro Council creates a regional plan, and reviews and selectively accepts community plans.⁹¹

The Metro Council's land use plan for the entire region is popularly known as "Smart Growth."⁹² The goal of the Metro Council's Smart Growth initiative is to "[link] transportation, economic development, land use and housing."⁹³ The Metro Council's land use planning goals are to create a globally competitive economy and a high quality of life for Twin Citians⁹⁴ while being fiscally conservative.⁹⁵ The Smart Growth initiative is intended to promote growth and to channel such growth into appropriate areas in order to preserve vital natural resources.⁹⁶ The Metro Council stresses efficient, well-planned land use.⁹⁷

The Council plans to channel half of the projected population growth within an urban boundary area called the Metropolitan Ur-

governmental units ... for the preparation of plans and controls." James Poradek, *Putting the Use Back in Metropolitan Land-Use Planning: Private Enforcement of Urban Sprawl Control Laws*, 81 MINN. L. REV. 1343, 1356-57 (1997) (quoting MINN. STAT. § 473.851).

88. MINN. STAT. § 473.858. Comprehensive land use plans include objectives, policies, standards and programs to serve as guides for land use and future preservation. MINN. STAT. § 473.859, subd. 1.

89. MINN. STAT. § 473.175; NAFTALIN, MAKING ONE COMMUNITY OUT OF MANY, *supra* note 68, at 24.

90. MINN. STAT. § 473.851 (stating that local governmental units are interdependent for the purposes of the Metropolitan Land Use Planning Act).

91. MINN. STAT. §§ 473.858, 473.175.

92. See METRO. COUNCIL, STATE OF MINN., CHOICE, NOT CHANCE (2000) [hereinafter METRO. COUNCIL, CHOICE, NOT CHANCE].

93. *Id.* (stating further that taxpayers can save 1.6 billion dollars over the next twenty years if Smart Growth initiatives are followed).

94. METRO. COUNCIL, STATE OF MINN., YOU HAVE A STAKE IN HOW OUR REGION GROWS (1999).

95. Metro. Council, State of Minn., *Growing Smart in Minnesota*, at <http://www.metrocouncil.org/planning/smrtgrowth.htm>. (last visited July 19, 2000).

96. METRO. COUNCIL, CHOICE, NOT CHANCE, *supra* note 92.

97. *Id.*

ban Services Area, or otherwise known as the "MUSA line."⁹⁸ The goal is significant because the natural growth trend is at a very low-density level.⁹⁹ Within the line, the Metro Council plans to further develop the slotted "urban core."¹⁰⁰ This is where sewers, roads, schools and other costly infrastructures are readily available.¹⁰¹ Within the urban core, polluted sites will be cleaned, new jobs will be created, high-density housing will be built, and neighborhoods will be physically stabilized.¹⁰²

The Council has a year 2020 MUSA line in place, as well as a year 2040 MUSA line.¹⁰³ Essentially, the result is that the urban core should not extend beyond the 2020 MUSA line until after the year 2020.¹⁰⁴ Logically, the same plan exists for the 2040 line. Between the MUSA line and the permanent agricultural reserve area exists the "urban reserve."¹⁰⁵ Urban reserves serve as a reservoir beyond today's already developed land for the 2020 and 2040 MUSA lines.¹⁰⁶ The urban reserve is limited to growth of only one dwelling per 40 acres.¹⁰⁷ Key agricultural areas outside the current and future MUSA lines are to be permanently preserved.¹⁰⁸ Like the urban reserve, growth is limited to one dwelling per 40 acres.¹⁰⁹

Another aspect of Smart Growth is a focus on regional mobility in relation to transit and transportation.¹¹⁰ The Metro Council pushes for investment in mass transit, namely its bus program.¹¹¹ The goal is to link significant growth areas with mass transit so that

98. *Id.*

99. *Id.*

100. The urban core includes both downtown Minneapolis and St. Paul and the University Avenue corridor that connects the two cities. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*; MINN. STAT. § 473H.01 (1994). The Metropolitan Agricultural Preserves Act was established in 1980 to encourage preservation of agricultural lands in the Twin Cities region. *Id.*

109. METRO. COUNCIL, CHOICE, NOT CHANCE, *supra* note 92.

110. METRO. COUNCIL, 1999 ANNUAL REPORT 7 (2000) ("Mobile people and product promote economic competitiveness. This requires several transportation choices ...").

