Curbing Urban Sprawl in the Zoning and Planning Games

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The battle for development in the United States creates strategic relationships between landowners, zoning officials, government officials, and neighbors. In recent years, many land use regulatory battles have centered on efforts to curb urban sprawl versus landowners’ property rights. This paper investigates sources of conflict in the development arena through institutional analysis of the policymaking structure. The analysis maps out the relationships amongst actors and highlights the typical strategic games played between actors. This study evaluates the strategic interactions amongst actors in a generalized zoning and planning setting. An institutional analysis using the Institutional Analysis and Development (IAD) Framework will be used to map the policy environment. The analysis will highlight events from a set of well-known cases in the development arena that illustrate the strategic behavior in different stages of the zoning game. Finally, the paper will investigate directions for future research that will evaluate effectiveness in the zoning and planning arena given this institutional analysis.
Development of land in the United States typically involves negotiations with landowners, zoning officials, government officials, and neighbors. Many development proposals have lead to protracted fights lasting several years that have ended in hostile court battles. This paper investigates sources of conflict in the development arena through institutional analysis of the policymaking structure. The analysis maps out the relationships amongst actors and highlights the typical strategic games between actors. This study will evaluate the strategic interactions amongst actors in a generalized zoning and planning setting. An institutional analysis using the Institutional Analysis and Development (IAD) Framework will be used to map the policy environment. Many of these strategic relationships could be categorized as social dilemma games with actors’ reluctant to forfeit private gain for the public good. The overall land use regulatory process is a multi-stage game with a complex set of actors. The process is highlighted with a set of well-known cases in the development arena that illustrate the strategic behavior in a particular stage of the zoning game. Finally, the paper will indicate several directions for future research, which will examine the effectiveness in the zoning and planning arena given the institutional structure highlighted here.

Zoning and planning arose to prevent nuisance litigation in the United States, but evolved as a mechanism to control and focus development. Planning and zoning goals may not lead to the intended consequences as many of the regulations are not consistent with neighboring jurisdictions. Within each jurisdiction, there also may be competing pro and anti-growth policies, such as tax abatements, lot size requirements, and historic preservation standards, which lead to mixed planning results with respect to land use change. Planning has been identified as a potential solution to contemporary environmental issues such as urban sprawl and habitat fragmentation, although frequently there has been mixed results with respect to these goals. Carruthers (2001) identifies inconsistent local land use regulation as a contributing factor to urban sprawl because counties, in most states, are unable to regulate land use in the same manner as incorporated municipalities. Rudel (1989) notes that community characteristics impact the local government unit’s stance towards economic development. One might expect that
urban/suburban municipalities have tighter growth policies limiting development, whereas areas beyond
the municipality have limited land use regulations or pro-growth policies, again creating the potential for
the leapfrog phenomenon (Carruthers 2001). Therefore, this study will also include a brief account of
general community characteristics that may affect the development games. The ability of communities to
regulate growth is complicated by the difficulty in assessing and containing sprawl.

Sprawl

Academics struggle to define urban sprawl with various definitions such as low-density
development, separation of land uses, leapfrog development, strip retail development, automobile
dependent development, employment decentralization, and loss of open space (Lopez and Hynes 2003).
Not only is sprawl difficult to define, but it is also difficult to measure with researchers combining the use
of satellite imagery with demographic data and using multiple measurements (Lopez and Hynes 2003).

Communities have tried to deal with urban sprawl and growth with a variety of policies aimed at
promoting compact or infill development, such as limited sewer and road infrastructure development
(Diamond and Noonan 1996). Local governments also utilize a variety of tax regulations and incentives
to enhance growth or prevent urban sprawl. One complicated control for prevention of urban sprawl, and
the focus of this study, is zoning and planning.

Modern Zoning and Planning

Zoning and planning has change over time, but in 1992, the American Planning Association
contended that "although amended from time to time, the basic legal constructs found in state enabling
legislation have changed very little over the past 50 years. . . .As a result, the planning and growth
management mechanisms in force in most states in the 1990s are woefully out-of-step with the times.
(Diamond and Noonan 1996)." Perhaps this widespread frustration indicates existence of a power check
on the planning process balancing citizen, development, and planning interests. On the other hand, this
frustration may indicate that the land use regulatory process is ineffective. Local government units
frequently experience a problem of coordination, partially because of the complex linkages between
citizens, bureaucrats, commissions, and boards, as well as communication problems with neighboring
jurisdictions. Local governments supplement their zoning ordinances with subdivision regulations, growth management strategies, and regulation of floodplains, wetlands, and coastlines (Platt 1996), which further complicates the zoning and planning games. Next, I will map out the land use regulatory arena where complex games and strategic behavior employed through an institutional analysis.

