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Plans are Not Enough

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Zoning and Land Use Planning

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Plans are not Enough

I. Introduction

Some commentators describe comprehensive land use planning as a potential remedy for suburban sprawl¹ (by which I mean automobile-oriented development, often in suburban areas far beyond a region's traditional urban core).² But in fact, states that require municipal comprehensive plans can be just as automobile-oriented as more permissive states. For example, Florida has required municipalities to comply with their own comprehensive plans since 1985,³ yet public transit ridership in every single Florida metropolitan area is lower than the U.S. average.⁴ Florida's metropolitan areas are also among the most dangerous for pedestrians.⁵ By contrast, there are five metropolitan areas where over

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¹See, e.g., Eric Links, *Hole-in-One For Land Use Control-Endorsing the Dominance of Comprehensive Plans*, 33 Wm. Mitchell L. Rev. 627, 634 (2007) ("Comprehensive planning is a comprehensive response to the systemic problems of sprawl."); Thomas Pelham, *Transportation Concurrency, Mobility Fees, and Urban Sprawl in Florida*, 42/43 Urb. Law. 105, 105 (2010/2011).

²See Michael Lewyn, *Sprawl in Canada and the United States*, 44 Urb. Law. 85, 86 & nn.2-3 (2012) (citing numerous definitions incorporating these elements).

³See Pelham, *supra* note 1, at 105.

⁴See U.S. Census Bureau, *Commuting in the United States: 2009*, at 5-6, at <http://www.census.gov/prod/2011pubs/acs-15.pdf> (5% of Americans commute via public transit; no Florida region has such high ridership) ("2009 Commuting").

⁵See Richard S. Geller, *The Legality of Form-Based Zoning Codes*, 26 J. Land Use & Envtl. L. 35, 64-65 (2010) (most dangerous metropolitan areas for pedestrians are in Florida); Robert D. Bullard, Glenn S. Johnson, and Angel O. Torres, *The Costs and Consequences of Suburban Sprawl: The Case of Metro Atlanta*, 17 Ga. St. U. L. Rev. 935, 996 (2001) (in

10% of workers use public transit-⁶ and only one of those regions (San Francisco) is in a state where municipalities must comply with comprehensive plans.⁷

This article shows how municipal plans can be inadequate or even counterproductive. In particular, the article focuses on two factors related to plan language.⁸ First, just as a zoning code can favor automobile-dependent sprawl, a comprehensive plan may do so as well. Second, even a comprehensive plan that seeks to limit sprawl is often too vague and general to change the status quo.

II. Pro-Sprawl Planning

As the examples below show, comprehensive plans may promote sprawl by requiring (1) low-density, single-use development, and (2) wide streets that are uncomfortable or even dangerous for pedestrians.

A. Anti-Density Means Anti-Pedestrian

A comprehensive plan, like a zoning code,⁹ may artificially limit density, either directly by mandating low-density development or indirectly through parking and setback regulation. Such restrictions reduce the number of residences that can be within walking distance of jobs, shops or public transit, thus making cities less walkable.

1. Directly Restricting Density

Jacksonville, Florida is the dominant city in one of the

1990s, metropolitan areas with highest rates of pedestrian fatalities were Miami and Fort Lauderdale, both in Florida).

⁶See U.S. Census Bureau, *Public Transportation Usage among U.S. Workers: 2008 and 2009*, at 5-6, at <https://www.census.gov/prod/2010pubs/acsbr09-5.pdf> (listing New York, New York, Boston, Massachusetts, San Francisco, California, Chicago, Illinois and Washington, D.C. as most transit-friendly regions) (“2009 Transportation”).

⁷See Jerrold A. Long, *Overcoming Neoliberal Hegemony in Community Development Law: Law, Planning and Selected Lamarckism*, 44 Urb. Law. 345, 361 n. 61 (2012) (the four states requiring strict compliance are California, Florida, Delaware and Oregon).

⁸I note, however, that a plan’s own defects are not the only possible factors relevant to its effectiveness. For example, if one city in a region favors pedestrian-friendly planning while the others favor sprawl, that city’s plan will obviously have less impact than a regionwide plan. In addition, a city may enact an anti-sprawl plan long after most of the city’s land has been developed in an auto-oriented manner.