111. *Id.* In 2000, forty-five percent of the Metro Council's budget was allotted for transportation. *Id.*

residents are not forced to rely on the automobile.¹¹²

3. Effectiveness Of The Plan

Minnesota's approach to the urban sprawl problem through implementation of the Metropolitan Council has become a prime example of how a novel initiative can result in a largely unfulfilled promise of a sprawl solution.¹¹³ There is little doubt that urban sprawl awareness in the Twin Cities metro area has improved¹¹⁴ since the Metropolitan Council's creation in 1976.¹¹⁵ However, awareness does not constitute solution. The Twin Cities remains one of the mostly highly sprawl-threatened metropolitan areas in the nation.¹¹⁶ In fact, Twin Cities traffic congestion ranks number fourteen in the nation.¹¹⁷

Clearly the Twin Cities land planning approach has many weaknesses. In fact, many argue that the Metro Council's land use plan is little more than salesmanship for political parties¹¹⁸ with few tangible plans or positive effects.¹¹⁹

112. METRO. COUNCIL, CHOICE, NOT CHANCE, *supra* note 92.

113. Poradek, *supra* note 87, at 1346.

114. See WALL, *supra* note 18 (analyzing several surveys that assessed Minnesotans' urban sprawl attitudes).

115. See *supra* note 70.

116. WALL, *supra* note 18, at 3.

117. Rachel E. Stassen-Berger, *Twin Cities Traffic is Jamming More Than Ever, Metro Area Ranks No. 14 in New Study of Congestion*, PIONEER PRESS DISPATCH, (St. Paul) Nov. 17, 1999, at 1A (citing a Texas Transportation Institute Surface Transportation Urban Mobility Study).

118. State Representative Myron Orfield, DFL-Minneapolis, acknowledges that Smart Growth has made a breakthrough in language through its "terminology and salespersonship," making Smart Growth popular among Minnesotans. Bill Salisbury, *Carrot or Stick: Sprawl Opponents Disagree, Use of Incentives in Smart Growth Draws Friends, Foes, Urban Sprawl Opponents Disagree on Smart Growth*, PIONEER PRESS DISPATCH (St. Paul), Feb. 24, 1999, at 6A [hereinafter Salisbury, *Carrot or Stick*]. Randall O'Toole, senior economist for the Thoreau Institute was quoted as saying Smart Growth was "coming up with catchy euphemisms to convince people to adopt things they really don't want and to force people to live in ways they don't want." Neal Gendler, *Smart Growth Seeks to Overcome Problems of Urban Sprawl*, STAR TRIB. (Minneapolis), Jan. 1, 2000, at 1H.

119. *But see* David Peterson, *New Data Show Sprawl Not as Bad as Claimed*, STAR TRIB. (Minneapolis), June 8, 2000, at 1A. The Metro Council released a 1997 assessment of land-use inventory in the Twin Cities. *Id.* The assessment shows that more open space preservation is occurring, less farmland is being lost, and more multi-family housing is being developed. *Id.*

IV. ANALYSIS

The effectiveness of Minnesota's approach to urban sprawl can best be gauged by comparison to the number one ranked¹²⁰ land use plan in the United States, which is found in Oregon. Oregon's experience and success provide a suggestive model for the Twin Cities.

A. *The Oregon Model*

Oregon's land use plan is frequently cited as the finest land use model initiated yet.¹²¹ Oregon's approach to solving urban sprawl has indeed become a model plan.¹²² The state "remains a beacon for how to manage growth and a best-case example of how to tame sprawl."¹²³ The key factors to Oregon's success are: 1) state-wide planning, 2) stern growth boundary enforcement, 3) a directly-elected metropolitan planning agency, and 4) strong citizen support.

The Oregon Legislature enacted the Comprehensive Land Use Planning Act in 1973, under which *all* cities and counties *must* create and adopt comprehensive plans consistent with state-wide goals.¹²⁴ The Act created a state-wide land use program, initiated because the legislature observed the failings of local government planning principles.¹²⁵ State-wide standards are the factor that has enabled Oregon to stop sprawl from becoming worse, and the fac-

120. Sierra Club, *Land Use Ratings-1999 Sprawl Report*, at <http://www.sierraclub.org/sprawl/report99/landratings.asp>. (last visited July 14, 2000) (ranking Oregon number one nationwide in land use planning) [hereinafter Sierra Club, *Land Use Ratings*].

121. E.g., Sen. Ron Wyden & Joshua Sheinkman, *A Road Map for Environmental Law in the Twenty-First Century: Follow the Oregon Trail*, 30 ENVTL. L. 35, 36 (2000) (stating that "Oregon may be the best model anyone has come up with yet for how the economy and the environment can grow together").

122. *Id.* at 35.

123. Sierra Club, *Land Use Planning-1999 Sprawl Report*, at <http://www.sierraclub.org/sprawl/report99/oregon.asp>. (last visited July 14, 2000) [hereinafter Sierra Club, *1999 Sprawl Rep.*].

