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# PROTECTING PASTURES FROM PARKING LOTS: DETRIMENTAL DENSITY RESTRICTIONS AND THE NEED FOR INTEGRATED INFILL DEVELOPMENT

## ABSTRACT

*Despite an agrarian reputation, Iowa is becoming an urbanized society dispersed across a handful of metropolitan regions throughout the state. Local efforts to coordinate an influx of urban development are thwarted by antiquated municipal regulations fragmenting Iowa's population centers. Destructive density restrictions drive inefficient expansion over optimal redevelopment opportunities, as an automobile-dependent infrastructure threatens to damage not only Iowa's sense of community but the land vital to its continued success. By concentrating parking lots and modernizing municipal zoning schemes statewide, Iowa can unwind the legacy of suburbanized sprawl to return to a transit-oriented growth model that promotes sustainable private-public partnerships in infrastructure redevelopment.*

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## I. INTRODUCTION

“[A]n antiurban attitude is ingrained in the American psyche,” and for many the “American Dream” of homeownership remains the desired goal.<sup>1</sup>

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1. Nathan Farris, Comment, *What to Do When Main Street Is Legal Again: Regional Land Value Taxation as a New Urbanist Tool*, 164 U. PA. L. REV. 755, 756 (2016); Casey Dowd, *Forget the White Picket Fence, Is This Today's American Dream?*, FOX BUS. (Oct. 15, 2017), <http://www.foxbusiness.com/markets/2017/10/15/forget-white-picket-fence-is-this-todays-american-dream.html>. According to a PurePoint Financial Survey, for 71 percent of respondents, “Today, the [American] dream is less about owning the home with a white picket fence and sending your kids to college and more about keeping your head above water. The Great Recession is still fresh in many people's minds, and many are still digging themselves out of debt, so how they define success has changed.” *Id.*

Yet modern realities evince the expansive reach of suburbanized sprawl,<sup>2</sup> as demand for cost-conscious development propels investment into an automobile-dependent suburban fringe.<sup>3</sup> Subsidized real estate speculators preserve savvy private interests to constrain local housing supplies at the detriment of the greater community.<sup>4</sup> By exposing the regulatory barriers

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2. This Note uses the terms *suburban sprawl* and *urban sprawl* interchangeably: “Urban sprawl has been defined generally by researchers as haphazardly planned, low-density residential development interspersed with strip commercial and retail development linked by a vast street and highway system that overemphasizes automobile use and de-emphasizes mass transit.” Eric M. Braun, *Smart Growth in North Carolina: Something Old or Something New?*, 35 WAKE FOREST L. REV. 707, 708 (2000).

3. See, e.g., Patrick Clark & Rebecca Greenfield, *Suburban Offices Are Cool Again: Companies Don’t Have to Head Downtown to Woo Millennials Anymore*, BLOOMBERG (Oct. 11, 2017), <https://www.bloomberg.com/news/articles/2017-10-11/suburban-offices-are-cool-again> (“‘Suburban office parks appeal because they’re cheap compared to downtown buildings’ . . . Americans are more likely to live in the suburbs today than they were in 2000, and even the young, affluent ones drawn to cities tend to move once their kids reach school age . . . Many of those workers will suffer long commutes into the city center. Others will opt for jobs closer to their suburban homes.”).

4. Steven J. Eagle, “Affordable Housing” as Metaphor, 44 FORDHAM URB. L.J. 301, 305 (2017) (“[N]eighborhood preservation often is in opposition to economic growth.”); Chad D. Emerson, *Making Main Street Legal Again: The SmartCode Solution to Sprawl*, 71 MO. L. REV. 637, 641, 643–44 (2006) (“[U]se-based land regulation is leading to unsustainable results . . . Take, for instance, an office building. Under Euclidean zoning, such a building would generally only be permitted in those use districts in which the conventional zoning code permits commercial uses. Under this scenario, it is essentially illegal for the lawyer or accountant or architect to live above her office, as has been a traditional model for many years, because doing so would impermissibly ‘mix’ residential and office uses.” (footnotes omitted)); Audrey G. McFarlane & Randall K. Johnson, *Cities, Inclusion and Exactions*, 102 IOWA L. REV. 2145, 2150–52, 2153–54 (2017) (noting “developers have a privileged voice and receive ample direct and indirect government subsidies to get even modest improvement projects off the ground[,]” and local authorities often succumb to developer pressure to preserve short-term profit margins by mandating low-density development); Danielle Muoio, *These US Cities Have the Absolute Worst Traffic*, BUS. INSIDER (Sept. 21, 2017), <http://www.businessinsider.com/13-us-cities-worst-traffic-2017-5/#13-baton-rouge-received-a-score-of-26-meaning-it-took-commuters-26-more-time-to-travel-anywhere-in-the-city-this-was-a-3-increase-from-2016-1> (“Congestion is getting worse every year in the United States.”). However, Iowa’s traffic congestion is not uniform, and Iowa’s relatively low commute times conceal the troubling trend of unexpected congestion from high-growth suburbs. See Eric Crowell et al., *Now’s the Time to Pave Future for Transit in Des Moines*, DES MOINES REG. (July 29, 2016), <https://www.desmoinesregister.com/story/opinion/abetteriowa/2016/07/29/nows-time-pave-future-transit-des-moines/87673440/> (“For those of us who have moved from larger cities, the 20-minute commute

gridlocking revitalization efforts, this Note aims to return Iowa to a transit-oriented growth model that promotes private–public partnerships in funding Iowa’s infrastructure improvements.

Part II provides a brief history of Iowan development to outline the threat behind the resurgence of suburbanized growth.<sup>5</sup> Part III discusses the unchecked regulations and private restrictions insulating inefficient land use decision-making.<sup>6</sup> Part IV provides Iowa’s current effort to combat suburban sprawl, its constitutional limitations, and the federal efforts to promote private–public partnerships in infrastructure development.<sup>7</sup> Part V advocates for judicial deference to a regional comprehensive plan for the coordination of concentrated communities.<sup>8</sup> Finally, Part VI calls on the state legislature to provide greater regional funding and planning mechanisms to metropolitan transit organizations for the perseverance of Iowa’s long-term growth.<sup>9</sup>

## II. FROM STEAMBOAT TO SMART CARS: THE DEATH OF TRANSIT-ORIENTED DEVELOPMENT

Agriculture and the world’s cities are inextricably intertwined<sup>10</sup> yet

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seems easy by comparison. But at the rate of our community’s growth, planning now for more robust transportation options is essential. The busiest stretch of Interstate Highway 235 on Des Moines’ west side exceeds an average of 127,000 vehicles per day, compared with 115,000 vehicles in 2010. Now is the time to plan for how we move people from place to place in the future.”); Kevin Hardy, *Why Des Moines Workers Enjoy the Nation’s ‘Least Stressful’ Commute*, DES MOINES REG. (Nov. 6, 2017), <https://www.desmoinesregister.com/story/money/business/2017/11/06/why-des-moines-workers-enjoy-nations-least-stressful-commute/814522001>; Shaina Humphries, *Soaring Traffic Numbers on I-235 May Force Changes*, KCCI (July 28, 2015), <http://www.kcci.com/article/soaring-traffic-numbers-on-i-235-may-force-changes-1/6910013>.

5. *See infra* Part II.

6. *See infra* Part III.

7. *See infra* Part IV.

8. *See infra* Part V.

9. *See infra* Part VI.

10. ALEXANDER MÜLLER, U.N. FOOD & AGRIC. ORG., FOOD, AGRICULTURE AND CITIES: CHALLENGES OF FOOD AND NUTRITION SECURITY, AGRICULTURE AND ECOSYSTEM MANAGEMENT IN AN URBANIZING WORLD 16 (2011), <http://www.iufn.org/wp-content/uploads/2013/08/FAO-2011-Food-Agriculture-and-Cities.pdf> (“The origin of agriculture itself is inextricably linked to the growth of cities, as permanent human settlement was associated with a permanent nearby agriculture.”).

conflict in their land use.<sup>11</sup> Innovative improvements to agricultural supply often surpass modern distribution networks to outpace market demand, as an increasing number of rural Iowan communities succumb to suburbanized sprawl's short-term success.<sup>12</sup> An influx of uncoordinated urban-fringe development threatens to destroy Iowa's valuable farmland, cities, and citizens alike.<sup>13</sup>

#### A. *The Rising Rivers of a Decentralized City*

Since Iowa's initial exploration by European explorers,<sup>14</sup> the state was

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11. MARK A. EDELMAN ET AL., FARM FOUND., LAND USE CONFLICT: WHEN CITY AND COUNTRY CLASH 5 (Ilse Tebbetts ed., 1999) (quoting ROBERT E. COUGHLIN ET AL., NAT'L AGRIC. LANDS STUDY, THE PROTECTION OF FARMLAND 4 (1980)), <https://www.farmfoundation.org/news/articlefiles/72-whencityandcountry.pdf> (“Visualize a strip of land a half-mile wide stretching from New York to California. . . . That is one million acres—the amount of farmland converted to other uses from agriculture every year in the United States.”); *Top Ten Things Affected by Poor Land-Use Decisions*, 1000 FRIENDS OF IOWA, <http://1000friendsofiowa.org/our-programs/top-ten/> (last visited Mar. 3, 2017) (“Urban development on farmland comprises the ability of farmers to do their jobs. Machinery, noise, dust, livestock, smells, traffic, building materials littering fields, and increased population do not make for good neighborhood relations. . . . Miles of paving cut into the land has taken thousands and thousands of acres of farmland out of production.”).

12. See generally IOWA STATE UNIV. EXTENSION & OUTREACH, A SNAPSHOT OF RURAL IOWA 1 (2015), [http://indicators.extension.iastate.edu/sites/default/files/data/Iowa\\_Snapshot%5B1%5D.pdf](http://indicators.extension.iastate.edu/sites/default/files/data/Iowa_Snapshot%5B1%5D.pdf) (“The mid-American farm crisis profoundly affected the economic well-being of small, agriculturally-dependent communities. The restructuring of the agricultural sector simply could no longer economically support existing populations.”); MÜLLER, *supra* note 10, at 16.

13. See Rachel Weinberger, *The High Cost of Free Highways*, 43 IDAHO L. REV. 475, 478 (2007) (“[T]o the extent that mobility is achieved by increasing auto infrastructure at the expense of other land uses, it may also detract from accessibility. . . . A suburban location typically gives a household greater opportunities for more affordable housing, larger living space for the same cost of housing, and private outdoor space, but potentially few opportunities to interact with others.”); *Top Ten Things Affected by Poor Land-Use Decisions*, *supra* note 11 (“Urban sprawl has increased our dependence on the automobile and use of non-renewable fuels. . . . Time consuming commutes are now a way of life. Sidewalks are no longer a feature in many new parts of town. New housing tracts are designed, not so people can visit and build a strong community, but for isolation and auto-convenience. Strip malls and discount stores only accessible by driving destroy downtowns and older neighborhoods. They steal the sense of community that helps bind us together as a people and a nation.”).

14. Dorothy Schwieder, *History of Iowa*, IOWA OFFICIAL REG., <http://publications.iowa.gov/135/1/history/7-1.html> (last visited Mar. 6, 2018) (noting after the first European explorers, Louis Joliet and Father Jacques Marquette, stepped

renowned for its fertile farmland<sup>15</sup>—a resource that would remain untapped until the development of the United States' early transportation network.<sup>16</sup> As the country's infrastructure evolved, so too did the state's population centers.<sup>17</sup> As Iowa's economy diversified,<sup>18</sup> its population centers became decentralized and automobile-dependent.<sup>19</sup>

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foot on Iowa soil, they “recorded in their journals that Iowa appeared lush, green, and fertile. For the next 300 years, thousands of white settlers would agree with these early visitors: Iowa was indeed lush and green; moreover, its soil was highly productive.”)

15. *Top Ten Things Affected by Poor Land-Use Decisions*, *supra* note 11 (“While all farmland is not of equal value, if you look at the quality of farmland globally, Iowans are sitting on a precious non-renewable resource.”).

16. Weinberger, *supra* note 13, at 480 (“When railroads began to crisscross the country, additional tracts of developable land were brought into the accessible land portfolio. Then highway corridors did the same. Business opportunities were made more abundant; business and population stretched out along these corridors following first the rail routes then the highway corridors.”).

17. WILLIAM H. THOMPSON, IOWA DEP'T OF TRANSP., TRANSPORTATION IN IOWA: A HISTORICAL SUMMARY 16 (1989), <https://www.iowadot.gov/history/pdfs/TransInIowa/TransportationInIowa.pdf> (“Water transportation eventually evolved into a major instrument of commerce in Iowa, but in those days migration of people was east to west, and the commerce and industry that followed were the result of a new form of land transportation [the railroad].”). For an in-depth discussion of transportation and the evolving cityscape, see Chad D. Emerson, *All Sprawled Out: How the Federal Regulatory System Has Driven Unsustainable Growth*, 75 TENN. L. REV. 411, 414–18 (2008) [hereinafter Emerson, *All Sprawled Out*].

18. See, e.g., Michael Barbaro, *With Farms Fading and Urban Might Rising, Power Shifts in Iowa*, N.Y. TIMES (Oct. 20, 2014), [https://www.nytimes.com/2014/10/21/us/politics/iowa-senate-election.html?\\_r=0](https://www.nytimes.com/2014/10/21/us/politics/iowa-senate-election.html?_r=0).

19. See *Farming on the Edge: The Nation's Best Farmland in the Path of Development*, AM. FARMLAND TR., <https://www.farmland.org/farming-on-the-edge> (last visited Feb. 2, 2018) (noting large sections of high-quality Iowan farmland are in the path of low-density development). Compare *Top Ten Things Affected by Poor Land-Use Decisions*, *supra* note 11, with Donnelle Eller, *Iowa Farmers Getting Squeezed Out by Land Preservation Tax Credits, Farm Bureau Says*, DES MOINES REG. (Feb. 17, 2017), <https://www.desmoinesregister.com/story/money/agriculture/2017/02/16/iowa-farmers-getting-squeezed-out-land-preservation-tax-credits-farm-bureau-says/96438658/>. “Iowa ranks 49th nationally in its percentage of public lands[.]” yet its Farm Bureau sought to end tax breaks for donations of land to charitable organizations and governments even though these credits “can protect farmland against development. . . . [Only a]bout 12 percent of the tax credits have gone to donors selling land at a bargain price.” Eller, *supra*. But see Dave Franzman, *Land Sale Gives a Big Boost to Indian Creek Nature Center*, KCRG (Mar. 15, 2017), <http://www.kcrg.com/content/news/Land-sale-gives-a-big-boost-to-Indian-Creek-Nature-Center-416275723.html> (reinforcing the Farm Bureau's argument of inefficient donations as the Cedar Rapids Nature Center eventually sold donated lands for commercial development with “little value as a nature

### 1. *From River Towns to Railways: Iowa's Initial Infrastructure Network*

Dubbed “Iowa’s Stolen Highway,”<sup>20</sup> Iowa’s rivers served as the state’s initial transportation network with early settlements developing along Iowa’s waterways.<sup>21</sup> By the mid-eighteenth century, westward expansion brought a new wave of development along a budding railway system.<sup>22</sup> As an important interstate throughway, new rail towns emerged as Iowa’s early farmers leveraged the state’s rich soil to export their crops to a national market.<sup>23</sup> River and rail towns waxed and waned with the agricultural economy,<sup>24</sup> but these early population centers rarely expanded beyond their city centers as Iowa’s population dispersed along transportation corridors.<sup>25</sup> The initial growth pattern reflected “transit-oriented development” where expansive urban growth was the “exception rather than the norm—often limited to the few who could afford it.”<sup>26</sup>

### 2. *Postwar Affluence and the Rise of an Automotive Nation*

As Iowa’s agricultural advantage reshaped the state’s countryside,<sup>27</sup> the

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area”).