⁹See Lewyn, *supra* note 2, at 114-17 (citing numerous examples of anti-density zoning).

most automobile-dependent regions in the United States.¹⁰ That city's comprehensive plan devotes most of the city's residential acreage to low-density residential use.¹¹ In particular, the plan's future land use map allocates 138,949 acres to low-density residential use, as opposed to 23,187 to medium-density housing and only 74 to high-density housing.¹²

Even within the city's "urban priority areas," the maximum density in low-density zones is generally seven units per acre.¹³ The plan adds that because zoning regulations will allow numerous types of districts within the city's low-density areas, "the average residential density in each category will be much lower than the maximum allowable density."¹⁴ The plan therefore suggests that most of Jacksonville's low-density residential zones will have fewer than seven units per acre.

Such low densities virtually guarantee a city dominated by automobile-dependent sprawl. As a general rule, a neighborhood must have at least seven to 15 dwelling units per acre to support significant transit ridership, because only such compact neighborhoods have a critical mass of people living within walking distance of a bus or train stop.¹⁵ In areas with lower density, very few people will live within a short walk of a bus or train stop, and transit ridership will

¹⁰See 2009 Transportation, *supra* note 6, at 8 (Among the 50 largest U.S. metropolitan areas, only five have lower transit ridership than Jacksonville.).

¹¹See JACKSONVILLE PLANNING AND DEVELOPMENT DEPARTMENT, 2030 COMPREHENSIVE PLAN, FUTURE LAND USE ELEMENT 155, at <http://www.coj.net/departments/planning-and-development/community-planning-division/comprehensive-plan.aspx> ("JACKSONVILLE LAND USE PLAN") (go to "Land Use Element" link; future land use map at page cited shows that land in yellow, devoted to low-density residential, more common than land in orange, devoted to medium and high-density residential).

¹²*Id.* at 148.

¹³*Id.* at 70-71 (describing "urban" part of city and stating general rules), 71 (noting exceptions to the seven-unit-per-acre rule).

¹⁴*Id.* at 67.

¹⁵See Robert H. Freilich, The Land Use Implications of Transit-Oriented Development: Controlling the Demand Side of Transportation Congestion and Urban Sprawl, 30 Urb. Law. 547, 552 & n. 18 (2009); ANTHONY DOWNS, STILL STUCK IN TRAFFIC: COPING WITH PEAK-HOUR TRAFFIC CONGESTION 210 (2004) (seven units per acre supports bus service once every half-hour).

therefore be low.¹⁶ Low density also reduces walkability even in the absence of transit service; in a higher-density environment, more people can walk to shops and jobs because more people live within walking distance of shops and jobs.

Some comprehensive plans are even more aggressively anti-density than Jacksonville's plan. For example, the comprehensive plan of Alpharetta, Georgia (a prosperous outer suburb of Atlanta, Georgia)¹⁷ allows no densities higher than ten dwelling units per acre.¹⁸ Thus, the most compact areas allowed by Alpharetta's plan are only slightly more compact than Jacksonville's low-density areas.

The plan adds that in Alpharetta's "low density residential" area, the maximum density is 2 or 3 units per acre.¹⁹ Moreover, most of the city's land is devoted to such use: the plan provides that only 3.5% of the city's land is to be "high-density residential," as opposed to 34.2% for "low density residential" and "very low density residential."²⁰ 4.6% of the city's land is in an intermediate density category, and the rest is devoted to civic and commercial use.²¹ So as a practical matter, roughly three-fourths of Alpharetta's residential land is devoted to low-density residential use.

Even plans that purport to be anti-sprawl may include similar anti-density regulations. For example, the comprehensive plan of Boise, Idaho incorporates "smart growth"²²

¹⁶See PAMELA BLAIS, *PERVERSE CITIES* 60-61 (2010) (citing numerous studies).

¹⁷See Michael Pearson, Kurey's face name purged councilman may appeal ouster, *Atlanta Journal and Constitution*, August 20, 2005 at, B1, 2005 WLNR 13113879 (describing Alpharetta as a "business-oriented suburb . . . about 26 miles from Atlanta"); Editorial, Access to public records lets us peek inside government's doors, *The Indianapolis Star*, March 12, 2006, at E2, 2006 WLNR 25289645 (describing Alpharetta as a "chic" suburb).

¹⁸FINAL DRAFT, CITY OF ALPHARETTA, 2030 COMPREHENSIVE PLAN 32, at http://www.alpharetta.ga.us/files/docs/pdfs/F&D/CD/Agenda_Final-Draft_6151100175_09-26-11.pdf ("high density residential" area allows a maximum of 10 dwelling units per acre) ("ALPHARETTA PLAN").