124. See OR. REV. STAT. §§ 197.000-860 (1991); DUKEMINIER, *supra* note 56, at 1095.

125. Timothy V. Ramis & Andrew H. Stamp, *Integrating Procedural Aspects of Transportation and Growth Management in Oregon: A Critical Look at the Oregon Department of Transportation's Role as a Growth Management Agency*, 77 OR. L. REV. 845, 848 (1998).

tor that has distinguished it from other states.¹²⁶

The state-wide goals are created by the state's Land Conservation and Development Commission.¹²⁷ Citizens are actively involved in the act through democratic referendum voting.¹²⁸ The three main purposes are: 1) to form an urban boundary beyond which rural uses are left unencroached, 2) to provide adequate housing for various income levels within the urban boundary, and 3) to preserve natural resources by preventing their destruction.¹²⁹

The second factor aiding Oregon's success is strict enforcement of its urban growth boundary, or UGB. The UGB's purpose is to protect valuable rural land and to maintain a compact urban area.¹³⁰ Portland has become a prime example of a successful revival of inner city.¹³¹ Numerous people are moving to the region and the business economy is soaring.¹³²

Oregon has the only directly-elected regional-planning organization in the country, which exists in conjunction with the state-wide initiative. This regional-planning organization is known as "Metro."¹³³ The Metro coordinates the Portland area land plan.¹³⁴

One primary reason for Metro's success lies in community consensus of what property rights should be in relation to land use.¹³⁵ Citizens are actively involved in Metro decisions.¹³⁶

Overall, Oregon has been able to fully incorporate environmental considerations into transportation, energy, and economic development, rather than attempting to deal with environmental considerations *ex post facto*.¹³⁷ The success of the Oregon approach is unprecedented in the United States, and is said to "hold lessons for all states."¹³⁸

126. Sierra Club, *1999 Sprawl Rep.*, *supra* note 123.

127. DUKEMINIER, *supra* note 56, at 1095.

128. *Id.* at 1096.

129. *Id.*

130. See Curt Johnson, *Greener Pastures Under Comparison With Oregon, Local Efforts Hold Up*, PIONEER PRESS DISPATCH (St. Paul), Oct. 15, 1997, at 8A.

131. *Id.*

132. *Id.*

133. Sierra Club, *1999 Sprawl Rep.*, *supra* note 123. Portland's "Metro" organization is analogous to the Twin Cities' "Metro Council."

134. *Id.*

135. DUKEMINIER, *supra* note 56, at 1095.

136. Johnson, *supra* note 130.

137. Wyden & Sheinkman, *supra* note 121, at 37-8; *see generally* Ramis & Stamp, *supra* note 125 (discussing Oregon's transportation plan).

138. DUKEMINIER, *supra* note 56, at 1096.

B. *Minnesota In Comparison*

While Minnesota's land use plan ranks fairly high nationwide in effectiveness,¹³⁹ clear weaknesses arise when comparing Oregon's plan and when observing the effects of Minnesota's approach. Minnesota clearly does not match up to the Oregon model. The Metropolitan Council's greatest weaknesses include: 1) feeble enforcement of its land use policies and the MUSA line, 2) an overly restricted jurisdiction, 3) non-elected (appointed) officials, 4) weak policies to prevent exclusionary zoning, 5) non-integration of uses, 6) lack of mass transit, and 7) lack of citizen support.

1. *Weak Enforcement Of Land Use Planning Policies And The MUSA Line*

Arguably, the most significant problem with the Metro Council's land planning policy is weak enforcement of the Metro Council's land use planning policies and of the MUSA line.¹⁴⁰ The Council has limited powers to force compliance with its growth policies.¹⁴¹ The Council's authority has been interpreted to only bring enforcement action in court against a municipality if the plan has "a direct and radical effect on any of the four basic infrastructure systems."¹⁴² In fact, when municipalities violate Metro Council policy, it has traditionally not taken action to force compliance.¹⁴³ In short, the Metro Council has been widely criticized for its passivity in enforcing Smart Growth policies.¹⁴⁴

139. Minnesota ranked fourteenth in the Sierra Club's 1999 Land Use Planning Report, and eleventh in its Open Space Protection Report. Sierra Club, *1999 Sprawl Report*, *supra* note 123; Sierra Club, *Open Space - 1999 Sprawl Report*, at <http://www.sierraclub.org/sprawl/report99/openratings.asp>. (last visited July 14, 2000).

140. Poradek, *supra* note 87, at 1346.

141. See MINN. STAT. § 473.851 (2000). The Legislature was reluctant to enable the Metro Council to assist cities in their planning. *Id.*; see also Poradek, *supra* note 87, at 1360. Poradek suggests ambiguous language in the Minnesota Land Use Planning Act creates mixed signals regarding the Metro Council's land use planning purpose and strategy. *Id.* For instance, "metropolitan system plans" is not clearly defined, leading to a question as to what system plans the Metro Council has power to restrict. MINN. STAT. § 473.852 (2000).

142. Poradek, *supra* note 87, at 1362. In fact, the Metro Council has not brought an enforcement action against a city in twenty years as of 1997. *Id.*

143. McDonnell, *Invisible Crisis*, *supra* note 25.

144. Poradek, *supra* note 87, at 1345 (discussing local controversy over the Council's submissiveness); see also Mike Kaszuba & Laurie Blake, *A Vision Clouded:*

Under the Minnesota Land Use Planning Act,¹⁴⁵ the land use plans submitted to the Metro Council by municipalities are only implemented to serve as guides, not as mandates for cities to comply.¹⁴⁶ For instance, if a city adopts an ordinance that is not in harmony with the Metro Council's land use plan adopted for that area, the ordinance may override the land use plan.¹⁴⁷