20. Tacitus Hussey, *History of Steamboating on the Des Moines River, from 1837 to 1862*, in 4 ANNALS OF IOWA 323, 327 (1900).

21. THOMPSON, *supra* note 17, at 2. For a brief history of Iowa’s seven oldest towns, see *Iowa’s Mississippi River Towns*, IOWA PUB. TELEVISION, <http://site.iptv.org/iowapathways/mypath/iowas-mississippi-river-towns> (last visited Mar. 18, 2017).

22. THOMPSON, *supra* note 17, at 16.

23. *See id.*; *Rails Across Iowa*, LIVING HISTORY FARMS, <https://www.lhf.org/2013/09/rails-across-iowa/> (last visited Mar. 30, 2018) (“With the rail lines complete, Iowa grain, meat, and dairy were transported to larger cities. In return, they hauled factory-made farm implements and consumer goods . . . and people, especially new settlers, back to the rural areas. Railroads were a hub for small towns on the prairie.”). For the rise and fall of Iowa’s rail network see Office of Rail Transp., *Iowa Rail History*, IOWA DEP’T OF TRANSP., <https://iowadot.gov/iowarail/historical-culture/iowa-rail-history> (last visited Mar. 5, 2018).

24. *See Iowa’s Mississippi River Towns*, *supra* note 21.

25. For a complete history of Iowan development along various transportation networks, see THOMPSON, *supra* note 17.

26. Emerson, *All Sprawled Out*, *supra* note 17, at 416 (citing Peter O. Muller, *Transportation and Urban Form: Stages in the Spatial Evolution of the American Metropolis*, in THE GEOGRAPHY OF URBAN TRANSPORTATION 59, 60 (Susan Hanson & Genevieve Giuliano eds., 3d ed. 2004)).

27. NAT. RES. CONSERVATION SERV., U.S. DEP’T OF AGRIC., RESTORING IOWA WETLANDS (2005), [https://prod.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/nrcs142p2\\_006832.pdf](https://prod.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_006832.pdf) (“In Iowa alone, over 90 percent of wetlands have been drained for agriculture and development.”); Neal Smith Nat’l Wildlife Refuge, *Tallgrass Prairie*,

automobile reshaped its urban environment.<sup>28</sup> Postwar affluence, combined with a rise of mass-produced automobiles and federally subsidized highways, paved the way for automotive dependency.<sup>29</sup> In turn, the automobile opened up new areas of development along the outskirts of existing urban centers as developers turned to prepackaged communities to meet the demands of a rising middle class.<sup>30</sup> New commuter societies posed unique challenges in

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U.S. FISH & WILDLIFE SERV., [https://www.fws.gov/refuge/Neal\\_Smith/wildlife\\_and\\_habitat/tallgrass\\_prairie.html](https://www.fws.gov/refuge/Neal_Smith/wildlife_and_habitat/tallgrass_prairie.html) (last updated June 9, 2012) (“Today, less than 0.1% of the original tallgrass prairie remains in Iowa.”); see Darryl Fears, *Iowa Farmers Ripped Out Prairie; Now Some Hope It Can Save Them*, WASH. POST (Aug. 7, 2016), [https://www.washingtonpost.com/national/health-science/iowa-farmers-ripped-out-prairie-now-some-hope-it-can-save-them/2016/08/07/1ff747a2-5274-11e6-88eb-7dda4e2f2aec\\_story.html?utm\\_term=.f9378af89741](https://www.washingtonpost.com/national/health-science/iowa-farmers-ripped-out-prairie-now-some-hope-it-can-save-them/2016/08/07/1ff747a2-5274-11e6-88eb-7dda4e2f2aec_story.html?utm_term=.f9378af89741) (noting the effort to return natural prairie as a way of combating soil erosion as “Iowa farmers lose about \$40 per acre to soil erosion in a state where more than 85 percent of the land is covered by crops”); see also Amy Mayer, *Study: Intensive Agriculture Drives Midwest Climate Changes*, HARVEST PUB. MEDIA (Feb. 16, 2018), <http://harvestpublicmedia.org/post/study-intensive-agriculture-drives-midwest-climate-changes> (noting agricultural irrigation’s impact on diverting Iowa’s waterways to the detriment of its environment in the form of increased rainfall and masked global temperature increases in the Midwest).

28. THOMPSON, *supra* note 17, at 113–41 (discussing the rise of Iowa’s initial interurban public transportation network and its inevitable downfall with the rise of individualized automobile ownership in stating, “By 1920 there was one motor vehicle for every 5.5 persons and by 1925, one for every 3.6 persons, surpassed only by the state of California.”); Martin V. Melosi, *The Automobile Shapes the City: Introduction*, AUTOMOBILE IN AM. LIFE & SOC’Y, [http://www.autolife.umd.umich.edu/Environment/E\\_Casestudy/E\\_casestudy1.htm](http://www.autolife.umd.umich.edu/Environment/E_Casestudy/E_casestudy1.htm) (last visited Feb. 4, 2018) (“Almost like a plough breaking the plains, the automobile transformed cities.”).

29. Weinberger, *supra* note 13, at 480 (citing Thomas R. Leinbach, *City Interactions: The Dynamics of Passenger and Freight Flows*, in THE GEOGRAPHY OF URBAN TRANSPORTATION 30, 45 fig. 2.9 (Susan Hanson & Genevieve Giuliano eds., 3d ed. 2004)) (“Road building projects were the order of the day. From the end of WWI until the end of WWII, vehicle registrations climbed from around 5 million to 30 million.”). For a detailed discussion of the history of our federal road system, see Emerson, *All Sprawled Out*, *supra* note 17, at 430–37.

30. For a history of Levittown, the “prototype” of postwar planned suburban communities, see WITOLD RYBCZYNSKI, *LAST HARVEST: FROM CORNFIELD TO NEW TOWN* 158–67 (2007). “Since building had largely stopped during the Depression and the war, the demand for housing was huge. . . . The solution proved to be . . . mass-produced suburbs built by private developers . . .” *Id.* at 158. Suburbs were built quickly with “extreme architectural uniformity” that “enabl[ed] work crews to repeat building operations efficiently and to use precut lumber and identical components.” *Id.* at 161. Separated into “master blocks,” these planned communities involved an automobile-centered plan that provided commercial strips along highways separated from local village centers and residential neighborhoods, with each house featuring two-stall

integrating isolated populations into a low-density urban landscape.<sup>31</sup> City planners responded by redesigning cities around cars instead of the people in them.<sup>32</sup> A legacy of the automobile's planning primacy persists today as fragmented population centers fail to promote the public's welfare.<sup>33</sup> By promoting Iowa's mass transit opportunities, municipalities can work to unwind the failed policies fueling the unequal returns of modern real estate recoveries.<sup>34</sup>

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garages. *Id.* at 163; *Levittown, Pa.: Building the Suburban Dream*, ST. MUSEUM OF PA., <http://statemuseumpa.org/levittown/one/b.html> (last visited Mar. 30, 2018) (“Between 1950 and 1960, 20 million people were drawn to mass housing developments on the outskirts of America’s cities.”).

31. Martin V. Melosi, *The Automobile Shapes the City: Modifying the City Core*, AUTOMOBILE IN AM. LIFE & SOC’Y, [http://www.autolife.umd.umich.edu/Environment/E\\_Casestudy/E\\_casestudy4.htm](http://www.autolife.umd.umich.edu/Environment/E_Casestudy/E_casestudy4.htm) (last visited Apr. 11, 2018) [hereinafter Melosi, *Modifying*].

32. Martin V. Melosi, *The Automobile Shapes the City: The “Footprint” of the Automobile on the America City*, AUTOMOBILE IN AM. LIFE & SOC’Y, [http://www.autolife.umd.umich.edu/Environment/E\\_Casestudy/E\\_casestudy2.htm](http://www.autolife.umd.umich.edu/Environment/E_Casestudy/E_casestudy2.htm) (last visited Apr. 11, 2018) (“Accommodating to the automobile most often required adapting cores to the needs of the car, be it changing the road system or adding gas stations, repair shops, auto parts stores, car washes, and automobile dealerships. However, adaptation did not mean remaking. In most cases, an automobile infrastructure was superimposed over cities that had undergone a variety of changes through time. Nevertheless, building new roads and highways within cities or adding automobile-related services did its share of changing—and in some cases destroying—human and animal habitats. Neighborhoods were cleaved, disrupted, or even eliminated. Plants and wildlife were threatened or dislocated.”).

33. See generally Wayne Batchis, *Suburbanization and Constitutional Interpretation: Exclusionary Zoning and the Supreme Court Legacy of Enabling Sprawl*, 8 STAN. J. C.R. & C.L. 1 *passim* (2012); Melosi, *Modifying*, *supra* note 31 (“Constructing a highway or freeway through an existing neighborhood, by its very act disrupted, degraded, and in some cases destroyed a community. Property values plummeted, but more significantly people were displaced and their neighborhood attachments undermined. One person’s blight and slum clearance was another’s life ripped asunder.”). For a discussion of the fragmentation of our urban environments and the attempted solutions, see Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763, 1764–71 (2002) (noting “the significant economic, environmental, and social costs imposed by the current fragmentation of American metropolitan areas into dozens, sometimes hundreds, of independent municipalities. . . . [State] laws, for example, facilitate the incorporation of new cities on the urban fringe, organize local taxation in a way that enables exclusive suburbs to offer better services to their residents than those offered by neighboring jurisdictions, and (along with a host of federal programs) provide financial support for suburbanization.”).

34. See Kevin Hardy, *Most Iowa Wages Have Stagnated. But the Rich Keep Getting Richer*, DES MOINES REG. (Nov. 25, 2017), <https://www.desmoinesregister.com/story/>

### B. *The Green Revolution and the Inequality of Iowan Innovation*

A product of Iowan innovation, the Green Revolution increased agricultural production worldwide to disprove dire warnings of a population crisis.<sup>35</sup> Freed from their supply-side constraints, commodity prices collapsed,<sup>36</sup> nearly driving the Iowan economy off the cliff of financial ruin.<sup>37</sup>

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money/business/2017/11/25/most-iowa-wages-have-stagnated-but-rich-keep-getting-richer/818770001/ (“Iowa traditionally scores well in income equality when compared to other states, ranking as sixth-best in 2016 by the Gini coefficient, a statistical measurement used by the U.S. Census Bureau to gauge income distribution. But Iowa’s income gap is widening. When adjusted for inflation, the bottom fifth of earners saw practically no growth in household income from 2006 to 2016, a Des Moines Register analysis of census data found. The poorest 20 percent saw household incomes inch up from \$13,798 to \$13,848 in 2016 dollars—less than one half of 1 percentage point.”).

35. For a discussion of Paul Ehrlich’s bestselling 1968 work, *The Population Bomb*, see David Kestenbaum, *A Bet, Five Metals and the Future of the Planet*, NPR (Jan. 2, 2014), <https://www.npr.org/sections/money/2013/12/31/258687278/a-bet-five-metals-and-the-future-of-the-planet> (“The 1970s felt like a time of shortages. TV news showed famines in Africa. And here at home in 1974, there were long lines at gas stations because of conflict in the Middle East.”). Enter Norman Borlaug. The Cresco, Iowa native earned a Nobel Peace Prize in 1970 for his pioneering work in selective crop breeding. *About Norman Borlaug*, WORLD FOOD PRIZE, [https://www.worldfoodprize.org/en/dr\\_norman\\_e\\_borlaug/about\\_norman\\_borlaug](https://www.worldfoodprize.org/en/dr_norman_e_borlaug/about_norman_borlaug) (last visited Mar. 30, 2018) (describing Dr. Borlaug’s “achievements to prevent hunger, famine and misery around the world . . . ‘sav[ing] more lives than any other person who has ever lived’”); Nobel Found., *Norman Borlaug—Biographical*, NOBELPRIZE.ORG, [https://www.nobelprize.org/nobel\\_prizes/peace/laureates/1970/borlaug-bio.html](https://www.nobelprize.org/nobel_prizes/peace/laureates/1970/borlaug-bio.html) (last visited Mar. 6, 2018).

36. J.R. Schubel & Carolyn Levi, *The Emergence of Megacities*, MED. & GLOBAL SURVIVAL, June 2000, at 107, 107 (“Throughout the 20th century, the number and sizes of cities grew, along with the percentage of the total population living in cities. In the past several decades we have seen the emergence of megacities—cities with populations greater than 10 million. Most of these are now in the developing world.”).

37. Iowa lost 20,000 family farms during the 1980s commodity crisis that ended over 15 percent of family farming legacies within the state. Iowa Farm Bureau, *Why ANF?*, AM. NEEDS FARMERS, <https://www.iowafarmbureau.com/ANF/Why-ANF> (last visited Mar. 6, 2018). The death of the family farm reverberated to the financial industry, as overleveraged banks saw the value of their collateral decline in “one of the worst global credit disasters in history.” John Summa, *From Booms to Bailouts: The Banking Crisis of the 1980s*, INVESTOPEDIA, <http://www.investopedia.com/articles/financial-theory/banking-crisis-1980s.asp> (last visited Mar. 30, 2018); see generally Brian Lamm, FDIC: Div. of Research & Statistics, *Banking and the Agricultural Problems of the 1980s*, in AN EXAMINATION OF THE BANKING CRISES OF THE 1980S AND EARLY 1990S (Detta Voesar et al. eds., 1997), [https://www.fdic.gov/bank/historical/history/259\\_290.pdf](https://www.fdic.gov/bank/historical/history/259_290.pdf) (discussing leverage lending practices as a response to the agricultural innovations of the Green Revolution and the impact of farmland value on lenders’ solvency). To raise awareness of the importance of the agricultural sector within the greater national

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As Iowa recovered, short-term market pressures increased standardized suburban development as investment in costly revitalization efforts declined.

1. *From Big Ag to Big Box: The Death of Downtown*

Commercialization of the agricultural industry put pressure on the margins of existing farmers who saw lucrative outs in the form of subsidized suburban development to the detriment of Iowan main street.<sup>38</sup> Standardized, low-cost suburban development, from “big-box” retail chains to McMansions, sprouted up across the state in search of short-term profits during Iowa’s economic resurgence.<sup>39</sup> Their short-term success signaled

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economy, the University of Iowa’s football team adopted the “America Needs Farmers” campaign during the team’s historic rise as the country’s all-too-temporarily top-ranked college football team during its historic 1985 season. Iowa Farm Bureau, *supra* (noting “a simple yellow circle, 2 ½ inches wide, with the letters ‘A-N-F’ positioned immediately above the Tigerhawk . . . [r]emains a testament to the men and women who proudly give their all to provide the nation’s diverse food supply”).

