
COMMENT

WHAT TO DO WHEN MAIN STREET IS LEGAL AGAIN:
REGIONAL LAND VALUE TAXATION AS
A NEW URBANIST TOOL

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INTRODUCTION

For most of the twentieth century, Americans left urban centers for suburban landscapes.¹

[O]ver the last one hundred years, American land use policy [was] designed to segregate uses of land, reduce population density, and facilitate the use of automobiles [S]uburban sprawl has come to represent the American dream, where citizens can own a home, two-car garage, both back and front yards, and if you are truly lucky, a pool.²

Indeed, an antiurban attitude is ingrained in the American psyche.³ Americans' deeply rooted desire for independence coupled with an abundant supply of low-priced land created a low-density land use pattern.⁴ The growth of affordable automobiles in the twentieth century allowed for satisfaction of the deeply ingrained American desire to spread out.⁵ Consequently, Americans fled urban areas for the suburbs.⁶ The proliferation of low-density

¹ See MARK MATHER, KELVIN POLLARD & LINDA A. JACOBSEN, POPULATION REFERENCE BUREAU: FIRST RESULTS FROM THE 2010 CENSUS 15 fig.6 (2011), <http://www.prb.org/pdf11/reports-on-america-2010-census.pdf> [<http://perma.cc/FN89-UCA2>] (showing that 7% of America's population lived in suburbs in 1910, compared with 51% in 2010). *But see* John McIlwain, *Suburbs 2.0: The Evolving American Suburb*, URBAN LAND (June 1, 2011), <http://urbanland.uli.org/economy-markets-trends/suburbs-2-0-the-evolving-american-suburbs/> [<http://perma.cc/UFH7-BC63>] ("The rapid growth on the furthest edges of metropolitan regions is a continuation of a pattern six decades old; what is new is the resurgence of the innermost ring of suburbs in the last decade. This new pattern of suburban growth, where both the innermost and outermost parts of the region are growing rapidly, has provided evidence to both those who believe that the suburbs will continue to grow forever outward in the years ahead, and to those who believe that the suburbs have reached an inflection point where most growth will shift to the closer-in parts of metropolitan regions.").

² Timothy Polmateer, Note, *How Localism's Rationales Limit New Urbanism's Success and What New Regionalism Can Do About It*, 41 *FORDHAM URB. L.J.* 1085, 1087 (2014). *See generally* KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* (1985) (describing the history of suburban sprawl in the United States and outlining how attaining a suburban lifestyle has come to define success in American culture).

³ *See* Polmateer, *supra* note 2, at 1086 ("[Thomas] Jefferson believed urban living was detrimental to the health of society and preferred other forms of settlement.").

⁴ *See* James A. Kushner, *Smart Growth, New Urbanism, and Diversity: Progressive Planning Movements in America and Their Impact on Poor and Minority Ethnic Populations*, 21 *UCLA J. ENVTL. L. & POL'Y* 45, 46 (2002) ("American growth patterns have been driven by natural and unnatural forces. Vast amounts of land tended to foster individualism, privacy, and noncontiguous, non-compact land use patterns.").

⁵ *See* JAMES HOWARD KUNSTLER, *THE GEOGRAPHY OF NOWHERE: THE RISE AND DECLINE OF AMERICA'S MAN-MADE LANDSCAPE* 85-112 (1993) (explaining that Americans are "Car Crazy").

⁶ *Id.*

development typified by post–World War II suburbs is called sprawl.⁷ Unfortunately, this low-density development is inefficient and causes a host of social and environmental problems.⁸

City planners, environmentalists, and academics alike widely criticize the proliferation of suburban sprawl. These critics argue that sprawl is fundamentally problematic because it is unsustainable and destroys vibrant neighborhoods and communities.⁹ “Evidence of sprawl surrounds us [S]prawl consume[d] nearly six million acres of farmland annually [from 1954 to 1974]”¹⁰ Sprawl makes us overly dependent on automobiles, “which imposes enormous costs and degrades our quality of life . . . [by] impos[ing] burdensome infrastructure costs”¹¹ and creating a society stratified by “income, education, race, and ethnicity.”¹²

This Comment assumes suburban sprawl is inimical to the common good and ought to be slowed and, if possible, reversed. My purpose is not to prove that there is a problem, but to explore a potential solution: Land Value Taxation (LVT). Finding a solution, however, begins with identifying the causes of the problem. Accordingly, Part I briefly examines single-use zoning’s contribution to the problem of sprawl, and concludes that New Urbanists are making tremendous progress toward reforming single-use zoning. I suggest that our current property tax system is another cause of sprawl and, given the success of zoning reform, ought to be the target of New Urbanist policy advocacy. Part II posits LVT as an alternative to our current single-rate tax system and explores LVT’s dual ability to incentivize denser development and disincentive land speculation at the suburban fringe. Part III concludes that LVT can be most effectively implemented at the regional level.

I. SUBURBAN SPRAWL AND THE NEW URBANIST RESPONSE

While a prolific social phenomenon like suburban sprawl is no doubt caused by a number of complex and overlapping factors, the greatest contributor to

⁷ *Id.*

⁸ *See id.* at 113-24 (detailing the environmental, social and economic cost of the exponential increase in the use of automobiles); Jeremy R. Meredith, Note, *Sprawl and the New Urbanist Solution*, 89 VA. L. REV. 447, 452-66 (2003) (detailing the same costs for sprawl).

⁹ *See* Timothy J. Dowling, *Reflections on Urban Sprawl, Smart Growth, and the Fifth Amendment*, 148 U. PA. L. REV. 873 (2000) (arguing that the debate over whether or not sprawl is harmful is over, and suggesting that the time has come to argue about its cures, not its effects).

¹⁰ *Id.* at 875; *see also* U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 597 (95th ed. 1974) (showing that the number of acres of farmland in the United States decreased by 119 million from 1954 to 1974).

¹¹ Dowling, *supra* note 9, at 875-76.

¹² Peter Mieszkowski & Edwin S. Mills, *The Causes of Metropolitan Suburbanization*, J. ECON. PERSP., Summer 1993, at 135, 137.

sprawl is single-use zoning. Local governments use zoning as the primary means to control land use.¹³ American zoning policy in the twentieth century created sprawl by using single-use zoning almost exclusively. Single-use zoning regulates the development of land based on the intended end use.¹⁴ It allows only one kind of use in a specified zone.¹⁵ Residential development is separated from commercial development, which is separated from industrial development. Mixed uses within a zone are prohibited; commercial activity is not permitted in residential zones and vice versa.

The result of single-use zoning is that “residential zones cover large amounts of thinly populated land, [and] few people can live within walking distance of commercial zones.”¹⁶ Single-use zoning’s first article of faith is that the best and highest use of land is the single-family detached home, and that all other uses are inferior and thus must be kept separate.¹⁷ The Supreme Court upheld the practice of single-use zoning in its now iconic decision *Village of Euclid v. Ambler Realty Co.*¹⁸

The spread of single-use zoning was aided not only by local zoning ordinances, but also by state and federal policy. For example:

[T]he federal government created the Federal Housing Administration (FHA)—an agency that subsidized home ownership by insuring private sector loans—but only for homes that met FHA standards. These standards prohibited gridded streets in residential neighborhoods, instead describing cul-de-sacs as “the most attractive form for family dwellings.” The FHA also recommended residential streets that were twenty-four to twenty-six feet wide—about 50% larger than some older streets. FHA standards also required long blocks and low densities. Because the majority of American mortgages were FHA-insured, the FHA minimum standards governed most new development. And local governments generally adopted rules based on FHA

13 ROBERT C. ELLICKSON ET AL., *LAND USE CONTROLS: CASES AND MATERIALS* 57 (4th ed. 2013) (“The single most important mechanism by which local governments control land use is the zoning ordinance.”).