In *R.A. Putnam & Associates v. Mendota Heights*, a developer sought to build a high-density residential planned unit development (PUD).¹⁴⁸ However, the court denied his request to compel the city to rezone the property for the PUD, despite the fact that the Metropolitan Council approved an amendment that changed the property's comprehensive plan designation to be suited for a PUD.¹⁴⁹ Thus, local zoning and ordinances have become more powerful than comprehensive plans required by the Metro Council.¹⁵⁰ In *Amcon Corp. v. City of Eagan*, the court even asserted "[t]he designation of land uses on [a comprehensive guide] is generally viewed as advisory and the city is not unalterably bound by its provisions."¹⁵¹

Lack of enforcement is also clear in the Metro Council's stray from adhering to its plan to develop only within the MUSA line. Smart Growth relies on incentives and not on mandates, unlike Oregon.¹⁵² Currently the government lures growth by providing infrastructure to sustain it.¹⁵³ But developers still have the option to develop infrastructure at their own cost. Thus, developers easily find their way around MUSA line recommendations. As Myron Orfield states, in developments built outside planned areas, Smart Growth simply adds infrastructure costs to home prices and creates

Met Council's Future Uncertain as Its Influence Drops Sharply, STAR TRIB. (Minneapolis), Apr. 14, 1991, at 1A.

145. *Supra* note 69.

146. MINN. STAT. § 462.357; *Amcon Corp. v. City of Eagan*, 348 N.W.2d 66, 74 (Minn. 1984); *R.A. Putnam & Assoc. v. City of Mendota Heights*, 510 N.W.2d 264, 268 (Minn. Ct. App. 1994).

147. *E.g.*, *R.A. Putnam*, 510 N.W.2d at 268. In *R.A. Putnam*, Mendota Heights' city ordinance was controlling over the Metro Council's land use plan. *Id.*

148. *Id.* at 266.

149. *Id.*

150. McDonnell, *Invisible Crisis*, *supra* note 25.

151. *Amcon*, 348 N.W.2d at 74 (striking down a city ordinance due to vagueness and capriciousness).

152. Salisbury, *Carrot or Stick*, *supra* note 118.

153. *Id.*

“sprawl without freeways.”¹⁵⁴ Additionally, even though the cost of development then remains in the developers’ hands, taxpayers pick up the tab for amenities such as roads and schools.

A prime example of MUSA line “gerrymandering”¹⁵⁵ is evidenced in *In Re Annexation of Certain Land to the City of Cottage Grove v. Minnesota Municipal Board*.¹⁵⁶ In *Cottage Grove*, land was annexed to the city despite the fact that the Metro Council had designated the areas as a rural service area, outside the MUSA line.¹⁵⁷ In a strong dissent by Justice Wahl, Wahl asserted that annexation of the city was improperly ordered despite designations of the area as rural by state agencies including the Environmental Quality Board and the Metro Council.¹⁵⁸

Difficulties are also evidenced in the reserves and agriculturally designated areas. The council’s acre restriction policy for rural development outside the MUSA line is easily avoided. In Ham Lake and Credit River township, numerous homes have been allowed on 2.5 acre lots.¹⁵⁹ One Metro Council official has even conceded that the MUSA line was never intended to restrict growth in the first place; rather, it was intended to encourage growth at the urban edge and provide high-quality sewage systems at a low cost.¹⁶⁰

In comparison to Oregon, Minnesota’s version of Oregon’s Urban Growth Boundary—the MUSA line—has not halted growth as intended.¹⁶¹ Growth has been steady for twenty-five years and shows no signs of stopping.¹⁶² While Portland has only extended its urban area by eight percent, the Twin Cities is planning to extend its urban area by fourteen percent by 2020.¹⁶³ While it must be conceded that the Twin Cities has a much larger population, the focus of the problem remains on the fact that there is no state law man-

154. *Id.*

155. See BLACK’S LAW DICTIONARY 687 (6th ed. 1990) (defining “gerrymander” as “[a] name given to the process of dividing a . . . territory into the authorized civil or political divisions, but with such a geographical arrangement as to accomplish an ulterior or unlawful purpose. . .”). Here, the ulterior purpose is that developers can profit by building houses outside the MUSA line.

156. 330 N.W.2d 884 (Minn. 1983).

157. *Id.*

158. *In re Annexation of Certain Land to the City of Cottage Grove v. Minn. Mun. Bd.*, 330 N.W.2d 884, 885 (Minn. 1983) (Wahl, J., dissenting).

159. McDonnell, *Invisible Crisis*, *supra* note 25.

160. *Id.* (paraphrasing 1996 Metro Council regional administrator Jim Solem).

161. Johnson, *supra* note 130.

162. *Id.*

163. *Id.*

dating that growth remain within the urban boundary.¹⁶⁴

While stricter mandates certainly would help curb sprawl more efficiently than the current system, it is important to note, however, that a major disadvantage to stricter mandates is that housing costs may rise within the MUSA line.¹⁶⁵ As land within the MUSA line would become saturated with homes, land buyers would compete for scarce land supply that is restricted by a strongly enforced urban growth boundary. Thus, land prices go up as demand increases.¹⁶⁶

Portland, where a strict urban growth boundary is enforced, now has the second-highest housing prices in the nation.¹⁶⁷ Single-family home prices increased 15.6 percent between 1993 and 1996, while the home prices in the rest of the nation only rose 1.8 percent.¹⁶⁸ However, the quality of life that accompanies stricter mandates in land use planning outweighs the disadvantages.