38. William E. Whittaker, *A Photographic Record of Iowa Towns, 2007–2013*, U. IOWA (Aug. 1, 2013), <http://digital.lib.uiowa.edu/cdm/landingpage/collection/iowatowns> (“The state as a whole finally regained its pre-[commodity] crisis population level in 2000, but almost all of this growth is in urban areas, especially in the Des Moines metro area. The increasing demand for biofuels has led to general profitability of farms, but farms are increasingly run like corporations, with very few people working very large farms. One recent study of Wright County showed that 42 percent of all agricultural land area was owned by people outside of Wright County; if you include people who live in the county but do not live on the farm, the number of absentee owners is probably greater than 50 percent. These absentee owners have no social or financial incentive to improve their communities, no [sic] do they experience any firsthand effects of their farming practices, they do not have to smell the high-density hog lots that make huge swatches of the countryside uninhabitable. At this point, most of the smallest towns are beyond salvage. The economic system that gave birth to them disappeared before World War II, they provide no services to local residents that residents cannot easily obtain more cheaply at larger towns or at a regional Wal-Mart or Theisens. The downtowns of medium-sized communities are generally in poor shape. Although their size provided a bit of a buffer, they suffer from the same sort of pressures that destroyed small towns. Other factors that harm towns are caused by poor planning: since the 1960s, highway planning has consistently shifted major roads around medium-sized town business districts, instead of through them, which shifts the business center away from the old downtown and to the outskirts of town.”).

39. Tamara Mullen, *The McMansion: Architecture’s Role in Facilitating Urban Sprawl and Farmland Loss*, 12 *DRAKE J. AGRIC. L.* 255, 256 (2007) (footnotes omitted) (“Applying the ‘bigger is better’ mindset of fast-food, houses, as with most items in today’s marketplace, appear to have been supersized. The new ‘biggie’ version of the single family home is the ‘McMansion,’ architectural jargon for a particular style of housing that is—as its name suggests—both large like a mansion

long-term decay as lax lending practices promoted a one-size-fits-all approach to Iowa's housing supply and the worst economic collapse since the Great Recession.<sup>40</sup>

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and as culturally ubiquitous as McDonald's fast food. . . . Farmland conversion is more than double that of population expansion."); Patricia E. Salkin, *Municipal Regulation of Formula Businesses: Creating and Protecting Communities*, 58 CASE W. RES. L. REV. 1251, 1253–56 (2008) (“[C]orporations benefit from uniformity because it is cheaper to develop one set of blueprints and one set of protocols that can be used for hundreds or thousands of retail or service outlets than it is to customize each individual establishment. . . . Formula retail, particularly big boxes, also present myriad environmental concerns for host communities by virtue of their size and development patterns. For example, traffic impacts including safety, congestion, noise (from trucks and from quantity of vehicles), and air quality that result from ‘destination’ big boxes are typically experienced by the residents of the host community. Impacts from stormwater run-off due to large impervious surfaces can be exacerbated by the potential for greater mixing of oil, gas and other products that may leak from large numbers of automobiles and commercial vehicles parked on these surfaces. Lighting from parking lots, needed for security reasons, contributes to light pollution. In addition, since it is more cost-effective on a cash basis to build a new store on undeveloped green space, rather than to retrofit an existing building or to redevelop a brownfield, large formula-retail outlets have been blamed for contributing to sprawl, resulting in destruction of aesthetic viewsheds and unnecessary degradation of the natural environment.”). For a discussion of the market conditions fueling expansive suburban growth, see Todd W. Daloz, *Farm Preservation: A Vermont Land-Use Perspective*, 12 VT. J. ENVTL. L. 427, 431–32 (2011) (“Agricultural land provides a tempting target for developers for multiple reasons. It is generally located closer to urban boundaries and thus is readily available for conversion into commuter communities. The features that make it prime growing soil also encourage urbanization: ‘The topography of prime farmland lowers infrastructure costs for development and makes such land a tempting target for development.’ Its generally level grade, good drainage, and open expanse simplify the transition from amber waves to asphalt cul-de-sacs.”). See, e.g., DAVID J. PETERS, IOWA STATE UNIV. EXTENSION & OUTREACH, IOWA POPULATION TRENDS IN 2016, at 8 (2017), <https://wp.las.iastate.edu/soc-smalltowns/wp-content/uploads/sites/163/2017/06/soc-05-2017-popest.pdf> (“Of the 20 fastest growing cities [in Iowa], nearly all were suburbs of larger cities like Des Moines, Cedar Rapids, and Iowa City.”).

40. For a discussion of the mortgaging crisis, see FED. RESERVE BANK OF CLEVELAND, BREAKING THE HOUSING CRISIS CYCLE 1 (2008), <https://www.clevelandfed.org/newsroom-and-events/publications/annual-reports/ar-2008-breaking-the-housing-crisis-cycle/ar-200802-breaking-the-housing-crisis-cycle.aspx> (noting the cycle of overproduction inherent to the crisis and the resulting “net worth of American households fell by \$4.2 trillion between the end of 2006 and the end of 2008 as a result of changing fortunes in the residential real estate market”).

## 2. REITs to Private Equity: The Inequality of a Rental Economy

As the bubble burst, speculative real estate investment trusts (REITs) and overleveraged borrowers failed en masse as the real estate industry consolidated and a rental economy moved in.<sup>41</sup> U.S. cities, desperate for

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41. Compare Barry Meier, *Foreclosures Profit Some Equity Firms*, N.Y. TIMES (Oct. 20, 2010), <http://www.nytimes.com/2010/10/21/business/21equity.html> (discussing private-equity financed “foreclosure mills” that purchased distressed loans to accelerate their foreclosures for profit with at least one firm going as far as disclosing “any steps that slowed the pace of foreclosures, like government programs that helped homeowners renegotiate loans, would hurt its revenue”), with Zoe Thomas, *Why Are America’s Suburbs Getting Poorer?*, BBC (Aug. 26, 2016), <http://www.bbc.com/news/business-36957439> (noting that private-equity firms turned foreclosed properties into high-rate rental properties while the surrounding communities continued to struggle with affordable housing supplies). For a discussion on REITs’ role in speculative investing, see ROBERT L. LEWIS, REAL ESTATE INVESTING IN NEW YORK CITY: A HANDBOOK FOR THE SMALL INVESTOR 80–81 (2003) (“The form of trust used within the [real estate] industry is called the ‘Real Estate Investment Trust,’ and is commonly referred to as a ‘REIT.’ These trusts invest primarily in real estate and have a minimum of one hundred shareholders. Although the trust may not pass any tax losses on to the shareholders, the trust is entitled to pass through all gains to the shareholders (pursuant to Subchapter M of the Internal Revenue Code) without the trust having to pay any taxes upon the income. In other aspects, a REIT is very similar to a publicly held corporation. Almost all REITs are publicly held and enable passive investors to invest in real estate. REITs have had a roller coaster history. . . . [Once] money making machines[,] . . . [competition for returns outpaced the] number of projects [available]. To invest the money, many of the REITs then made very risky loans, which resulted in tremendous losses. Many of these REITs landed up in bankruptcy, or with a market value that was but a small fraction of the price for which they had traded previously. Many large commercial banks and insurance companies sponsored REITs, making it possible for them to assume their riskier loans . . . . Even with the sponsorship of strong financial institutions many of these REITs lost substantial sums of money. . . . In the last several years, REITs have gone through a total revitalization and many new REITs have gone public in the past few years. Many of these REITs tend to be more specialized. There are now REITs which invest just in residential housing . . . . [while others] invest only in very large regional shopping centers . . . .”). While publicly traded REITs rose and fell out of favor, private equity rose to fill in the investment void. See Paul J. Davies, *Why Private Equity Risks Tripping on Its Own Success*, WALL ST. J. (Feb. 13, 2018), <https://www.wsj.com/articles/why-private-equity-risks-tripping-on-its-own-success-1518518193> (“These firms are no longer the simple buyout shops of old, rehabilitating badly run businesses. Today, big private-equity firms are financial conglomerates reaching into all corners of the markets. They act not only as fund managers, but also proprietary investors, traders and investment bankers. In some ways, they are resurrecting the lightly regulated investment-bank partnerships of old. Big private-capital firms now typically encompass traditional buyout arms plus private debt, real estate, infrastructure and energy funds. . . . Then there is Blackstone[ Group’s] recent use of derivatives trading to

development after years of decay, offered tax incentives to reinvent city centers, which brought with it an oversupply of luxury rentals mixed with rent-controlled apartments in the name of “affordable housing.”<sup>42</sup> These efforts lured mobile millennials from larger cities but masked the greater region’s decline in the affordable housing supply.<sup>43</sup> Efforts to fill the “missing

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subsidize lending to U.S. home builder Hovnanian at the direct expense of some hedge funds, which seems to undermine the spirit, if not the law, of that market. . . . Their decisions on whether to invest or cut costs now hold ultimate sway over millions of jobs, from shop assistants to pharmaceutical scientists. . . . The industry has a history of overpaying during booms. . . . Private-equity firms’ great advantage is time: investor money is locked up for years, so firms can wait for what they think is the best moment to invest and cash-in.”); Eric Morath, *U.S. Households Shoulder Record \$13.15 Trillion Debt to End 2017*, WALL ST. J. (Feb. 13, 2018), <https://www.wsj.com/articles/u-household-debt-up-193-billion-to-13-15-trillion-to-end-2017-1518537600> (“Rents are high, so [new homeowners] want to purchase and lock in a price . . . . Buyers are being more aggressive. They see there are a lot of other buyers out there, and that gives them confidence in the market.” (quoting Matt van Winkle, a real estate agent in Seattle)).

42. See, e.g., Adam Johnson, *4 Reasons Why REITS Are Traps Not Trusts*, INVESTOPEDIA (Oct. 3, 2016), <https://www.investopedia.com/news/4-reasons-why-reits-are-traps-not-trusts/> (noting specialized REITs reactionary nature in creating an oversupply of retail and luxury housing); Matt Vasilogambros & Mauro Whiteman, *The People Who Can’t Take Advantage of the Des Moines Housing Boom*, ATLANTIC (Oct. 9, 2014), <https://www.theatlantic.com/politics/archive/2014/10/the-people-who-cant-take-advantage-of-the-des-moines-housing-boom/431379/> (“The Des Moines area is thought to be one of the most affordable metropolitan areas in the country; the cost of living is 6 percent below the national average. The city offers tax credits as an incentive for developers to transform old industrial spaces into creative, new living spaces in the downtown area. Those new apartments must maintain their rent rates for 10 years after they’re built. But these same rent-control measures in the downtown area aren’t being taken in other residential parts of the Des Moines area that are more attractive to lower-income, working families. In many ways, the Des Moines housing boom has left a void, with some lower-income populations lacking access to affordable homes. For every 100 extremely low-income renter households in Polk County, where Des Moines is located, there are only 20 affordable and available rental units, according to the Urban Institute. The gap between the number of households of four earning less than \$22,650 and affordable, available rental units is 11,205. The problem for many lower-income people in Des Moines is that their jobs are not actually in Des Moines, but in the surrounding area. Affordable housing may be in the city, but they work at one of the two large malls in West Des Moines, or at the Bass Pro Shop in Altoona, or at big-box stores in Ankeny. These workers may also lack cars and depend on limited bus routes. The average commute for the Des Moines area is 20 minutes. But for people who rely on public transportation, it can be up to an hour each way.”).

43. See, e.g., Catherine Clifford, *The 25 Best Cities in the US for People Under the Age of 35*, CNBC MONEY (May 23, 2017), <https://www.cnbc.com/2017/05/22/the-25-best-cities-in-the-u-s-for-millennials.html> (praising Des Moines’s relative employment

middle” became blocked by private interests preserving detrimental density restrictions to geographically isolate public services and local housing supplies.<sup>44</sup> Growth-minded suburbs seized on rising urban rents to promote speculative sprawl, further straining public services over vital regional redevelopment opportunities.<sup>45</sup> Meanwhile, U.S. automotive manufacturers received massive bailouts in the name of economic “protectionism” as local officials failed to protect the public from the failed policy of the automobile’s

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prospects and “modest cost of living”); David Johnson, *These Cities Have Already Reached ‘Peak Millennial’ as Young People Begin to Leave*, TIME (Dec. 14, 2017), <http://time.com/5054046/millennials-cities>. *But see* MÜLLER, *supra* note 10, at 16.

44. *See, e.g.*, HUGH F. KELLY ET AL., URBAN LAND INST., EMERGING TRENDS IN REAL ESTATE, URBAN LAND INSTITUTE 5–6 (2017), <https://uli.org/wp-content/uploads/ULI-Documents/ET17.pdf> (noting investors increased demand for “optionality” development that can support multiple uses in the wake of a rising service industry and uncertain retail landscape); Katherine Shaver, *Cities Turn to ‘Missing Middle’ Housing to Keep Older Millennials from Leaving*, WASH. POST (Dec. 9, 2017), [https://www.washingtonpost.com/local/trafficandcommuting/cities-turn-to-missing-middle-housing-to-keep-older-millennials-from-leaving/2017/12/09/3a129bc8-d54a-11e7-95bf-df7c19270879\\_story.html?utm\\_term=.ac3272829ff5](https://www.washingtonpost.com/local/trafficandcommuting/cities-turn-to-missing-middle-housing-to-keep-older-millennials-from-leaving/2017/12/09/3a129bc8-d54a-11e7-95bf-df7c19270879_story.html?utm_term=.ac3272829ff5).

45. Demographic trends and depressed wages put pressures on homebuilders to meet the demand for low-cost housing by commoditizing land that had already received local approval for development. Chris Kirkham & Laura Kusisto, *Lennar, CalAtlantic Strike Deal to Create Largest U.S. Home Builder*, WALL ST. J. (Oct. 30, 2017), <https://www.wsj.com/articles/lennar-calatlantic-strike-deal-to-create-largest-u-s-home-builder-1509360815> (“Major home builders are looking to control rising costs for land, labor and materials as the U.S. housing market expansion continues. Builders increasingly are focusing on first-time home buyers purchasing less-expensive homes, which has put pressure on profit margins. . . . In acquiring CalAtlantic, Lennar will have access to a new supply of developable land that can be built on quickly, which is less risky than [even] buying large tracts of undeveloped land that could take years to get permits.”); *see, e.g.*, Andrea J. Boyack, *Limiting the Collective Right to Exclude*, 44 FORDHAM URB. L.J. 451, 485, 496–97 (2017) (“One problem with federal affordable housing efforts is that they historically have been concerned with quantity of housing rather than the location of affordable units. Because housing funds have historically been allocated without affirmatively considering the optimum location for affordable housing, and because of the effectiveness of community exclusions . . . most affordable housing is located in high-poverty neighborhoods. . . . Many of our laws and regulations have been enacted and justified as ways to preserve ‘property values,’ based on the presumption that owners of property in a neighborhood have the legal right to enact protective policies to buoy their home’s market value. . . . Allowing groups to exclude for the sake of exclusivity has prolonged market inefficiencies and created inequitable constraints on and placement of the affordable housing supply. . . . Communities have long employed exclusionary tools to self-segregate by income and divert investment out of broadly accessible public goods, for example by crafting excessively fractionalized school districting schemes rather than more sustainable regional ones.”).

planning primacy.<sup>46</sup>

### III. THE DEVELOPER DILEMMA: PRIVATE INTEREST IN PROMOTING PUBLIC WELFARE

Given the variety of local interests involved, municipal and county governments have long been in charge of land use decision-making.<sup>47</sup> While alternative land use intervention theories remain too numerous for the scope of this Note,<sup>48</sup> the following seeks to expose outdated density restrictions that detract from revitalization efforts.<sup>49</sup>

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46. See David Kiley, *As Obama Takes Victory Lap over Auto Industry Rescue, Here Are the Lessons of the Bailout*, FORBES (Jan. 20, 2016), <https://www.forbes.com/sites/davidkiley/2016/01/20/obamas-takes-victory-lap-over-auto-industry-rescue/#6d4ded423e83> (discussing the merits of these bailouts); see also James R. Healey, *Average New Car Price Zips 2.6% to \$33,560*, USA TODAY (May 4, 2015), <http://www.usatoday.com/story/money/cars/2015/05/04/new-car-transaction-price-3-kbb-kelley-blue-book/26690191/> (stating that the cost of automobile ownership continues to rise).

