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## 2008 Planetizen blog posts

Michael Lewyn



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Blog post

# A few feet

[Michael Lewyn](#) | December 27, 2008, 7pm PST

Because of President-elect Obama's plans to spend billions of dollars on infrastructure, some recent discussion of smart growth has focused on proposals for huge projects, such as rebuilding America's rail network.

But walkability often depends on much smaller steps, steps that require changes in tiny increments of space.

For example, take a typical tree-lined, upper-class suburban neighborhood, such as the fancier blocks of Atlanta's Buckhead. A four-foot wide sidewalk, although not ideal, can make such a neighborhood very pleasant and walkable. (For an example, see <http://atlantaphotos.fotopic.net/p14704743.html> )

Now substitute a strip of lawn for the sidewalk. (For examples, see <http://atlantaphotos.fotopic.net/p44263562.html> and <http://atlantaphotos.fotopic.net/p14008023.html> ) The neighborhood is not so inviting to pedestrians; although it is certainly possible to walk on this strip of lawn, the lawn can be muddy in rough weather, and a pedestrian might feel uncomfortable walking on something that is not obviously public space. Nevertheless, a city that cannot afford to build new sidewalks would be well advised to encourage homeowners to allow a small easement on their lawn for pedestrians, since the lawn strip is better than the alternative, which is

Nothing. In much of Atlanta, homeowners allow trees and bushes to go right up to the street, rather than flanking the street with lawns. (For an example, see <http://atlantaphotos.fotopic.net/p14010314.html> ) As a result, pedestrians must walk on the street, sharing that street with vehicles.

In sum, the fate of one or two strips of land just four feet wide makes the difference between a reasonably walkable residential street, a somewhat pedestrian-unfriendly street, and a street that virtually excludes pedestrians.

Even in the latter situation, a few feet makes a difference between the worst possible street and a merely bad one. On many sidewalk-less residential streets, cars go 40 miles per hour, creating a very risky situation for pedestrians. By contrast, when I visited my

parents' vacation house in the mountains of North Carolina, people routinely hiked in the middle of the street. Why? Because the street was narrow enough that vehicle traffic was relatively slow, thus allowing pedestrians to reclaim the street to some extent. Again, a few feet made a big difference.

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Blog post

## The Lesser Evil

[Michael Lewyn](#) | December 11, 2008, 11am PST

Due to the collapse of local tax revenues caused by the national economic downturn, many transit systems may face shortages of money over the next year or two. Assuming this is the case, transit providers will have to either raise fares or reduce services by eliminating bus routes or otherwise reducing transit service.

It seems to me that raising fares is generally the lesser evil, both from the standpoint of an individual rider and from the standpoint of the transit agency itself.

If an individual rider has to pay more to get on the bus, the rider is obviously worse off. But even so, that rider can still use the bus to get to work. By contrast, if the rider loses service entirely (or loses service at the times the rider needs to travel), then that rider is completely cut off from public transit. If this former rider cannot use a car (due to low income, age or disability) then he/she is essentially cut off from the labor force and from society- hardly a desirable result. If the former rider is a car-owning "choice rider", he/she will drive to work every day, creating pollution and clogging local highways - also an undesirable result.

Moreover, that rider may have relied on existing service, by choosing to live in area served by transit. By contrast, a rider is much less likely to rely on existing transit fares, since transit agencies periodically increase fares.

To be sure, transit agencies lose riders in the short run when fares are increased. But nevertheless, transit ridership will, in the long run, decay even more if services are reduced. If a rider decides to drive because gas prices are down and bus fares are up, the former rider might go back to the transit system if gas prices rise again, or if inflation erodes the fare increase a few years later. But if that former rider simply has no convenient bus route available, that rider is lost to the transit system forever. No matter

how high gas prices are, a rider cannot take the bus to work if the bus doesn't go where he/she lives and works.

Of course, it could be argued that low-ridership routes should generally be cut back- and to be sure, service cutbacks are more defensible where routes are duplicative of other routes, or where cutbacks merely involve making a bus go every 20 minutes instead of every 15.

But the "let's cut the weakest bus route" argument proves too much: no matter how high or low a system's ridership, there will always be some routes with fewer riders than others. So if the route with the lowest ridership is cut every couple of years, eventually a city will have only one route- hardly a desirable result. Thus, every effort should be made to keep buses going where they already go, at times beyond the rush hour service typical of smaller systems.

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Blog post

# Thanksgiving

[Michael Lewyn](#) | November 26, 2008, 8am PST

Since tomorrow is Thanksgiving, I thought I would ask myself: what I am thankful for that is related to urbanism?

On a personal level, the answers are easy:

1. I live in a neighborhood that, despite its essentially suburban character, has sidewalks.
2. And even where there's no sidewalks, people have lawns to walk on so I don't have to walk on the street (unlike where I grew up in Atlanta).
3. I live within walking distance of lots of stores (even if crossing the street is sometimes an adventure).
4. I am a block away from city bus service.

5. In fact, I am one of the few non-downtown commuters in Jacksonville who can get to work without changing buses.
6. And what's more, the bus runs after dark (though not as late as in some other cities).
7. And thanks to Greyhound, I can get out of town with an hour or two's notice if there's a tropical storm brewing (as in fact happened in August).

On a national level, I am thankful that:

1. I am part of a nationwide movement of people (1) trying to help more people have what I am thankful for.
2. The outgoing Administration, despite its other deficiencies, has been reasonably helpful to public transit; both federal funding levels (2) and ridership (3) have increased over the past eight years.
3. Nationally, crime is far lower than it was twenty years ago. (4) As a result, "urban" is not as much of a dirty word as it once was.

(1) [www.cnu.org](http://www.cnu.org) (for example).

(2) <http://www.census.gov/compendia/statab/tables/08s0419.pdf>

(3) <http://www.census.gov/compendia/statab/tables/08s1082.pdf>

(4) <http://www.disastercenter.com/crime/uscrime.htm>

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Blog post

## Why I fight

[Michael Lewyn](#) | November 20, 2008, 1pm PST

Occasionally, someone familiar with my scholarship asks me: why do you care about walkability and sprawl and cities? Why is this cause more important to you than twenty other worthy causes you might be involved in?

The answer: Freedom. I grew up in a part of Atlanta that, for a carless teenager, was essentially a minimum-security prison. There were no buses or sidewalks, as in many of Atlanta's suburbs and pseudo-suburbs. But in my parents' non-neighborhood, unlike in most American suburbs, there were also no lawns to walk on, so if you wanted to walk, you had to walk in the street - not a particularly safe experience in 40 mph traffic.

So I was essentially trapped in my parents' house. (1) Long before I started thinking of street design as a public policy issue, I began to say to myself: "This is outrageous! I shouldn't have to live this way". And when I grew up, I began to think: "Maybe other people shouldn't have to live this way either!"

And as a grownup, I took jobs in places like Cleveland and St. Louis. Before I moved to St. Louis in 1990, I asked a friend where to live. He said: "I do not recommend the city." Since Atlanta contains plenty of upper-class areas (primarily because it annexed a big chunk of suburbia in 1954), I was shocked. And I asked myself: how could things have gotten to this stage? How come I can't live in a city without living five blocks from the corner of Ghetto and Gang? And I started to read and to learn about sprawl.