2. *Overly-Restricted Jurisdiction*

The second major weakness of the Metro Council's land use policies is that it has too small of a jurisdictional area. By not having a state-wide land use plan, the Metro Council's limited application leaves large loopholes in preventing sprawl. For instance, the Metro Council has no ability to prevent development outside of the seven-county Metro Area.¹⁶⁹ Additionally, the Metro Council is limited *within* its own jurisdictional boundaries.¹⁷⁰ For instance, the Legislature has recurrently undercut the council's authority by excluding it from major facility planning, such as the Mall of America and the Metrodome.¹⁷¹ Lack of a state-wide land planning initiative prevents control over counties and municipalities on the edge of

164. *Id.*

165. Salisbury, *Carrot or Stick*, *supra* note 118 (stating that growth boundaries have drawbacks, including "soaring housing costs").

166. Lynda McDonnell, *The Sprawl Stops Here*, PIONEER PRESS DISPATCH, (St. Paul), Nov. 22, 1996, at 1A (discussing the effect of the growth boundary on home prices in Portland, Oregon) [hereinafter McDonnell, *Sprawl Stops Here*].

167. Salisbury, *Carrot or Stick*, *supra* note 118.

168. McDonnell, *Sprawl Stops Here*, *supra* note 166.

169. MINN. STAT. § 473.123 (2000) (limiting the Metro Council's authority to interior metropolitan area, including Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties).

170. MINN. STAT. § 473.121 (2000).

171. McDonnell, *Invisible Crisis*, *supra* note 25.

the metropolitan area, and even within.¹⁷²

In Big Lake, a town just north of the Twin Cities in which a major industry was once cash-crop farming, growth has boomed.¹⁷³ Yet the Metro Council remains unable to affect any of its planning.¹⁷⁴ Such leapfrog development could easily lead to congestion, myopic infrastructure costs, and high property taxes without the implementation of an effective land use plan.¹⁷⁵ Yet, because Metro Council's jurisdiction does not extend to Sherburne County (the situs of Big Lake), and because Minnesota does not have a state-wide land use plan, Big Lake could be headed exactly in that direction.

Some suggest that the jurisdiction of the Metro Council be expanded from the seven-county metropolitan area even into western Wisconsin.¹⁷⁶ The Metro Council has commissioned an 85,000 dollar study of the St. Croix River area (just east of the Twin Cities metro area, and outside of the MUSA line).¹⁷⁷ The study will help develop strategies and design options for managing the growth along the St. Croix River for the next twenty years.¹⁷⁸ This is the first time the Metro Council has attempted to work with Western Wisconsin communities.¹⁷⁹ It is largely recognized that out-state communities, as well as metropolitan area communities, need some direction from the state.¹⁸⁰

172. Compare OR. REV. STAT. §§ 197.005-.860 (2000) (mandating a statewide program to apply sustainable development to land use planning) with MINN. STAT. §§ 462.355, 473.121, .175, .851-.872 (2000) (mandating a metropolitan-wide program for land use planning).

173. Lynda McDonnell, *Creeping Beyond Suburbia*, PIONEER PRESS DISPATCH (St. Paul), Nov. 21, 1996, at 1A [hereinafter McDonnell, *Creeping Beyond Suburbia*].

174. *Id.*

175. *Id.*

176. Editorial, *Metro Council Needs More Power, Resources to Manage Region's Growth*, PIONEER PRESS DISPATCH (St. Paul), July 6, 1999, at 10A.

177. Editorial, *Metro Council Design Ideas, Smart Growth, Wise Tack*, PIONEER PRESS DISPATCH (St. Paul), Nov. 19, 1999, at 22A.

178. *Id.*

179. *Id.*

180. Lynda McDonnell, *Can We Live With Limits?*, PIONEER PRESS DISPATCH (St. Paul), Nov. 23, 1996, at 1A [hereinafter McDonnell, *Limits*] (quoting Lee Ronning, Program Director of 1000 Friends of Minnesota). 1000 Friends of Minnesota is an environmental group that increases awareness of land use issues in Minnesota. *Id.*

3. *Non-Elected Officials*

Unlike Oregon's "Metro," in which representatives are elected, Minnesota's Metro Council representatives are appointed by the governor.¹⁸¹ Appointment has created a great amount of dispute, and has even led to the proposal of legislation to change the Metro Council to a directly elected board.¹⁸² Prior to 1996, members were appointed in consultation with legislators, and the state senate had to ratify all appointments.¹⁸³ Now, the governor has much more discretion, which only seems to be increasing.