INSTITUTIONAL ANALYSIS

The Institutional Analysis and Development (IAD) framework was developed to understand complex inter and intra-institutional activities. Under IAD, institution is defined as “the shared concepts used by humans in repetitive situations organized by rules, norms, and strategies (Ostrom 1999).” The IAD framework has been used in variety of situations including: irrigation system negotiations, forest association rulemaking, and international aid agencies. The framework enables researchers to investigate the hierarchies involved in rulemaking. The three tiers of decisionmaking in the IAD framework are operational, collective choice, and constitutional.

In order to utilize the IAD framework for land use regulation, I must identify the three levels of decisionmaking and the institutions involved at each level. From the perspective of local land use regulation, state legislation has enabled local governments to zone and plan. The local government unit must also pass a zoning ordinance in order to zone and plan at the local level. A local government unit’s passage of a zoning ordinance could be seen as a constitutional choice decision to regulate land use. The passage of this “rule” enables the local government to make decisions regarding land use. After the establishment of a plan commission and zoning board of appeals, the local government unit would also need to pass each comprehensive plan and amendments to the comprehensive plan. The plan commission as a whole would make operational decisions about the comprehensive plan, but the plan commission is comprised of members that vote to make collective choices about recommendations for the local government. The professional planners, which may be consultants or staff planners, make operational decisions regarding plan recommendations on a daily basis.

Action Arena
The action arena is where rules are made, enforced, and broken. The local planning action arena consists of public hearings, government meetings, as well as some behind-closed-doors bureaucratic planning meetings. The actors in the local land use arena compete for passage of comprehensive plans that capture their preferences, for examples standards and goals for aesthetics, public parks, public health, segregation of incompatible uses, and freedom to utilize private land. Some groups such as developers may be more active in the land use regulation arena, but it is difficult for any one group to control the policymaking arena because of the complex hierarchy (Figure 1).

{Insert Figure 1 Here}

The actors in the community may change over time such as increased residential or industrial growth, which causes changes in community preferences. Thus the action arena is dynamic across time with changing relationships amongst actors. In the next section, I will outline the main actors in the local land use regulation arena.

**Actors**

The actors in the action arena represent a diverse interests and positions with elected officials in the local government unit, the plan commission members, professional planners, zoning inspectors, board of zoning appeals, and citizens routinely involved with land use regulation policymaking. The state legislature and the judicial system support the local arena through state enabling legislation and judicial decisions on land use cases. These actors’ preferences and experiences may differ from place to place, but there are some general characteristics that will be discussed in the following sections.

**Local Government Unit**

The local government unit may be a township, town, village, city, or county depending on the enabling legislation of the state. The local government unit is made up of elected citizens that vote on zoning ordinances and plan amendments. The local government unit may also appoint members of the plan commission and board of zoning appeals. Depending on the community characteristics, the local
government unit may also hire a planning consultant or staff planner because of potential pressure from their constituents, or government officials own preferences for land regulation. Citizens are able to express their land use preferences through the electoral process, as well as through letters, phone calls, and public hearings. The government unit passes and amends the ordinances and plans, which the Plan Commission initially recommends. Frequently, neighboring jurisdictions form Area Plan Commissions, which coordinate planning. These area commissions may complement or supplant the work of the local Plan Commission.

**Plan Commission**

The Plan Commission members are appointed by the local government unit. These members are citizens of the community with varying experiences in land use planning. The plan commission makes recommendations for rezoning after a public hearing, but the elected government unit has the final authority to rezone the land in most jurisdictions (Fleischmann and Pierannunzi 1990). The composition of interests within the commission varies with the community type. Sometimes, there may be a disproportionate representation of developing or conservation interests. For example, the planning commission members may be a part of the established development community in urban areas because regular citizens have limited information about the complex regulations, as well as limited personal benefit from changes to regulations, whereas developers may sustain substantial financial gains through policy changes in urban areas. The planning commission is responsible for making recommendations to the local government unit regarding the comprehensive plan and any amendments to the plan.