14 Michael Lewyn, *New Urbanist Zoning for Dummies*, 58 *ALA. L. REV.* 257, 263 (2006) (“[S]ingle-use zoning (also known as ‘Euclidean zoning’ after the [1926] case which upheld that technique) became virtually universal.” (citations omitted)).

15 *Id.* at 258.

16 *Id.*

17 ELLICKSON ET AL., *supra* note 13, at 63. The notion that residential uses must be kept separate from nonresidential uses emerged from a group of landscape architects operating on the European Continent in the late nineteenth and early-twentieth centuries—chief among them Le Corbusier. See KUNSTLER, *supra* note 5, at 71-73, 78; ROY LUBOVE, *THE URBAN COMMUNITY: HOUSING AND PLANNING IN THE PROGRESSIVE ERA 1-22* (1967) (discussing the roots of urban planning).

18 272 *See* U.S. 365 (1926) (upholding a local zoning ordinance that created six zones and allowed only a single use within each zone as a valid exercise of the enacting municipality’s police power).

standards, which meant that even homes not insured by the FHA were governed by FHA rules.¹⁹

So, for much of the twentieth century, American land use policy at the local, state, and federal levels encouraged sprawl, accelerating the decline of walkable, mixed-use neighborhoods and leading to an increasingly stratified and automobile-dependent society.

New Urbanism²⁰ emerged as an anti-sprawl movement.²¹ Jane Jacobs, one of the earliest and harshest critics of single-use zoning, is in many ways the mother of New Urbanism.²² Jacobs argued single-use zoning destroys vibrant cities by “stifling the cross-fertilization of ideas and experiences that is so important to a city’s economic and social health”²³ and that arises naturally in a dense and diverse city. Today, New Urbanists strongly criticize single-use zoning and urge a switch to mixed-use zoning, which “allows people to work and shop within walking distance of their homes”²⁴ New Urbanists’ proposed pattern of development promotes a sense of community and reduces dependence on automobiles.²⁵ New Urbanism seeks to create human-scaled,

¹⁹ Lewyn, *supra* note 14, at 264-65 (footnotes omitted) (citing Michael Southworth & Eran Ben-Joseph, *Regulated Streets: The Evolution of Standards for Suburban Residential Streets* (Inst. of Urban and Reg’l Dev., Working Paper No. 593, 1993)).

²⁰ I use the term New Urbanism broadly to refer to the range of responses to single-use zoning and the resultant sprawl. See Joseph E. Gyourko & Witold Rybczynski, *Financing New Urbanism Projects: Obstacles and Solutions*, 11 HOUSING POL’Y DEBATE 733, 733 (2000) (explaining that New Urbanism is also referred to as “traditional neighborhood development, neotraditional development, and smart growth”). While each of these movements varies from the others in subtle ways, for the purposes of this Comment, their overall goals are sufficiently similar to warrant being lumped together.

²¹ See Meredith, *supra* note 8, at 451 (explaining that New Urbanism “focuses primarily on spatial solutions to urban sprawl at the regional, neighborhood, and block level”); Polmateer, *supra* note 2, at 1095 (“New Urbanism attempts to manage development problems like sprawl . . .”).

²² See JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (1961); see also SULEIMAN OSMAN, *THE INVENTION OF BROWNSTONE BROOKLYN: GENTRIFICATION AND THE SEARCH FOR AUTHENTICITY IN POSTWAR NEW YORK* 173 (2011) (“If Le Corbusier was a guru for modernist urban planning students of the 1950s, Jane Jacobs was the founding mother of the New Urbanism . . .”).

²³ Jay Wickersham, *Jane Jacob’s Critique of Zoning: From Euclid to Portland and Beyond*, 28 B.C. ENVTL. AFF. L. REV. 547, 550-51 (2001) (citing JACOBS, *supra* note 22, at 165-74).

²⁴ ELLICKSON ET AL., *supra* note 13 at 63; see also ANDRES DUANY ET AL., *SUBURBAN NATION: THE RISE OF SPRAWL AND THE DECLINE OF THE AMERICAN DREAM* 25 (2000) (“[In a traditional, mixed-use neighborhood, citizens] can live above the store, next to the store, five minutes from the store, or nowhere near the store, and it is easy to imagine the different age groups and personalities that would prefer each alternative. In this way and others, the traditional neighborhood provides for an array of lifestyles. In [single-use] suburbia, there is only one available lifestyle: to own a car and to need it for everything.”).

²⁵ Lewyn, *supra* note 14, at 258-59.

walkable, mixed-use development in which spontaneous human interaction is possible.²⁶

Not surprisingly, New Urbanists fought sprawl by attacking its wellspring: single-use zoning.²⁷ New Urbanism categorically rejected the foundational value judgment of single-use zoning, namely, “that the appropriate way to order different land uses is to separate them from one another into single-use zones.”²⁸ Instead, New Urbanists sought to regulate density rather than use by creating the “SmartCode”:²⁹

While ordinary zoning codes regulate a building’s character (e.g., its height, building and lot size, and parking facilities) by its use, the SmartCode regulates a building’s character by the urban intensity of its zone—it sets up one set of rules for buildings in each zone, regardless of whether the buildings are being used for residential or commercial purposes.³⁰

Surprisingly, New Urbanists have been successful in fighting single-use zoning and implementing the SmartCode.³¹ Indeed, “[d]uring the past forty years, the lessons taught by Jane Jacobs about urban form have largely been incorporated into land-use regulation.”³² The role of zoning is transforming. Rather than separating uses, zoning is now most often used “in the service of promoting walkable, mixed-use neighborhoods connected by transit.”³³ Cities

²⁶ See *id.* (laying out the principles of New Urbanism); see also CONG. FOR THE NEW URBANISM, CHARTER OF THE NEW URBANISM (2001), http://www.cnu.org/sites/default/files/charter_english.pdf [<http://perma.cc/44ZV-V4ZV>] (same).

²⁷ See J. Peter Byrne, *The Rebirth of the Neighborhood*, 40 *FORDHAM URB. L.J.* 1595, 1597 (2013) (listing zoning reform as one of the three chief tools of New Urbanists).

²⁸ Nicole Stelle Garnett, *Ordering (and Order in) the City*, 57 *STAN. L. REV.* 1, 4 (2004).

²⁹ The SmartCode is one example of the more generic form-based codes used by New Urbanists, but since both regulate density rather than use, I use the terms interchangeably. See ELLICKSON ET AL., *supra* note 13, at 63 (“The movement in favor of form-based zoning likewise deemphasizes segregation of uses in favor of specifying urban forms or physical layouts that might encompass mixed-uses like retailers in close proximity to residences.”). Notably, form-based codes do still regulate some non-compatible uses like heavy industry and residential housing. See generally DANIEL G. PAROLEK ET AL., *FORM BASED CODES: A GUIDE FOR PLANNERS, URBAN DESIGNERS, MUNICIPALITIES, AND DEVELOPERS* 12 (2008) (“[W]hile FBCs [form-based codes] differ radically from conventional zoning in many ways, they are similar in a few ways. FBCs also isolate noxious uses, such as heavy manufacturing and airports, and they generally only regulate private buildings as they affect the public good, leaving plenty of room for individual tastes and styles. As necessary, they may also contain provisions similar to conventional zoning for such issues as non-conforming uses and affordable housing.”).

³⁰ Lewyn, *supra* note 14, at 269.

