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Don't touch my property

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2003

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This article was originally published at:

<http://www.alternativesjournal.ca/>

Citation for this paper:

Deborah Curran, "Don't touch my property" (2003) 29:3 Alt J 13.

Smart growth is about regional equity – about who pays for new roads and infrastructure, about the affordability of housing, the property value benefits of healthy ecosystems, and the true costs and benefits of economic development.

This same tension is beginning to emerge in Canada. In January 2001, then premier Mike Harris launched the Ontario Smart Growth Initiative and one of the first announcements made under its auspices was a massive expansion (estimated at \$10 billion) of the province's highway building program.

Second, smart growth seems to apply mostly to rapidly growing urban areas. So far, the movement has little to say to those communities that are growing very slowly or are in decline. In these areas, attracting growth, new businesses or cultural facilities may be more important than controlling the shape of that growth.

Third, there is a lingering debate about whether there should be limits to growth, especially in areas where the population depends on limited local ecological resources, such as groundwater.

Finally, some of the recommendations made by smart growth enthusiasts may simply be unrealistic under prevailing economic conditions and popular attitudes. For instance, Jill Grant at Dalhousie University has questioned whether mixed-use development is as feasible as often assumed.⁴ Having shops and services available within neighbourhoods is a laudable planning goal, but many developers say such strategies are not economically viable

in most suburban settings: adjacent residents don't want the hubbub that retail activity brings, and corner retailers can't make a buck when most people can drive to a Wal-Mart in a few minutes.

Nonetheless, it is clear that there is growing popular, professional and political support for real changes to the way we build cities and for the smart growth agenda.

In the past, efforts to manage growth have largely been seen as the responsibility of urban planners working with tools like zoning regulations and development controls. We have learned from the failure of that approach that shaping urban development requires a much wider array of tools.

Healthy, sustainable cities need strong regional planning authorities, adequate financing and financial incentives, cross-sectoral partnerships, high levels of civic engagement and greater cultural acceptance for mixed, high-density, residential-commercial areas.

Strengthen regional governance

Regional governments have always played an important role in shaping land-use planning in Canada. Regional authorities like the Lower Mainland Regional Planning Board in BC, and regional governments in Ontario cities

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The US preoccupation with individual rights may seem a little quixotic to many Canadians. But aggressive rights talk is having a subtle influence on smart growth planning here in Canada.

The idea that landowners have a sacred right to do whatever they like with their property is a cornerstone of US culture, and property rights advocates have emerged as the most powerful anti-smart growth lobby.

Smart growth strategies that may prohibit or limit development on privately owned land are frequently met with the claim that the government is unjustifiably taking away owners' rights to do as they wish with their property.

Landowners argue that they should receive compensation for any such "taking" because property rights are protected under the US Constitution. For example, a landowner who is prevented from building at the front of a shorefront lot because of a local planning regulation that the building must be set ten metres back from the shoreline might seek compensation from the government for the loss of that economic opportunity.

In Canada, land-use planning has long been accepted by the courts as a legitimate limit on how property owners may use land. Planning is seen as a way to ensure the orderly development of compatible activities

and to avoid costly mistakes. As a smart growth tool, the ability to enact land-use rules is essential to protecting ecosystem values, channeling growth into existing built areas and addressing problems at a regional scale.

However, property rights arguments are common in the US media and this rhetoric has spilled over into Canada. Provincial and municipal prohibitions on development in riparian zones, shoreline preservation regulations, and cluster development requirements have all been challenged using US "takings" arguments.

To date, none of these challenges has been successful in Canadian courts. But even the threat of lawsuits can make local governments less likely to try new approaches to growth management. 🗣️

Follow up

The Institute for Local Self Government provides resources for local governments on how to design regulations that withstand these "takings" claims: www.ilsg.org

The Defenders of Property Rights is one law and advocacy group dedicated to challenging government decisions that potentially limit what landowners can do with their land: www.yourpropertyrights.org 🗣️