Typically, citizen preferences reach the plan commission through public hearings and personal relationships with commission members, or concerns expressed indirectly through the local government unit and the electoral process (Figure 1). Since the planning commission is not directly accountable to the public, there may be coordination problems between the constituents and the plan commission recommendations. Some local governments have created a forum for additional meetings in order to facilitate communication with the citizenry (Department of Metropolitan Development and Division of Planning 1991). The plan commission frequently works with a number of other local government units.
and related commissions, such as an environmental commission or the parks and recreation board, which may further complicate the policymaking process.

{Insert Figure 1 Here}

**Professional Planners**

The plan commission, or the local government unit, often hires a planning consultant or staff planner(s) to direct their planning activities. Rudel indicates that planners may have extensive education about land use law and visionary planning goals, but not about the conditions in which various regulations should be applied (Rudel 1989). The planner may be idealistic and have environmental or social goals that are incompatible with the nature of the community. "We begin with the dismal fact that the planner, whether consultant of staff member, finds that he must spend more time working with zoning than with any other planning tool; zoning, the very device he has been taught in planning schools and professional conventions to regard as a dull, ineffective tool (Babcock 1966)." The professional planners have different education and possibly different personal preferences with respect to land use than the rest of the community. These preferences may have caused the planners to enter the planning profession, or were shaped during their acculturation into the planning community. Thus, there seems to be inherent conflict between the planning department employees and the elected and appointed officials.

This inherent conflict between the officials and the planners may be exacerbated in smaller communities where a consultant planner is employed because the community is not large enough to afford or warrant a full-time planner. The consultant planner most likely has other projects in other communities. Therefore, each community may receive a cookie-cutter plan established from previous projects. Consultant behavior may be restricted by a desire for good recommendations from the community, but the consultant’s income is not as closely related to the community’s satisfaction as a staff planner. The outside consultant may also have more limited knowledge of the local area than a staff
planner who probably lives in the area. Thus, it may be for the community to obtain a plan incorporating their preferences with a consulting planner.

Even with staff planners, there are coordination problems with the Plan Commission and the local government unit. The planners may receive directions from multiple political perspectives that are difficult to coordinate within a single plan. Babcock (1966) found in the 1960s that planners were disturbed by the political conflict between the plan commission members and the elected officials. This type of conflict between commission members and elected officials seems to be just as planners cite ability to foster compromise amongst stakeholders as a valuable skill in creation of comprehensive plans (Ellickson and Been 2000). There are multiple sources of coordination problems with the planners because citizens, plan commission members, and government officials frequently have limited technical and legal knowledge of planning. The limited official technical information required leads to the classic information asymmetries and managerial dilemmas (Miller 1990). Planners sometimes only interact with citizens through formal hearings (Figure 1). By the time citizens interact with the planners at the public hearings the decision-making is usually in the hands of the government unit and the plan commission. Thus, we may expect that it is difficult for a plan to match community preferences due to the lack of interaction between citizens and planners and the difficulty for officials to access the technical plans. These problems are further complicated by the limited and spotty enforcement of zoning ordinances (Ellickson and Been 2000).

**Zoning Inspectors**

Inspectors are required to enforce the comprehensive plan, but typically do not have the resources to effectively police the entire jurisdiction. Given the scarce resources inspections often come as a result of citizen complaints, so compliance success is often related to neighborly policing and issues of citizen concern. Ellickson and Been (2000) note that inspection is often left to building departments who may not have sufficient knowledge of zoning ordinances, which leads to a principal-agent problem between the building department inspectors and the planning department. This problem is exacerbated by limited planning department control over building inspectors’ work assignments and job performance rating.
Another potential issue with zoning inspection is that the comprehensive plan may have development goals that are not expressed in actual enforceable zoning ordinances due to the inability to create regulations with specific, legal language and standards that fully incorporate lofty, visionary goals of the comprehensive plans. Plans are only as good as the supporting ordinances, which in turn are only partially enforced by the inspectors.  