³¹ See Tony Perez, *Top 10 Misconceptions About Form-Based Codes*, BETTER CITIES AND TOWNS, Sept.–Oct. 2014, at 1, 1 (“Since 1981, approximately 400 form-based codes (FBCs) have been prepared for communities across the [United States], and as of 2012, 252 of them have been adopted. Eighty-two percent of the adoptions have taken place in the past 10 years.”).

³² Byrne, *supra* note 27, at 1598.

³³ *Id.*

are now “permitting greater mixing of uses on a single site This trend now culminates in form-based coding”³⁴

That zoning is decreasingly an impediment to New Urbanism is astounding given that less than twenty years ago, “virtually everything [New Urbanists] want[ed] to do [was] illegal.”³⁵ Indeed, in 2006, Chad Emerson wrote his now seminal article *Making Main Street Legal Again: The SmartCode Solution to Sprawl*.³⁶ In his opening line, Emerson boldly claimed:

Under zoning codes in much of the United States today, building a project similar to classic American communities such as Charleston, Savannah, Key West, or Alexandria, would be illegal. Many zoning codes also prohibit the creation of a neighborhood with a traditional corner store or a classic American main street where the shopkeeper lived above her shop.³⁷

It is therefore truly amazing that less than a decade later, the SmartCode has made so much progress in American land use planning.

Zoning reform, however, is a necessary but not sufficient element in achieving the New Urbanist agenda.³⁸ In fact, it is only the frontier. As municipalities and communities across America continue to adopt form-based codes, the New Urbanist movement should look to new policy initiatives that can create a better built environment. Now is the time to start planning for a future in which zoning codes are not an impediment to New Urbanism. Accordingly, this Comment proposes the Land Value Tax (LVT) as the next major initiative New Urbanists should pursue. The Land Value Tax is not a new concept; it is not even a new concept for New Urbanists.³⁹ This Comment, however, makes the additional argument that LVT is most effectively implemented at the regional or metropolitan level. Given the success of New Urbanist zoning reforms, the time is ripe to plan the future of the movement, and a Land Value Tax is a key component in a comprehensive New Urbanist legal regime. Land Value Taxation must become a club in the bag of New Urbanist policy.

³⁴ *Id.* at 1599.

³⁵ Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047, 1093 (1996).

³⁶ Chad D. Emerson, *Making Main Street Legal Again: The SmartCode Solution to Sprawl*, 71 MO. L. REV. 637 (2006).

³⁷ *Id.* at 637.

³⁸ See Thomas A. Gihring, *Incentive Property Taxation: A Potential Tool for Urban Growth Management*, 65 J. AM. PLAN. ASS'N. 62, 62 (1999) (noting that “[r]arely have [New Urbanists] looked beyond regulations [like zoning] for solutions to the twin problems of urban sprawl and central city stagnation” and proposing a focus on a revised property tax as an additional tool).

³⁹ See *id.* (providing an example of a New Urbanist suggesting LVT as a means of achieving New Urbanist goals).

II. LAND VALUE TAX⁴⁰

A. *The History and Theory*

Nearly every jurisdiction in the United States employs a single-rate property tax system—that is, they tax land and improvements to land (i.e. buildings) at the same rate.⁴¹ Thus, “property tax is actually two types of taxes—one on building values, and the other on land values.”⁴² Henry George, a nineteenth century politician, criticized this two-rate approach as inefficient and unjust.⁴³ As a superior alternative, George proposed eliminating the tax on building values in favor of a single tax on land values.⁴⁴ For a little over a century now, George and his followers have been advocating LVT as an equitable and efficient alternative to the current single-rate property tax system.⁴⁵

Proponents of LVT criticize the manner in which the single-rate system combines two taxes into a unitary property tax because “the property tax is, economically speaking, a combination of one of the worst taxes—the part that is assessed on real estate improvements . . . and one of the best taxes—the tax

⁴⁰ A threshold question not addressed in this Comment is whether LVT’s different treatment of land and buildings violates a state constitution’s uniformity clause. See J. Anthony Coughlan, *Land Value Taxation and Constitutional Uniformity*, 7 GEO. MASON L. REV. 261, 262 (1999) (describing a state constitution’s uniformity clause as a “constitutional requirement that taxes upon the same classes of subjects be uniform,” which “may forbid the subclassification of real property into land and improvements”). Indeed, in Pennsylvania, the only state to experiment broadly with LVT, the issue has not come up despite Pennsylvania’s use of LVT for over a century. See *id.* (“[T]here are no reported rulings directly regarding the constitutionality of a two-tiered real property tax.”). To the best of my knowledge, this remains the case today. Nevertheless, after surveying the relevant Pennsylvania case law, Coughlan concludes LVT does not violate Pennsylvania’s uniformity clause. *Id.* at 269; see also PA. CONST. art. VIII, § 1 (“All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.”). Coughlan does speculate, however, that fifteen other states’ uniformity clauses, read literally, are unlikely to allow LVT. See Coughlan, *supra*, at 291. Obviously, if LVT is unconstitutional in certain states, switching to it becomes politically and practically difficult.

⁴¹ See Jeffrey P. Cohen & Cletus C. Coughlin, *An Introduction to Two-Rate Taxation of Land and Buildings*, 87 FED. RES. BANK ST. LOUIS REV. 359, 359, 366 (2005).

⁴² Alana Hartzok, *Pennsylvania Farmers and the Split-Rate Tax*, in LAND-VALUE TAXATION: THE EQUITABLE AND EFFICIENT SOURCE OF PUBLIC FINANCE 239, 239 (Kenneth C. Wenzer ed., 1999).

⁴³ See generally HENRY GEORGE, PROGRESS AND POVERTY: AN INQUIRY INTO THE CAUSE OF INDUSTRIAL DEPRESSION AND OF THE INCREASE OF WANT WITH INCREASE OF WEALTH; THE REMEDY 403-29 (Robert Schalkenbach Found. 1935) (1879). “[R]ent should, both on grounds of expediency and justice, be the peculiar subject of taxation [A]ll taxation should be abolished save a tax upon the value of land.” *Id.* at 423-24.

⁴⁴ See *id.* at 431-73 (justifying a single tax on land with reference to the tax’s effect on the production and distribution of wealth, on individuals and classes, and on social organization and social life).

⁴⁵ See LAND VALUE TAXATION: THE EQUITABLE AND EFFICIENT SOURCE OF PUBLIC FINANCE (Kenneth C. Wenzer ed., 1999) (collecting essays advocating for a switch to LVT).

on land or site value”⁴⁶ These critics complain that the single-rate system “punishes anyone who puts up a decent building made of durable materials” by encouraging land speculation, shoddy construction, and underutilization.⁴⁷

The tax on buildings is problematic because it is a tax on production. Buildings exist to help people accomplish tasks. When a company constructs a building, it does so because it thinks the building will help it be more profitable. The building is part of the company’s production costs just like labor or equipment. When a building is taxed at the same rate as the land on which it sits, there is a strong disincentive for the company to expend capital to improve the land unless the improvement’s value is greater than the increase in the tax burden on the land.⁴⁸ Thus, taxing buildings, even though they are a cost of production, raises the costs of goods and therefore reduces the supply. Thus, taxes on buildings are inefficient because they increase the cost of production, thereby driving down demand for that item. Put simply: the higher the tax rate on buildings, the fewer buildings there will be.⁴⁹

Conversely, a tax on the value of land is efficient because, unlike the quantity of buildings, the quantity of land is fixed; therefore, an increase in the tax rate on land cannot result in a decrease in its supply.⁵⁰ The only way to offset an increase in the tax rate of land is to increase the production of the land.⁵¹

As the tax rate on land increases, landowners have a strong incentive to make capital improvements to land that will produce enough revenue to offset the higher taxes.⁵² “[B]y penalizing non-production, [taxing land] encourages

⁴⁶ William Vickrey, *Simplification, Progression, and a Level Playing Field*, in LAND VALUE TAXATION: THE EQUITABLE AND EFFICIENT SOURCE OF PUBLIC FINANCE, *supra* note 45, at 17, 17; *see also* RICHARD F. DYE & RICHARD W. ENGLAND, LINCOLN INST. OF LAND POL’Y, ASSESSING THE THEORY AND PRACTICE OF LAND VALUE TAXATION 4 (2010), https://www.lincolnst.edu/pubs/dl/1760_983_Assessing%20the%20Theory%20and%20Practice%20of%20Land%20Value%20Taxation.pdf [<https://perma.cc/CFL4-GKHS>] [hereinafter ASSESSING THE THEORY] (“The traditional property tax is controversial because it is widely perceived to be unfair and regressive.”).

