

Touro College Jacob D. Fuchsberg Law Center

From the Selected Works of Michael E Lewyn

2017

My Planetizen blog posts July-August 2017

Michael Lewyn



Available at: <https://works.bepress.com/lewyn/131/>

Can Zoning Mitigate Flooding? Yes...And No

Houston's flooding might be mitigated by land use regulation- but not the type of regulations that most cities have.

Michael Lewyn | August 30, 2017, 11am PDT

Once Houston started to flood, I saw post after post on my Facebook and Twitter feeds, all saying, in so many words, "If only Houston was more regulated, Houston would stop flooding!" (Here's [one](#) of the more persuasive examples).*

Are all these posts right? Yes...and no.

To understand why, imagine two possible zoning codes: one for the pro-environment city of Ecoland, and the other for the typical American city of Usualville.

In Ecoland, preventing and mitigating flooding is the first priority. This means that the city and its neighbors would prevent flooding by prohibiting development of wetlands and by minimizing the number of impervious surfaces—that is, roads and parking lots that do not soak up rain. If there are lots of impervious surfaces, rain runs off from the impervious surfaces into bayous and rivers and dams, making those bodies of water overcrowded and more likely to flood.

But minimizing impervious surfaces requires policies that are a bit unusual. First, government would, like cities in Oregon, use zoning to create a greenbelt (or, in plannerese, "[urban growth boundaries](#)") around the city—that is, to prevent the outer edges of the region from being paved over to build more impervious surfaces. This might raise housing prices. If more people moved into the city, they would be accommodated by making the already-built-up part of the city more compact—which the city's existing residents might not like.

Second, the city would not build new roads to suburbia, because those roads encourage suburban development, which in turn means that those suburbs get paved over with parking lots and secondary roads, thus reducing the amount of grass and wetlands available to soak up rain. In addition, existing roads would be as narrow as possible, because each new lane of road is another lane of impervious surface. Of course, drivers might not like that.

Third, the city would use zoning to minimize surface parking (another impervious surface). The most coercive possible zoning code would simply outlaw surface parking lots. A more moderate code would at least abolish minimum parking requirements, leaving parking up to the market. Why? Because when government mandates parking for stores and apartments (as is the case in Houston, as well as in most of the United States) many landowners will build surface parking lots because such lots are [cheaper](#) than aboveground or

underground structures. Obviously, fewer parking lots might inconvenience drivers, so this policy also might be controversial.

Fourth, Ecoland would take an ax to height and density regulations. Most zoning codes strictly limit tall buildings, and limit density by requiring houses to take up some minimum amount of land. (Houston too has [density regulations](#), though they are a bit more lenient than those of some Sunbelt cities.) But if a city's close-in neighborhoods are dominated by big houses and short apartment buildings, the close-in areas might not have enough housing to go around—so development has to shift to places further away from downtown, which means more paving of previously rural and suburban places, which of course means more impervious surfaces. So density-phobia would have to be washed out of the zoning code.

In addition, the city's regulations would focus on adaptation—that is, making sure **that when a flood comes, people don't drown. Normal, anti-density zoning** tends to regulate height strictly, which means that most people live in single-story houses and garden apartment complexes. But single-story buildings are death traps in a flood-happy city like Houston, because people cannot flee to higher floors when a flood comes.

So under Ecoland's zoning code, any new residential single-story buildings would have to be somehow elevated to make them taller than a typical one-story building. In the absence of such elevation, houses and apartment buildings would have to be two stories or more (at least). In addition, the code would make multistory residential buildings the norm, by eliminating regulations limiting height. Where most cities have maximum height requirements, Ecoland would have minimum height requirements.

Some urbanists believe that walk-up buildings promote street life, and thus would oppose any building over five or six stories. But in an aging society, more and more people will be unable to use stairs. (In fact, I have friends in their mid-50s **who have "stair issues" due to weak knees and other problems.**) **So if Ecoland** residents are forced into walk-ups, many seniors would be forced to live on the death-trap first floor. To avoid this outcome, any height limit would be generous enough to accommodate mid-rise elevator buildings—say, at least 10-20 stories.

Another concern about taller buildings is that after a storm, electricity outages might eliminate elevator service, thus trapping people who cannot climb stairs in their apartments. Although this is a serious problem, it is a much less serious problem than people drowning in single-story houses or garden apartments.

So if you compare Houston to Ecoland, you might say to yourself: "Houston **doesn't have any of these rules; thus, Houston needs zoning and lots of it!**"

But this view is simplistic, because no zoning code resembles that of Ecoland (though some cities in the Pacific Northwest adopt [a few](#) Ecoland-like policies). To imagine what Houston would be like with zoning, it probably makes more

sense to compare Houston to other automobile-oriented cities with zoning, such as Dallas or Atlanta.