One complaint is that appointed members are too insulated from the public.¹⁸⁴ An additional predicament to arise among Metro Council members is domination by land developers on the board.¹⁸⁵ In fact, in the mid-1990s, a majority of the seventeen appointed members were either developers or had substantial development interests.¹⁸⁶ Similar conflicts have existed since the Metro Council's creation.¹⁸⁷ While Arne Carlson, governor in the 1990s, contended that his appointments were based on expertise in development,¹⁸⁸ the public did not buy this reasoning. The obvious conflict of interest¹⁸⁹ has generated distrust among natives.¹⁹⁰ When the

181. MINN. STAT. § 473.123, subd. 3 (2000). Sixteen members representing the districts defined by § 473.123 are appointed by the governor. *Id.*

182. In 1997, the state Senate created legislation that would make the council an elected body. The House passed the bill only to see it vetoed by then governor Arne Carlson. David Chanen & Robert Whereatt, *Senate Oks Bill to Make Met Council Elected Body; Carlson Say's He'll Veto*, STAR TRIB. (Minneapolis), May 13, 1997, at 3B.

183. Charles C. Whiting, *We Need a Governor Here*, STAR TRIB. (Minneapolis), June 2, 1998, at 17A.

184. Bob & Teri Bureau, *Met Council Too Insulated from the Public*, STAR TRIB. (Minneapolis), July 7, 1996, at 20A (stating they are "convinced our mail doesn't get read [by the Council] unless there's a corporate logo attached").

185. Mike Kaszuba, *A 'Delicate Balance' for Met Council Members*, STAR TRIB. (Minneapolis), June 30, 1996, at 1A; Frank Jossi, *Ventura, Mondale Tackle Twin Cities Growth Issues*, PLANNING, Jan. 1, 2000, at 30, available at 2000 WL 21630777.

186. Kaszuba, *supra* note 185. One member was a real estate developer in the Twin Cities, one was a real estate broker, one owned a company that built shopping centers, one co-developed Calhoun Square and was Vice President of Nationwide Housing Corp., and one was chairman of Scherer Bros. Lumber Co. *Id.*

187. *Id.*

188. *Id.*

189. *Met Council, A Conflict of Development Interests?*, STAR TRIB. (Minneapolis), July 7, 1996, at 20A (explaining that for a real-estate developer to be a Metro Council representative is the *definition* of conflict of interest). "To play the ... game, developers and their lawyers need to know who the decision-makers are." 9 THOMPSON ON REAL PROPERTY, SECOND THOMAS EDITION § 85.09, at 865 (David A. Thomas ed., 1999).

Metro Council's agenda is nearly encompassed by land values and land development, the possibility for a member/developer's private interests to be kept aside from his/her public interests are nearly impossible.

4. *Weak Policies To Prevent Exclusionary Zoning*

Another major weakness in the Metro Council's land use planning policies is that the current tax policy encourages exclusionary zoning.¹⁹¹ According to Barbara Lukerman, past president of the Citizens League and Professor of land planning at the University of Minnesota, Minnesota needs a change in tax policy to make exclusionary zoning less attractive.¹⁹²

Exclusionary zoning occurs when local municipalities adopt zoning plans that close the suburban land market to low-and moderate-income families.¹⁹³ Exclusionary zoning exists in the Twin Cities in two ways. First, to meet the costs of developing outside the MUSA line, developers typically construct housing that only the middle-to-upper class can afford. This higher class development prevents lower class citizens from living in the suburban areas.

Second, segregation is evident in suburban communities' zoning plans themselves. Suburban communities fail to include prescribed areas for affordable apartments and town homes. Failure to prescribe affordable housing areas may be due to lack of municipal land use plans, or due to the Metro Council not having jurisdiction to review their plans.¹⁹⁴

Such exclusionary zoning has aggravated polarization and

190. See *Letters from Readers*, STAR TRIB. (Minneapolis), July 9, 1996, at 10A. In a letter responding to an article about the number of Metro Council members who were financially interested in local development, a resident of the Minneapolis suburb Bloomington expressed his outrage and loss of trust and respect for government. *Id.*

191. 83 AM. JUR. 2D *Zoning and Planning* § 100 (1992) (defining "exclusionary zoning" as "land use control regulations which singly or in concert tend to exclude persons of low or moderate income from the zoning municipality").

192. McDonnell, *Limits*, *supra* note 180.

193. Kristine Nelson Fuge, *Exclusionary Zoning: Keeping People in Their Wrongful Places or a Valid Exercise of Local Control?*, 18 HAMLINE J. PUB. L. & POL'Y 148, 148 (1996).