⁴⁷ JAMES HOWARD KUNSTLER, HOME FROM NOWHERE: REMAKING OUR EVERYDAY WORLD FOR THE TWENTY-FIRST CENTURY 197 (1996).

⁴⁸ Hartzok, *supra* note 42, at 239.

⁴⁹ *See id.* (arguing that a tax on buildings results in “lower production, higher prices, or both” (emphasis added)).

⁵⁰ *See id.* (“A tax on land cannot be avoided by producing less land, or by moving land from one jurisdiction to another.”).

⁵¹ *See id.* at 239-40 (“Land is most certainly not a product of human labor but a gift of nature Unlike a levy on capital items, a tax on land is not a cost of production in itself but functions as a type of user fee which has the added advantage of encouraging efficient land use while curbing land speculation.”).

⁵² *See* Mark Speirs, Land Value Taxation: An Underutilized Complement to Smart Growth Policies 38 (Dec. 13, 2010) (unpublished B.S. thesis, University of Pennsylvania) <http://www.urbantoolsconsult.org/upload/markspeirsfinalpaper12-20.pdf> [<http://perma.cc/HQ37-M5GL>] (stating that a tax on land does not affect the amount of the commodity that a firm produces and therefore is more efficient).

landowners to develop their land, thereby creating jobs and other benefits. It also reduces speculation, bringing land prices more into line to [sic] true market rates.”⁵³ Accordingly, LVT proponents argue that land should be taxed at a much higher rate than improvements to land because such a tax will incentivize more efficient land usage.⁵⁴ In sum, LVT provides landowners both a carrot and a stick. LVT’s carrot comes in the form of the benefit the tax system provides: if landowners put bigger buildings on their land, the value of those buildings will be taxed at a much lower rate than the land. LVT’s stick is that if a landowner holds land in an unproductive fashion and fails to make improvements, it will cost much more than under a single-rate system.

LVT’s greatest virtue, however, is that it is a value capture tax. By taxing the value of land at a high rate, the public recaptures part of the value added to land through the expenditure of public funds for improvements like sewers and roads.⁵⁵ By capturing the value of public expenditures, LVT eliminates a free rider problem caused by developers making money off tax expenditures meant to benefit the whole community.⁵⁶ The value capture feature of LVT creates a more equitable distribution of tax burdens: “[O]wners of valuable land benefit from socially created value based on the location of their land, so under a system of [land-]value taxation the relation between tax paid and benefits received would be clear and proportional.”⁵⁷ Under our current system of single-rate taxation “taxes may be (and often are) out of proportion with benefits received, which a normal person would rightfully construe as unfair.”⁵⁸ Kunstler illustrates the intuitive fairness of LVT: “For instance, a homeowner whose [property tax] is increased because he decides to fix up his old house derives no increased benefit in municipal services. Why should he be penalized for taking care of his building?”⁵⁹ In sum, LVT’s value capturing ability creates a more equitable and efficient property tax system.

⁵³ *Id.* at 15.

⁵⁴ See, e.g., KUNSTLER *supra* note 47, at 198-207.

⁵⁵ See Coughlan, *supra* note 40, at 266-67 (stating that LVT can be used to capture some or all of the value added to real property by government expenditures).

⁵⁶ See, e.g., Walter Rybeck, *Transit-induced Land Values*, 5 ECON. DEV. COMMENT. 23 (1981) (showing that the completion of Washington’s Metrorail system created windfalls for nearby developers, who could now charge rental premiums thanks to their newfound proximity to mass transit). For a hypothetical illustration of the free rider problem, see *infra* notes 69-70 (citing Speirs, *supra* note 52, at 20-25).

⁵⁷ KUNSTLER, *supra* note 47, at 202.

⁵⁸ *Id.*

⁵⁹ *Id.*

B. Why Land Value Taxation Accomplishes New Urbanist Goals

1. Infill Development

Because Land Value Taxation incentivizes more intensive use of land, switching to it would create the more dense walkable neighborhoods sought by New Urbanists.⁶⁰ “A major objective of [New Urbanism] is to alter the spatial distribution of population and employment, principally by increasing the density and intensity of development”⁶¹ LVT accomplishes this objective by creating a strong incentive for infill development. Infill development is the process of “developing vacant or under-used parcels within existing urban [and suburban] areas that are already largely developed.”⁶²

LVT’s high tax rate on land rather than on buildings and improvements to land creates an incentive to build more improvements. It also creates disincentives to build structures that generate little revenue such as surface parking lots or large yards. In urban areas, where tax rates would increase the most under LVT given the high site-value of land, developers would be incentivized to make substantial improvements to their land in order to take advantage of the tax-favored status of improvements.⁶³ Further, “vacant and underutilized sites would have heavy tax increases, thus providing financial incentives to bring about infill development and general upgrading.”⁶⁴ Indeed, the data from Pittsburgh—the only major city in the United States

⁶⁰ See Speirs, *supra* note 52, at 18 (stating that taxing land more heavily than building values promotes urban revitalization).

⁶¹ GREGORY K. INGRAM ET AL., LINCOLN INST. OF LAND POL’Y, SMART GROWTH POLICIES: AN EVALUATION OF PROGRAMS AND OUTCOMES 135 (2009).

⁶² *Infill Development: Completing the Community Fabric*, MUN. RES. SERV. CTR., <http://mrsc.org/Home/Explore-Topics/Planning/Development-Types-and-Land-Uses/Infill-Development-Completing-the-Community-Fabric.aspx> [<http://perma.cc/C8UD-M5PB>] (last modified May 18, 2015) [hereinafter *Infill Development*]. Most municipalities and towns have many parcels of land that are either undeveloped or underdeveloped. Infill development seeks to utilize these parcels, creating a greater overall density, rather than simply “sprawling” to yet another undeveloped farm or plot of vacant land. Infill development aims to achieve more than scatter-shot development: by creating more dense land use, infill development creates more coherent neighborhoods. *See id.* (“Successful infill development is characterized by overall residential densities high enough to support improved transportation choices as well as a wider variety of convenience services and amenities. It can return cultural, social, recreational and entertainment opportunities, gathering places, and vitality to older centers and neighborhoods.”). *But see* J. Terrence Farris, *The Barriers to Using Urban Infill Development to Achieve Smart Growth*, 12 HOUSING POL’Y DEBATE 1, 8 (2001) (providing an overview of the disincentives for infill development).

⁶³ See Gihring, *supra* note 38, at 75 (“[C]apital investment in building improvements is rewarded through the incentive of lower taxes.”).