¹⁹*Id.*

²⁰*Id.*

²¹*Id.*

²²JEANNE HUFF, IDAHO SMART GROWTH DOLES OUT ANNUAL AWARDS, *IDAHO BUS. REVIEW*, NOV. 13, 2012, 2012 WLNR 24688806.

principles such as the promotion of walkable neighborhoods.²³ But even Boise's plan²⁴ places much of the city in a low-density "suburban" zone.²⁵ The plan states that in the "suburban" zone, the appropriate density range is between three and five units per acre,²⁶ a level not significantly different from Alpharetta or Jacksonville.²⁷ The suburban zones are not even Boise's least dense: the plan also provides for "large lot" zones with no more than one or two dwelling units per acre.²⁸ As noted above, such low densities are incompatible with significant levels of public transit service.²⁹

2. Single-Use Zoning

The comprehensive plans discussed above combine low density with single-use zoning: that is, their land use maps include separate commercial and residential zones. These residential zones are sometimes so large that residents will not be within walking distance of anything but other houses. For example, Jacksonville's future land use map shows that in one area at the city's southern edge, everything between San Jose Boulevard and Interstate Highway 95 is low-density residential³⁰—an expanse of about six miles.³¹ The comprehensive plan freezes this status quo in place not only

²³*Id.*

²⁴City of Boise, Idaho, Blueprint Boise, at <http://pds.cityofboise.org/planning/comp/blueprint-boise/> (hereinafter "Blueprint").

²⁵*Id.*, Future Land Use Map (between pages 3-5 and 3-6 in Chapter 3).

²⁶*Id.* at 3-20.

²⁷See *supra* notes 13-14, 18-19 and accompanying text.

²⁸See Blueprint, *supra* note 24, at 3-19. I note, however, that the city does allow higher density zones as well. *Id.* at 3-15, 3-22. Boise's mix of zones is not unique among smart growth-oriented plans. For example, Seattle's comprehensive plan seeks to promote smart growth. See David Fox, Halting Urban Sprawl: Smart Growth in Vancouver and Seattle, 33 B.C. INT'L AND COMP. L. REV. 43, 54 (2010) (Seattle plan "furthers Smart Growth policies[.]"). But the plan nevertheless emphasizes that one of its goals is to "protect low-density, single-family neighborhoods." CITY OF SEATTLE, TOWARD A SUSTAINABLE SEATTLE 2.13, at http://www.seattle.gov/DPD/cms/groups/pan/@pan/@plan/@proj/documents/web_informational/dpdp_019097.pdf ("Sustainable Seattle") (emphasis added).

²⁹See *supra* notes 15-16 and accompanying text.

³⁰JACKSONVILLE LAND USE PLAN, *supra* note 11, at 154.

³¹To verify this, I searched on Google Maps to ascertain the distance between 12909 San Jose Boulevard (a commercial street at the western edge of this area) and the Shoppes at Bartram Park shopping center near I-95 (the commercial center at the eastern edge).

through its future land use map, but also by stating more broadly that the city may allow commercial expansion near residential areas only if such expansion “maintains the existing residential character.”³²

Even smart growth-oriented plans sometimes segregate commercial uses in ways that reduce walkability. For example, the Boise plan suggests that the suburban zone will consist of residential areas served by commercial “activity centers.”³³ However, the city’s future land use map suggests that these activity centers will sometimes be more than three miles apart.³⁴

Obviously, few people living in the middle of these housing-only monocultures will be willing to walk a couple of miles to the nearest shop or job. Thus, the size of some plans’ residential zones effectively mandates automobile dependence.

3. Parking Regulations

Seattle’s comprehensive plan generally purports to favor smart growth,³⁵ nevertheless, the plan states that the city seeks to “[e]stablish off-street parking requirements for new development.”³⁶ Although minimum parking requirements are not always mentioned in comprehensive plans, such requirements are virtually universal in the United States.³⁷

Land that is used for parking lots cannot be used for housing or commerce. It follows that minimum parking requirements, by increasing the amount of land used for parking,

³²JACKSONVILLE LAND USE PLAN, *supra* note 11, at 34.

³³See Blueprint, *supra* note 24, at 3-20.