47. Maureen E. Brady, *Penn Central Squared: What the Many Factors of Murr. v. Wisconsin Mean for Property Federalism*, 166 U. PA. L. REV. ONLINE 53, 56 (2017) (“Constitutional property federalism has generally been perceived as desirable, encouraging beneficial competition and innovation in property forms.”). See Jerry L. Anderson, Aaron E. Brees & Emily C. Reninger, *A Study of American Zoning Board Composition and Public Attitudes Towards Zoning Issues*, 40 URB. LAW. 689 (2008), for a detailed discussion on the rise of zoning boards, who comprise them, and their limitations. See also William W. Buzbee, *Urban Sprawl, Federalism, and the Problem of Institutional Complexity*, 68 FORDHAM L. REV. 57, 92–94 (1999).

48. For a discussion of the merits and shortcomings of a localized zoning system, see Craig Anthony (Tony) Arnold, *The Structure of the Land Use Regulatory System in the United States*, 22 J. LAND USE & ENVTL. L. 441, 456 (2007). For a discussion on the positive and negative effects of restricting suburban growth, see *A Planet of Suburbs: The Limits to Limits*, ECONOMIST, <https://www.economist.com/suburbs> (last visited Mar. 31, 2018).

49. Compare McFarlane & Johnson, *supra* note 4 *passim*, with Kristin B. Flood, Note, *Who Should Pay for the Impact of New Development in Iowa: Developers or the Preexisting Community? Analysis of Home Builders Association of Greater Des Moines v. City of West Des Moines*, 91 IOWA L. REV. 751, 757–61 (2006) (discussing local funding limitations in adapting to the sustained strain of subsidized infrastructure expansion), and Margot J. Pollans, *Drinking Water Protection and Agricultural Exceptionalism*, 77 OHIO ST. L.J. 1195, 1197 (2016) (“The drinking water in Des Moines, Iowa just barely meets federal nitrate standards. According to the city’s 2016 Consumer Confidence Report, ‘[h]igh nitrate levels in drinking water can cause blue baby syndrome,’ and consumers caring for infants ‘should ask for advice from [their] healthcare provider[s].’ . . . [I]f left unabated, ongoing contamination could ultimately cost the city hundreds of millions.” (alterations in original) (citations omitted)).

A. *Political Fragmentation in a Mobile Municipal Maze*

Property developers adjust to the patchwork of local zoning regulations by developing larger areas in the periphery,<sup>50</sup> rather than allocating the capital necessary to improve smaller lots within existing communities.<sup>51</sup> Even unsubsidized, undeveloped agricultural land offers cheaper projects from a developer's perspective,<sup>52</sup> as the public bears the ultimate cost of sustaining strained services.<sup>53</sup> Profit-minded developers avoid the early expenses of speculative growth by purchasing undeveloped land along an urban fringe and then lobbying local politicians to rezone the land.<sup>54</sup> In avoiding the myriad of municipal regulations of urban centers, profit-minded developers can artificially reduce their project's pay-off

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50. See H. WADE VANLANDINGHAM, SARAH S. HOLLIS & ROBERT M. CARAVONA, UNIV. OF LOUISVILLE, DEALING WITH GROWTH: ALTERNATIVES TO LARGE LOT ZONING ON THE URBAN FRINGE 3 (2016), <https://louisville.edu/cepm/newpg5> ("Large lot subdivisions are often easier to develop. Governments that are under pressure to accommodate booming populations and development will find that zoning large lots does not require months of deliberations with professional planners and attorneys. For developers, large-lot subdivisions are an easy sell and guaranteed to make a profit: most new residents are seeking a big house on a five acre, 'rural' lot."); Joseph H. Bornong & Bradley R. Peyton, Note, *Rural Land Use Regulation in Iowa: An Empirical Analysis of County Board of Adjustment Practices*, 68 IOWA L. REV. 1083, 1094 (1983) ("[Z]oning is essentially a product of this century and has been almost universally enacted in major American cities. . . . [but] relatively slow to gain acceptance in [rural] areas.").

51. See, e.g., RYBCZYNSKI, *supra* note 30, at 55. But see Joel Aschbrenner, *Widening Gap: How D.M.'s Rising Home Values Left Behind Some Neighborhoods*, DES MOINES REG. (Jan. 30, 2017), <https://www.desmoinesregister.com/story/money/business/development/2017/01/28/widening-gap-how-dms-rising-home-values-left-behind-some-neighborhoods/96373234>. See *supra* note 4.

52. Daloz, *supra* note 39, at 431–32.

53. VANLANDINGHAM, HOLLIS & CARAVONA, *supra* note 50, at 3–4 ("Large lots cost the community more, both in terms of greater expenditures per household served and in terms of revenue gained in taxes from each."); Dorothy J. Glancy, *Vehicle Miles Traveled and Sustainable Communities*, 46 MCGEORGE L. REV. 23, 33 (2014) ("Because of their natural resource wastage and economic inefficiency, scattered, low-density residential development in suburban and exurban areas have been targeted for reform. Such development patterns generate the need to require extensive travel, usually in passenger vehicles, to reach urban centers and even local retail, education and recreation resources. The automobile and the interstate highway systems are often held responsible for a panoply of urban and suburban ills (environmental pollution, aesthetic blight, emptying out of urban cores, economic cost to individuals and municipalities, highway deaths, etc.)." (citation omitted)).

54. See *supra* note 45.

period.<sup>55</sup> The initial profitability of these fringe projects promotes political inflexibility of existing property interests that disguise the true cost of expansive growth.<sup>56</sup>

*B. Greenfields Return: The Neo-Nodal Need for Greyfield Development*

Developers, being proverbially stuck between a rock and a hard place, must predict what the market will bear with local officials acting “as mediators of disputes between incumbent homeowners and developers.”<sup>57</sup> Competition amongst localities leads to a leveraged municipal growth model, where local tax incentives are used to entice new development without regard to the greater region’s needs.<sup>58</sup> “[T]he demand for walkable

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55. See generally *Real Estate Modeling: Quick Reference—Real Estate Development Key Terms*, BREAKINGINTOWALLSTREET.COM, <https://samples-breakingintowallstreet-com.s3.amazonaws.com/80-BIWS-RE-Development-Key-Terms.pdf> (last visited Mar. 31, 2018) (outlining the various real estate expenses incurred in development projects).

56. For a detailed discussion of the rise of exclusionary zoning in U.S. land use and the ingrained private interests in our local political process, see Roderick M. Hills, Jr. & David Schleicher, *Planning an Affordable City*, 101 IOWA L. REV. 91, 111–16 (2015) (noting the “prisoner’s dilemma” blocking political cooperation from years of “ad hoc” decision-making made at the local level that prioritizes politically active landowners and developers over the greater regional populace). However, the struggle with speculative suburban growth is not just a U.S. issue. See *A Planet of Suburbs: Places Apart*, ECONOMIST, <http://www.economist.com/suburbs> (last visited Mar. 31, 2018) (“Now farmers are selling their small parcels of land to housebuilders for sums beyond previous imagining. Commuters are rushing in so that, every morning, they can rush out again.”).

57. Hills & Schleicher, *supra* note 56, at 105; see also RYBCZYNSKI, *supra* note 30, at 285–86 (noting developers cannot control their own development due to variable construction costs and unpredictable buyers).

58. See generally Richard Eisenberg, *What ‘The End of the Suburbs’ Means for Boomers*, FORBES (Aug. 9, 2013), <https://www.forbes.com/sites/nextavenue/2013/08/09/what-the-end-of-the-suburbs-means-for-boomers/#4666f3e442e9> (“[W]e’re at this turning point where for the last half century we’ve been expanding outward and outward . . . spread[ing] people further and further apart—further away from their jobs and into communities that weren’t designed to meet their needs.”); *Last Week Tonight with John Oliver: Economic Development* (HBO television broadcast Nov. 5, 2017). But see Joel Kotkin, *Megacities and the Density Delusion: Why More People Doesn’t Equal More Wealth*, FORBES (Apr. 16, 2013), <https://www.forbes.com/sites/joelkotkin/2013/04/16/megacities-and-the-density-delusion/#36381c191661> (refuting “the density cult” assumption that “higher population densities lead to more productivity and sustainable growth”); see also Shira Ovide & Mark Peters, *Why Data Centers Collect Big Tax Breaks; Facebook Opens \$300 Million Facility in Iowa, Not Far From Google, Microsoft*, WALL ST. J. (Nov. 14, 2014), <https://www.wsj.com/articles/why-data-centers-collect-big-tax-breaks-1416000057> (explaining how Facebook officials disguised their communications for a new \$300 million data center in Altoona “to avoid interference from rivals of

urbanism dramatically outpaces the supply[.]”<sup>59</sup> and developers seeking to build walkable communities often do so in isolation.<sup>60</sup> By building isolated suburban centers along existing fringe communities, neo-traditional developments undercut the desired goal of delivering a walkable community—the promotion of an interconnected, regional, transit-oriented economy.<sup>61</sup>

### C. Smart Growth: Tethering Mass Transit

The benefits of reducing automotive dependency are well-known.<sup>62</sup>

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jacked-up prices from state and local officials or landowners” until later in the negotiations “with [State] officials, the company dangled the possibility of choosing neighboring Nebraska as a data center site instead. . . . [Ultimately,] Altoona agreed to provide Facebook a 20-year exemption on paying property taxes . . . . It remains an open question whether the cost of these facilities . . . works out in their favor.”).

59. JEFF SPECK, WALKABLE CITY 24–25 (2012) (quoting CHRISTOPHER B. LEINBERGER, THE OPTION OF URBANISM 91 (2009)) (“The metropolitan area that does not offer walkable urbanism is probably destined to lose economic development opportunities; the creative class will gravitate to those metro areas that offer choices in living arrangements.”); Aschbrenner, *supra* note 51 (noting despite accolades for its “strong, yet affordable housing market,” Des Moines has seen a “widening gap between the haves and have-nots” as “growing suburbs and wealthy west-side neighborhoods have seen the biggest increases” in property values while other inner city neighborhoods “have seen little recovery”).

60. For a discussion of the “neo-traditional” or “new urbanism” approach to urban planning emphasizing “more compact communities designed to encourage bicycling and walking for short trips by providing destinations close to home and work,” see NEO-TRADITIONAL NEIGHBORHOOD DESIGN, FEDERAL HIGHWAY ADMINISTRATION COURSE ON BICYCLE AND PEDESTRIAN TRANSPORTATION 1 (2006), [https://safety.fhwa.dot.gov/ped\\_bike/univcourse/pdf/swless06.pdf](https://safety.fhwa.dot.gov/ped_bike/univcourse/pdf/swless06.pdf). Given existing communities were not developed according to this design, developers once again turned to large lot developments to deliver neo-traditional developments. See, e.g., Rox Laird, *Ankeny’s Prairie Trail Revives Lost Art of Town Planning*, DES MOINES REG. (Aug. 29, 2015), <https://www.desmoinesregister.com/story/opinion/columnists/2015/08/29/ankenys-prairie-trail-revives-lost-art-town-planning/71378412>.

61. Compare *supra* note 4, with Chris DeWolf, *Why New Urbanism Fails*, PLANETIZEN (Feb. 18, 2002), <https://www.planetizen.com/node/42> (“Most New Urbanist neighbourhoods are greenfield developments built without context on urban peripheries. Many lack adequate transit service to existing urban neighborhoods, standing alone in a vacuum of more typical subdivisions. New Urbanism tries to fool us into believing it is the saviour of urbanity when in reality it is nothing more than a new style of slipshod suburban development.”).

62. See, e.g., SPECK, *supra* note 59, at 31 (“Road and highway work, with its big machines and small crews, is notoriously bad at increasing employment. In contrast, the construction of transit, bikeways, and sidewalks performs 60 to 100 percent better.”);

Yet the costs of the current system in terms of public welfare are often understated.<sup>63</sup> Automobile-fueled sprawl costs Iowa not just its valuable farmland, but it prevents the development of public transportation alternatives.<sup>64</sup> In response, the state adopted the national “Smart Growth” initiative to reduce automobile dependency and promote walkable “nodes” throughout urban centers.<sup>65</sup> However, Smart Growth’s reliance on private adoption ensures ingrained private interests will continue to insulate

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Katrina Fischer Kuh, *Using Local Knowledge to Shrink the Individual Carbon Footprint*, 37 HOFSTRA L. REV. 923, 937–38 (2009) (“Local governments . . . define the physical architecture and infrastructure of communities through building and zoning codes, a function which greatly influences individual carbon emissions. It is well recognized that this physical architecture and infrastructure—where and how buildings, streets, parking lots, parks, etc. are constructed—in turn defines the broad outlines of a community’s energy needs and sets the starting point for any conservation effort.”); John R. Nolon, *An Environmental Understanding of the Local Land Use System*, 45 ENVTL. L. REP. NEW & ANALYSIS 10215, 10221 (2015) (noting the evolution of zoning schemes to allow small shopping centers within traditionally restrictive residential communities that enabled walkable communities, reduced vehicle miles traveled, and improved downtown air quality).

63. See, e.g., SPECK, *supra* note 59, at 30 (citation omitted) (“[T]he typical ‘working’ family, with an income of \$20,000 to \$50,000, pays more for transportation than for housing. . . . Families of limited means move farther and farther away from city centers in order to find housing that is cheap enough to meet bank lending requirements.”); Zack McMillin, *The Most Dangerous Activity: Driving*, SEATTLE TIMES (Jan. 6, 2010), <http://www.seattletimes.com/life/lifestyle/the-most-dangerous-activity-driving/> (“Some advocates call [driving] America’s great, unnoticed public health menace”); Matt Scully, *Auto Loan Fraud Soars in Parallel to the Housing Bubble*, BLOOMBERG MARKETS (May 10, 2017), <https://www.bloomberg.com/news/articles/2017-05-10/auto-loan-fraud-is-soaring-in-a-parallel-to-the-housing-bubble>.

64. See generally Michael Lewyn, *Campaign of Sabotage: Big Government’s War Against Public Transportation*, 26 COLUM. J. ENVTL. L. 259, 260 (2001) [hereinafter Lewyn, *Campaign of Sabotage*] (“[G]overnment at all levels has sabotaged transit in a variety of ways: by building highways to suburbs unserved by public transit, by loading down transit systems with unfunded mandates, by using housing, education and tax policy to encourage migration to those suburbs, and by using zoning policy to make suburbs as auto-dependent as possible.”).