⁶⁴ *Id.* at 73.

to implement LVT—supports the conclusion that “the real power of [LVT] is to stimulate central city revitalization.”⁶⁵

LVT’s ability to incentivize infill development will also decrease urban blight by increasing the costs of leaving a building vacant. Vacant buildings and lots are a primary cause of urban blight, and “[a] significant portion of vacant buildings are owned by speculators who buy inner-city property cheaply in the hope that future development, whether spurred by the government or by private developers, will allow them to sell their land for a substantial profit.”⁶⁶ Not surprisingly, these urban speculators hold land unproductively (by not building on it) because “most cities’ property taxes impose relatively low burdens on land holding, but heavy burdens on land using. By keeping buildings vacant, speculators pay less in taxes while avoiding the problems of dealing with tenants.”⁶⁷ What’s more, even when these vacant properties do have improvements, “[m]aintenance is typically ignored ‘because it does not affect actual property prices in a way that makes speculation more profitable.’”⁶⁸ Under an LVT regime, however, the holding costs of vacant land will increase, and speculators will be forced to at least use the property for a purpose that generates enough revenue to pay the taxes on the property.

An example helps illustrate how LVT encourages infill development, especially in urban areas.⁶⁹ Imagine an empty lot located in a city; the assessed value of the lot is \$8360. A typical tax rate for this lot is 1.7%, or \$142 annually. Thus, for roughly \$12 a month, the owner of this lot can leave it vacant and hope its value increases. There is almost no incentive for the landowner to make any capital improvements to the land. Instead, the owner takes a wait-and-see approach, hoping a major public works project or private development such as a hospital will drive up the value of the land (effectively free riding on such public or private investment). If that happens, the owner can sell the land for five or ten times its current value.⁷⁰ Even taking a conservative estimate, the owner could sell the land for \$40,000. With a tax burden of only \$142 annually, the owner can afford to hold the property for fifteen or more years waiting for its value to increase and still make a handsome profit even discounted to present value.

⁶⁵ *Id.* (citing Wallace E. Oates & Robert M. Schwab, *The Impact of Urban Land Taxation: The Pittsburgh Experience* 22-25 (Ctr. for Inst. Reform and the Informed Sector, Working Paper No. 47, 1992), http://pdf.usaid.gov/pdf_docs/PNABP359.pdf [<http://perma.cc/3SRH-V8EL>]).

⁶⁶ David T. Kraut, Note, *Hanging Out the No Vacancy Sign: Eliminating the Blight of Vacant Buildings from Urban Areas*, 74 N.Y.U. L. REV. 1139, 1152 (1999).

⁶⁷ *Id.* at 1152-53.

⁶⁸ *Id.* (quoting Hans Skifter Anderson, *Motives for Investments in Housing Rehabilitation Among Private Landlords Under Rent Control*, 13 HOUSING STUD. 177, 197 (1998)).

⁶⁹ This example is taken from Speirs, *supra* note 52, at 20-25.

⁷⁰ *Id.* at 20-21.

On the other hand, if that same lot were located in a jurisdiction employing a pure LVT (no tax on improvements), and was taxed at a normal LVT rate of 8.5%, the speculator's holding costs increase to \$710 a year—five times the holding cost under a single-rate system. The developer is now more likely to develop the property, at least to a level where it generates enough revenue to offset the increase in tax rate (from 1.7% to 8.5%). Thus, under an LVT regime, our hypothetical lot is more likely to be improved than under a two-rate system. This (overly simplified) example illustrates the ability of LVT to encourage infill development and reduce blight.

In sum, LVT encourages infill development by reducing the tax on buildings, which facilitates new construction and replacement of obsolete buildings in urban areas. “Property owners, responding to the financial inducement to reduce the land-to-building value ratio, would build more intensively on vacant and underutilized sites.”⁷¹ The total effect over time in urban areas “would be to increase property values, and thus the tax base, where that is most needed.”⁷²

LVT's infill-producing effect also ameliorates a challenge to early New Urbanist developments. Critics allege that New Urbanist developments are really just suburbs for yuppies who have traveled to Europe and are nostalgic for the streets of Paris or Berlin.⁷³ Indeed, in their earliest iterations, New Urbanist communities had to be built at the outer limits of metropolitan areas because that was the only place where enough land could be assembled to recreate the sufficiently densely built walkable mixed-use neighborhoods so favored by New Urbanists.⁷⁴ Consequently, “[m]ost first generation New Urbanist developments appear to be suburban rather than urban; their only impact is to drain more wealth and tax base from the city.”⁷⁵

To reverse this trend, New Urbanists should focus on creating infill development.⁷⁶ Indeed, “[t]he only strategy for generating a more affordable expanding housing supply is to establish a program of higher density development, predominantly targeted at urban infill development and around transit corridors throughout the region.”⁷⁷ LVT incentivizes exactly this kind of development by raising the cost of surface parking and oversized lots for

⁷¹ Gihring, *supra* note 38, at 63.

⁷² *Id.* at 73-74.

⁷³ See Kushner, *supra* note 4, at 61 & n.71 (describing the locations after which New Urbanist developments are modeled).

⁷⁴ See Polmateer, *supra* note 2, at 1120 (“Critics suggest that most new urbanism development has occurred on the outskirts of metropolitan areas. As a result, those areas are quintessentially suburban.”).

⁷⁵ Kushner, *supra* note 4, at 65.

⁷⁶ *Id.* at 56.

⁷⁷ *Id.*

single-family dwellings. Thus, LVT promotes transit-oriented development,⁷⁸ which “protects lower-income populations from marginalization by offering mixed-income housing in a connected and socially and economically diverse setting.”⁷⁹

LVT can also help ensure that New Urbanism is accessible to people in all socioeconomic ranges and demographics. This is crucial for the success of New Urbanist communities. A critical tenet of the New Urbanist philosophy of neighborhoods is that communities should be diverse, leading to a rich tapestry and deep communal heritage.⁸⁰ The denser, more walkable developments incentivized by LVT are attractive to minorities. A recent Pew Foundation study shows a divide among Americans regarding the ideal built environment: 48% prefer walkable, mixed-use settings while 49% prefer a more traditional suburban setting centered around a car.⁸¹ Of those surveyed, Hispanics, then African-Americans, were the most likely to prefer a denser built environment.⁸² Those with a college degree were more likely to prefer denser accommodations.⁸³ Additionally, young adults and those over sixty-five (particularly women) prefer a more walkable landscape.⁸⁴ The conclusion gleaned from this data is that walkable neighborhoods are desirable to a diverse range of people. Thus, the creation of denser neighborhoods should result in diversity and create the vibrant neighborhoods New Urbanists seek.⁸⁵

LVT also reduces the price of housing, which helps ensure that the denser neighborhoods it incentivizes are mixed-income. LVT reduces the price of housing both on the supply side—by increasing the supply of housing—and on the demand side—by eliminating the tax on building improvements, thus lowering a homeowner’s tax burden.⁸⁶ LVT increases the supply of housing by creating strong incentives to build more structures; invariably, some of

⁷⁸ See Speirs, *supra* note 52, at 32-35 (explaining how LVT creates transit-oriented development and the advantages of transit-oriented development).

⁷⁹ M. Tanner Clagett, *If It’s Not Mixed-Income, It Won’t be Transit-Oriented: Ensuring Our Future Developments Are Equitable & Promote Transit*, 41 TRANSP. L.J. 1, 2 (2014).

⁸⁰ See Rebecca R. Sohmer & Robert E. Lang, *From Seaside to Southside: New Urbanism’s Quest to Save the Inner City*, 11 HOUSING POL’Y DEBATE 751, 757-758 (2000) (explaining that New Urbanists seek to design neighborhoods that blend housing of different socioeconomic strata).