³⁴*Id.*, Future Land Use Map (between pages 3-5 and 3-6). For example, the map shows that in the city’s southwest corner there will be “activity centers” at Overland and Lake Hazel Roads. A Google Map search showed that the distance between the Overland/Five Mile Road intersection (site of one activity center) and the Lake Hazel/Five Mile Road (site of the nearest activity center to the south) is 3.3 miles.

³⁵See *supra* note 28.

³⁶Sustainable Seattle, *supra* note 28, at 2.11. I note, however, that the city’s parking policies may be more moderate than those of other municipalities. While other cities might apply such requirements universally, the Seattle plan notes the city’s willingness to consider removing such requirements in the city’s more urban areas, and to prevent parking from standing between buildings and the street. *Id.* at 2.12 (city will “consider removing minimum parking requirements” in “urban centers” and will “generally prohibit street level parking between buildings and the street.”). See also *infra* note 46 (explaining why pedestrians worse off when parking is in front of buildings).

³⁷See Donald C. Shoup, The High Cost of Free Parking 22, 25 (2005).

artificially limit population density and thus reduce neighborhood walkability and transit use.³⁸ For example, in 1961, Oakland, California required apartment buildings to build one parking space per dwelling unit.³⁹ Within three years of this ordinance, the number of apartments per acre in Oakland had decreased by 30%.⁴⁰ If, as suggested above, other forms of anti-density regulation make cities more automobile-dependent,⁴¹ it logically follows that minimum parking requirements do so as well.

By forcing landowners to build parking instead of residential and commercial buildings, minimum parking requirements reduce the amount, and thus increase the price, of urban housing and commerce. Thus, minimum parking requirements may force people and businesses to move to suburbs in search of cheaper land. To be sure, these regulations also affect suburban land. However, land for parking is cheaper and more plentiful in the least developed suburbs, so developers can more easily comply with minimum parking requirements by purchasing additional land (instead of by reducing development).⁴² By contrast, developers in already-developed cities and older suburbs may have to purchase and tear down adjoining buildings in order to comply with minimum parking requirements.

These regulations also facilitate automobile-dependent development by artificially subsidizing driving. Minimum parking requirements increase the supply of parking, and thus reduce the market price of parking.⁴³ As a result, 99% of vehicle trips in North America are to destinations with

³⁸See *supra* notes 15-16 and accompanying text (explaining density/walkability relationship).

³⁹See Shoup, *supra* note 37, at 143.

⁴⁰*Id.* at 144.

⁴¹See *supra* notes 15-16 and accompanying text (explaining density/walkability relationship).

⁴²See Roberta F. Mann, On The Road Again: How Tax Policy Drives Transportation Choice, 24 Va. Tax Rev. 587, 636 (2005) ("cost of providing a parking space varies from \$2,000 in suburban areas to \$20,000 in urban areas").

⁴³Richard Willson, Suburban Parking Requirements: A Tacit Policy For Automobile Use And Sprawl, 61 Journal of the Am. Planning Ass'n 29, 34 (1995) ("When developers are required to provide more parking than is demanded, the oversupply tends to push the market price down to zero[.]").

free parking.⁴⁴ Where parking is free or nearly so due to government-mandated oversupply, government essentially forces businesses to give drivers free real estate (in the form of parking spaces).

Who pays for this subsidy? At first, landowners pay, because they pay for the construction of parking lots and forego revenue from land that could be used for purposes other than parking (such as renting space out to commercial tenants, or building additional residential units). But landowners may pass the cost of free parking on to their customers. For example, a landlord might seek to recoup the cost of parking through higher rents for commercial tenants (who in turn may pass such costs to their customers by charging higher prices for goods and services) and residential tenants (who presumably pay higher rents than would otherwise be the case).⁴⁵

It follows that minimum parking requirements lead to increased residential and commercial rents, and thus require society as a whole to subsidize driving.⁴⁶ And where driving is cheaper, it is cheaper and more convenient for people to move to automobile-dependent suburbs. Thus, minimum parking requirements also encourage sprawl by making auto-oriented suburbs more attractive.⁴⁷

⁴⁴PAMELA BIAIS, *PERVERSE CITIES* 145 (2010).

⁴⁵*Id.* at 146. Cf. Victoria Transport Policy Institute, *Transportation Cost and Benefit Analysis II-Parking Costs*, 5.4:17, available at <http://www.vtpi.org/tca/tca0504.pdf> (study estimating that each “additional residential parking space effectively increases U.S. urban housing unit costs by \$52,000 to \$117,000”).