**Board of Zoning Appeals**

After zoning decisions or violations are given to citizens, they may appeal to the Board of Zoning Appeals (BZA), which is appointed by the local government. The BZA often deals with the hardship variance cases, where BZA must determine whether the citizen has suffered undue hardship because of the zoning. The BZA’s authority is fairly limited with respect to granting variances (Ellickson and Been 2000). The board also frequently handles grievances from the building permitting process, so BZA resources are stretched between the planning and building arenas (Ellickson and Been 2000). Like the planning commission, the BZA may or may not reflect the distribution of community preferences. Therefore, there may be coordination problems between the citizens of the community and the decisions of the board. Citizens mostly influence the board indirectly through elections of the government unit, or informally in conversation (Figure 1). If the landowner or citizens are unhappy with the BZA decision they may appeal to the justice system.  

**Citizens**

Citizens represent a diverse group in the development arena, including landowners and neighbors, and sometimes developers. Citizens may appeal decisions in the comprehensive plan first to the BZA and then to the justice system. Citizens may express their opinions at the public hearings for proposal and adoption of the comprehensive plan, amendments, and zoning appeals. Finally, citizens may express their views through the electoral process and informally by talking with the elected and appointed officials. Citizens frequently protest development at public rezoning hearings, but organization of an opposition force represents a collective action problem. Some citizens may not want the development, but will free ride on the efforts of their neighbors.
**Justice System**

The justice system handles appeals after board of zoning appeals decisions. The courts power to invalidate zoning regulations is mostly limited to a test to whether they are arbitrary and capricious (Babcock 1966). The court does investigate appeals on an individual basis, but the burden of proof is placed upon the citizen or landowner to prove that the comprehensive plan or amendment was unjust. Since the trials are conducted on the basis of expert testimony, they are often prohibitively expensive and are frequently avoided through the Board of Zoning appeals process. As will be described in the games section, the justice system is an essential component of the land use regulatory process. Without the justice system, there would be no higher power to aid in sanctioning noncomplying uses, as well as no outside referee for the highly political comprehensive planning process.

**State Legislatures and Congress**

State Legislatures and the U.S. Congress have enacted many land use regulations including local zoning enabling acts. The state enabling acts represented a constitutional rule change that allowed local governments to control some private land uses. Both Oregon and Vermont have enacted state-wide planning commissions that direct some local land use regulation. "The Oregon legislature has attempted to support agriculture by minimizing instability for commercial farms. It has done so in many ways, but the most important step was requiring all cities to adopt urban growth boundaries (UGBs) and prohibiting counties from approving urban-scale development outside them (Diamond and Noonan 1996)." State legislatures and Congress typically are involved only in enabling acts, except in Oregon and Vermont where the state legislatures are involved with specific land use legislation.

**Other Actors**

There are many other actors in the local land use regulation arena including: lawyers, local government bureaucracy, developers, and non-governmental organizations. Lawyers often serve as consultants for local government units, citizens, and landowners in zoning appeals, but lawyers are not always part of the process. Like planners, lawyers have specific technical knowledge, which leads to coordination and monitoring problems because citizens, local government officials, and landowners may
have limited legal knowledge. Finally, nongovernmental organizations are significant actors in local land use in many communities. These organizations may express preferences for limited urban sprawl or increased economic growth.

Community Types

The variation among state land use legislation enabling acts is echoed in their application to different community types within each state. These differences reflect the local community characteristics. Urban and rural residents have different expectations about economic growth and different preferences for land use. Hogs may be a nuisance in New York, but the rule in Iowa. A strip mall may signal a new economic awakening to rural residents, but exurbanites may view the mall as damaging their country view. In this section, the differences in land use regulation in various community types, city, suburbs, urban-rural fringe, and rural, will be discussed.