⁸¹ Robert Steuteville, *America Split Between Two Community Ideals*, BETTER CITIES & TOWNS (June 13, 2014), <http://bettercities.net/news-opinion/blogs/robert-steuteville/21157/america-split-between-two-community-ideals> [<http://perma.cc/WYQ5-7WMT>].

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ See Byrne, *supra* note 27, at 1596-97 (describing the ideal neighborhoods envisioned by New Urbanists); cf. J. Peter Byrne, *Two Cheers for Gentrification*, 46 HOW. L.J. 405, 406 (2003) (arguing that “gentrification is good on balance for the poor and ethnic minorities” because it brings about more cohesive neighborhoods with necessary retail amenities, high property values, and thick social bonds).

⁸⁶ Speirs, *supra* note 52, at 27-29.

these new structures will be residential. An increase in the supply of housing results in a decrease in the price of housing. Further, LVT generally lowers property taxes on housing.⁸⁷ Lower property taxes not only reduce the price of housing, but also make more people eligible to buy homes. When banks review mortgages, they include property tax payments in the cost of the mortgage payments, which means that higher property taxes lead to higher income requirements to qualify for a mortgage. Thus, a reduction in property taxes reduces the amount a borrower must earn to be eligible for a mortgage.⁸⁸

In sum, LVT promotes infill development by reducing the tax on buildings, which facilitates revitalization of urban spaces and creates incentives to replace and repair dilapidated buildings.⁸⁹ Further, LVT induces property owners to build more densely by raising the costs of holding unproductive land.⁹⁰

2. Land Speculation and Farm Land Conversion

Land Value Taxation has the ability to curb sprawl not only by incentivizing infill development but also by slowing the conversion of farmland into suburbs and even exurbs. It can even benefit family farmers.

One of the major effects of suburban sprawl is the disappearance of American farmlands.⁹¹ A major cause of the evaporation of farmland is landowners speculating on suburban growth by buying large tracts of farmland, farming it sparingly, and hoping to reap a huge capital gain by selling to a suburban developer.⁹² Alanna Hartzok calls these speculators “real-estate farmers,”⁹³ who cause sprawl by holding “out for high capital gains on acreage cheaply obtained years ago.”⁹⁴ These real-estate farmers create a

⁸⁷ See, e.g., CTR. FOR THE STUDY OF ECON., LAND VALUE TAXATION: TITUSVILLE, PENNSYLVANIA 3 (2007), <http://www.urbantoolsconsult.org/upload/Titusville%202007.pdf> [<http://perma.cc/K9K8-HBNE>] (finding that residential property taxes decreased by 5.57% after the city shifted to LVT).

⁸⁸ See Speirs, *supra* note 52, at 27-28 (estimating that the salary required to qualify for a mortgage on a \$158,000 home [\$150,000 structure value, \$8000 land value] under a traditional property tax system is \$40,500, but only \$33,400 under LVT).

⁸⁹ Gihring, *supra* note 38, at 63-64.

⁹⁰ *Id.* at 63.

⁹¹ Rick Rybeck, *Tax Reform Motivates Sustainable Development*, AM. INST. ARCHITECTS/D.C. NEWS, Dec. 1995-Jan. 1996, at 4, 4-5 (noting that as a result of sprawl, “undeveloped areas are too small and too scattered to support meaningful agricultural or conservation uses”).

⁹² Mason Gaffney, *Rising Inequality and Falling Property Tax Rates* (showing empirically that large farms experience fewer improvements, and that one possible hypothesis explaining this is that larger plots are purchased as “place[s] to park slack money” rather than as vehicles for enterprise and development), in LAND OWNERSHIP AND TAXATION IN AMERICAN AGRICULTURE 119 (Gene Wunderlich ed. 1993).

⁹³ Hartzok, *supra* note 42, at 254.

⁹⁴ *Id.* at 249.

leap-frog pattern of suburban sprawl as they go farther and farther out to purchase cheap farmland and reap a capital gain.⁹⁵ In the alternative and even more insidious case,

Land near public infrastructure such as a subway station or major road intersection remains vacant or grossly underutilized because a landowner is waiting for a price in excess of what space users will pay today. This phenomenon forces developers to seek cheaper sites that are farther away from public infrastructure.⁹⁶

This leapfrog version of sprawl drives up the price of land at the urban fringe, making it more expensive for farmers to farm that land.⁹⁷ As Hartzok explains:

Sprawl penalizes farmers who want to raise crops rather than speculate and it discourages farm improvements on fringe land around cities. Sprawl drives up the price of land in rural areas. It also fuels land speculation while making it increasingly difficult to secure access to affordable land for farming operations.⁹⁸

Since 1930, there has been a sharp decline in property taxes on farmland.⁹⁹ While lowering taxes on farmland may on its face seem beneficial to farmers, the evidence suggests that it actually hurts farmers by lowering the holding costs of farmland.¹⁰⁰ Although well-intentioned, this policy of lowering the holding costs of farmland creates incentives for increased land speculation and more urban sprawl.¹⁰¹ Accordingly, lower property tax rates correlate with larger farm size and less intensive use of farmland.¹⁰²

Lower property tax rates particularly hurt small farmers who are more likely to make capital improvements to land than larger corporate farmers. For example, Gaffney surveyed the nine states with the highest property taxes and the nine states with the lowest property taxes on farmland.¹⁰³ He found, counterintuitively, that higher property taxes led to smaller farms, more

⁹⁵ See McIlwain, *supra* note 1 (explaining that the sustained rapid growth of the farthest edges of the suburbs may support the inference that under the current system, sprawl will continue to grow outward).

⁹⁶ Hartzok, *supra* note 42, at 250.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Gaffney, *supra* note 92, at 119-20 (showing a decrease in the national average of farm property tax rates from their peak of 1.32% in 1930 to 0.77% in 1945, before stabilizing at 0.85% in 1987).

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 120-24.

¹⁰² *Id.* at 119.

¹⁰³ *Id.* at 128-31.

intensive farming, and higher investments in machinery and buildings.¹⁰⁴ All of these attributes are characteristics of a family farm.¹⁰⁵ He concluded that higher property taxes actually have an egalitarian effect despite the “negative incentive effects” caused by taking building value into account at all.¹⁰⁶ He speculated that the egalitarian effect “would be stronger if the tax base was limited to naked land value, because the [land share of real estate value] rises steeply with size of farm. Untaxing buildings would also eliminate negative incentive effects.”¹⁰⁷ Thus, LVT can also help slow sprawl at the suburban fringes by raising the holding cost for land speculators and creating incentives for more family farming.

Hartzok explains how LVT attacks one of the causes of suburban sprawl:

The economic incentives promoting sprawl can be partially explained by the unproductive way in which landowners earn money. Either a landowner can make money by developing a site and renting or selling it to someone who will use that development; or the owner can wait for population increases, wage increases, or improvements in public infrastructure to impart value to a site, which he can appropriate through a higher rent or sales price

Landowners who underutilize valuable land sites with speculative intent thus contribute to sprawl and the costly, inefficient use of infrastructure.¹⁰⁸

LVT partially reverses these economic incentives in two ways. First, because it functions essentially as a user fee for land, it creates an incentive to use land rather than hold it unproductively for speculative gain. Second, it creates strong incentives not only to use farmland for agricultural purposes, but to make capital investments into the agricultural enterprise by decreasing the tax on capital improvements to land.

In total then, LVT can slow sprawl both in urban cores, by creating strong incentives for increased density, and at the suburban fringes, by raising the cost of land speculation and giving family farmers incentives to invest in improvements to their farms.

III. LAND VALUE TAXATION AND THE METROPOLITAN REVOLUTION

In their recent book, Bruce Katz and Jennifer Bradley boldly proclaim “[a] revolution is stirring in America. Like all revolutions, this one starts with a simple but profound truth: [C]ities and metropolitan areas are the engines of

¹⁰⁴ *Id.* at 128.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 131.