So what does the zoning code of a typical city (my hypothetical Usualville) look like?

*Government mandates that most landowners build lots of [parking](#) for their tenants and customers. This parking often comes in the form of surface parking—that is, new impervious surface. **So Usualville's zoning actually encourages** flooding by encouraging the creation of new impervious surfaces.

*[Density](#) and height regulations limit close-in development, which means development is forced into new suburbs. New suburbs mean new roads and parking lots— that is, new impervious surface that means more flooding. And to **the extent that Usualville's height regulations encourage or require one-** and two-story buildings, they create more buildings that are unsafe when it floods.

Usualville's transportation policies are also pro-flooding. Usualville, like Houston, builds lots of [new roads](#) to facilitate suburban development. These new roads are of course impervious themselves. And as the road-created suburbs develop, **new roads and parking lots are built for the suburbs' new residents. And even in** existing neighborhoods, road design standards may favor wide roads with wide lanes—that is, even more impervious surface.

So if Houston's hypothetical zoning was like that of a typical American city, it might not be significantly less likely to flood. But if Houston's zoning was focused on Houston's unusual weather conditions, it might do some good—although at the sacrifice of other valid public goals.

*I note that even if the right policies would prevent some floods, they might not prevent floods as large as this week's flood (see [here](#) for an argument on that side of the issue). Between 1992 and 2010, development wiped out enough wetlands to handle 4 billion gallons of water—but this week's storm is likely to drop [9 trillion gallons](#) on Houston.

Is There a Perfect Density?

This post offers a critique of claims that there is an ideal, "Goldilocks density."

Michael Lewyn | August 14, 2017, 9am PDT

In recent years, I have read numerous references to the phrase "[Goldilocks density](#)": the idea that there is one level of density that is neither too high nor too low, but just right. For example, Lloyd Alter wrote some years ago that this perfect density is "dense enough to support vibrant main streets with retail and services for local needs, but not too high that people can't take the stairs in a pinch."

But it seems to me that the idea of a "perfect density" is inherently a bit dictatorial. Different people prefer different levels of density and different building heights: even in a pre-sprawl world, some people lived in high-rises, some in very dense rowhouse neighborhoods, others in more bucolic streetcar suburbs. Perhaps the market should be allowed to accommodate these varying preferences.

In fact, cities with a wide range of densities tend to be more walkable and transit-friendly: cities like New York and Boston have dense cores, less dense residential neighborhoods, and sprawling suburbs, while in car-oriented cities, the gap between the least dense and most dense areas is far smaller. For example, Manhattan (about 70,000 people per square mile) is about 15 times as dense as suburban Nassau County, while Virginia-**Highlands** (one of Atlanta's more walkable areas) has only a little over 6,000 per square mile—only three times as dense as suburban Cobb County.

Furthermore, what makes a density "perfect"? If a goal of zoning policy is to limit automobile-related pollution, it seems that there is no American density that is "too high." Car use and ownership is lower in New York City than in medium-density cities, and lower in high-density Manhattan than in the rest of New York City. 78 percent of Manhattan households own no car, as opposed to 55 percent in the city as a whole, 25-30 percent in medium-density Chicago and San Francisco, and much lower percentages in car-dependent Sunbelt cities. As I wrote [several years ago](#), modeling by John Holtzclaw suggests that there is no upper limit to the relationship between density and vehicle miles traveled: a neighborhood with 500 units per acre will have less vehicle travel than one with 100 units per acre.

Moreover, different density levels make sense for cities of different sizes. Los Angeles has over 7,000 people per square mile and is quite spread out and automobile-oriented. Why? Partially because in a city of over 3 million people, that level of density still demands a lot of territory. So it seems to me that Los Angeles must become a lot more dense in order to become one of this nation's more transit-friendly cities. By contrast, a 20,000-person small town with that level of density would encompass less than 3 square miles, which means that

everyone would live within a mile or so of the city core. In other words, a huge city needs to be pretty dense to be transit-friendly, while a small city can achieve the same results with much lower levels of density.

Similarly, a city suffering from a housing shortage needs lots of new housing, which means it must either become more dense or sprawl further into the countryside. By contrast, a cheap, declining city might not need more housing in order to be inexpensive.

Alter (who I think may have been the first to coin the term) seems to have been primarily interested in fighting proposals for taller buildings. But height and density are not synonymous: as Alter himself has noted, low-rise neighborhoods can still be quite dense. So if height is not necessary for density, it logically follows that even opponents of tall buildings should be willing to tolerate neighborhoods like New York's West Village, which (at 70,000 people per square mile) are more compact than almost any American neighborhood outside Manhattan. In fact, even higher densities are consistent with mid-rise living: Hong Kong's Mongkok has [340,000 people per square mile](#), but a look at Google Street View suggests that most buildings there are 5-20 stories: often tall enough for elevators, but by no means skyscrapers. Thus, it seems to me that skyscraper-phobia does not require that cities be limited to current densities, or even to any density lower than that of Mongkok.