Now, I live within the city limits of a relatively healthy city (Jacksonville, FL) and my city even has some well-off areas near downtown. But even here, I see things that trouble me. For example, I had an appointment at a regional planning agency yesterday. The planning agency was located in a suburban office park. I decided to experiment with the municipal bus system (which I usually take to work, but had never taken to this destination).

I was surprised and yes, shocked when I learned that I couldn't walk the thirty-minute distance to the bus stop closest to my job. Why not? Because the office park was cut off by one limited-access highway to the south and another to the west, so there was simply no way to reach the bus stop without getting on another bus that served one of the highways and then changing buses. (2) Again, I was basically deprived of the freedom to walk to my destination.

Some people worry about sprawl primarily because they are worried about air pollution or global warming. But I worry more about freedom. Bad street design means that in some places, you just aren't free to move around on foot (or bike, or even bus in some areas). And urban decay and out-of-control sprawl mean that if your job or family takes

you to the wrong metro area or the wrong side of town, you have to live or work in one of those places.

(1) For photos see <http://atlantaphotos.fotopic.net/c1521148.html> , in particular the Atlanta photos.

(2) For a visual picture of the situation go to [www.maps.google.com](http://www.maps.google.com) . The office park is near Belfort Road in Jacksonville, FL. The highways are 95 and 202, and the bus stop I wanted to use is at Phillips Highway.

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Blog post

## Fun with transportation statistics

[Michael Lewyn](#) | November 11, 2008, 8am PST

A few days ago, I was looking at a regional planning document and saw something startling: an assertion that transit ridership in my region has been going down. Since transit ridership has been going up nationwide, I smelled a rat.

After digging around through a big pile of statistics, I realized that there are so many different ways of measuring transit ridership that one can easily prove either that ridership is going up or that ridership is going down. Some possible measurements include:

\*Passenger miles traveled. As jobs have moved to suburbs, some transit agencies have had to extend their systems far into suburbia in order to retain ridership. So even if a transit system is weak and stagnant, its riders will make longer commutes, thus causing miles ridden to increase.

\*Number of trips. In most cities, the number of trips decreased during the third quarter of the 20<sup>th</sup> century, as car ownership increased and suburbs boomed. But in recent years, transit improvements and unstable gas prices have caused transit ridership to increase in most cities.

\*Market share - that is, measuring transit trips as a percentage of all trips. By this measurement, transit nearly always seems to be declining- because if people are taking more trips by car and more trips by transit as well, transit's share of all trips may stagnate or decline.

So if you want to show that transit is declining, always use the "market share" measurement- and make it the market share of an entire region, so you can include suburbs with minimal or nonexistent public transit (as opposed to central cities where transit and highways compete).

By contrast, if you want to show that transit is and always has been booming, emphasize passenger miles. And if you want to split the difference and honestly show changes over time, focus on ridership.

Similar statistical games can be played with highway transportation. If you want to "prove" that not enough of America has been paved over, compare the number of lane miles built to the number of vehicle-miles traveled. So if lane miles increase 300% in Sprawl City and vehicle-miles increase 400%, you can argue that we haven't built enough roads- even if your region is honeycombed with expressways, every major street has eight lanes, and there is nary a bus or train in sight. Of course, this technique tends to create a kind of unending circle of construction: more highways mean longer commutes from new suburbs that the highways have opened up for development, which means more miles traveled, which in turn can be used to justify more highways.

On the other hand, if you want to argue that America has already been paved to death, focus on the raw number of miles built, or compare lane-miles to population. So if lane miles have increased by 300% in Sprawl City while population has only increased by 50%, obviously the highway lobby is out of control.

In sum, you can prove a lot with numbers- as long as you are careful which numbers to use.

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Blog post

# We Have Met The Enemy And He Is Us

[Michael Lewyn](#) | November 6, 2008, 2pm PST

Last week, voters in San Francisco voted against a measure to compel the city to set aside \$30 million for affordable housing. Opponents of the proposal argued that "the



city already has spent more than \$200 million on affordable housing in the past several years, and is building more units - some affordable, some not - than anytime in recent history." (1) San Francisco is not alone; government at all levels seeks to provide housing assistance for the poor.

But at the same time, government zones and rezones property to protect "property values" (2) - in other words, to cause home prices to increase over time rather than decrease. So government makes housing expensive with one arm while trying to provide affordable housing with the other.

But how can housing be affordable and at the same time become consistently more expensive? Either a house costs low price X or it costs high price Y: it cannot cost both X and Y at the same time.

The only way to accommodate the public need for affordable housing and sellers' lust for expensive housing is to subsidize buyers (and renters). San Francisco is doing this through tax revenue. But this strategy has its limits. Is there ever going to be enough tax revenue available to bridge the gap between San Francisco's expensive housing and the average resident's paycheck? And if San Franciscans tax themselves heavily in order to bridge this gap, will they be able to afford even so-called "affordable" housing?

At the national level, the Federal Reserve sought to subsidize buyers less directly, by lowering interest rates, thus encouraging banks to lend more money and buyers to take on additional levels of debt. But this strategy does not seem to have worked particularly well, and the banks now demand additional subsidies.

Americans seem to want three incompatible benefits: (1) expensive housing, (2) that they can afford to buy, without (3) massive government subsidies. Any two of these are easy to achieve. But I see no easy way to get all three.

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1. [www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/11/05/BA1B13S0US.DTL&hw=a...](http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/11/05/BA1B13S0US.DTL&hw=a...)

2. *Durkin Village Plainville v. Zoning Board*, 946 P.2d 916, 921 (Conn. App. 2008) (protecting property values a major purpose of zoning).

Blog post

# Is the bad economy good for cities?

[Michael Lewyn](#) | October 22, 2008, 9pm PDT

A few days ago, someone asked a question on one of my listservs about the likely impact of America's economic crises upon urbanism.

The best answer is: it depends.

A few months ago, the economic crisis centered around foreclosures and rising oil prices. As oil prices rose, commuting by car became more expensive, driving declined, and public transit ridership rose. And even drivers wanted shorter commutes, thus making city life (or at least life in built-out, job-rich suburbs) more desirable. To be sure, many commuters adjusted to these trends by purchasing more fuel-efficient cars. But given the heavy one-time cost of switching cars, it was apparently more efficient for some commuters to move closer to work or avoid driving altogether.

But today, we appear to be on the verge of a broader recession. Traditionally, recessions reduce transit ridership, for a couple of reasons. First, a recession means fewer commuters, which means fewer transit riders. Second, a recession usually means declining state and local tax revenues, which means less money for public transit, which in turn usually means less transit service. Since car-free commutes are a major advantage of urban life, transit service reductions make urban life less appealing relative to suburban life.

And if reduced economic activity continues to lower oil prices by lowering demand for oil, driving might become more convenient again. Furthermore, if declining revenues go far enough to endanger public spending on police and prisons, crime might rise. And because cities already suffer more from violent crime than suburbs, increased criminal activity might widen suburbs' safety advantage.