¹⁰⁷ *Id.*

¹⁰⁸ Hartzok, *supra* note 42, at 250.

economic prosperity and social transformation in the United States.”¹⁰⁹ They explain that “[m]etros dominate because they embody concentration and agglomeration—networks of innovative firms, talented workers, risk-taking entrepreneurs, and supportive institutions that cluster together in metropolitan areas and coproduce economic performance and progress.”¹¹⁰ Katz and Bradley contend “[t]he metro revolution reflects the maturing of U.S. cities and metros in terms of capacity and focus. Over the past three decades, these communities have innovated on the form of their places, regenerating downtowns, revitalizing waterfronts, restoring historic buildings, inspiring grand architecture, [and] expanding transit”¹¹¹ Moreover, metros are now “focusing on their function and the very shape and structure of their economies, taking on the core elements that drive economies: innovation, human capital, infrastructure, advanced industry.”¹¹² Given its ability to curb suburban sprawl, Land Value Taxation can be the shield, fuel, and product of this exciting revolution.

A. Land Value Taxation as Shield and Fuel of the Metropolitan Revolution

Sprawl threatens the core benefits of the Metropolitan Revolution: “Sprawl negates the purpose of cities, which is to let people live and work close together so as to utilize and enjoy the greatest efficiency of community facilities and enterprises.”¹¹³ The very fact that the metropolitan revolution is taking place is evidence of the beneficial effects of cities. As Katz and Bradley point out, “[o]ur nation’s top 100 metropolitan areas sit on only 12 percent of the nation’s land mass but are home to two-thirds of our population and generate 75 percent of

¹⁰⁹ BRUCE KATZ & JENNIFER BRADLEY, *THE METROPOLITAN REVOLUTION: HOW CITIES AND METROS ARE FIXING OUR BROKEN POLITICS AND FRAGILE ECONOMY* 1 (2013); see also Benton C. Martin, *Federalism and Municipal Innovation: Lessons from the Fight Against Vacant Properties*, 46 *URB. LAW.* 361 (2014) (citing Katz and Bradley with approval and using their thesis to glean lessons from metro area collaborations to fight blight); Sheila A. Martin & Carolyn N. Long, *Horizontal Intergovernmental Relations in the Portland Metropolitan Region: Challenges and Successes*, 50 *WILLAMETTE L. REV.* 589, 591 (2014) (citing Katz and Bradley and applying their paradigm to the Portland area); Nancy Cook, *When Cities and Suburbs Work Together*, *ATLANTIC* (May 2, 2015), http://www.theatlantic.com/business/archive/2015/05/when-cities-and-suburbs-work-together/391979/?utm_source=SFFB [<http://perma.cc/PBU6-NWB6>] (adding further evidence to Katz and Bradley’s theory by providing new examples of collaboration in New York and Denver delineating the problems caused by competition among cities within a metropolitan area).

¹¹⁰ KATZ & BRADLEY, *supra* note 109, at 1.

¹¹¹ *Id.* at 4-5.

¹¹² *Id.* at 5.

¹¹³ Hartzok, *supra* note 42, at 249. See generally EDWARD GLAESER, *THE TRIUMPH OF THE CITY: HOW OUR GREATEST INVENTION MAKES US RICHER, SMARTER, GREENER, HEALTHIER, AND HAPPIER* (2011) (arguing that the collaboration fostered by denser city dwelling produces more human prosperity).

our national GDP.”¹¹⁴ The benefits of living in close proximity to other intelligent and industrious people must be safeguarded, and LVT accomplishes this goal by discouraging suburban sprawl. Thus, LVT can be a shield for the Metropolitan Revolution by helping to ensure that the new prosperity created by metropolitan areas does not drive people out of those same metropolitan areas. This is a real concern given that high-income households represent the highest demand for low-density, sprawling development.¹¹⁵

Similarly, LVT can fuel the metropolitan revolution by creating incentives for increased density. Further, LVT’s benefits are precisely in line with the goals of the Metropolitan Revolution: better, sturdier buildings, increased use of public transportation, more efficient utilization of land and infrastructure resources, increased low income housing supply, and more walkable and distinct neighborhoods.

B. Land Value Taxation: A Product of the Metropolitan Revolution

One key feature of the Metropolitan Revolution is that it is truly metropolitan: it is characterized by groups of jurisdictions within a single metro area collaborating rather than competing with one another.¹¹⁶ This is an encouraging development given that during the late twentieth century’s migration to the suburbs “individuals sought control over the development of their new communities, and coupled with the evolution of state law towards easier municipal incorporation, the existence of local [autonomous] governments exploded.”¹¹⁷ By 1992, there were an average of 113 local governments per metropolitan area.¹¹⁸ This massive proliferation of autonomous municipalities is born of localism, which is the “concept of legal and political empowerment of autonomous municipalities, as a response to the idea that regional or state influences undermine that autonomy during their decision-making processes.”¹¹⁹ The morass of autonomous local governments created by localism often leads to wasteful competition between municipalities and difficulty in providing solutions for problems best

¹¹⁴ KATZ & BRADLEY *supra* note 109, at 1.

¹¹⁵ Seong-Hoon Cho et al., *Moderating Urban Sprawl Through Land Value Taxation* 4 (Am. Agric. Econ. Ass’n, Selected Paper No. 468873, 2008), <http://ageconsearch.umn.edu/bitstream/6150/2/468873.pdf> [<http://perma.cc/YL4X-34C8>] (“[S]trong preferences for lower-density development among higher income households may exist.”) (citing P. Gordon & H.W. Richardson, *Prove It*, BROOKINGS REV., Fall 1998, at 23; Andrejs Skaburskis, *Housing Prices and Housing Density: Do Higher Prices Make Cities More Compact?*, 23 CANADIAN J. REGIONAL SCI. 455 (2000)).

¹¹⁶ See KATZ & BRADLEY *supra* note 109, at 41-63 (detailing the Denver Metro’s transformation from a group of competing and parochial municipalities to a collaborative effort).

¹¹⁷ Polmateer, *supra* note 2, at 1091 (citing Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 1992 (2000)).

¹¹⁸ *Id.* at 1091.

¹¹⁹ *Id.*

addressed at the regional level.¹²⁰ In short, these local governments face a collective action problem: “Certain challenges can be addressed more effectively at a regional [or metropolitan] scale because individual local governments lack the capacity or resources to address certain issues without the cooperation of neighboring jurisdictions.”¹²¹

Sprawl is one of these crucial areas where regional effort is needed to address a serious social problem.¹²² Polmateer argues convincingly that localism has proven a significant stumbling block for New Urbanism.¹²³ He argues that even though most Americans live seamlessly in a metropolitan area, moving from one municipality to the next without suffering any effects from crossing jurisdictional lines, these independent municipalities have failed to connect those few New Urbanist developments that independent governments may succeed in creating.¹²⁴ Polmateer contends “the failure of new urbanism lies in its inability to break free from localism’s isolationist tendencies and integrate these new urbanist developments into the surrounding region.”¹²⁵ Polmateer posits: “[N]ew regionalism provides the missing piece to the proper implementation of new urbanism.”¹²⁶ New regionalism comprises “any attempt to develop regional governance structures or interlocal cooperative agreements that better distribute regional benefits and burdens.”¹²⁷ In short, new regionalism encourages exactly the sort of collaboration that Katz and Bradley trumpet as the touchstone of the Metropolitan Revolution.