Car-Free in Houston

Visiting the city without zoning.

Michael Lewyn | August 7, 2017, 5am PDT

Last week, I had a mini-summer vacation in Houston—primarily because I thought Houston's combination of no formal zoning code, transit reforms, and a permissive attitude towards building make it worthy of examination. I visited about 16 or 17 different neighborhoods by bus and light rail—if you want a more complete picture (pun intended), feel free to look over my Facebook albums. Although I mostly stayed within Houston's I-610 "Loop" (apparently the boundary between older and newer, more suburb-y areas), I visited both rich and poor neighborhoods.

As a land use professor, I was most interested in the effect of nonzoning. Was Houston chock full of Wal-Marts in the middle of residential areas? Or does Houston look just like other Sun Belt areas? The right answer was: "somewhere in between." I saw no large-scale retail in residential zones. Occasionally, I saw small-scale commercial uses such as antique shops and professional offices, or the occasional car repair shop in poorer neighborhoods. In fact, Houston's residential neighborhoods resembled the zones portrayed by some form-based code I have seen: there was some mixing of uses, but mostly the nonresidential uses were in structures that resembled (and usually, I suspect, once had been) single-family homes.

However, the lack of zoning does appear to have affected one type of land use: multifamily structures such as condominiums and apartments. After Houston, I visited San Antonio and Austin. In those cities, apartments and houses are often kept far apart, limiting the supply of rental housing. By contrast, in Houston small multifamily structures often seem to sit right next to houses—even three- and four-story condos! This is true not just in poor areas, but even in high-rent areas like Boulevard Oaks. And because I saw new multifamily buildings as well as old ones, it seems to me that this mixture of uses might become more common over time. Evidently, the multifamily lion can lie down with the single-family lamb without anyone getting eaten.

It is conventional wisdom that Houston's density is too low to support public transit; although the city does not regulate use very much, it does (as I have [written](#)) regulate density just like other cities. Even inside the Loop, Houston has about 4,700 people per square mile—more than most Sun Belt cities (most of which clock in at around 3000 people per square mile)*, but still low by the standards of the North and Midwest, and too low to support high-class transit service. Even Houston's popular urban neighborhoods, like [Montrose](#) and [Houston Heights](#), tend to have about 6000-7000 per square mile—comparable to the citywide average in many Rust Belt cities. Having said that, Houston has [improved](#) its bus service in recent years, and does have

decent transit service for its density; in addition to a tiny light rail system, its buses run reasonably frequently. In the inner-suburban area where I stayed, buses run every 30 minutes and run till 11 or so. In more urban areas, buses run more frequently: [some](#) routes have service every eight or ten minutes during rush hour.

In Houston, as in many other newer cities, parking and setback requirements limit walkability. In the most walkable American neighborhoods, shops are in front of the sidewalk, making pedestrians feel enclosed and minimizing the length of pedestrian trips. However, Houston has historically required shops to have off-street parking and to be set back from the street, so even in Montrose, a pedestrian has to walk through a parking lot to get to those shops. But in Montrose, the parking lots tend to be less overwhelming than outside the Loop.

A common cliché is that Houston is not a planned city. But Houston's street system is better planned than that of my native Atlanta, in two ways. First, Houston has something of a grid system. Although there are some residential dead-end streets, there seems to be a major street every half a mile or so inside the Loop. By contrast, Atlanta suffers from a shortage of east-west streets outside downtown and midtown. Second, Houston seems to me to have more sidewalks than Atlanta: although I certainly saw some residential streets without them even inside the Loop, those streets are the exception rather than the rule.

So do I like Houston? Not as much as the most transit-oriented cities, but more than I expected to.

The Roots of Racial Transition

In some American cities, the white population is growing while the black population is declining. Is this a result of gentrification or of black upward mobility?

Michael Lewyn | July 17, 2017, 9am PDT

In a recent blog post, one of my favorite urban affairs bloggers, Pete Saunders, [writes](#) in that eight of the 20 largest American urbanized areas (Los Angeles, Chicago, Detroit, San Francisco, Seattle, Tampa, Baltimore, St. Louis), the central city's white population grew while the central city's black population declined. And in all but two of these (Los Angeles and San Francisco) the black population grew in suburbia.

It seems to me that there are two possible interpretations of this data:

*The "Gentrification/Displacement Story." According to this story, because blacks tend to be poorer than whites, they tend to be priced out of central cities, and are being forced into cheaper suburbs.

*The "Upward Mobility Story." According to this story (which Saunders seems to prefer), black suburbanization is evidence of affluence rather than poverty. As middle-class blacks are gaining wealth, they are leaving decaying urban neighborhoods for the relative safety of suburbia.