194. McDonnell, *Invisible Crisis*, *supra* note 25; Poradek, *supra* note 87, at 1351 (explaining that without comprehensiveness of local land use, local boards could continue excluding undesirable classes of people).

suburbanization.¹⁹⁵ Further, such practices deny housing to low-to-middle income people, and leave older and less affluent areas with a lower tax base, leading to decline in school and community quality.¹⁹⁶

Minnesota has attempted to fashion a regional incentive program to relieve the effects of exclusionary zoning. In 1995, the Minnesota Legislature passed the Livable Communities Act¹⁹⁷ to create tax-base sharing and create incentives for communities to include a full range of housing opportunities.¹⁹⁸ Unfortunately, this tax-based sharing plan reduces but does not eliminate disparities.¹⁹⁹

An alternative is that the state could give tax breaks to developers to build lower-to-middle income housing. Perhaps tax incentives could even be used to boost density in prescribed zones.²⁰⁰ Further, a change in tax policy in which money from development in the more affluent suburbs helps alleviate the cost of the inner development. Coordination of school planning between districts and of government units would additionally alleviate segregation.²⁰¹

Another possible solution is the imposition of impact fees. Impact fees are charges that local governments impose on developers instead of imposing costs on taxpayers.²⁰² For example, when developers build outside the MUSA line, new schools may be necessary.²⁰³ Impact fees could assist in the cost of such new public infrastructure. Accordingly, impact fees may reduce the rate of growth by serving as a disincentive for developing outside the MUSA line.²⁰⁴ Unfortunately, new homebuyers might bear the impact of

195. Orfield, *supra* note 5.

196. McDonnell, *Invisible Crisis*, *supra* note 25.

197. Livable Communities Act, ch. 255 Minn. Laws 1995 (enacted June 2, 1995) (initially codified at MINN. STAT. §§ 473.25-.254 (1995)).

198. MINN. STAT. § 473.25; Fuge, *supra* note 193, at 148.

199. MYRON ORFIELD, METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY 142-52 (1997) (providing a full analysis of tax base sharing history in Minnesota).

200. Wascoe, *supra* note 51.

201. See generally John Powell, *Segregation and Educational Inadequacy in Twin Cities Public Schools*, 17 HAMLINE J. PUB. L. & POL'Y 337 (1996) (discussing educational segregation in the Twin Cities); Elizabeth B. Bowling, *Viewing Metropolitan Housing Authorities As Parties to Be Joined, if Feasible, in Fair Housing Suits: Will Minnesota Break "A Great Silence?"*, 78 MINN. L. REV. 733 (1994) (discussing housing segregation in the Twin Cities).

202. Wiewel et al., *supra* note 54.

203. *Id.*

204. Note that impact fees serve as a disincentive on top of the already *existing*

such fees because developers might simply raise the cost of housing where impact fees are implemented.²⁰⁵

5. *Non-Integration Of Uses*

“Integration of uses” is a land planning principle in which all major community resources (commercial, civic, cultural, and recreational facilities) are in close vicinity to residences.²⁰⁶ Integration occurs when communities “provide the opportunity for someone to walk to work and to the grocery store, [and the] kids can walk to school.”²⁰⁷ Additionally, most activities should be located within walking distance of transit hubs.²⁰⁸ Mass transit should connect all planned unit developments.

Minnesota cities lack true integration of uses.²⁰⁹ The Metro Council does have an action plan related to development and sustainable communities, but as the above analysis has shown, the Metro Council has little authority to implement this plan.²¹⁰ Instead, zoning continues to eliminate mixed-use neighborhoods in the Twin Cities by dividing communities into segregated uses.²¹¹ Only by a revolution creating an alternative to the modern development model will change occur.²¹² Zoning continues to be widely used, and is only beginning to be criticized.²¹³

6. *Lack Of Mass Transit*

According to a study from the Texas Transportation Institute, the average St. Paul-Minneapolis driver spent thirty-four hours sitting in traffic in 1997.²¹⁴ A startling statistic is that almost seventy percent of the increase in driving is a result of urban sprawl im-

disincentive. The existing disincentive is that developments outside the MUSA line are not afforded the luxury of sewage and water costs to those developments inside the MUSA line. Salisbury, *Carrot or Stick*, *supra* note 118.

205. Wiewel et al., *supra* note 54.

206. SIERRA CLUB NORTHSTAR CHAPTER, *supra* note 13, at 2.

207. *Id.*

208. *Id.* at 3.

209. *Id.* at 23.

210. *Id.* at 24; *supra* note 141.

211. Millett, *supra* note 19.

212. *Id.* (discussing zoning critic James Howard Kunstler's beliefs).

213. The New Urbanism movement has attacked modern zoning. *Id.*

214. Stassen-Berger, *supra* note 117.

pacts.²¹⁵ “Sprawling development forces us to drive more frequently and make longer trips.”²¹⁶

Alleviation can be found in mass transit. Transit systems complement high densities by linking them to one another, thus alleviating traffic congestion.²¹⁷ Yet the Metro Council’s light rail transit plans have continuously fallen through, and the Twin Cities has yet to see any tangible result.²¹⁸ Note, however, that at the time of this note’s publication, a federal appropriation for light rail in the Twin Cities became official.²¹⁹ One light rail line slated for the area known as the Hiawatha corridor is expected by 2003.²²⁰ Yet once the new light rail line arrives, it is not likely that just *one* line will alleviate the magnitude of traffic congestion in the metropolitan area.

