

City planning must protect constitutional property rights

by Randy Bright <http://www.tulsabeacon.com/?p=2258#more-2258>

Last week, I wrote about one of my old college textbooks, *The Use of Land - A Citizens' Policy Guide to Urban Growth - A Task Force Report Sponsored by the Rockefeller Brothers Fund*, that was written back in 1973. It is apparent that many of the troubling regulations we have now, and will see in the near future, may have come about because of those who wrote it. I would have thought that there would have been more regard for property rights three decades ago, but the writers of this book had no reservations in proposing laws and regulations that would severely limit the use of land.

For example, a great deal of text was dedicated to the issue of "open space." Open space is part of any form-based code. The concept of open space is to provide areas of no development within a development of high density. Open space could range from a park area to an area where there would be no human habitation allowed, where the land would be allowed to go back to nature. Open spaces are intended to give visual or recreational relief for those who live in these dense developments.

However, open spaces may not be owned by the government. The writers felt it was acceptable to place certain lands under an open space classification and thus prevent its development, without regard to the rights of the owner of the property, especially in light of the fact that the government did not have the money to buy these lands.

"Land kept open," they wrote, "for purposes other than recreation is, we believe, best left in private hands and regulated to prohibit uses inconsistent with the conservation of scenic characteristics or ecological processes."

Using fear-mongering as a motivator, the writers raised the specter of losing valuable open spaces, saying that "if we do not take the opportunity to conserve privately owned open space... we must all be prepared to give up much of what we treasure in America."

They viewed as candidates for protected open space to include areas of environmental concern, future public recreation areas, areas that would act as buffer zones between urban areas, and farmland, and strongly proposed that the federal government to create planning policies that could be adopted or (in view of current events), forced upon state and local governments.

They saw no reason why developers should not be forced to donate part of the land that they were developing to be used as a park, saying, "we see no inequity in requiring developers to dedicate parkland before subdivision or development", because, after all, the developer could either pass the costs on to the residents in the land price, or recoup the cost by reducing the size of the lots.

Last week, Flint, Michigan, was in the news because its county treasurer had proposed bulldozing a large part of the city as an answer to reducing the operational cost of the city. One article suggested that large areas of buildings could be razed and be allowed to go back to nature. Apparently Obama heard of his plan during his election campaign and now wants this man to review 50 other American cities to see if this might be a good solution for them as well. No doubt this will be a way to force populations into denser living arrangements and provide those open space buffers between urban areas.

Sarcasm aside, I recognize that cities are facing terrible budget problems, and many are facing bankruptcy. Some are in difficulty out of their own poor management, many are suffering from spending sprees done to compete with other cities, and many are trying to comply with a growing list of federal mandates. But is the denial of property rights the answer?

If 50 cities were forced to identify their blighted areas for removal, how could it not trample on the rights of those citizens whose property will be taken? Does anyone really believe that they will be given sufficient funds to buy or build another home of equal size to what they owned? Does the fact that most of these people will be too poor to fight the government bother anyone like it bothers me? Is there some limit to the property rights guaranteed by the Constitution? Does it just apply to the middle and upper class, but not the lower class? Are we so eager to create Utopia in this country that we are willing give away our property rights (as long as it's someone else)? And what about the cost? Is this Obama's next bailout, giving cities the money to drive out or warehouse the poor? Just to create a more "open space"?

We do need to find solutions to make our cities a better place to live, but whatever those solutions are, they must always protect and respect property rights.

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Randy W. Bright, AIA, NCARB, is an architect who specializes in church and church-related projects. You may contact him at 918-664-7957, rwbrightchurcharch@sbcglobal.net or www.churcharchitect.net.

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