65. See, e.g., CITY OF DES MOINES CMTY. DEV. DEP’T, CITY OF DES MOINES COMPREHENSIVE PLAN 12 (2016); John Sarkis Reshwan, Note, *Crossing the Threshold of Urban Mobility and Redevelopment: Using Tax Allocation Districts to Develop the Atlanta Beltline*, 23 GA. ST. U. L. REV. 681, 682 (2007) (“‘Smart Growth’ relies on public subsidies to encourage compact development around transit centers in regions suffering from sprawl.”); Joel Aschbrenner, *Developer of Des Moines Skyscraper Wants to Break Ground This Fall*, DES MOINES REG. (Sept. 2, 2016), <https://www.desmoinesregister.com/story/money/business/development/2016/09/02/developer-des-moines-skyscraper-wants-break-ground-fall/89749480>.

inefficient growth patterns.<sup>66</sup> Whether our cities are ready or not, Iowa's population will increasingly be drawn to metropolitan areas as new uses for the surrounding land emerge.<sup>67</sup> If Iowa wishes to honor its innovative legacy, the state must enforce transit-oriented development statewide to prevent private interests from undermining the rising tide of Iowa's metropolitan growth.<sup>68</sup>

#### D. Make Main Street Great Again

For many Iowans, the commercial or public health benefits a walkable community provides are simply not worth the congested, small-lot sizes of neo-traditional developments.<sup>69</sup> However, successful walkable communities contain characteristics of a "compact village" more akin to the small towns prevalent throughout Iowa's history before the rise of standardized sprawl.<sup>70</sup>

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66. See, e.g., Hills & Schleicher, *supra* note 56, at 112 ("The very term '[Not in my Backyard]' suggests neighbors' preference not for the total exclusion of a use but merely its relocation elsewhere."); Chris Hensley & Eric Burmeister, *To Help Strengthen Iowa, Expand Affordable Housing*, DES MOINES REG. (June 24, 2017), <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2017/06/24/help-strengthen-iowa-expand-affordable-housing/423719001>.

67. PETERS, *supra* note 39, at 1, 8. Compare Georgeanne M. Artz, Younjun Kim & Peter F. Orazem, *Can the Trend of Rural Population Decline Be Reversed?*, AGRIC. POL'Y REV., Spring 2014, at 3, 3 (noting Iowa is the 12th most rural state in the country with only 64 percent of its population living in urban areas), with Kyle Munson, *Childless Iowa: More Communities Left with Few, If Any, Kids*, DES MOINES REG. (Jan. 4, 2018), <https://www.desmoinesregister.com/story/news/local/columnists/kyle-munson/2017/12/27/childless-small-towns-iowa-struggle-aging-population/909256001/> (discussing the "shrink-smart" initiative of aging Iowan towns that face declining public services), and Patricia Cohen, *Immigrants Keep an Iowa Meatpacking Town Alive and Growing*, N.Y. TIMES (May 29, 2017), <https://www.nytimes.com/2017/05/29/business/economy/storm-lake-iowa-immigrant-workers.html>.

68. See generally Jeffrey Sayer et al., *Ten Principles for a Landscape Approach to Reconciling Agriculture, Conservation, and Other Competing Land Uses*, 110 PROC. NAT'L ACAD. SCI. U.S. AM. 8349, 8349 (2013).

69. For a discussion of walkable community critics, see RYBCZYNSKI, *supra* note 30, at 55, and Justin Fox, Conor Sen & Noah Smith, *Millennials Are Driving the Suburban Resurgence*, BLOOMBERG VIEW (Aug. 25, 2017), <https://www.bloomberg.com/view/articles/2017-08-25/millennials-are-driving-the-suburban-resurgence> (attributing the "urban comeback narrative" as by-product of "[t]he fact that millennials weren't buying homes or cars a few years ago [as a] product of economic hard times [more] than an expression of changing tastes").

70. RYBCZYNSKI, *supra* note 30, at 67 ("[D]espite the smaller lots, home buyers are willing to pay a premium for the green spaces, the convenience of nearby shops, the townlike surroundings, and the comfortable sense of a community."); Eillie Anzilotti,

By committing to a neo-nodal growth model for infill development, Iowa can ignite the revival of dilapidated communities and improve housing inequality to ensure one community's real estate recovery does not cost its neighbor's "American Dream."<sup>71</sup> By concentrating revitalization efforts around existing parking supplies, Iowa can embrace the future of the United States' transportation landscape—the truly automated automotive.<sup>72</sup>

#### IV. SMART GROWTH AND IOWA CODE § 18B: PRIVATIZING POLITICAL COOPERATION

Suburbanized growth, while a relatively new phenomenon in Iowa, has baffled city planners and academics alike for decades.<sup>73</sup> As sociologists and urban planners parse out what works and what does not work in the development of the United States' great cities, these lessons are inconsistently applied.<sup>74</sup> By adopting sustainable city planning strategies at the state level, Iowa can attract and maintain tomorrow's workforce.<sup>75</sup>

##### A. *Reliance on Repressive Regimes*

The term *smart growth* itself has been a "ubiquitous umbrella term for a slew of principles"<sup>76</sup> since the Smart Growth initiative first appeared in the American Planning Association's 1997 *Growing Smart Legislative Guidebook*.<sup>77</sup> At its core, "Smart Growth promotes a shift in the

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*Finding the Soul of America in Small-Town Iowa*, CITYLAB (Oct. 26, 2016), <https://www.citylab.com/life/2016/10/finding-the-soul-of-america-in-small-town-iowa/505451>.

71. See *supra* Part II.B and note 1.

72. See T.S., *Why Driverless Cars Will Mostly Be Shared, Not Owned*, ECONOMIST (Mar. 5, 2018), [https://www.economist.com/blogs/economist-explains/2018/03/economist-explains-1?fsrc=gp\\_en](https://www.economist.com/blogs/economist-explains/2018/03/economist-explains-1?fsrc=gp_en) ("With fewer private vehicles needing to be parked, vast swathes of land currently wasted on parking will be available for other uses, such as housing. As cars did in the 20th century, [automated vehicles] will redefine retailing and reshape cities, as well as providing convenient new form of mobility.").

73. See PETERS, *supra* note 39, at 8–10.

74. See *id.*

75. See Aaron Young, *U.S. News: Iowa Makes Top 10 in Best States Rankings*, DES MOINES REG. (Feb. 28, 2017), <https://www.desmoinesregister.com/story/news/2017/02/28/us-news-iowa-best-states-rankings/98502200>.

76. Irina Vinnitskaya, *A Clearer Definition for Smarter Smart Growth*, ARCHDAILY (May 9, 2013), <https://www.archdaily.com/369954/a-clearer-definition-for-smarter-smart-growth>.

77. GERRIT-JAN KNAAP, *A REQUIEM FOR SMART GROWTH* 3 (2006), <http://smartgrowth.umd.edu/requiemforsmartgrowth.html> (follow "view report")

conventional development patterns” by creating an “interdisciplinary process” of metropolitan and regional cooperation.<sup>78</sup> The U.S. Environmental Protection Agency further expanded on this process, identifying 10 guidelines to achieve Smart Growth’s antisprawl aims.<sup>79</sup>

The federal government’s regionalist approach to city planning is not without its critics who argue a decentralized approach to land use provides the best model, as it allows for a pure form of democracy and local governance.<sup>80</sup> However, intercity competition within urban regions, the pervasion of self-interest, and cost-conscious development remove the benefits of a participatory democracy.<sup>81</sup>

Sprawling suburbs often benefit from their supply of low-cost development with access to a greater region’s employment and public services.<sup>82</sup> New residents to suburban communities often lack any planning authority, as these communities come prepackaged with restrictive covenants and low-density zoning schemes, which are designed to protect internal property values by limiting the future supply that pushes new development further into the suburban fringe.<sup>83</sup> For many metropolitan

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hyperlink).

78. Jessica Tirado, *Smart Growth Advances Nationally*, NEW URBANISM, <http://www.newurbanism.org/newurbanism/smartgrowth.html> (last visited Mar. 31, 2018).

79. *Id.*

80. Keith Aoki, *All the King’s Horses and All the King’s Men: Hurdles to Putting the Fragmented Metropolis Back Together Again?: Statewide Land Use Planning, Portland Metro and Oregon’s Measure 37*, 21 J.L. & POL. 397, 409 (2005) (noting the public-choice theorists’ argument that local control over local matters is preferable to the centralized regionalist approach because those who are most affected are able to decide the desired outcome); *see generally* Brady, *supra* note 47.

81. Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365, 374 (1999) (labeling local government as the most “private” form of government that favors existing land owners over its citizens by “fragment[ing] states into hundreds of jurisdictions, each focused narrowly on the well-being of the constituency within its boundaries rather than on the state or region as a whole. . . . To attract investment, local governments often focus on the provision of ‘the environment of private opportunity,’ not the promotion of public discourse.” (citations omitted)).

82. SPECK, *supra* note 59, at 24–25; Weinberger, *supra* note 13, at 478 (“A suburban location typically gives a household greater opportunities for more affordable housing, larger living space for the same cost of housing, and private outdoor space . . .”).

83. *See* Anderson, Brees & Reninger, *supra* note 47 *passim*; McFarlane & Johnson, *supra* note 4, at 2153–54 (“The geographic location of [a] privatized yet subsidized housing construction was shaped by ordinary land use regulation. Thus, housing

residents, smaller homes within existing urban spaces financially elude them despite the desire for the healthy lifestyle a walkable community provides.<sup>84</sup> However, the hard truth for many Iowans is that even existing urban spaces do not offer walkable communities as the legacy of the automobile's planning primacy persists today.<sup>85</sup> Despite Smart Growth's best intentions, local funding remains essential to infrastructure development, and a reliance on municipal cooperation within a competitive-growth landscape disguises the long-term expense of expansive development.<sup>86</sup>

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construction took two project-focused forms: (1) a suburban-style, independently-owned (while invisibly subsidized) form of housing that was constructed in the low-density areas outside of central cities; and (2) a rented form of the multifamily home, largely segregated by race and income, which was confined to central cities and stigmatized as the epitome of subsidized. As a result, ordinary land use regulation has often restricted affordable housing opportunities to locations that are racialized 'black' and resulted in an uneven distribution of public sector resources, access to wealth, stigmatized reputation, and constrained opportunities for social mobility.”)

84. See generally Aschbrenner, *supra* note 51 (discussing how Des Moines “hub-and-spoke vision” to deliver walkable communities is pricing more and more existing residents out of desirable walkable communities, while the slow pace of infill development fails to pass on the rising property value benefits to surrounding property holders).

85. *Cities in Iowa*, WALK SCORE, <https://www.walkscore.com/IA/> (last visited Mar. 31, 2018) (noting every major Iowan city with a walk score below 49); *How Walk Score Works*, WALK SCORE, <https://www.walkscore.com/how-it-works/> (last visited Mar. 31, 2018) (noting that a score of 25 to 49 indicates “Car-Dependent: Most errands require a car”).

86. Federal Smart Growth policies can be seen throughout Iowa municipal codes. See, e.g., DAVID M. ERICKSON & CHRISTOPHER TALCOTT, REAL ESTATE LAW AND PRACTICE § 13:5, n.1, in 17 IOWA PRACTICE SERIES (2017 ed.) (quoting IOWA CODE ANN. §§ 335.5, 414.3 (West 2018)) (“[A]ll [Iowan city or county] zoning regulations must also be made with consideration to the ‘smart planning’ principles . . . .”); James A. Kushner, *Smart Growth: Urban Growth Management and Land-Use Regulation Law in America*, 32 URB. LAW. 211, 229–30 (2000) (noting initial Smart Growth federal policy initiatives “involve[d] a comprehensive planning [to] preserve[] open space and encourage[] the concentration of development”). However, Trump’s plan for comprehensive growth relies primarily on a project’s ability to demonstrate profitability above promoting public welfare. See, e.g., Patricia Cohen & Alan Rappeport, *Trump’s Infrastructure Plan Puts Burden on State and Private Money*, N.Y. TIMES (Feb. 12, 2018), <https://www.nytimes.com/2018/02/12/business/trump-infrastructure-proposal.html> (“Private investors will become the tail that will wag the dog, because they’ll want projects that will give returns.’ . . . The new plan ‘doesn’t allocate money in terms of congestion, economic need or the public good . . . .’”); Miriam Gottfried & Cezary Podkul, *Blackstone, Other Private-Equity Firms May Sit Out Trump Infrastructure Push; Private Equity Funds Have Raised Nearly \$34 Billion for Infrastructure Investments in North America*, WALL ST. J. (Feb. 13, 2018),

B. *Iowa Code § 18B and Its Constitutional Limits*

Planned zoning and land use restrictions have been found to be constitutional pursuant to a state's police power, yet important constitutional limits were established.<sup>87</sup> Federal courts sit above the partisan politics of exclusionary zoning.<sup>88</sup> While the U.S. Supreme Court serves as the ultimate authority on when zoning policies exceed the constitutional limits of governmental authority,<sup>89</sup> the Court struggles to balance this limit in a dynamic, developing world.<sup>90</sup>

Significant deference is afforded to municipal zoning ordinances.<sup>91</sup> However, a zoning restriction must leave an existing landowner with a reasonably profitable use of the land or risk a "takings" challenge under the Due Process Clause—requiring public compensation be paid to the private landowner.<sup>92</sup> In response to these costly takings challenges, "The federal government has taken on an increasing policy role in the area of land use reform and in influencing state and local land use decisions through myriad regulations, funding programs, and other agency-level technical assistance

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other-private-equity-firms-may-sit-out-trump-infrastructure-push-1518557542 ("[F]ew firms believe Mr. Trump's infrastructure plan will open the floodgates for privatization deals, which have long been out of their reach because of cheap funding alternatives such as municipal debt and the challenges of navigating local politics. Fund managers say they are mainly looking for assets that are already privately owned—such as renewable energy, railroads, utilities and pipelines—and not the deteriorating government-owned infrastructure like roads and bridges that helped attract the capital in the first place. . . . Deals often take years to get done and are notorious for falling apart at the last minute when an administration changes or legislatures reverse course.").

87. Compare John G. Sprankling, *Property Law for the Anthropocene Era*, 59 ARIZ. L. REV. 737, 740–57 (2017) (discussing the evolution of static property rights in an age of developmental uncertainty), with *Murr v. Wisconsin*, 137 S. Ct. 1933, 1944–45 (2017) (noting the Supreme Court's reliance on "reasonable expectations" when viewing property rights within the context of a takings challenge under local or state law).

88. See, e.g., Wayne Batchis, *Enabling Urban Sprawl: Revisiting the Supreme Court's Seminal Zoning Decision Euclid v. Ambler in the 21st Century*, 17 Va. J. Soc. Pol'y & L. 373, 383–88 (2010) [hereinafter Batchis, *Enabling Urban Sprawl*].

89. *Id.*

90. But see *Murr*, 137 S. Ct. at 1944–45 (looking beyond state and local law to the "reasonable expectations" of property owners as an important consideration in a local takings challenge).

91. But see *id.*

92. See Batchis, *Enabling Urban Sprawl*, *supra* note 88, at 388–89; Bornong & Peyton, *supra* note 50, at 1106–07 (discussing *Arverne Bay Constr. Co. v. Thatcher*, 15 N.E.2d 587 (N.Y. 1938)).

programs.”<sup>93</sup>

As a form of comprehensive planning and community development, Iowa Code § 18B attempts to promote concentrated communities but fails to provide a mechanism for enforcing interconnected growth.<sup>94</sup> In requiring state agencies, local governments, and other public entities to consider and apply codified principals that are in line with the national Smart Growth movement, the statute fails to provide a meaningful mandate.<sup>95</sup> Extensive infrastructure improvements for connecting intraregional communities posit major funding problems, and without legislative action, our communities will continue to fragment themselves along existing income lines.<sup>96</sup>

*C. Parking Private Interest Within Home Rule: Federal Funds’ Failed Attempt at Cooperation*

Following the Housing and Urban Development Act of 1965, the federal government required federal grants to be made to metropolitan planning organizations (MPOs), which were to be comprised of public officials for the purposes of comprehensive planning and the facilitation of transportation services in urban areas that lack qualified planning agencies.<sup>97</sup> While the successes and failures of public housing projects are beyond the scope of this Note, an important critique remains: “[L]ocal governments regulate the placement, allocation, and approach to housing production and neighborhood design. Although local governments purport to promote affordable housing production and housing integration, almost fifty years of local government action under the Fair Housing Act has failed to alleviate housing inequities and unaffordability.”<sup>98</sup>

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93. Patricia E. Salkin, *Smart Growth and Sustainable Development: Threads of a National Land Use Policy*, 36 VAL U. L. REV. 381, 381 (2002).