⁴⁶Minimum parking requirements also reduce walkability because landowners who are forced to build parking often build parking in front of buildings, forcing pedestrians to walk through parking lots to reach destinations. See SHOUP, *supra* note 37, at 107; Jil McIntosh, *It's no cakewalk being a pedestrian*, *Toronto Star*, July 18, 2009, at W2, 2009 WLNR 13724302 (parking lots “dangerous” because drivers “busy looking for spots or avoiding cars backing out, making pedestrians vulnerable”). I note, however, that some cities try to discourage landowners from placing parking in front of buildings. See Sustainable Seattle, *supra* note 28, at 2.12 (city will “consider removing minimum parking requirements” in “urban centers” and will “generally prohibit street level parking between buildings and the street.”).

⁴⁷The traditional argument for minimum parking requirements are that these rules are necessary to (1) prevent drivers from congesting traffic while searching for on-street parking, and (2) to prevent commercial parking from “spilling over” from commercial areas into residential streets. See Michael Lewyn, *What Would Coase Do (About Parking Regulation)?*,

4. A Small Setback For Pedestrians

Seattle's comprehensive plan requires "building setback requirements from property lines . . . [for] multifamily developments."⁴⁸ Mandatory setbacks, like minimum parking requirements, reduce density and thus reduce walkability,⁴⁹ because every foot of land used for setbacks cannot be used for housing. Setbacks also force pedestrians to spend more time walking between buildings and sidewalks, thus making their commutes longer and more inconvenient.

B. Anti-Pedestrian Street Design

Jacksonville's comprehensive plan includes a "Transportation Element."⁵⁰

The Transportation Element creates right-of-way minimums, such as a 150-foot minimum for major arterials (that is, the most heavily trafficked streets)⁵¹ and a 120-foot mini-

22 Fordham Envtl. L.Rev. 89, 93-96 (2010). These arguments lack merit for two reasons. First, parking requirements may increase driving to such an extent that on balance they increase, rather than decreasing, traffic congestion. *See supra* notes 38-46 and accompanying text (explaining how these requirements increase driving). Second, numerous alternatives may reduce these externalities without the same negative effects as minimum parking requirements. *See Lewyn, supra*, at 113-16 (discussing various strategies, including charging market prices for on-street parking and requiring permits for drivers in residential neighborhoods).

⁴⁸Sustainable Seattle, *supra* note 28, at 2.17. The city raises a variety of justifications for this rule. First, the city claims that building setbacks "ensure access to light and air [and] provide a sense of privacy." *Id.* But all human beings breathe air no matter where buildings are placed, so air is simply irrelevant to setback requirements. Similarly, light exists wherever there is sun (except to the extent tall buildings cast shadows over a street)-so light does not justify setback requirements either. Second, the city claims that setbacks provide "a sense of privacy." *Id.* The city supplies no evidence for this assertion. I live in a 15-story building, and I do not see how my apartment would be any more "private" if it was separated from the street by a patch of grass or a parking lot. Finally, the city claims that setbacks "provide adequate transition between zones of different intensities." *Id.* This claim may justify setbacks at the boundary of different zones, but not elsewhere.

⁴⁹*See supra* notes 15-16 and accompanying text (explaining density/walkability relationship).

⁵⁰CITY OF JACKSONVILLE 2030 COMPREHENSIVE PLAN, TRANSPORTATION ELEMENT at <http://www.coj.net/departments/planning-and-development/docs/community-planning-division/2030-comp-plan-postings/2030-transportation-element-january-2013.aspx> ("JACKSONVILLE TRANSPORTATION PLAN").

⁵¹*See* JACKSONVILLE, FLA. ORDINANCE CODE, sec. 654.106(mm)(6) (defining term).

mum for quieter⁵² minor arterials.⁵³ Assuming that the city typically devotes about 15 feet of right-of-way to sidewalks and shrubbery,⁵⁴ these requirements mean that a major arterial might have about 135 feet of pavement and minor arterials 105 feet. Since the plan also requires most traffic lanes to be 12 feet wide (and 16 feet wide for “outside” lanes closest to intersections)⁵⁵ it logically follows that major arterials could have as many as ten 12-16 foot lanes, and even minor arterials might have six to eight lanes.