City

The city is often populated by a diverse community with a wide array of preferences. The connection between the citizen and the government officials may be weak. In comparison to smaller communities, few citizens know government officials personally leading to coordination problems between the constituency and officials. Even with a large scale urban bureaucracy and distant elected body, some citizens have pressed officials to pass interesting land use legislation, which that meets their unique needs. The Soho artists restricted entry to their neighborhood in 1971 by persuading “the New York City government to establish an Artists Certification Committee that would certify applicants as professional artists and then to make such a certification a zoning requirement for SoHo residency (Nelson 1980).” The Soho Artist Certification process is a unique variant of land use regulation, but often urban residents are frustrated and confused by the land use policy making process. Within city government, there is also a problem of coordination between city departments. The number of actors in the urban local land use arena is probably quite large, which may lead to elite actors, such as developers or wealthy commercial interests, controlling land use discussion. "In some cases, boom-and-bust examples abound within one metropolitan area, leading to conflicting or contradictory policies, given the
absence of local government coordination (Dowall 1988).” Dowall’s discussion illustrates the problem of consistent land use policy in urban areas, but this problem is also found in other community types.

**Suburbs**

In comparison to urban areas, the suburban land use debate is controlled by residential interests. Suburban residents often protect their quality of life and property values by establishing lot size restrictions. The Supreme Court ruling in *Ambler Realty v. Euclid* voiced the widespread belief that “that an apartment house in a low-density neighborhood was ‘a mere parasite, constructed in order to take advantage of open spaces and attractive surroundings created by the residential character of the district’ (Nelson 1980).” Suburban land use is often chiefly residential with some commercial use districts, particularly for service industries. In comparison to city residents, suburban residents are frequently more motivated and informed about local land use regulation (Rudel 1989; Ellickson and Been 2000). Citizens and landowners may be more involved in the action arena balancing the power of other elite groups, like developers. In a sense, the suburban homeowners are the elite group in the suburbs. They are often able to prevent the movement of poorer residents into the area through limitations of low-income housing, although the language of these comprehensive plans and zoning ordinances typically utilizes vague language to avoid discrimination suits like *NAACP v. Mt. Laurel* (Hughes and Vandoren 1990).

**Urban-Rural Fringe**

The urban-rural fringe is distinct from the suburbs because it is populated with exurbanite residents and rural natives, creating a unique conflict in the action arena. "For exurbanites, most of whom do not rely on land for their income, the countryside is first of all a park, a place valued largely for its amenities. . .Only the creation of publicly approved constraints on individual land users, usually in the form of zoning laws, can assure the preservation” of the park-like atmosphere (Rudel 1989).” The exurbanite residents often rely on neighboring urban or suburban communities for employment, so may not be sympathetic to some rural residents’ use of land for income. Typically, there is a gradual shift from rural to urban-rural as through the development of agricultural land into single-family subdivisions,
as the rural shifts to suburban there often is a shift toward more restrictive land-use controls (Rudel 1989). The urban-rural fringe often has an emerging developer interest and strong exurbanite interests.

Rural

In comparison, rural communities often experience limited economic development. Rural residents may not expect a small development project to lead to extensive development. "Because rural populations are relatively immobile, neighboring landowners have often known one another for long periods of time, and the nature of this relationship can affect the way a neighbor reacts to a proposal to develop the land (Rudel 1989).” In rural areas, neighbors are often able to work out land use concerns without interference from the government. Large development plans may actually lead to the initial zoning ordinances in rural communities. Thus, the rural government unit could be characterized as reactive, rather than proactive in land use regulation.

In rural communities, personal relations with government officials and neighbors are the norm. Rudel describes a typical situation where plan commissioners talk before a meeting and the chairperson, a banker, mentions a meeting with developers who applied for a loan during the past week and “that he considered them to be 'responsible' developers whose application should be approved. The pro-developer bias illustrated here appears common among land-use authorities in former farming communities (Rudel 1989).” Former farming, and other resource-dependent, communities may evaluate development as a positive move toward economic growth in a relatively depressed farming area.

GAMES

Most communities feature competing interests such as farmers and exurbanites, or low-income apartment developers and homeowners. These competing interests create several games in the land use regulation arena. One general type of game is the social dilemma where participants (citizens) need to contribute towards a public good. In the land use regulatory arena, there are several social dilemmas such as creation of greenspace through the regulation of private property. Citizens benefit from the public good, greenspace, but individual property owners bear the burden for the public good. Thus policymakers need to strike a balance between the maintenance of greenspace or the promotion of economic
development and the citizen’s interests. One type of social dilemma that is common in policymaking is the collective action problem (Olson 1965). Several common games will be outlined below that are general social dilemmas. There is also discussion of a contracting game that is one strategy to cope with the uncertain zoning approval process.