Thus, the continued recovery of cities is no longer a given. A serious recession is bad for urbanism- rising oil prices much less so. The future of transit-oriented urbanism depends on which trend is stronger over the next few years.

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Blog post

# A Planner's Prayer

[Michael Lewyn](#) | October 3, 2008, 1pm PDT

## A PLANNER'S PRAYER

Next week, Jews around the world (including myself) will spend the day in synagogue for Yom Kippur, the Jewish day of atonement. On that day, we will pray for forgiveness for our sins. One Yom Kippur prayer, the Al Chet (Hebrew for "for the sin") lists a variety of sins, requesting Divine forgiveness for each. (One English translation can be found at [www.chabad.org/holidays/JewishNewYear/template\\_cdo/aid/6577/jewish/Text-...](http://www.chabad.org/holidays/JewishNewYear/template_cdo/aid/6577/jewish/Text-...) )

It occurred to me this week that given the problems of America's built environment, those of us involved in some way with planning may need our own special Al Chet, specifying sins most likely to be committed by planners, zoning lawyers, transportation engineers, and others involved in regulating our built environment - regardless of their religion. So here's a few prayers to get started:

For the sins we have committed through overdevelopment;  
And for the sins we have committed by failing to develop;

For the sins we have committed under duress from politicians and neighborhoods;  
And for the sins we have committed through stubbornness;

For the sins we have committed by ignoring the middle class;  
And for the sins we have committed by ignoring the poor;

For the sins we have committed through exclusion;  
And for the sins we have committed in the name of diversity;

For the sins we have committed with roads;  
And for the sins we have committed with buses and trains;

For the sins we have committed by turning our cities into wastelands filled with parking lots;  
And for the sins we have committed by pretending cars don't exist;

For the sins we have committed by segregating compatible land uses;  
And for the sins we have committed by mixing incompatible uses;

For the sins we have committed that made housing expensive;  
And for the sins we have committed that caused imploding housing values;

For the sins we have committed through regulation;  
And for the sins we have committed through deregulation;

For the sins we have committed through disrespect for the environment;  
And for the sins we have committed through environmentalist hysteria;

For the sins we have committed through overspending;  
And for the sins we have committed through penny-pinching;

For the sins we have committed from the Left;  
And for the sins we have committed from the Right;

For the sins we have committed to become popular;  
And for the sins for which we incur the hatred of the majority;

For all these, God of pardon, pardon us, forgive us, atone for us.

(PS Feel free to add additional verses in your own prayers!)

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Blog post

## **Sprawl Hell and Sprawl Heck**

[Michael Lewyn](#) | September 21, 2008, 1pm PDT

Last Friday, I was in two different suburban environments in Atlanta. Both are sprawl by any normal definition of the term - car-oriented environments where residential streets are separated from commerce, sidewalks are rare, and densities are low. But the two places are as different as sprawl and new urbanism.

On the way into town, I prayed at a synagogue in Sandy Springs (an inner ring suburb) and then walked along a residential street to a nearby commercial street. Both the residential street and commercial street were not very pedestrian-friendly: there were no sidewalks on the residential street, and the commercial street was perhaps a couple of lanes too wide to be truly comfortable for pedestrians.

But this area (or as I call it, "Sprawl Heck") has its consolations. While the residential street did lack sidewalks, it at least had lawns to walk on so I didn't have to walk in the street most of the time (much like these streets from neighboring Atlanta suburbs:

<http://atlantaphotos.fotopic.net/p14010326.html>

and

<http://atlantaphotos.fotopic.net/p14010324.html> )

Traffic calming measures kept Sprawl Heck cars going relatively safe speeds. And even though the residential streets don't connect very well to each other, they are reasonably close to a commercial street with sidewalks and bus stops.

By contrast, I spent the rest of the weekend with family members. They live in an area that I would describe as "Sprawl Hell." In Sprawl Hell, trees go right up to the street so there's no way to avoid walking on the street. And on many of Sprawl Hell's residential streets, traffic goes 40 mph. So in Sprawl Hell, walking can be pretty dangerous.

(For some examples, see

<http://atlantaphotos.fotopic.net/p50930564.html>

and

<http://atlantaphotos.fotopic.net/p50930560.html> )

And the nearest commercial street, about a mile and a half away, is a highway which also lacks sidewalks:

<http://atlantaphotos.fotopic.net/p50930562.html>

In sum, not all car-oriented suburbs are equally bad. The mere addition of sidewalks, or some limits on foliage near streets, can elevate a suburb from terrible to merely mediocre.

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Blog post

# McCain, Obama, and urbanism

[Michael Lewyn](#) | September 15, 2008, 12am PDT

The battle for the White House has reached my inbox, as even listservs about urbanism crackle with endorsements and denunciations of Obama, McCain, Palin, etc.

But all of this frenzied activity assumes that what a President says or thinks is particularly relevant to urban issues. But this need not be so. The policy areas most relevant to sprawl and urbanism, land use and transportation, are not likely to be directly affected by the results of the presidential election.

In particular, zoning and similar land use issues are generally addressed by state and local governments. Even the most pro-urban president is unlikely to take on anti-infill NIMBYism (1), make strip malls more walkable. or make streets narrower.

On the other hand, transportation issues are the federal government's business. A significant chunk of road and public transit spending is supplied by the federal government. So in theory, a President could shift transportation spending from highways to public transit or vice versa.

But in recent decades, Congress rather than the White House has decided transportation funding issues. For example, several Administrations (including the last two) have sought to close down Amtrak(2)- yet Amtrak survives. And public transit seems to be independent of Presidential ideology. Under President Bush (not exactly a smart growth champion) federal support for public transit has consistently increased.(3) By contrast, under the Clinton Administration, federal support for transit decreased for years, only to recover in Clinton's last years as the Republican Congress moved towards a more pro-spending position. (4) Because transportation funding is politically popular, Presidents rarely veto transportation funding bills. As a result, Congress gets what it wants even if a President's priorities differ.

This is not to say that the identity of the President will have no effect upon urbanism. Often, policies not intended to affect urban development will be more important than the Administration's official attitude towards sprawl or transit. For example, the current Administration's willingness to tolerate a weak dollar may have contributed to the increase in gas prices, thus making public transit more attractive.

In sum, land use and transportation issues should be highly relevant to your votes for governor and senator, and somewhat relevant to your vote for Congress. But I'm not sure how important such issues should be in deciding who to vote for in the Presidential race.

(1) NIMBY= Not In My Back Yard

(2) See, e.g., <http://www.msnbc.msn.com/id/6942852/> (President Bush);

<http://query.nytimes.com/gst/fullpage.html?res=9F07E2DF1738F935A25752C0A...> (President Clinton)

(3) [http://apta.com/research/stats/factbook/documents08/2008\\_fundcap\\_final.pdf](http://apta.com/research/stats/factbook/documents08/2008_fundcap_final.pdf), Table 41.

(4) <http://www.census.gov/prod/2002pubs/01statab/stlocgov.pdf>, Table 420.