Jacksonville’s wide streets make Jacksonville more automobile-dependent because such streets are both inconvenient and dangerous for pedestrians-inconvenient because a wide roadway takes more time to cross than a narrower street,⁵⁶ and dangerous because the more time a pedestrian spends on such a street, the more time he or she spends exposed to vehicle traffic.⁵⁷

Planners mandate wide streets in order to help motorists drive more rapidly.⁵⁸ But when government succeeds in encouraging fast driving, it increases the risk of pedestrian injury in three ways. First, a fast driver has a narrow field of vision. A motorist driving 30 miles per hour has a 150-degree field of vision.⁵⁹ By contrast, a motorist driving at twice that speed has only a 50-degree field of vision.⁶⁰ Thus,

⁵²See JACKSONVILLE TRANSPORTATION PLAN, *supra* note 50, at 80 (contrasting major and minor arterials).

⁵³*Id.* at 35.

⁵⁴Sidewalks are typically five feet wide. *Id.* at 37 (sidewalks in non-residential areas should be five feet wide). So if sidewalks take up 10 feet (one for each side of the street) and nearby shrubs take up a couple of feet of space, it follows that streets could consume all but 15 feet of the required right-of-way.

⁵⁵*Id.* at 33.

⁵⁶See *Donavan v. Jones*, 658 So. 2d 755, 765 (La. Ct. App. 2d Cir. 1995), writ denied, 661 So. 2d 1379 (La. 1995) and writ denied, 661 So. 2d 1379 (La. 1995).

⁵⁷*Id.* See also WALLACE IMMEN, CITY SEEKS SOLUTION TO COMMUTE CRUNCH, *Globe and Mail*, APRIL 26, 2002, at A22, 2002 WLNR 12038490 (in downtown Toronto, pedestrians “have to run to beat the changing light” on wide streets).

⁵⁸See Stephen H. Burrington, *Restoring the Rule of Law and Respect for Communities in Transportation*, 5 N.Y.U. Envtl. L.J. 691, 694 (1996) (traffic engineers build wide streets out of “solicitude for fast traffic”).

⁵⁹*Id.* at 704 n. 50.

⁶⁰*Id.*

a fast driver is less likely than a slower driver to notice a pedestrian (or for that matter, other drivers).⁶¹

Second, even a motorist who **does** notice a pedestrian is less likely to be able to stop in time if he or she is driving at a rapid speed. A motorist who is driving 40 miles per hour will be able to stop 120 feet after noticing a pedestrian or other road user.⁶² By contrast, a motorist driving half that speed will be able to stop only 40 feet after seeing the other road user.⁶³

Third, a car traveling rapidly is more likely to kill or maim a pedestrian than a slow-moving vehicle. A pedestrian has a 3.5% chance of death from a car traveling 15 miles per hour, but the likelihood of death increases to over 80% when the vehicle is traveling at three times that speed.⁶⁴

In addition, wide streets may create a visually disorienting and uncomfortable environment for pedestrians. Numerous commentators suggest that pedestrians are “drawn to streets with a feeling of intimacy and enclosure”⁶⁵ and that wide streets make pedestrians feel less enclosed.⁶⁶

III. A Good Start, but Only a Start

Sometimes plans may fail to limit sprawl not through aggressively pro-sprawl provisions, but by provisions that are

⁶¹*Id.* Cf. Peter Swift, *Residential Street Typology and Injury Accident Frequency*, available at, <http://www.sierraclub.org/sprawl/articles/narrow.asp> (in one community studied, “a typical 36 foot wide residential street has 1.21 a/m/y (Ed: accidents/mile-year) as opposed to 0.32 for a 24 foot wide street”).

⁶²See JOEY LEDFORD, SPEEDING CARS TERRIFY NEIGHBORHOODS, ATLANTA JOURNAL AND CONSTITUTION, AUGUST 27, 1997, at B, 1997 WLNR 3173969 (“At 20 mph, it takes you 20 feet to react [to a pedestrian or vehicle in the street] and another 20 feet to stop. At 40 mph, it’s 40 feet to think and another 80 feet to stop.”).

⁶³*Id.*

⁶⁴See Burrington, *supra* note 58, at 704 (83% risk of death from car traveling 44 miles per hour).

⁶⁵Paul Zykofsky, *Building Livable Communities with Transit*, available at http://www.lgc.org/freepub/community_design/articles/build_wit_h_transit/index.html.