94. See IOWA CODE ANN. §§ 18B.1–18B.11 (West 2018).

95. See *Murr*, 137 S. Ct. at 1933–58; Hills & Schleicher, *supra* note 56, at 102 (“Even when the scope of state planning mandates is more detailed, however, the legal force of the plan is, outside of a handful of states, weak. A parcel’s zoning is said to be ‘in accordance with a comprehensive zoning plan’ so long as its treatment serves the ‘general welfare’ and is not dramatically different from nearby sites. . . . [C]ourt intervention will vary significantly based on unwritten assumptions about who the plan is supposed to protect from whom.”); see also Gottfried & Podkul, *supra* note 86.

96. See Flood, *supra* note 49 *passim*.

97. *About MPOs: A Brief History*, ASS’N METRO. PLANNING ORGS., <http://www.ampo.org/about-us/about-mpos/> (last visited Mar. 31, 2018).

98. Boyack, *supra* note 45, at 485–86 (citations omitted).

Metropolitan planning organizations distribute federal funds to private actors to promote Smart Growth aims, but without the support of their neighboring municipalities, early adopters cannot sustain comprehensive redevelopment.<sup>99</sup> The result: a tragedy of the commons situation<sup>100</sup> in which neighboring communities fail to invest in an interconnected regional housing supply.<sup>101</sup> Under the Trump Administration, private stakeholder investment will play an even larger role in federal funding decisions for years to come, and the judiciary will be called on to preserve the public's access.<sup>102</sup>

#### V. JUDICIAL ACTION REQUIRED: THE PARKING PARIAH AND THE INDUCED-DEMAND PARADIGM

For walkable communities to sustain themselves, they must support an accessible and walkable commercial center.<sup>103</sup> With a transparent, enforceable, and comprehensive plan, Iowa can begin to adapt its existing

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99. Lisa T. Alexander, *The Promise and Perils of "New Regionalist" Approaches to Sustainable Communities*, 38 *FORDHAM URB. L.J.* 629, 638–39 (2011) (noting the exclusionary tendencies resulting from traditional structure of local government autonomy amongst suburban localities that “exacerbates interlocal fiscal disparities and undermines regional equity and collaboration”).

100. For a definition and discussion of the tragedy of the commons, see Tucker Levis, Note, *Vaccines and the Tragedy of the Commons: An Argument for an Alternative Liability Tort Remedy*, 65 *DRAKE L. REV.* 1059, 1062–63 (2017).

101. See, e.g., MacKenzie Elmer, *The DART Bus Dilemma: Who Will Pay To Stay?*, *DES MOINES REG.* (Dec. 11, 2016), <http://www.desmoinesregister.com/story/news/local/des-moines/2016/12/11/dart-bus-dilemma-who-pay-stay/94302874/> (noting the current financial struggles of Des Moines's only metropolitan public-transit option and the cutback in the number of citizens served).

102. Scott Rodd, *Infrastructure Strategy Touted by Trump Has Produced Uneven Results*, *PBS* (Dec. 14, 2016), <https://www.pbs.org/newshour/nation/infrastructure-trump-uneven-results>.

103. RYBCZYNSKI, *supra* note 30, at 68 (“The hardest thing to make work in a [medium density] development is the town center[.]”); see also Matthew J. Parlow, *Healthy Zoning*, 44 *FORDAM URB. L.J.* 33, 48–49 (2017) (“[K]ey findings related to its community’s collective health, including the need for more park space, access to healthy food, emergency services, usable public transportation, and walkable neighborhoods, as well as the existence of noise, water, air, and soil pollution. . . . [M]any low-income communities lack access to grocery stores and other establishments that provide healthy food options—creating the phenomenon of the food desert. There are significant obstacles facing cities that seek to attract grocery stores into these neighborhoods. For example, full-service supermarkets require up to 150,000 square feet. Moreover, grocery stores require a substantial number of parking spaces, and there are rarely vacant lots available in urban areas to accommodate these kinds of square footage and parking needs.”).

infrastructure to remove policies promulgating suboptimal sprawl.<sup>104</sup> Local efforts to remove redundant subsidies are already underway, but without regional enforcement mechanisms, reluctant self-interest will derail cooperation.<sup>105</sup>

*A. Mandated Minimums: Self-Interest in Sprawl's Supply*

Shortly after the rise of municipal zoning, an even more prolific culprit in the acceleration of urban sprawl emerged—minimum parking requirements.<sup>106</sup> While these requirements seemed reasonable in light of the United States' auto dependency, its long-term implications enabled our addiction.<sup>107</sup> Once considered a purgatory of urban planning, parking lots became ingrained into our public culture despite their pervasive impact.<sup>108</sup> Today, “Parking covers more acres of urban America than any other one thing . . . .”<sup>109</sup> Author Jeff Speck estimates that the United States spends a staggering 28 percent of its society's budget on transit, while our industrialized peers spend only 3 to 8 percent.<sup>110</sup> The total amount of federal government subsidies required to fuel this costly system is between \$127

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104. See, e.g., SPECK, *supra* note 59, at 23 (“[M]eeting the pent-up demand for walkable urban development will take a generation. It will be a boon to the real estate industry and put a foundation under the American Economy for decades . . .”).

105. *But see, e.g.,* B.A. Morelli, *Cedar Rapids and Marion Dropping Blue Zones, Joining Healthy Hometowns Instead*, GAZETTE (Feb. 26, 2018), <http://www.thegazette.com/subject/news/government/cedar-rapids-and-marion-dropping-blue-zones-joining-healthy-hometowns-instead-20180223> (noting municipal funding dependence on the private insurance industry in promoting changes in the city's “built environment” that makes “healthy living an easy choice”).

106. For a detailed discussion on the history of parking requirements, see Michael Lewyn & Judd Schechtman, *No Parking Anytime: The Legality and Wisdom of Maximum Parking and Minimum Density Requirements*, 54 WASHBURN L.J. 285 *passim* (2015). See also John L. Horwich, *Environmental Planning: Lessons from New South Wales, Australia in the Integration of Land-Use Planning and Environmental Protection*, 17 VA. ENVTL. L.J. 267 *passim* (1998).

107. See generally SPECK, *supra* note 59, at 29–30; Lewyn & Schechtman, *supra* note 106, at 285.

108. JOHN A. JAKLE & KEITH A. SCULLE, *LOTS OF PARKING: LAND USE IN A CAR CULTURE* 95 (2004) (noting parking as a “purgatory phase” of urban development that endured along with private interest's demand for induced convenience).

109. SPECK, *supra* note 59, at 115 (citing Eric Betz, *The First Nationwide Count of Parking Spaces Demonstrates Their Environmental Cost*, KNOXVILLE NEWS SENTINEL, Dec. 1, 2010).

110. *Id.* at 103 (citing IVAN ILLICH, *TOWARD A HISTORY OF NEEDS* 120 (1977)).

billion and \$374 billion a year.<sup>111</sup> Furthermore, the environmental costs of a decline in various metropolitan areas' relative ability to absorb rainwater presents new ecological challenges.<sup>112</sup> However, the true cost of mandated parking minimums is in terms of public health:

[Promoting parking] worsens air and water quality, speeds global warming, increases energy consumption, raises the cost of housing, decreases public revenue, undermines public transportation, increases traffic congestion, damages the quality of the public realm, escalates suburban sprawl, threatens historic buildings, weakens social capital, and worsens public health, to name a few things.<sup>113</sup>

Despite being warned of an inefficient supply of ample public parking as early as a 1997 University of Iowa parking study,<sup>114</sup> Iowa's largest metropolitan areas ensure an automobile addiction for years to come by requiring minimum number of parking spaces for new development in the face of changing demographic trends.<sup>115</sup> Rather than promoting mass transit and other ridesharing alternatives to reduce traffic, our public officials accommodate individual convenience over public welfare.<sup>116</sup> The resulting tragedy of the commons situation, inherent to Smart Growth's reliance on private agreements, produces a paradigm of unsustainable induced demand.<sup>117</sup> Put in the simple terms of Iowa's iconic induced-demand film: "If

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111. *Id.* at 118.

112. *See, e.g.,* Lewyn & Schechtman, *supra* note 106 *passim*; Ian Bogost, *Houston's Flood Is a Design Problem*, ATLANTIC (Aug. 28, 2017), <https://www.theatlantic.com/technology/archive/2017/08/why-cities-flood/538251>.

113. SPECK, *supra* note 59, at 119 (citing DONALD SHOUP, THE HIGH COST OF FREE PARKING 585 (2011)); *see also* DONALD C. SHOUP, AM. PLANNING ASS'N, PARKING CASH OUT *passim* (2005) [hereinafter SHOUP, AM. PLANNING ASS'N], <http://shoup.bol.ucla.edu/ParkingCashOut.pdf>.

114. JOHN G. SHAW, UNIV. IOWA PUB. POLICY CTR., PLANNING FOR PARKING 41–51 (1997).

115. *See, e.g.,* Demographic Shifts: Shaping the Future of Car Ownership, KNOWLEDGE@WHARTON (Feb. 21, 2017), <http://knowledge.wharton.upenn.edu/article/demographic-shifts-shaping-future-car-ownership>.

116. *See* SHOUP, AM. PLANNING ASS'N, *supra* note 113, at 3–4; Joe Cortright, *The True Costs of Driving*, ATLANTIC (Oct. 25, 2015), <https://www.theatlantic.com/business/archive/2015/10/driving-true-costs/412237>.

117. *See* SPECK, *supra* note 59, at 119. Public officials fear a lack of parking will doom development and deter a taxable base as the average Iowan would be prohibited from entering their markets without the terminals parking spaces provide. *See, e.g.,* Joel Aschbrenner, *Not Enough Parking near the Downtown Hy-Vee? We Found Thousands of Spots*, DES MOINES REG. (Feb. 22, 2017), <https://www.desmoinesregister.com/>

you [pave] it, they will [park].”<sup>118</sup>

*B. Paradise Paved: The Induced-Demand Paradigm*

As policymakers sought to promote public welfare by privatizing parking requirements: “[We] paved paradise [to] put up the parking lot . . . .”<sup>119</sup> Despite the adverse long-term costs, parking requirements remain.<sup>120</sup> For the general public, parking requirements have become ingrained as a necessity, yet our government takes no steps to cut our costly dependency.<sup>121</sup> For some, the notion of paying for parking seems unthinkable.<sup>122</sup> Yet efforts to return the parking economy are occurring in cities across the state, but suburban societies are delaying any action to diminish their subsidized supply.<sup>123</sup> Despite the competitive pressures

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story/money/business/2017/02/22/not-enough-parking-near-downtown-hy-vee-we-found-thousands-spots/98176870.

118. See SPECK, *supra* note 59, at 119. For a discussion on the induced-demand paradigm occurring today at the Field of Dreams site in Dyersville, Iowa, see Michael J. McGraw, *Field of Dreams: Is the Movie Site’s Commercialization a Dream Plan with Significant Benefits or a Nightmare Script with Crippling Effects?*, 2 TEX. A&M J. PROP. L. 73, 74 (2014) (“What began as a benign conversion of farmland into a movie prop has become a contentious situation for various parties claiming a multitude of interests in the land.”).

119. JONI MITCHELL, *Big Yellow Taxi*, in LADIES OF THE CANYON (Reprise Records 1970); see generally Fareed Zakaria *GPS: February 11, 2018* (CNN television broadcast Feb. 11, 2018) (describing the usual effect of privatizing public lands for development, as well as noting the United States is now the second worst country in terms of secrecy and offshore financial activity according to the Tax Justice Network). For a complete history of the evolution of the private parking lot, see JAKLE & SCULLE, *supra* note 108 *passim*.

120. For an evolution of parking within the urban environment, see JAKLE & SCULLE, *supra* note 108, at 95–155. 106

121. Donald Shoup, *Who Should Pay for Parking?*, CATO UNBOUND (Apr. 13, 2011), <https://www.cato-unbound.org/2011/04/13/donald-shoup/who-should-pay-parking> (“Parking spaces are essential for automobile travel, almost as oxygen in the atmosphere is essential to life. As a result, most people seem to think that parking requirements are an essential feature of city planning, but, as Cliff Winston says, economists have only recently begun to study the cost of these requirements.”).

122. Rachel M. Cohen, *Do Americans Have the Right to Free Parking?*, WEEK (June 24, 2014), <http://theweek.com/articles/446022/americans-have-right-free-parking> (noting activist groups who defend free parking from government intervention on the grounds of an individual constitutional right).

123. See, e.g., *New Parking Changes Coming to Downtown Des Moines*, KCCI (Jan. 11, 2018), <http://www.kcci.com/article/new-parking-changes-coming-to-downtown-des-moines/15065502>. For a further discussion on how the market undervalues parking at the cost to the general public, see SPECK, *supra* note 59, at 119.

amongst municipalities to compete for Smart Growth,<sup>124</sup> few cities are willing to remove parking minimums.<sup>125</sup> The political will to change the status quo is overcome by the “black hole” of induced demand.<sup>126</sup> The state’s legislature must defend against the various political groups continuing to promote a broken cycle.<sup>127</sup> Iowa courts must look past local mandates to enforce a comprehensive approach to a regional parking supply and remove exclusionary zoning constraints.<sup>128</sup>

### C. Commuter Lots: Coordinating Parking to Promote Mass Transit

Opponents will argue reducing or removing parking requirements will hurt Iowan growth as strained parking supplies generate high parking costs that deter commercial activity.<sup>129</sup> While these short-term concerns have their

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124. Joel Kotkin, *America’s Next Boom Towns*, FORBES (Jan. 14, 2016), <https://www.forbes.com/sites/joelkotkin/2016/01/14/americas-next-boom-towns/#2f5ebe1c52d5> (noting “divergent kinds of ascendant cities. One is driven by the tech industry, the in-migration of educated people and sharply rising incomes; the other type is what we describe as ‘opportunity cities,’ which tend to have a diverse range of industries, lower costs and larger numbers of families.”).

125. See Lewyn & Schechtman, *supra* note 106, at 288 (noting that “almost every American municipality has minimum parking requirements”).

126. For a detailed discussion of political pressure and the creation of induced demand, see SPECK, *supra* note 59, at 119.

127. See generally Daniel A. Crane, *Tesla, Dealer Franchise Laws, and the Politics of Crony Capitalism*, 101 IOWA L. REV. 573 (2016). “Public choice theory has long proclaimed that business interests can capture regulatory processes to generate economic rents at the expense of consumers. Such political exploitation may go unnoticed and unchallenged for long time periods because, though the rents are captured by a relatively small number of individuals or firms, the costs are widely diffused over a large number of consumers.” *Id.* at 574 (citation omitted).