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Blog post

## Culs-de-Sac and Grids: A Middle Ground (Or Two, Or Three)

[Michael Lewyn](#) | August 28, 2008, 1pm PDT

Smart growth supporters tend to prefer grid systems to cul-de-sacs, for excellent reasons. A proliferation of cul-de-sacs artificially lengthens walking distances: if streets don't connect to each other, you might have to walk a mile to go just a few hundred feet. In addition, cul-de-sacs increase traffic congestion by dumping most vehicular traffic on a few major streets. And because biking is less safe on busy, high-traffic streets, bikers benefit from a grid system as well.

But banning cul-de-sacs on residential streets might go too far: many homeowners understandably prefer cul-de-sacs because of the absence of "cut through traffic" on those streets (that is, traffic cutting through from one major street to another). Is there a middle ground between current subdivision ordinances (which sometimes require new subdivisions to be dominated by cul-de-sacs) and wiping out cul-de-sacs altogether?

One option might be for government to neither encourage nor discourage cul-de-sacs. It seems to me that this result would clearly be preferable to the status quo, as it maximizes consumer choice while reducing at least some of the social harms caused by cul-de-sacs.

On the other hand, one common justification for government regulation is to prevent situations where it makes sense for individuals to do X, but if lots of individuals do X, we all lose something. It could legitimately be argued that the prevalence of cul-de-sacs may be such a situation: if I live on the only cul-de-sac in the neighborhood, I have less traffic on my street (presumably a good thing) but still live in a basically walkable and uncongested neighborhood. But if everyone else lives on a cul-de-sacs, I have to suffer through all the disadvantages of cul-de-sacs as well: more traffic congestion because everyone has to drive on a couple of main streets, and reduced walkability as distances between houses multiply.

A second "middle ground" alternative is to allow cul-de-sacs in new subdivisions, but to create a quota limiting their number- for example, to provide that there be no more than one cul-de-sac for every intersection. This rule might accommodate consumer demand for cul-de-sacs, but would ensure that there were enough interconnected streets to accommodate driving, walking and biking.

A third compromise is the "fused grid." Under a fused grid street system, there is a grid of main streets and a set of cul-de-sacs branching off from those streets. But the difference between the fused grid and a cul-de-sac system is as follows: in the latter situation, there is nothing to connect one cul-de-sac to another, so walkers and bikers have to travel out of their way to reach other cul-de-sacs. By contrast, a fused grid "fuses" the cul-de-sacs with miniature parks or pathways designed for bicycles and pedestrians, thus allowing nondrivers to go from one house to another. When streets in an existing grid network are closed off to cars, something similar to a fused grid is created: cars are limited as in a cul-de-sac system, while pedestrians are as mobile as in a grid system.

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Blog post

## **Crime and urban design: Oscar Newman 36 years later**

[Michael Lewyn](#) | August 13, 2008, 9pm PDT

I recently read Oscar Newman's 1970s book on crime prevention, "Defensible Space." In this book, Newman addressed the question of why some public housing projects are insanely dangerous, and others only moderately so. Although Newman's analysis is



mostly confined to low-income housing, commentators of all stripes have relied on his work: new urbanist commentator Laurence Aurbach asserts that Newman's work supports new urbanists' emphasis on heavily trafficked, walkable streets (1) while Randall O'Toole considers Newman to be a defender of single-use, cul-de-sac sprawl (2).

In *Defensible Space*, Newman seems to partially endorse the new urbanist theory that heavy pedestrian traffic creates "eyes on the street" and thus enhances security. He writes that housing project lobbies should face public streets, because "streets provide security in the form of prominent paths for concentrated pedestrian and vehicular movements; windows and doorways, when facing streets, extend the zone of residents' territorial commitments and allow for the continual casual surveillance by police in passing cars." (3)

In particular, housing projects should be designed so that residents can see bordering streets from their windows; where housing projects look inward on themselves, "these bordering streets have been deprived of continual surveillance by residents and have proven unsafe to walk along". (4)

At a minimum, lobbies should be in a straight line from public streets because "Winding access paths provide many opportunities for muggers to conceal themselves while awaiting the arrival of a victim." (5).

By contrast, O'Toole asserts that Newman believed that mixed-use neighborhoods "suffered from higher crime than single-use neighborhoods." (6) Newman wrote that people generally feel safer on "heavily trafficked public streets and arteries combining both intense vehicular and pedestrian movement; commercial retailing areas during shopping hours; institutional areas; and government offices" (7) because "the presence of many people is seen as a possible force in deterring criminals." (8) Although Newman does not directly address mixed use in this part of his book, the notion that "heavily trafficked" streets are safer appears to be to support mixed use, because mixed use increases pedestrian traffic.

Newman goes on to write that even if a commercial street has a higher crime rate per resident, this may reflect the fact that "the number of pedestrians passing any point on the commercial street is over twenty times the average of surrounding streets and areas." (9) Thus, "the chance of occurrence per [street] user may be lower." (10) Moreover, the type of crime may differ in a more deserted, single-use area: while purse snatchings may occur on heavily trafficked streets, "aggravated assault would not be tolerated by witnesses (shopkeepers and other shoppers) on a well-trafficked

commercial street" (11), while crime on deserted streets might be more likely to involve physical harm.

O'Toole cites page 112 of *Defensible Space* for the proposition that crime is higher in mixed-use areas.<sup>(12)</sup> On this page, Newman qualifies his prior assertion, stating:

two hamburger joints on the west side of the project, and the teenage play areas to the east, together generate high crime and vandalism rates in the immediately adjacent buildings. The New York City Housing Authority police has found that those of its projects located adjacent to commercial streets suffer proportionally higher crime rates ... The simple decision to locate commercial or institutional facilities within a project in order to increase activity and so provide the safety which comes with numbers must be critically evaluated in terms of the nature of the business, the intended users [and other factors]." (13)

English translation: commercial activities that attract teenagers might lead to higher crime rates than, say, a department store, because teenagers are more likely to commit crimes than middle-aged shoppers.<sup>(14)</sup>

Newman's position on density is less equivocal than his position on mixed use; he writes that "a correlation between density and crime rate for all New York City projects reveals that there is no evident pattern until one reaches a density of fifty units per acre"<sup>(15)</sup> - far more dense than most urban neighborhoods outside New York City, let alone suburbs (16). Thus, Newman appears to reject the notion that any increase in density automatically means more crime.

In sum, Newman's book hardly champions of low-density, single-use sprawl. In *Defensible Space*, he repeatedly emphasizes the importance of having common areas be visible to neighbors, he suggests that mixed use can at least sometimes (though not always) be good for neighborhood safety, and he does not believe density is harmful at the levels most common in even urban neighborhoods. But he is not a consistent urbanist as Jane Jacobs; he views some uses as crimogenic, and does believe that density can be harmful in unusually high doses.

(1) See Laurence Aurbach, *Connectivity* Part 5, at <http://pedshed.net/?p=72>

(2) See Randall O'Toole, *The Best Laid Plans* 144-47 (2008).

(3) Oscar Newman, *Defensible Space* 25 (1972).

(4) *Id.* at 80.