⁶⁶*Id.* (less enclosure possible “in a wide open area with busy traffic passing closely by”); see also Andres Duany, Elizabeth Plater-Zyberk and Jeff Speck, *Suburban Nation: The Rise of Sprawl and the Decline of the American Dream* 78 (2001) (“If a street is to provide the sense of enclosure that pedestrians desire—if it is to feel like a room—it cannot be too wide[.]”); J.H.Crawford, *Carfree Cities* 44 (2000) (“long strips of low buildings bordering wide streets fail to create a sense of enclosure [desirable to pedestrians.]”).

so vague as to be meaningless. For example, Boise's plan states that the city wishes to promote "compact, walkable development patterns that support transit."⁶⁷ This may be a noble goal, but in the absence of rules either limiting non-compact development or allowing compact development where it is now prohibited, how does the city reach this goal?

The plan tries to resolve this problem through providing for "mixed-use activity centers"⁶⁸ Boise's plan states that these centers will be near established neighborhoods, so that residents of nearby blocks can walk to shopping, schools, parks and jobs.⁶⁹ But the centers must also be "of a scale that is compatible with the surrounding neighborhood"⁷⁰—a phrase which implies that if the surrounding neighborhood is sprawl, the "activity center" must be oriented towards cars as well. For example, if a neighborhood is dominated by streets too wide to be safe for pedestrians and buildings set back far from the street, it could be argued that "activity centers" should contain similar features in order to be "compatible with the surrounding neighborhood."

Other generalities in the Boise plan seem to discourage mixing of land uses; for example, the plan states that it will "[p]rotect existing business and industrial areas from . . . incompatible or non-complimentary uses."⁷¹ Because the plan does not detail when commercial and residential uses are "compatible," this language could be used to thwart mixed-use development.

Boise's future land use map does seek to remedy this problem through its future land use map, which sets forth locations for activity centers. But if someone proposes to build a business at a major intersection, an opponent of the project could use the plan's language to argue that any development could be somehow "incompatible" with existing homes or businesses.

Similarly, Seattle's plan is full of language that could be just as easily used to oppose compact, pedestrian-oriented development as to support such development. The plan states that the city wishes to "permit limited amounts of commercial use in what are otherwise residential zones . . .

⁶⁷See Blueprint, *supra* note 24, at 2-9.

⁶⁸*Id.* at 2-34.

⁶⁹*Id.*

⁷⁰*Id.*

⁷¹*Id.* at 2-71.

to provide retail and service uses in close proximity.”⁷² This language seems designed to promote neighborhood walkability- but on the other hand, the plan’s use of the term “limited” gives the city ample discretion to defeat this objective through restrictive zoning. This discretion is reinforced by statements on the same page that the city wishes to establish “multifamily development as the predominant use in multifamily areas, to preserve the character of [such] areas”⁷³ and that the city wishes to “[l]imit the number and type of non-residential uses permitted in multifamily areas . . . to protect those areas from negative impacts of incompatible uses.”⁷⁴ The city’s invocation of neighborhood “character” and “incompatible uses” gives it ample discretion to choke off real mixed-use development, since a project that makes a neighborhood more pedestrian-friendly (for example, by increasing the amount of shopping within walking distance of houses) by definition changes the neighborhood’s “character” and thus is at least partially incompatible with the status quo.

The Seattle plan also states that the city wishes “to focus development in transit and pedestrian-friendly-urban villages while maintaining compatibility between new development and the surrounding area through standards regulating the size and density of development.”⁷⁵ On the one hand, the city wants to focus development on transit-friendly areas, which seems to imply more density in these areas. On the other hand, the city wants “compatibility” with the status quo, which could be interpreted to allow as little change as possible. And by referring to “standards” without listing such standards, the plan apparently endorses letting zoning do the difficult work of deciding exactly how dense the city’s neighborhoods should be.

IV. Conclusion

It is certainly possible that a municipality’s comprehensive plan could make that city less automobile-dependent. However, the mere existence of a binding comprehensive plan is not sufficient to achieve this goal; in fact, comprehensive plans can actually make cities and suburbs *more* automobile-dependent by reducing density and encouraging

⁷²See Sustainable Seattle, *supra* note 28, at 2.16.

⁷³*Id.*

⁷⁴*Id.*

⁷⁵*Id.* at 2.21.

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the creation of wide, high-speed streets. And even plans that do not actively promote sprawl may be so vague that they fail to encourage change.