128. While current Iowa law defers to comprehensive plans in rezoning efforts, it also provides cover to local politicians who deviate from these plans and placate current property owners articulating “overcrowding of land” and “undue concentration of population” as desired results, with no mention of the other extreme of standardized sparsely populated single-use sprawl. IOWA CODE ANN. § 414.3 (West 2018). It also defeats any enforceability efforts by allowing city council members to amend their comprehensive plans at any time. *Id.*

129. Lewyn & Schechtman, *supra* note 106, at 293 (acknowledging that parking reduction measures could “raise the cost of parking enough to make the city a less appealing place to live and work”). *But see* Christopher K. Hsee, Yuval Rottenstreich & Alois Stutzer, *Suboptimal Choices and the Need for Experienced Individual Well-Being in Economic Analysis*, 1 INT. J. HAPPINESS & DEV. 63 *passim* (2012) (noting the suboptimal decision most suburbanites choose in electing longer commute times over a shorter commute based on an unequal evaluation of experienced material values over

merit, alternative rideshare options can be utilized to defray transitional costs by coordinating commuter lots, reducing a growing population's impact on existing infrastructure.<sup>130</sup> Integrating short-term cost increases will be offset over the long-run by a shift to an inexpensive pedestrian primacy after years of a costly, automobile-dependent Anthropocene era.<sup>131</sup> Reinvesting in infrastructure redevelopment through the promotion of coordinated commuter lots over private parking requirements will position transit authorities to encourage interregional transit options.<sup>132</sup> Ideally, drafting comprehensive plans for development according to soil suitability and

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the inexperienced subsequent experience).

130. DES MOINES METRO. ORG., *THE TOMORROW PLAN: PARTNERING FOR A GREENER GREATER DES MOINES* 83 (2013), <http://www.thetomorrowplan.com/documents/ttp-final.pdf> (noting Des Moines's existing plans to integrate cost-efficient bus rapid transit that can interconnect with commuter lots that decrease the number of stops and decrease existing ride times that plague DART ridership); Michael N. Widener, *Animating Performance Zoning at Sustainability's Competitive Edge*, 29 *GEO. INT'L. ENVTL. L. REV.* 647, 690 (2017) (noting "parking structures [can] directly connect to intra-urban core people movers, enabling service to those who drive private vehicles"); see also John Infranca, *Spaces for Sharing: Micro-Units amid the Shift from Ownership to Access*, 43 *FORDHAM URB. L.J.* 1, 14–20 (2016) (citation omitted) ("Car sharing can be particularly effective at reducing car ownership within a development when provided directly on-site . . . [Austin, Texas, allows] [d]evelopers who provide car sharing on-site [to] reduce the amount of on-site parking by twenty spaces for each car-sharing space provided, up to a maximum reduction of forty percent of the required parking."); Michael Lewyn, *The (Somewhat) False Hope of Comprehensive Planning*, 37 *U. HAW. L. REV.* 39, 64–65 (2015) [hereinafter Lewyn, *False Hope*] (noting the negative externalities of "'spillover parking' . . . [and] 'cruising' . . . [where] drivers wast[e] time searching for scarce parking spaces . . . creating congestion and pollution" can be combated with permits that limit residential street parking to residents and guests with commercial meter prices set to promote ridesharing and alternative transportation by setting prices that ensure "enough spaces are vacant to allow enough parking for any driver who is willing to pay the price").

131. See, e.g., SPECK, *supra* note 59, at 119. The rise of an Anthropocene area has directly corresponded to the rise of automobile ownership and the failure of our rigid property law's ability to adapt to its damaging impact on the environment. Compare *supra* Part II.A, with Sprankling, *supra* note 87, at 740 (citations omitted) ("Anthropocene, defined as '[t]he era of geological time during which human activity is considered to be the dominant influence in the environment, climate, and ecology of the Earth.' . . . [M]ost authorities now place the beginning of the Anthropocene in the mid-twentieth century.").

132. For a discussion of the successes of a similar statewide Pigovian gasoline tax on statewide infrastructure, see Erin Murphy, *Iowa's Gas Tax Increase Working as Planned, Officials Say*, *GAZETTE* (Feb. 28, 2016), <http://www.thegazette.com/subject/news/government/iowas-gas-tax-increase-working-as-planned-officials-say-20160228>.

existing infrastructure should direct growth into areas with the lowest relative public costs.<sup>133</sup>

To be clear, Iowa's high supply of rural populations ensures that its cities need to maintain automotive access for the foreseeable future.<sup>134</sup> Yet, good design features of a community include parking garages linked to transit sites or entertainment, retail, office, and residential uses that can have significant potential benefit in encouraging walkability.<sup>135</sup> While the cost and future of parking garages can prohibit cash-strapped municipalities from considering reinvestment, shared neighborhood commuter lots, connected by shuttles with landscaping designs to improve storm water management techniques, can deliver similar results.<sup>136</sup> The key to commuter lots is the convenient connection of walkable nodes throughout metropolitan areas.<sup>137</sup> City officials should work to provide not only convenient transit between walkable nodes, but also include sheltered areas attached to parking facilities that shield commuters from Iowa's harsh elements and make shared transit options more desirable.<sup>138</sup>

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133. Lewyn & Schechtman, *supra* note 106 *passim* (comparing more onerous regionalist approaches to Smart Growth, including set parking maximum and population density requirements).

134. Lewyn, *Campaign of Sabotage*, *supra* note 64, at 285 (“[T]he popularity of the automobile has long been the bane of urban planners who wish to increase transit ridership [because of the public] preference for the convenience and freedom that the automobile represents.”); Elmer, *supra* note 101 (noting the current financial struggles of Des Moines's only metropolitan public transit option and the cutback in the number of citizens served).

135. METRO. TRANSP. COMM'N, REFORMING PARKING POLICIES TO SUPPORT SMART GROWTH 21 (2007), <https://mtc.ca.gov/sites/default/files/Toolbox-Handbook.pdf>.

136. Shane Hartman, *A Credit Where Credit Is Due: Why Congress' Long-Awaited Equalization of the Transit Pass and Qualified-Parking Exclusions, While Laudable, Does Not Go Far Enough*, 33 SETON HALL LEGIS. J. 565, 594–606 (2009) (noting the perverse parking incentive historically included public tax incentives); Lewyn & Schechtman, *supra* note 106, at 293–94.

137. METRO. TRANSP. COMM'N, *supra* note 135, at 21.

138. See generally Lewyn, *Campaign of Sabotage*, *supra* note 64, at 285–86. For the pros and cons of Des Moines's skywalk network see, Scott McFetridge, *Des Moines Not Alone in Facing Dilemma of Skywalk Success*, DES MOINES REG. (June 21, 2016), <https://www.desmoinesregister.com/story/money/business/2016/06/21/skywalks-des-moines-urban-problem/86178078>. While retail centers face uncertainty during an e-commerce age, employment centers remain essential to regional success. E.P.A., HOW SMALL TOWNS AND CITIES CAN USE LOCAL ASSETS TO REBUILD THEIR ECONOMIES: LESSONS FROM SUCCESSFUL PLACES 16–20 (2015), [https://www.epa.gov/sites/production/files/2015-05/documents/competitive\\_advantage\\_051215\\_508\\_final.pdf](https://www.epa.gov/sites/production/files/2015-05/documents/competitive_advantage_051215_508_final.pdf) (discussing

#### D. Future Proofing: The Free Market's Tipping Point

Automated cars provide both a blessing and a curse for today's urban planners.<sup>139</sup> Uncertainty regarding their acceptance and uniform adoption present unclear price points surrounding the future of the United States' transportation landscape.<sup>140</sup> As high-density areas invest in transportation alternatives, Iowa's history of low-density, auto-dependent suburbs will prevent public transportation options from emerging.<sup>141</sup> In other words, Iowa's investment in infrastructure will continue to lag market demand until city planners can concentrate development enough to promote private investment in public transportation.<sup>142</sup> With their existing municipal stakeholders, a wealth of traffic studies, and Smart Growth scholars, Iowa's metropolitan planning organizations are uniquely situated to provide

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Dubuque, Iowa's success in revitalizing the community's employment opportunities through a walkable, mixed-use neighborhood along its riverfront). Connecting employment centers to a network of walkable communities will help provide a big-city feel amongst Iowa's population centers. *See id.* at i.

139. *See, e.g.*, Belton Zeigler, *Cybersecurity Concerns Surround the Promise of Driverless Cars*, UPSTATE BUS. J. (Dec. 7, 2017), <https://upstatebusinessjournal.com/looming-pothole-cybersecurity-concerns-surround-promise-driverless-cars/> (“When fully implemented, the Automated Vehicle (AV) technology promises to do the following: Slash highway deaths and injuries[;] Eliminate most fender benders[;] Allow interconnected vehicles to flow at top speeds on congested highways[;] Expand transportation options for the disabled and elderly[;] Eventually replace car ownership with fleets of self-driving cars that come when we call and take us wherever we like. All indications are that this future is coming at us much more quickly than seemed possible before now. But there is a looming pothole—cybersecurity.”).

140. Peter Grant, *Say Goodbye to Garages as Developers Imagine a Driverless Future*, WALL ST. J. (Jan. 30, 2018), <https://www.wsj.com/articles/say-goodbye-to-garages-as-developers-imagine-a-driverless-future-1517317200>.

141. DES MOINES AREA METRO. PLANNING ORG., *Commuter Rail Feasibility Study for the Des Moines, Iowa Metropolitan Area 3* (2000), <https://dmampo.org/wp-content/uploads/2013/08/commuter-rail-feasibility-study.pdf> (“To stand any chance of competing with the automobile, commuter rail service must offer competitive trip times—a tall order when average rail trip length is 10 to 15 miles. . . . Of crucial importance is that prospective commuter rail service be connected with trip origins and destinations of sufficient volume to make the venture worthwhile.”).

142. *See id.* at 10, 17. *But see* Aaron Young, *Iowa Ranks as the Best State to Live in America, U.S. News Says*, DES MOINES REG. (Feb. 27, 2018) <https://www.desmoinesregister.com/story/news/2018/02/27/iowa-best-state-rankings-us-news-world-report/376147002/> (noting the “state’s top ranking in infrastructure” due to modern agriculture’s data needs that drove the state’s number one rating in Internet access while the state’s transportation network lags behind the majority of the country).

regional standards for community concentration efforts.<sup>143</sup> By statutorily ensuring judicial deference to MPOs' comprehensive plans in land-use disputes over defined density restrictions, Iowa can foster cooperative competition in a dynamic development age while preserving "home rule" authority over community characteristics.<sup>144</sup> However, traditional local funding mechanisms are woefully unprepared to initiate any meaningful change, where the framing of sustainable market incentives will be essential to ensuring the long-term success of Iowa's communities.<sup>145</sup> Currently, Iowa law is enforcing exclusionary efforts but fails to account for their long-term costs.<sup>146</sup> Partisan politics allows private interests to prevail, preventing both

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143. See Alexander, *supra* note 99, at 638–39; see, e.g., *Office of Systems Planning*, IOWA DOT, [https://www.iowadot.gov/systems\\_planning/planning/mpo.rpa](https://www.iowadot.gov/systems_planning/planning/mpo.rpa) (last visited Mar. 19, 2018). But see Elise Downer, Note, *Taxpayers as Investors: The Case for Applying Sarbanes-Oxley to Public Development Authorities*, 30 J. CORP. L. 857, 867–73 (2005) (discussing the need for greater accountability of public development agencies for failed policies while accounting for the challenges of applying corporate liability standards on public agencies).

144. For a discussion of the evolution of home rule authority in insulating exclusionary efforts within regional reforms, see David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2257, 2329–67 (2003) (“[S]tate law often authorizes localities to enact exclusionary zoning . . . [U]phold[ing] these local ordinances against legal challenge in the name of preserving local control.”). Communities can still set reasonable limits on the character and conditions of new development, but a transparent MPO comprehensive plan, setting evolving boundaries for density development according to objectively suitable districts, can provide a regional check on abusive restrictions that delays regional, affordable housing supplies. See *id.*

145. For a discussion of framing, see Cynthia D. Love, Sean T. Lawson & Avery E. Holton, *News from Above: First Amendment Implications of the Federal Aviation Administration Ban on Commercial Drones*, 21 B.U. J. SCI. & TECH. L. 22, 24–25 (2015). For a discussion on the importance of culture in driving sustainable development, see UNESCO GLOBAL REPORT ON CULTURE FOR SUSTAINABLE URBAN DEVELOPMENT 17–25 (2016), <http://unesdoc.unesco.org/images/0024/002459/245999e.pdf>.

146. Compare Jonathan Rosenbloom, *Funding Adaptation*, 47 J. MARSHALL L. REV. 657, 670–75 (2013) (citations omitted) (“Typically, local governments assume the responsibility of paying for infrastructure projects and are given wide discretion to determine the proper funding means. Funding tools available to local governments can be categorized under two general headings: 1) local governments can raise revenue and pay for the project with upfront funds, or 2) as is common in most large scale infrastructure projects, they can borrow money by issuing municipal bonds. . . . The municipal bond market helps local governments procure capital for anything from bridges to airports and is commonly used for local infrastructure projects. Municipal bonds allow local governments to borrow money and spread the cost of a given project among multiple generations. . . . Local governments also bear the risk of loss for any inefficiency in the project. For example, if a new water treatment facility is over budget

federal and regional attempts to correct inefficient policies.<sup>147</sup> It is in Iowa's best interest to look locally and cooperate regionally in reducing suburban sprawl's geographic inequality.<sup>148</sup> The current Administration's solution to local funding problems is to recycle asset portfolios into private-public

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or does not perform to the projected optimum level, the relevant local government is responsible for raising the additional funds to cover the full costs and for ensuring that the water exiting the plant is in quantity and quality that meets federal and state standards. An argument could be made that bond investors assume some risk relative to the project's performance, particularly in the case of revenue bonds where payment to the bondholders is based on revenues generated from the project. Most bonds, however, are specifically structured to disassociate risk of payment from risk stemming from the project itself. Bondholders rarely have involvement with the project. They almost never have oversight or review authority, and are usually unconcerned with the project and its development. If the project fails or does not achieve its stated goals, the public entity that issued the bonds is obligated to pay the bondholders. . . . The goals of traditional infrastructure projects include growth and population increases; and the structure of municipal bonding supports these goals. Growth, however, is not a goal of adaptation.”), *with Kragnes v. City of Des Moines*, 810 N.W.2d 492, 508, 516 (Iowa 2012) (finding a “franchise fee” used to combat the cost of rising public services is “not reasonably” related to the city's administrative expenses in exercising its police power limited only to the costs of “inspecting, licensing, supervising, or otherwise regulating the activity that is being franchised” that ultimately required the city to refund fees without providing alternative funding mechanisms for the rising cost of public services).

147. Boyack, *supra* note 45, at 486 (“A collective right to exclude through zoning and restrictive covenants essentially creates a legally enforced monopoly on housing affordability.”).

148. See Laura Bliss, *So Much for That Bipartisan Infrastructure Plan*, CITYLAB (Jan. 30, 2018), <https://www.citylab.com/transportation/2018/01/so-much-for-that-bipartisan-infrastructure-plan/551849/> (“According to the American Society of Civil Engineers, the U.S. faces a funding shortfall of at least \$2 trillion to bring infrastructure into an ‘adequate’ state of repair. The country places tenth in the world in terms of quality of overall infrastructure, according to the World Economic Forum. . . . Infrastructure has historically been an issue left and right can work together on. Most Americans have been able to agree that the solution to pockmarked roads, undone train tracks, and toxin-seeping water systems is to pay to fix them. They still do: According to a 2017 poll, nearly three-quarters of Americans would pay higher taxes for better roads. . . . Furthermore, the administration has proposed no new funding to support the grant program. At the same USCM meeting, White House infrastructure advisor DJ Gribbin said that money could come from funding cuts to Amtrak and transit programs.”); Damian Paletta & Erica Werner, *GOP Leaders Reject Gas Tax Increase After Trump Floats the Idea*, WASH. POST (Jan. 10, 2018), [https://www.washingtonpost.com/news/business/wp/2018/01/10/gop-leaders-reject-gas-tax-increase-after-trump-floats-the-idea/?utm\\_term=.4df218df6333](https://www.washingtonpost.com/news/business/wp/2018/01/10/gop-leaders-reject-gas-tax-increase-after-trump-floats-the-idea/?utm_term=.4df218df6333) (discussing failure of Trump's suggested gas tax increase that would have helped fund an overhaul of national infrastructure).

partnerships.<sup>149</sup> The removal of outdated on-site parking minimums can initiate infrastructure recycling efforts by igniting private investment into regional transportation networks.