- (5) Id. at 82.
  - (6) O'Toole at 145.
  - (7) Newman at 109.
  - (8) Id.
  - (9) Id.
  - (10) Id.
  - (11) Id.
  - (12) O'Toole at 370.
  - (13) Newman at 112.
  - (14) Id. at 110-11 (discussing crime by teenagers, and suggesting that such crime more frequent in low-income housing projects where facilities catering to teenagers present).
  - (15) Id. at 195.
  - (16) Aurbach, The Density of Traditional Urbanism, at <http://pedshed.net/?p=99> (Comparing density in numerous neighborhoods within Washington, DC metro area; even in walkable urban areas, density below 50 units per acre more often than not).
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Blog post

## One way to protect bus riders

[Michael Lewyn](#) | August 6, 2008, 1pm PDT

As gas prices keep rising, the public demand for buses and trains keeps growing. Yet in some cities, government is actually cutting back transit service, because rising gas prices make transit vehicles more expensive to operate.<sup>(1)</sup> But as a matter of substantive policy, service reductions are not only less desirable than service increases, but also less desirable than fare increases. As a bus rider, I'd rather pay \$1.50 and know that my service is safe from fiscal crises than pay \$1 and worry that my service might be reduced or canceled next month. Moreover, if fairness means spreading pain equally throughout the population, it is fairer to have everyone pay a little more than to have some neighborhoods be left without service.

Accordingly, I would like to throw this idea out for discussion: a state government (or maybe even the federal government) could require as a condition for its financial support that local transit agencies be barred from reducing existing service (by which I mean shutting down a transit route entirely, or significantly reducing its hours without providing compensating service).<sup>(2)</sup> Local governments would still have plenty of options in tough times; they could (a) run their agencies more efficiently, (b) reduce government spending in other areas, or (c) raise fares. But they could not cut service. The advantage of this proposal for transit users is obvious: they could rely on the status

quo in deciding where to live and do business - and if transit users did have to sacrifice, they would all sacrifice equally through higher fares. After all, we don't close highways every time fiscal times get tough- so why eliminate bus routes?

The most obvious problem with my proposal is that perhaps higher levels of government should trust local transit agencies to decide which routes are efficient and which are not. On the other hand, local governments have a strong incentive to reduce transit service (especially bus service) rather than to cut spending in other ways: many other beneficiaries of government largesse (such as transit unions and road builders) are wealthier and more organized than bus riders, so a local politician who wants to be reelected is more likely to stick bus riders with the costs of fiscal crisis than to gore some other ox.

So if we trust local transit agencies, we will get rid of some underpopulated bus routes- but on balance, we'll wind up with transit service that is less stable and less extensive. And unstable bus service creates its own inefficiencies: the more bus service changes, the harder it is for riders to keep up with service, which in turn means fewer riders in the long run.

Even transit critics have reason to support my proposal. A common argument against new rail systems is that they take money that could more efficiently be spent on buses.<sup>(3)</sup> My proposal wouldn't prevent the construction of new rail systems (nor would I want it to). But it would prevent transit agencies from reducing bus service in order to pay for rail service.

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(1) For a story on this issue, see <http://planetizen.com/node/34036>

(2) Of course, there should probably be an exception for experimental bus service, so that local governments could have the flexibility to experiment with new routes here and there. Perhaps a statute could cover bus routes as soon as they have been in effect for over a certain period of time- say, six months.

(3) See, e.g., <http://www-pam.usc.edu/volume4/v4i1a6print.html> , Sec. III.

Blog post

# Who fights for suburbia?

[Michael Lewyn](#) | July 22, 2008, 2pm PDT

This morning, one of my listservs was aflutter with discussion of a new article by Joel Kotkin, attacking an alleged "war against the suburbs." According to Kotkin, this "war" consisted of Jerry Brown's efforts to "compel residents to move to city centers." After reading Kotkin's article, I couldn't really figure out exactly what Brown was trying to do - and since I don't live in California, it really isn't that important to me.

However, it is important to realize that "smart growth" need not be the enemy of suburbs. Here's why:

Suppose you are in a bucolic outer suburb, where one- and two-acre lots dominate the landscape. Under the sprawl status quo, more and more subdivisions are coming your way. That means your neighborhoods will become more like cities and older suburbs: more dense, more socially diverse. The residents of these subdivisions will crowd your roads, making your commute more difficult. By contrast, the most radical smart growth policies (such as Oregon's urban growth boundaries) limit developers' rights to build up those outer suburbs. Bad for the developers, but very good for you, the incumbent suburbanite.

What if you are in an older suburb? The sprawl status quo means that jobs and people will migrate to outer suburbs - but they'll still drive on your roads, so you still have traffic to worry about. Moreover, some of those people moving to outer suburbs may abandon your suburb. And if they are replaced by poorer households, your tax base and public schools may decline; eventually, you will be faced with the same problems as the troubled city nearby. So policies that limit outer-suburban development may protect your suburb from the problems of the Big Bad City.

In sum, arguments over sprawl and smart growth are not simply "city vs. suburb" battles. Suburbanites' interests are complex, and do not always square with the interests of the developers and road-builders.

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Blog post

# Why Kelo is not a blank check

[Michael Lewyn](#) | July 4, 2008, 12pm PDT

Last week marked the third anniversary of the Supreme Court's ruling in *Kelo v. New London*. The first time I read *Kelo*, I thought what many Americans probably thought: that any government could seize property for any reason, so long as it compensated prior owners.

But after having taught *Kelo* to law students several times over the past few years, I now realize that Kelo is much more complex. *Kelo* was a 5-4 decision, and Justice Anthony Kennedy wrote a separate concurrence. Because Justice Kennedy was the "swing vote", his decision predicts future Court decisionmaking more accurately than the Court's primary opinion, because a taking which fails to satisfy Kennedy might not be able to get five votes in the Supreme Court.

Justice Kennedy wrote:

**This taking occurred in the context of a comprehensive development plan meant to address a serious city-wide depression, and the projected economic benefits of the project cannot be characterized as de minimis. The identity of most of the private beneficiaries were unknown at the time the city formulated its plans. The city complied with elaborate procedural requirements that facilitate review of the record and inquiry into the city's purposes.**

Thus, the taking in *Kelo* was valid only because:

1. The city jumped through the appropriate procedural hoops, such as creating "a comprehensive development plan" and other "elaborate procedural requirements";
2. The city of New London was in a "serious city-wide depression";
3. The economic benefits of the taking were more than "de minimis"; and
4. The ultimate beneficiaries of the taking were "unknown at the time the city formulated its plans."

If any of these requirements are not met, the validity of a taking becomes a close call. For example, suppose the city wants to bulldoze a subdivision in a reasonably prosperous suburb to build a Wal-Mart. Even if appropriate procedures are followed, factors 2 and 4 (city-wide depression and "unknown" beneficiaries) are not met. Thus, *Kelo* is not on point and does not require lower courts to uphold the city's decision. Does this mean the city automatically loses? No, but it does mean that a plaintiff who wishes to challenge the taking may have a plausible claim.

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Blog post

## Learning from exam schools

[Michael Lewyn](#) | June 24, 2008, 7am PDT

Yesterday's Washington Post contained [a list of elite public schools](#)- schools where the average student SAT is over 1300. Since suburban schools generally have better reputations than urban schools, one might expect that all the schools on the list would be in prestigious suburban school districts. But in fact, this is not the case. Three New York City schools (Stuyvestant, Hunter College, Bronx High) and one school near downtown Richmond (Maggie Walker) are on the high-SAT list- despite the fact that the New York City and Richmond school districts, like nearly all urban school districts, have mediocre reputations.