So how can we figure out which story is closer to reality?

It seems to me that if the first story is true, the blacks leaving cities would tend to be the poorest, while better-off blacks get to stay. Thus, central city poverty rates would have declined in recent years. By contrast, if the second story is true, we would see higher rates of black poverty in the central cities, as better-off blacks moved to suburbia.

In all six cities* where black suburbanization was most pronounced (that is, where black urban population declined, white urban population did not, and black suburban population grew) black poverty grew between 2012 and 2015. Sometimes, the rise was not statistically significant – for example, in Baltimore, the black urban poverty rate rose from 27.2% to 28.1%.** Similarly, in St. Louis the black poverty rate grew from 37.7% to 38.1%. On the other hand, in Seattle, the black poverty rate grew from 28.5% to 33.6%, the largest increase among these six cities. By contrast, white poverty rates were stable in all six cities—in all but Detroit, the poverty rate grew or declined by less than 1 point. (In Detroit it rose from 37.3% to 39.6%.) In all of these cities, poverty rates for both racial groups were lower in 1999, reflecting (I suspect) the Great Recession.

So to the extent the evidence tells any story at all, it suggests that blacks moving to the suburbs were middle-class (or at least nonpoor)—which in turn suggests

that black migration in these places might be a result of upward mobility rather than gentrification-related displacement.

*That is, the eight cities mentioned at the start of this post, minus Los Angeles and San Francisco.

*The data supporting this discussion is [here](#).

Higher Quality Won't Prevent NIMBYism

Some argue that neighborhoods will be willing to accept new housing as long as it is high quality; this argument overlooks a wide variety of other objections to new housing.

Michael Lewyn | July 11, 2017, 10am PDT

One argument I've heard in new urbanist circles runs as follows: "Neighborhood activists oppose new housing only because they have been subjected to so much ugliness in recent decades. If we just built less ugly stuff and made builders provide more parks and other amenities, neighborhoods would be willing to support rezonings for as much housing as we need." If this argument were correct, there would be no need for institutional reform to discourage "Not In My Back Yard" (NIMBY) opposition to housing; instead, we would just need prettier buildings and more parks.

This argument would make sense if design-related objections were the only objections to new housing. But in fact, inadequate design is just one of only many anti-housing arguments. As Benjamin Ross wrote in the book [Dead End](#), there is a nearly infinite variety of anti-development arguments: "There's either too much parking or too little. If houses are proposed, offices are what the neighborhood needs; if offices, houses would be better. Property values will go down; we will be priced out of our homes."

It could be argued that these arguments are all fraudulent, and that NIMBYs are really just afraid of ugly buildings. But to make this argument, you have to believe that ever since the birth of zoning in the 1920s, thousands of activists, city councils, and mayors all over North America have been just *pretending* to be concerned about property values or parking or racial transition or any other objection they raise, but are in fact concerned (either consciously or subconsciously) about design. The only way to prove beyond a reasonable doubt that this claim is false is to probe the subconscious attitudes of thousands of people—a project that seems to me to be impossible. But the claim nevertheless seems highly implausible to me. In my experience, people either say what they mean, or at least say something vaguely resembling what they mean.

Let us suppose that planners and builders act as if this argument was true, and negotiate with community groups to provide the most attractive housing possible. Would this be a good thing? Yes, in a world of unlimited resources.

On the other hand, features that increase housing quality often cost money, which in turn might make housing more expensive. For example, if every subdivision with over 50 houses had a park attached, that might cost more money than the same subdivision without a park attached. Or builders might

have to build fewer units in order to accommodate the park, thus reducing regional housing supply and making housing more expensive than it would otherwise be. Furthermore, the amount of time spent negotiating with the community to make a development perfect might also be costly, since time is money. For example, if landowner X hires architectural firm Y to design a subdivision or a condominium, X has to spend more money if Y spends two weeks getting community input than she would if Y spends two days on doing so.

Moreover, a world of beautiful-but-expensive housing might actually lead to more NIMBYism. How so? Because in cities with expensive housing, NIMBYs argue that new housing is too expensive and thus spurs gentrification and displacement. So if a city starts requiring higher-quality housing, it might wind up raising housing costs and feeding the NIMBY beast in the long run.

Appeasing neighbors with better design might work for an individual developer. And for a city, public benefits such as popular design and public amenities might reduce NIMBY resistance to new housing- especially if the public benefits are tied to [density bonuses](#).^{*} So this strategy might be better than building nothing— but if your goal is to hold down housing prices, beauty is no substitute for deregulation.

^{*}In this context, I notice that Vancouver, a world leader in this policy, also has [extremely expensive](#) housing. So as much as I admire Vancouver's achievements in other respects, I don't consider Vancouver to be an affordability role model.