In the meantime, Twin Citians continue to rely on the automobile. State, metropolitan, and local governments have spent billions of dollars on roads.²²¹ Approximately 1.1 billion dollars was spent during the 1980s on new highways.²²²

7. *Lack Of Citizen Support*

A significant difference between the Oregon land use approach and the Minnesota land use approach is that Minnesotans *themselves* do not support the land use plan adopted by the Metropolitan Council.²²³ On the other hand, Oregonites adamantly support environmental protection and land planning, as evidenced by their referendum results.²²⁴ Without citizen support, the efforts of

215. SIERRA CLUB, *SPRAWL COSTS US ALL: HOW TAXES FUEL SUBURBAN SPRAWL*, 5 (2000).

216. *Id.*

217. *But see* Steven Dornfeld, *Building Rail System Won’t Magically Change Urban Growth Patterns, Planners Say*, PIONEER PRESS DISPATCH (St. Paul), Sept. 27, 1999, at 6A.

218. *Transit Fund, Ventura’s Plan Deserves Strong Support*, STAR TRIB. (Minneapolis), Apr. 5, 1999, at 10A (stating that Minnesota is seen as “the state that can’t” in a multi-modal transportation context).

219. *LRT’s Big Gamble with Other People’s Money*, MPLS. ST. PAUL, February 2001, at 24.

220. *Id.*

221. Orfield, *supra* note 5, at 7.

222. *Id.*

223. For a representative sample of disapproving views of the Metro Council’s policies, see Kaszuba, *supra* note 185; McDonnell, *Creeping Beyond Suburbia*, *supra* note 173; Salisbury, *Fight*, *supra* note 45.

224. Johnson, *supra* note 130 (stating that Portland’s major advantage is that

the Metro Council appears to be in vain.

In general, the issue of whether the Metro Council should stop urban sprawl is moot.²²⁵ Yet surprisingly, a small camp is contra. Opponents of limiting sprawl argue that people have inherent rights associated with land use.²²⁶ Woodbury's mayor was quoted as saying "[p]eople have a right to develop their property." This sentiment, while possibly unpopular, is "intrinsicly American,"²²⁷ and is rooted in the manifest destiny phenomenon discussed *supra*.²²⁸ The Commissioner of the Metropolitan Council himself has even been cited as stating "This is a free country, and no one can tell you where or how to live, or whether you should take a car, bus, train or bicycle to work."²²⁹

When the economy is booming, and the non-affected suburbanites are in office, the pressure to change is lacking. Successful states combating land use have typically shared a sense of crisis.²³⁰ Yet while property rights as well as freedom to choose should be respected and recognized, the underlying truth is that small individual sacrifices will add up to create a much greater benefit to all; a much more livable, beautiful place to live. According to John Fregonese, past director of the Portland Metro Council's growth management services, "you have to sacrifice for the things that are valuable."²³¹

V. RECOMMENDATIONS

In light of the preceeding analysis, this note recommends a number of Metro Council transformations. Such alterations are essential to enable the body to effectively curb urban sprawl in the Twin Cities. Changes include:

1. Expansion of the Metro Council's authority to enforce

its growth boundary is part of its political culture).

225. Dowling, *supra* note 7, at 873-78 (asserting that the policy debate over urban sprawl's serious nature is over).

226. *Contra* Poradek, *supra* note 87, at 1352 (stressing "integration of control"). Some suggest a private right of action, established by either the courts or by the legislature, should be created to help control sprawl. *Id.* at 1358, 1366-67.

227. SIERRA CLUB NORTHSTAR CHAPTER, *supra* note 13 (citing City of Woodbury, WOODBURY BULLETIN, Aug. 19, 1999, at 5A).

228. *Supra* notes 19-25 (discussing urban sprawl and the manifest destiny phenomenon in detail).

229. Wascoe, *supra* note 51.

230. McDonnell, *Limits*, *supra* note 180.

231. McDonnell, *Sprawl Stops Here*, *supra* note 166.

compliance with its policies, including strict mandates with consequences in lieu of monetary "lures".

2. Implementation of a state-wide land use plan in conjunction with the Metro Council's metropolitan area authority or, in the alternative, expansion of the Metro Council's jurisdiction beyond the seven-county metropolitan area.
3. Implementation of a popularly-elected board.
4. Creation of tax incentives to prevent exclusionary zoning.
5. Implementation of integration of uses within planned unit developments.
6. Construction of light rail or other mass transit.
7. Augmentation of citizen support.

VI. CONCLUSION

A conglomeration of flaws and limitations has regrettably led the Twin Cities Metro Council's effectiveness in curbing urban sprawl down a dead-end road. Concededly, the market will provide a partial cure for some effects of sprawl due to the inconvenience of congestion, long commutes, traffic jams and decreased open space.²³² However, without a successful government program to combat the ill effects of urban sprawl and to prevent resource devastation, the Twin Cities is destined for myopic, disparaging growth. Reform is conceivable. Many of the Metro Council's weaknesses are plausibly fixable. Arming the Metro Council with the tools it needs to successfully manage urban sprawl is essential to a better way of life for Twin Citians, and Minnesotans alike.

232. Buzbee, *supra* note 1, at 63.