What do these schools have in common? All of them are selective "exam schools" rather than typical public neighborhood schools. While most neighborhood schools must accept all comers, these schools can screen out low-achieving students.

The success of exam schools explodes the common idea that a school's success is due to the competence of its school system. If this were so, exam schools would be as unsuccessful as other urban schools. But the success of exam schools suggests that a school's success or failure reflects students' ability to succeed going into school: if a school has smart children, those children will have high test scores no matter what the school boards and bureaucrats do- and if a school has low-achieving children, the bureaucrats aren't likely to turn them into high-SAT students.

This reality, in turn, explodes two common myths - one cherished by suburbanites, and another cherished by political liberals. The suburban myth is that their "good" schools

are due to their bureaucrats' own honesty and diligence. But if allegedly incompetent urban school districts have schools with better results, this claim is factually incorrect. Instead, suburban schools' success arises from their ability to use zoning to exclude disadvantaged households (which, all else being equal, are more likely to produce low-achieving students): the more exclusion, the better the test scores, and the better the reputations of the schools.

The liberal myth is that with enough money, low-performance urban schools can be brought up to suburban standards. But if students' performance reflects their pre-admission skills, this view seems implausible. I do not deny that schools can make a difference- but that difference may not be enough to make up for inequalities caused by natural differences in ability and differences caused by social disadvantage.

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Blog post

## Learning from my suburb

[Michael Lewyn](#) | June 11, 2008, 8pm PDT

For nearly all of my adult life, I have lived in small towns or urban neighborhoods. But for the past two years, I have lived in sprawl. When I moved to Jacksonville two years ago, I moved to Mandarin, a basically suburban neighborhood about nine miles from downtown. As I looked for apartments in 2006, I noticed that in many ways, Mandarin is typical sprawl: our major commercial street (San Jose Boulevard) is as many as eight lanes in some places, and even most apartments are separated from San Jose's commerce. [See <http://atlantaphotos.fotopic.net/c872477.html> for my photos of Mandarin and other Jacksonville neighborhoods.] I thought Mandarin would be a typical suburb: homogenously white and upper-middle class.

But in fact, Mandarin has the same kind of social mix as some of Jacksonville's more urban neighborhoods. Like many urban neighborhoods, Mandarin has rich and not-so-rich blocks: the rich live in Mandarin's western edge along the St. Johns River, the areas between the river and San Jose Boulevard (our major commercial street) are middle-to-upper-middle class, and the areas east of San Jose are more humble. And Mandarin has a few apartment complexes, which tend to be not so fancy: my own complex (the most expensive in the area, and the only one west of San Jose) is dominated by retirees, and



others are dominated by working-class families of all races. Our retail is not just "big box" stores like Target and Wal-Mart: we have Brazilian, Russian and Asian supermarkets, as well as a variety of ethnic restaurants.

But Mandarin's diversity is not always a good thing: just as residents of walkable urban neighborhoods often don't go north of street X or east of street Y at night in order to avoid crime, Mandarin has a bona fide rough area - a street full of highly affordable apartment complexes where there have been at least two murders in the past two years. And I've been confronted by panhandlers twice in the last few weeks. I worry that Mandarin may be turning into one of Jacksonville's declining inner suburbs, a place forsaken both by urbanites who prefer more walkable neighborhoods and by suburbanites who prefer newer, safer suburbs.

So what have I learned from my years in Mandarin? That both the optimists and the pessimists about suburbia are right. Optimists correctly point out that suburbia is inheriting the diversity of cities- not just their ethnic and economic diversity, but their diversity of commercial forms: the notion that Wal-Mart is a natural monopoly is, in the setting of a large city, simply rubbish.

But pessimists are correct in worrying that as suburbs inherit urban diversity, they may inherit urban crime and decay.

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Blog post

## How to teach about sprawl

[Michael Lewyn](#) | May 28, 2008, 1pm PDT

Today, I turned in my grades for my seminar on "Sprawl and the Law." It occurred to me that some readers of this blog might be academics, and might be interested on how one can teach a course on sprawl.

I began by defining the issue. As I pointed out in an earlier post (at <http://www.planetizen.com/node/31063>) the term "sprawl" has two common meanings: where we grow (city or suburb) and how we grow (pedestrian-friendly or automobile-

dependent). Policies that affect the first type of "sprawl" need not affect the second (and vice versa).

Then we discussed the question frequently debated on Planetizen: is sprawl good or bad? I used Oliver Gillham's book, *The Limitless City*, as a text, since Gillham addresses both sides of the argument. We discussed sprawl's impact on social equity, air pollution, traffic congestion, and a variety of other matters. Because my courses focus on legal issues, I limited our discussion of the pros and cons of sprawl to one class. However, urban planning instructors might wish to devote more time to the question.

But because I teach in a law school, I focused on legal rules relevant to sprawl. I began by focusing on the "how we grow" element of sprawl; since Jacksonville (where I live and teach) is a growing but highly car-dominated city, I believed that this element of sprawl was more relevant to my students than the urban decay common in Rust Belt cities. In particular, I spent most of the course on land use and street design regulations that contribute to sprawl: we read case law on zoning laws segregating land uses, minimum lot size requirements, and minimum parking and setback regulations, as well as examples of, and critiques of, those rules. Similarly, we read and discussed pro-sprawl street design regulations, such as rules mandating wide streets and cul-de-sacs. We then discussed possible solutions to pro-sprawl land use regulation, such as land use deregulation and New Urbanism. And because many of my students had never known anything but sprawl, we made field trips to Jacksonville's most pedestrian-friendly neighborhoods.

The last few weeks of the course were spent on the "where we grow" element of sprawl. We focused on highways and public transit, as well as the pros and cons of land use policies designed to curb suburban development and/or encourage urban redevelopment, such as Oregon's urban growth boundaries and the sort of redevelopment-oriented eminent domain upheld by the Supreme Court in *Kelo v. New London*. In addition, we spent about an hour or so of class time on the poor quality of urban schools as a driver of suburban migration, and on solutions to this problem (such as vouchers and school finance reform). If I was teaching in a declining city (such as St. Louis) I would have spent more time on "where we grow" sprawl, and in particular on the education issue.

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Blog post

# The Case Against Flexibility

[Michael Lewyn](#) | May 18, 2008, 9pm PDT

A few weeks ago, I was reading yet another think-tank paper arguing against new rail projects. Amidst the sea of technical detail, one assertion bothered me: the common claim that bus service is more "flexible" than rail.

Indeed it is- and that's precisely what's wrong with it. Flexibility means unreliability. In particular, flexibility means that politicians can eliminate your bus service whenever recession or overspending in other areas leads to a fiscal crisis. Bus service is an easy target: it often serves people too poor to give campaign contributions or become politically organized, and its environmentalist supporters have dozens of other issues to worry about. For example, in Denver bus ridership is rising- yet due to increased fuel costs, service may actually be reduced. (See <http://www.9news.com/news/article.aspx?storyid=91837> )

Politicians tend to justify bus cutbacks by stating that they are merely reducing low-performing service. But as long as there is more than one bus route in a city, some routes will always have fewer riders than others. So this theory, if consistently applied, would ultimately lead to the elimination of every route but the most popular one- hardly a desirable result.