#### VI. THE CARROT AND THE STICK: PRIVATE–PUBLIC PARTNERSHIPS WITHIN REGIONALIST PLANS

As one commentator notes, “Now is the time to start planning for a future in which zoning codes are not an impediment [to walkable communities].”<sup>150</sup> Regionalizing infrastructure development can set a level playing field by removing inefficient exclusionary tactics that fragment growing communities.<sup>151</sup> By integrating inclusionary zoning within existing low-density areas dominated by surface parking lots, Iowa can promote infill development while preserving public space.<sup>152</sup> In layering a local and regional property taxation scheme, Iowa can provide the funding mechanisms necessary for infrastructure revitalization efforts without renewing sprawl’s hidden subsidies.<sup>153</sup> By employing a carrot-and-stick approach to efficient land use decision-making, Iowa can become a leader in urban planning and produce a healthy, active, and connected populace for years to come.<sup>154</sup>

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149. Jason Scott & Brett Foley, *Trump Public-Works Plan Gets Nudge from \$2 Trillion Pension Pool*, BLOOMBERG POL. (Feb. 21, 2018), <https://www.bloomberg.com/news/articles/2018-02-21/trump-infrastructure-plan-gets-2-trillion-nudge-from-australia> (quoting David Whiteley, chief executive of Industry Super Australia) (noting the current administration’s “asset recycling” initiative and “key blockage” to new projects “due to community concern over private ownership of what people perceive should be public assets”).

150. Farris, *supra* note 1, at 761.

151. Compare Alexander, *supra* note 99, at 638–39 (noting the exclusionary tendencies resulting from traditional structure of local government autonomy amongst suburban localities that “exacerbates interlocal fiscal disparities and undermines regional equity and collaboration”), with Kushner, *supra* note 86, at 229–30 (“Smart Growth can also involve carrots rather than sticks . . .”).

152. See, e.g., Michael Lewyn, *You Can Have It All: Less Sprawl and Property Rights Too*, 80 TEMP. L. REV. 1093, 1104–05 (2007); see also Munson, *supra* note 67 (discussing the “shrink-smart” initiative of aging Iowan towns that face declining public services). But see Cohen, *supra* note 67.

153. See Farris, *supra* note 1, at 763.

154. Chris Kirkham, *More Americans Leave Expensive Metro Areas for Affordable Ones*, WALL ST. J. (Nov. 1, 2016), <https://www.wsj.com/articles/more-americans-leave-expensive-metro-areas-for-affordable-ones-1478088003>.

A. *The Memphis Plan: Unified Development Standards*

In 2010, the city of Memphis underwent a major zoning overhaul to attract developers without unnecessary competition amongst its various suburbs.<sup>155</sup> The Memphis plan became a new metropolitan code to encourage development by creating a uniform standard for developers to adhere to, which encouraged smart growth by relaxing parking requirements across the metropolitan region.<sup>156</sup> Memphis's plan reduced parking requirements from one parking spot for every 100 square feet of building space to one spot for every 300 square feet, increasing land use flexibility through the implementation of a region-wide code.<sup>157</sup> The effect was not only a revitalization of inner-city neighborhoods, but it also helped prioritize other Smart Growth initiatives such as increased public transit and smart streets to help account for the decline in city-wide parking.<sup>158</sup> In higher population areas, revitalization drove a change in how urban officials planned for mixed-income residents to combat the impact of rising rents that priced residents out of their existing neighborhoods.<sup>159</sup> With a population of over 600,000 people, Memphis approximates Iowa's largest urban area, Des Moines.<sup>160</sup> While many Iowan cities have smaller populations, a regional approach to reducing density restrictions—like relaxing single-use zoning and removing on-site parking requirements—can lure new development

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155. Michael Ryan, *Changing Development Codes to Promote Smart Growth in Memphis*, SMART GROWTH AM. (Sept. 2, 2014), <https://smartgrowthamerica.org/changing-development-codes-to-promote-smart-growth-in-memphis>.

156. *Id.*

157. *Id.*

158. Andy Meek, *Effort to Overhaul Unified Development Code Continues*, DAILY NEWS (Mar. 31, 2006), <https://www.memphisdailynews.com/editorial/Article.aspx?id=29984>.

159. See, e.g., Justin P. Steil, *Innovative Responses to Foreclosures: Paths to Neighborhood Stability and Housing Opportunity*, 1 COLUM. J. RACE & L. 63, 76 (2011). But see David Kane, *Restoration Remedies for Remaining Residents*, 61 UCLA L. REV. 812, 816 (2014) (“In neighborhoods of declining property values, however, or in situations in which there is an overall collapse in home values, such as during the foreclosure crisis, these incentives vanish. Instead, many lenders settle on the least expensive method of property maintenance: neglect.”).

160. Joel Aschbrenner, *Des Moines Is the Fastest Growing City in the Midwest, Census Says*, DES MOINES REG. (Mar. 22, 2017), <https://www.desmoinesregister.com/story/news/2017/03/23/des-moines-fastest-growing-city-midwest-census-says/99502922/> (stating that the total population of the Des Moines metropolitan area is 634,725); *QuickFacts Memphis City, Tennessee*, U.S. CENSUS BUREAU (July 1, 2016), <https://www.census.gov/quickfacts/fact/table/memphiscitytennessee/PST045216>.

without the inefficient competition over local tax incentives.<sup>161</sup> Practically speaking, getting various municipalities to agree on a common code is unlikely, but by having a metropolitan transit organization identify suitable density areas, a transit-oriented comprehensive plan can serve as a judicial check on political monopolies over Iowa's affordable housing supply.<sup>162</sup>

### B. *The Atlanta Plan: Integrating Parks and Public Equity*

An offshoot of Smart Growth planning, New Urbanism focuses on decreased automobile dependence through “pedestrian-oriented communities” in suburbs by emphasizing architectural elements such as “walkways behind homes, expanded front porches, and narrower roads” to enhance the pedestrian experience.<sup>163</sup> Central to Atlanta's plan is reducing “parking capacity . . . to a point where residents choose to walk or bicycle to local shops rather than drive.”<sup>164</sup> Given Atlanta's existing sprawl problem, the city struggled to integrate desirable green space that led to a “unified system of parks . . . instead of scattered open spaces . . . to ensure each community receives comparable benefits from [revitalization].”<sup>165</sup> Atlanta's approach “distribute[d] growth evenly throughout its redevelopment area. . . . [s]et[ting] aside 15% of all bond proceeds for affordable housing. . . . directed at acquiring land and constructing homes for families at the lower 40% of the earnings spectrum.”<sup>166</sup> While critics of subsidized housing may disparage the financial subsidies for the maligned incentives they provide, unlike Des Moines's reduced rent revitalization, Atlanta's plan allows residents to build an equity stake in their neighborhood success.<sup>167</sup> By shifting to an equity-based model for housing subsidies that protects access

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161. See Ryan, *supra* note 155; Kevin Hardy, *Rural Iowa Has a Housing Crisis. Here's How a Handful of Communities Are Solving It*, DES MOINES REG. (Mar. 28, 2018), <https://www.desmoinesregister.com/story/money/business/2018/03/28/rural-iowa-housing-crisis-homes-sale-real-estate-market/412289002/>

162. Boyack, *supra* note 45, at 486; Lewyn, *False Hope*, *supra* note 130, at 69 (“[A] well-drafted plan can be to a zoning code what a legislative history is to a state or federal statute—a document that explains the purpose of the law in order to guide the judges, landowners and officials who must follow and/or implement the law.”).

163. Reshwan, *supra* note 65, at 689.

164. *Id.* (citing 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, 67 (2002)).

165. *Id.* at 691.

166. *Id.* at 705 (citation omitted).

167. See *id.*

to public spaces, Iowa can reduce the displacement costs associated with neighborhood revitalization efforts.

*C. The Philadelphia Plan: Encouraging Financial Accountability*

In 2012, Philadelphia removed parking minimums for commercial buildings in the city center and dramatically reduced residential parking requirements.<sup>168</sup> Philadelphia coupled these efforts with parking taxes and reassessed property values that focused on the value of the underlying land as opposed to the structures upon them.<sup>169</sup> Akin to a Pigovian use tax, land value taxation “create[s] incentives for construction. When land is taxed more relative to buildings[,] [it] encourages property owners to develop, rather than retain low-value uses like parking lots.”<sup>170</sup> An increase in tax revenues helped finance tax abatements similar to those observed in downtown Des Moines.<sup>171</sup> Iowa currently mandates automotive insurance under the guise of “financial responsibility,” yet it stands to reason that Iowa’s property owners benefitting from their connection to those automobiles should maintain financial responsibility as well.<sup>172</sup> By applying an integrated land value taxation scheme at a regional level, Iowa can incentivize investment into private–public partnerships, where the public’s funding sources will be tethered to those properties benefitting the most from revitalization efforts.<sup>173</sup> A form of sprawl insurance, a regional land-value taxation scheme that is tied to the landowner’s relative supply of impermeable surface spaces can accelerate the desired repurposing result and promote interconnected land use.

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168. Angie Schmitt, *How Philadelphia Fixed Parking Craters Using Tax Policy*, STREETS BLOG USA (Oct. 30, 2017), <https://usa.streetsblog.org/2017/10/30/how-philadelphia-fixed-parking-craters-using-tax-policy>.

169. *Id.*

170. *Id.* For a detailed discussion on land value taxation, see *supra* note 1.

171. *See id.*

172. *See* IOWA CODE ANN. § 321A.21(1) (West 2018); *see also* Downer, *supra* note 143, at 867–873.

173. *See* Rosenbloom, *supra* note 146, at 670–75; *see also* Mike McGinnis, *Iowa Farmland Is Going Back Up, Survey Shows*, SUCCESSFUL FARMING AT AGRICULTURE.COM (May 17, 2017), <https://www.agriculture.com/news/business/iowa-farmland-is-going-back-up-survey-shows> (putting this phenomena in terms of existing farming struggles: “When you leverage debt during those years that you are seeing positive returns on your assets, you get the desire to grow your farm and add more financial leverage. But, when the worm turns, and returns on assets go negative and you are losing liquidity, the downturn goes a lot faster than the upturn.”).

#### D. *The Proposed Iowa Plan: A Comprehensive Strategy Solution*

Preservation of Iowa's farmland is not diametrically opposed to public conservation efforts when population growth occurs within existing urban spaces. In reducing the regulatory barriers that restrict density development, a comprehensive transit-oriented plan can ensure urban growth is channeled to the areas best suited for concentrated development. Meanwhile, a regionalist approach to infrastructure funding can prevent bipartisan malaise from monopolizing the location of Iowa's affordable housing supply. While the evasiveness of corporate taxation will present challenges in ensuring solvent land owners pay their share of infrastructure development within a land-value taxation scheme,<sup>174</sup> increasing developer accountability can accelerate redevelopment cycles where planned uses fail. Attempts to improve developer accountability include requiring demolition or performance bonds for new developments.<sup>175</sup> Utilizing performance or demolition bonds within a regional land-value taxation scheme can reduce revitalization's "free-riding" issue, where property owners neglect to improve their own property while benefitting from their neighborhood's property value improvements.<sup>176</sup> Ultimately, Iowa will need legislative action to authorize the Iowa plan, but set forth succinctly it includes: judicial deference to metropolitan planning organizations' comprehensive plans to improve public welfare assessments within contested local zoning disputes, a land-value property taxation scheme that disincentivizes impermeable surface spaces, and the use of performance or demolition bonds to hold developers accountable for the cost of future redevelopment.<sup>177</sup>

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174. See, e.g., PETER S. FISHER, IOWA FISCAL P'SHIP, LEVELING THE PLAYING FIELD: HOW TO RESTORE FAIRNESS TO IOWA'S CORPORATE INCOME TAX BY CLOSING LOOPHOLES 2 (2007), <https://www.iowapolicyproject.org/2007docs/070411-IFP-loop-hole.pdf> (describing the various taxation techniques retail developers use to avoid paying Iowa taxes by utilizing Real Estate Investment Trusts (REITS) and shell subsidiaries). "By paying rent to itself, Wal-Mart is able to dodge its state tax responsibility." *Id.*

175. As an attractive local solution, these bonds can help finance revitalization when intended commercial uses fail, but these bonds will not address existing developments that have already failed or are operating at sub-optimal efficiency with their large supplies of surface parking. Betsy H. Sochar, *Shining the Light on Greyfields: A Wal-Mart Case Study on Preventing Abandonment of Big Box Stores Through Land Use Regulations*, 71 ALB. L. REV. 697, 715-16 (2008).

176. For a discussion of the "free-riding" problem see Barak Atiram, *The Wretched of Eminent Domain: Holdouts, Free-Riding and the Overshadowed Problem of Blinded-Riders*, 18 BERKELEY J. AFR.-AM. L. & POL'Y 52, 66-74 (2016).

177. See Sarah Schindler, *The Future of Abandoned Big Box Stores: Legal Solutions*

## VII. CONCLUSION

Whether it is a glut in global output, improvements in agricultural production, or a trade war with China, declining Iowa farm values threaten to supply the state with a new wave of low-density urban fringe development. This urban fringe development fails to pass on the benefits of a community's growth by constraining the space available for future housing supplies and mandating the public's automotive dependency within a low-density landscape. As constrained housing supplies force local rents to outpace inflation and wage growth, localities respond by leveraging local tax bases to invest in isolated communities that pull public capital away from regional revitalization efforts. In implementing inclusionary zoning over outdated private parking minimums, Iowa can supplant fringe growth with concentrated infill development. By reducing the regulatory barriers that prevent walkable communities from emerging, reusing low-density localities that preserve inefficient land use, and recycling impermeable surface spaces that damage our communities, Iowa can save paradise and rethink the parking lot.

*Brian Shea\**

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*to the Legacies of Poor Planning Decisions*, 83 U. COLO. L. REV. 471, 499–501 (2012) (discussing various planning policies to increase developer accountability for failed commercial developments including relatively new “demolition bond[s]”). An attractive local solution, these bonds can help finance revitalization when intended commercial uses fail but will not address existing developments that have already failed or are operating at sub-optimal efficiency with their large supplies of surface parking. Sochar, *supra* note 175, at 715–16. In *Home Builders Association of Greater Des Moines v. City of West Des Moines*, the Iowa Supreme Court failed to allow adaptive strategies to municipal funding limitations, finding “impact fees” were not expressly authorized by Iowa statute and constituted an unauthorized taxation. 644 N.W.2d 339, 346–50 (Iowa 2002). This ruling not only ignores the privileged role commercial developers play in local politics, but it also ignores the funding constraints municipalities face from future development straining public services. *Compare id. with supra* note 4, and Part III.A.

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