LVT is precisely the sort of growth management tool that is best implemented at a regional level. As we saw above, LVT has the power both to revitalize urban cores by creating more intense development and to stop suburban sprawl by decreasing the value of speculating on farmland. These twin results can only be maximized, however, at the regional level. It is not enough for the major city within a metro to implement LVT; this will only produce the infill prong of LVT’s sprawl-reducing power. Pittsburgh’s

¹²⁰ Cashin, *supra* note 117, at 2033 (suggesting that “robust regionalism . . . better distributes benefits and burdens”).

¹²¹ LINDA MCCARTHY, U.S. ECON. DEV. ADMIN., *COMPETITIVE REGIONALISM: BEYOND INDIVIDUAL COMPETITION* 4 (2000).

¹²² See Richard Briffault, *Localism and Regionalism*, 48 *BUFF. L. REV.* 1, 21 (2000) (“Local issues like sprawl . . . may not be capable of successful resolution at the local level.”).

¹²³ Polmateer, *supra* note 2, at 1093.

¹²⁴ *Id.*; see also PETER CALTHORPE & WILLIAM FULTON, *THE REGIONAL CITY: PLANNING FOR THE END OF SPRAWL* 6 (2001) (“[W]e live in an aggregation of cities and suburbs: a metropolitan community that forms one economic, cultural, environmental, and civic entity The health of this new region depends on the interconnectedness of these [cities and suburbs] . . .”).

¹²⁵ Polmateer, *supra* note 2, at 1093.

¹²⁶ *Id.* at 1094.

¹²⁷ *Id.* at 1130 (citing Lisa T. Alexander, *The Promise and Perils of “New Regionalist” Approaches to Sustainable Communities*, 38 *FORDHAM URB. L.J.* 629, 632 (2011)).

experiment with LVT underscores this point. While the city itself showed a significant uptick in density and development after implementing LVT, the data is severely lacking as to LVT's effect on the surrounding suburbs.

Pittsburgh switched to a two-rate property tax system in 1979, raising the tax rate on land to five times that of improvements to land.¹²⁸ In a comparative study of fifteen "rust belt" cities from 1980 to 1989, only two had an increased average annual value of building permits for commercial buildings: Columbus (15.43%) and Pittsburgh (70.43%).¹²⁹ Pittsburgh is a "remarkable outlier; the real value of building permits on an annual basis rose by some 70 percent in the 1980s relative to the twenty-year period preceding the tax reform."¹³⁰ Notably, much of Pittsburgh's increased building value owed to a shortage of commercial space in the region.¹³¹ Nevertheless, the reliance on increased land taxation played an important supporting role in stimulating development.¹³²

Similarly, a survey of the handful of Pennsylvania municipalities (including Pittsburgh) that implemented LVT showed that a split-rate tax system resulted in a three to four percent increase in the value of residential construction permits.¹³³ And finally, a 1992 study found a strong correlation between building density and split-rate taxation.¹³⁴ Thus, it appears individual municipalities can employ LVT's ability to encourage infill development.

If, however, only a few municipalities in a metro area adopt LVT, its power to stop land speculation at the suburban fringe will not be appropriately exploited. To be sure, increased density in and around central business districts might relieve some pressure on the far suburbs by decreasing the demand for housing.¹³⁵ Developers might even have an incentive to build in the municipality with LVT given the preferential treatment of improvements. Speculators, however, will not be deterred because the demand for large, low-density housing is greatest among high-

¹²⁸ Oates & Schwab, *supra* note 65, at 1, 9.

¹²⁹ *Id.* at 42 tbl.3.

¹³⁰ *Id.* at 12.

¹³¹ *Id.* at 9, 20.

¹³² *Id.* at 22.

¹³³ See, e.g., Florenz Plassmann & T. Nicolaus Tideman, *A Markov Chain Monte Carlo Analysis of the Effect of Two-Rate Property Taxes on Construction*, 47 J. URB. ECON. 216 (2000).

¹³⁴ Kenneth M. Lusht, *The Site Value Tax and Residential Development (1992)* (unpublished manuscript) (on file with the University of Virginia Law Library) (avoiding reverse causality problems by reducing sample to twenty-eight suburban communities that had substantial amounts of developable land available at the time these communities adopted split-rate taxation).

¹³⁵ See, e.g., Hartzok, *supra* note 42, at 251 ("By encouraging development within the existing urbanized areas, the two-rate property tax counteracts sprawl and land speculation, and thereby decreases development pressures and escalation of land prices on nearby farmlands and rural areas.").

income individuals.¹³⁶ Therefore, demand for large homes on large plots at the suburban fringes will still exist. The pattern of leapfrog development will continue unabated unless appropriate disincentives are put in place. As demonstrated, LVT represents one such disincentive. Its effect, however, will be diminished unless the entire region implements it. Doing so would raise the costs of farmland speculation across the entire metro region and force the development of adequate, medium-density housing in the regions surrounding the central business district.

Without the sort of regional collaboration promised by the Metropolitan Revolution, LVT's potential to reign in sprawl will not be realized. LVT can moderate the demand for open space at the fringes of metro areas by using "a sliding land value tax . . . targeting 'critical' sprawl areas."¹³⁷ But implementing such a sliding scale that targets critical sprawl areas by raising the tax rate on land will require massive collaboration among the varied municipalities that comprise the outer rims of metro areas. These municipalities will not only need to share data, but they must also be willing to raise land tax rates to slow sprawl within their borders and force it into neighboring jurisdictions. This will require a level of trust and cooperation as yet unseen.

This shifting approach is like herding sheep: the sheep are sprawl, and the dog is LVT. LVT needs to be constantly shifting around the perimeter of the sprawl to keep it hemmed in. Such a massive collaborative effort can only be the result of the Metropolitan Revolution and a growing awareness among suburban municipalities that what is good for the region as a whole is good for the individual municipality.¹³⁸ Controlling sprawl will lead to an increased tax base, stop the drain of human capital, and lead to a more efficient utilization of municipal resources.¹³⁹

To summarize, for LVT to have a maximal halting effect on sprawl, it must be implemented both in the major city within a metro area as well as in the surrounding suburban municipalities on a sliding scale targeting key sprawl areas. This effort will require tremendous collaboration by the municipalities within a given metro area. While this level of cooperation is unprecedented, the Metropolitan Revolution provides evidence and hope that it is not out of reach.

¹³⁶ See Cho et al., *supra* note 115, at 4 ("[S]trong preferences for lower-density development among higher income households may exist.").

¹³⁷ *Id.* at 7.

¹³⁸ See Polmateer, *supra* note 2, at 1112 (explaining that localism leads to competitive behavior among neighboring municipalities even though "no locality is actually isolated because what happens in one area has a direct effect on its neighbors."); see also Cook, *supra* note 109 (discussing the benefits of regional collaboration in Denver, where "[t]he city and its surrounding suburbs had to decide that working together was preferable to struggling separately").

¹³⁹ Cook, *supra* note 109.

CONCLUSION

The tremendous progress made by New Urbanists in reforming the single-use zoning codes that impede their ability to create the neighborhoods for which they advocate provides an opportunity for the movement to reflect on other obstacles to its agenda. Our current single tier property tax system is just such an obstacle because it creates strong incentives for sprawling development. A switch to Land Value Taxation (LVT) can undo these perverse incentives. Land Value Taxation, however, would be most effective if implemented at the regional/metropolitan level because sprawl is a regional problem requiring a regional response. By following the lead of the Metropolitan Revolution and collaborating to implement LVT, the many jurisdictions comprising a metropolitan area can fully capitalize on LVT's twin ability to encourage infill development and slow suburban land speculation. In sum, LVT is a promising new avenue for creating New Urbanist communities.

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