By contrast, recessions and other economic problems tend to have a relatively modest impact on rail and highway service- perhaps because the larger up-front costs of rail and highway expansion cannot be recovered by cutbacks in service, perhaps because affluent, politically influential people are more willing to drive or ride trains.

Does the reliability of rail service mean transit supporters and users should support new rail service in every city? Not necessarily; obviously, intracity rail service is not practical everywhere. But certainly, this factor is one of many relevant considerations – a thumb on the scale favoring construction of new subways and light rail systems.

Of course, it is certainly possible to make bus service less vulnerable to the political winds. For example, imagine an America in which state or federal civil rights law

protected bus service from cutbacks, on the grounds that cutting bus service without blowing up the occasional highway or two had a disproportionate impact on racial minorities or adversely affected air quality. In such an America, bus service would be as politically impregnable as highways or even rail service- and I would certainly be less willing to support rail service in my city.

But of course, that's not the America I live in.

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Blog post

## Myth and Reality About European Sprawl

Some commentators argue that sprawl is an inevitable result of affluence, based on European development patterns. These pundits tell a simple story: European urban cores are losing population and becoming more automobile-dependent - just like American cities. So if Europe can't beat sprawl, neither can America.

[Michael Lewyn](#) | May 13, 2008, 7am PDT

Some commentators argue that sprawl is an inevitable result of affluence, based on European development patterns. These pundits tell a simple story: European urban cores are losing population and becoming more automobile-dependent - just like American cities. So if Europe can't beat sprawl, neither can America.

But in fact, this theory is based on questionable factual assumptions. To be sure, many European cores did lose population in the late 20<sup>th</sup> century. But in recent years, European cores have rebounded. Between 1991 and 2004, 15 of 27 European national capitals gained population. (1) Among the eleven European cities with over 1 million people, six (Vienna, London, Paris, Hamburg, Munich, and Madrid) gained population.(2)

Moreover, European transit ridership is in fact growing. In all five of the largest Western European nations (Germany, Spain, France, Italy and the U.K.) kilometer-miles of bus and train travel grew between 1995 and 2003- in four cases (all but Germany) by between 12 and 33 percent.(3) By contrast, population in these countries increased by 6 percent or less. (4) Even if one measures automobile dependence by market share, the results are more ambiguous than pro-sprawl pundits suggest: in the fifteen nations originally

comprising the European Union, the automobile's market share has fluctuated between 84.3 and 85 percent every year since 1994- hardly a rapid increase in car dependency. (5) And in France and the United Kingdom, the "automobile market share" actually declined.

Admittedly, these trends differ from the more sprawling trends of the late 20<sup>th</sup> century. But to the extent Europe did sprawl, those results may have been a result not of the free market or affluence, but a result of pro-sprawl government policies. European highway networks expanded enormously in the late 20<sup>th</sup> century; for example, Spain's road network expanded from 387 miles to 11,432 miles between 1970 and 2005.(6) In the short run, highways make driving easier and may shift development to places with minimal transit service. In the absence of such pro-sprawl policies, Europe might have sprawled less.

But today, the tide of European sprawl is ebbing- thus indicating that sprawl is not as inevitable as some think.

(1) EUROPEAN COMMISSION, EUROSTAT REGIONAL YEARBOOK 2007 at 77.

(2) For detailed statistics go to [www.citypopulation.de](http://www.citypopulation.de)

(3) See Eurostat, Transport Tables, available at

[http://epp.eurostat.ec.europa.eu/portal/page?\\_pageid=1996\\_45323734&\\_dad=...](http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996_45323734&_dad=...) (click on links for "Rail transport of passengers" and "Bus transport of passengers, and add links together")

(4) See U.S. Census Bureau, 2004-05 Statistical Abstract at 841-43.

(5) See Eurostat Transport Tables, *supra* note 3 (click on link for "Car share of inland passenger transport").

(6) European Union, Statistical Pocketbook 2007, Part 3.5.1, available at

[http://ec.europa.eu/dgs/energy\\_transport/figures/pocketbook/doc/2007/2007\\_transport\\_en.pdf](http://ec.europa.eu/dgs/energy_transport/figures/pocketbook/doc/2007/2007_transport_en.pdf) (visited March 11, 2008).

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Blog post

## Two kinds of sprawl

[Michael Lewyn](#) | May 5, 2008, 8am PDT

Once every few semesters, I teach a seminar on "Sprawl and the Law." On the first day of the seminar, I ask students what "sprawl" is. After getting a variety of answers, I reveal the truth: most definitions of sprawl involve one of two separate definitions:

**"Where we grow"**- Sprawl as movement from the core to the fringe of a region.

**"How we grow"**- Sprawl as development oriented towards drivers as opposed to nondrivers.

Often, the two go together: a car-oriented development 20 miles from downtown is certainly "sprawl" by either definition. But a new urbanist development in an outer suburb (such as Celebration or Kentlands) is sprawl in the first sense ("Where") but not in the second ("How.") On the other hand, in car-oriented cities like Atlanta and Jacksonville, there are car-oriented neighborhoods built in the 1940s and 1950s- some as few as four or five miles from downtown. These places are sprawl in the second sense ("How") but not in the first ("Where").

Policymakers who wish to limit sprawl must adopt different policies to deal with each type of sprawl. Urban growth boundaries and farmland preservation limit suburban growth and thus affect "Where we grow" sprawl- but do nothing to affect "How we grow" sprawl. "How we grow" sprawl, by contrast, is not going to be affected by limitations on overall suburban growth. The most effective way to limit this type of sprawl is through density, diversity, and design- encouraging compact, mixed-use, pedestrian-oriented development in city and suburb alike.

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Blog post

## The Real Meaning Of The "American Dream"

[Michael Lewyn](#) | April 23, 2008, 7pm PDT

Both supporters and opponents of the sprawl status quo often refer to suburbia as "The American Dream." One sprawl-defending organization even calls itself "The American Dream Coalition". Sprawl critics use similar language; for example, in 1998, the Sierra Club issued a report titled "Sprawl: The Dark Side of the American Dream."

([www.sierraclub.org/sprawl/report98/](http://www.sierraclub.org/sprawl/report98/))

The equation of the "American Dream" with sprawl is inconsistent with the term's

original meaning. The term "American Dream" was apparently invented in 1931 by historian James Truslow Adams; he was referring to "That dream of a land in which life should be better and richer and fuller for every man, with opportunity for each according to his ability or achievement." (Youngro Lee, *To Dream Or Not To Dream*, 16 Cornell Journal of Law and Public Policy 231, 232). Thus, the term "American Dream" means not one type of house on one type of lot, but an economy open to talent, whether in dense cities, streetcar suburbs, or small towns.

More importantly, the use of the term "American Dream" to describe just one type of development is so inconsistent with America's libertarian values as to be almost un-American.

In the Declaration of Independence, Thomas Jefferson wrote that people are "endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness." To me, "liberty" implies some diversity of living arrangements - not just suburbs, but big cities and small, rural retreats and small towns. "Liberty" implies that Americans should be free to create Manhattan as well as Montana.

By contrast, the use of the term "American Dream" to describe the sprawl status quo implies that only one form of development is "American" - that large-lot suburbia, as the "American Dream", is what all **real** Americans want, and that cities and small towns and rural areas are for foreigners. There is nothing particularly libertarian about such an attitude.

Sprawl critics weaken their position by allowing their opponents to get away with such abuses of patriotism. Instead, supporters of more compact development should be reclaiming the mantle of Americanism themselves - for example, by suggesting that people are freer when they can walk as well as drive.

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Blog post

# Why Liability Concerns Should Not Prevent Pedestrian-Friendly Streets

[Michael Lewyn](#) | April 8, 2008, 7am PDT

American commercial streets are often designed almost exclusively for cars; streets are often as many as eight or ten lanes wide, lengthening pedestrian trips and encouraging motorists to drive at speeds unsafe for pedestrians.

In part, the anti-pedestrian design of American streets is a result of transportation planners' perceptions of American tort law. When a road user injured in a car crash sues a government or its employees for negligent street design, courts may rely upon the "Green Book", a set of engineering guidelines drafted by the American Association of State Highway and Transportation Officials (AASHTO). And because AASHTO's street design rules have historically favored wide streets built to accommodate high-speed traffic, transportation planners sometimes believe that in order to avoid liability, they must do the same.

In fact, the Green Book no longer dictates the creation of high-speed streets, for two reasons.

First, in the majority of states, government entities and their employees are not liable for negligent decisions arising from "discretionary" government activities. As a rule, a government decision is "discretionary" when "broad policy factors were involved in reaching the allegedly negligent decision." (1) Such "broad policy factors" are certainly present where government officials are consciously choosing to weigh the policy of protecting pedestrian safety against the policy of encouraging fast driving.

For example, courts have held that government decisions related to street width are discretionary. In *Stewart v. State*, the Washington Supreme Court wrote: "The decision to build the freeway, the decision to place it in this particular location ... the number of lanes- these decisions involve a basic governmental policy" and are thus discretionary (2).



Discretionary immunity applies even when government has chosen to ignore Green Book guidelines. For example, in *Schmitz v. City of Dubuque*, the Iowa Supreme Court noted that a bike trail violated AASHTO standards, but nevertheless went on to address the merits of the city's discretionary immunity defense.<sup>(3)</sup>

Second, the Green Book itself does not require anti-pedestrian street design. The Green Book states that "its guidelines are not intended to "supercede the need for the application of sound principles by the knowledgeable design professional"(4) and the U.S. Court of Appeals for the Eighth Circuit has accordingly pointed out that the Green Book's provisions "are guidelines and are not mandatory."<sup>(5)</sup> Thus, AASHTO guidelines are not mandatory even in states rejecting discretionary immunity.

More importantly, the Green Book's guidelines, even if followed to the letter, are less anti-pedestrian than in the past. In its Foreword, the 2004 Green Book states: "[e]mphasis has been placed on the joint use of transportation corridors by pedestrians, cyclists and public transit vehicles. Designers should recognize the implications of this sharing of the transportation corridors and are encouraged to consider not only vehicular movement, but also movement of people"<sup>(6)</sup>

In particular, the Green Book states that in designing "local" residential streets, a streetbuilder's "overriding consideration is to foster a safe and pleasant environment whereas the convenience of the motorist is secondary." <sup>(7)</sup>To protect pedestrians, the Green Book actually recommends sidewalks even in rural and suburban areas <sup>(8)</sup>.

And even Green Book guidelines regarding heavily trafficked streets are no longer oblivious to pedestrians' interests. According to the 2004 Green Book, arterial streets (the busiest type of street) may be as narrow as four lanes <sup>(9)</sup>, and intermediate-volume collector streets (which connect residential and commercial areas) should typically be two lanes wide <sup>(10)</sup>.

In sum, the Green Book no longer requires transportation planners to build six-lane monster streets; thus, a transportation planner reluctant to build such streets no longer must worry about losing a lawsuit.

1. *Breed v. Shaner*, 562 P. 2d 436, 443, 57 Haw. 656, 667 (1977)

2. 92 Wash. 2d 285, 294, 597 P. 2d 101, 106 (1979). See also *Mitchell v. State*, 108 A.D.2d 1033, 1035, 486 N.Y.S.2d 97, 99 (N.Y.A.D. 3 Dept. 1985) (road adequately designed "despite its narrowness").

3. 682 N.W. 2d 70 (Iowa 2004). The court went on, however, to hold that the government's decision was based solely on cost and was thus not discretionary.

4. 2004 Green Book at xliii.
  5. 486 F.3d 1030, 1033 (8th Cir. 2007).
  6. 2004 Green Book at xliv.
  7. Id. at 390.
  8. Id. at 357-58, 436.
  9. Id. at 473.
  10. Id. at 433.
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Blog post

## Pro-Pedestrian Policies Can Be Pro-Driver Too

[Michael Lewyn](#) | March 31, 2008, 7pm PDT

Some transportation writers seem to believe that the interests of drivers and those of nondrivers are irreconcilable. For example, I just searched on google.com for websites using the terms "traffic calming" and "anti-automobile" together, and found over 60 such sites. But in fact, the interest of pedestrians in calmer, more walkable streets sometimes intersects (pun intended) with the interests of at least some motorists.

In parts of my city, surface streets are eight or nine lanes wide, and shops are typically set back at least a couple of dozen feet from the street. Obviously, such streets are not particularly safe for pedestrians. A wide street takes more time to cross than a not-so-wide street, and every second spent crossing streets and parking lots is another second that a pedestrian is exposed to automobile traffic.

But does that mean that such wide streets are "pro-driver", and that critics of such street design are "anti-auto"? Not necessarily. If you are a long-distance commuter passing through an eight-lane street, you may think that the wide street is a good idea, because it allows you to drive through the neighborhood more quickly.

But if you actually want to drive to a shop or restaurant near the eight-lane street, you may find a narrower street more convenient. Suppose you want to drive to a restaurant on the left side of the street. On a two-lane street, you don't have to worry about getting into the appropriate lane to make a turn- you just get to the store and turn left.

But on an eight-lane street, you have to plan your trip by getting in the center lane, and then risk your life making a left turn across several lanes of high-speed traffic.

And if you don't know whether your restaurant is on the left or right side of the street, Heaven help you, because if you are driving 45 miles per hour to keep up with the traffic, you probably won't be able to find your restaurant in time to figure out which lane you need to enter. Ordinances requiring buildings to be set back behind 20 or 30 feet of greenery or parking lots make navigation even more difficult, because street numbers are often invisible when buildings are far from the street.

Thus, decisions about street design are not always simple "pedestrian vs. driver" conflicts; different drivers have different interests. The interests of a driver searching for a neighborhood destination, or of the shopkeeper who wants to attract drivers to that destination, are not always the interests of a driver who wants a speedy commute to exurbia.

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