**Creation of a Comprehensive Plan**

The process of creating a comprehensive plan involves many different, competing stakeholders, including the plan commission, professional planners, citizens, and auxiliary committees. As can be seen in Figure 1, a basic map of the stakeholders is already quite complicated. The citizens represent a diverse group including the landowners, developers, and the neighbors. They indirectly influence the creation of the plan through public hearings, but do not have decisionmaking authority except through their elected officials. Likewise, the plan commission members and planners can make recommendations, but the final vote is usually with the local government. One can imagine the additional complexity in comprehensive planning once historic preservation, parks and recreation, utilities, environmental, and other committees are added.

In construction of the comprehensive plan, sometimes the plan commission has a specific proposed development in mind. In many small, rural jurisdictions comprehensive planning arises in response to large new developments (Rudel 1989). Rudel (1989) recognizes that increased development may lead to land use regulation, but only indirectly links developers’ influence to local land use decisions. In other areas, there may be sweeping changes to a plan, when a large development is proposed in order to prevent the intrusion. These sorts of planning amendments are often the most controversial and litigious, as in many jurisdictions they are illegal because they are considered arbitrary and capricious.

In Mount Laurel, New Jersey, the NAACP brought a suit against the township of Mount Laurel alleging discriminatory land use regulatory practices, which were keeping low income and minorities out (Hughes and Vandoren 1990). The *NAACP v. Mount Laurel* case illustrates the opportunity of nonlandowners to voice their opinion about the activities of the government through the judicial system.
The conflict between homeowners and potential apartment or condominium dwellers and developers is frequent in many municipalities.

The comprehensive plan may include a variety of supplementary documents and tools. In Bloomington, Ind. there is a Growth Plan, which focuses on maintaining greenspace, coordinating infrastructure development, and reducing urban sprawl (City of Bloomington Planning Department 2002). The Growth Plan also includes some historic preservation elements, such as architecture guidelines for historic buildings, which lead to heated debate (Johnson 2001). Recently, one Bloomington, Ind. landowner tore down several older homes that were scheduled for historic listing. As might be expected, landowners may try to preemptively act by destroying a building or changing a land use before the regulation can affect their use rights. Overall, there is a lot of strategic action involved in plan construction, as the plan will alter affected landowner’s property values and rights.

**Enforcement of a Plan**

A comprehensive plan and associated regulations are only as good as the monitoring and sanctioning associated with it. If residents do not witness credible land use policing, we may expect that there will be widespread noncompliance. Many jurisdictions do not have the resources to effectively monitoring land use regulations violations. Throughout the country, governments rely on citizen complaints to enforce the zoning ordinances (Ellickson and Been 2000). Therefore, land use regulatory enforcement probably will be concentrated in the most visible types of violations. The problem with citizen enforcement is that it only works if citizens are willing to take the time to generally be aware of legal uses under the zoning ordinances, to watch their fellow citizens’ use, and report the offense. Thus, many citizens are willing to free-ride on others policing, so there is the typical collective action problem associated with citizen lead enforcement. Figure 2 illustrates the informal connection between landowners and inspectors.

{Insert Figure 2 here}

As mentioned earlier the *de jure* ordinances may or may not effectively advance the goals of comprehensive plan due to the “legalese” used in ordinance construction. The difference between the
plan goals and the actual regulatory goals is one potential source of the ineffectiveness of land use regulation. Irregardless of whether the ordinances reflect the plan, the basic ordinances frequently are not upheld because of the lack of monitoring resources.

Another enforcement problem is that inspectors may be building inspectors who are asked to enforce land use regulation ordinances without sufficient training. Similarly, these building inspectors’ job security is tied to their enforcement of the building code, so we may expect that there is limited incentive for the inspectors to enforce the zoning codes, another principal-agent problem. Since, there are repeated interactions between the planning department, building department, and inspectors, the principal-agent problem may be overcome as reputations are established and trust builds between the two departments (Ensminger 2001). Then planning department and plan commission may increase their ability to direct the inspectors’ actions by establishing good relationships with the building department.

Professional zoning inspectors under the direction of the planning department may know and understand the zoning laws, but have their own priorities with respect to enforcement (Figure 2). In a conversation with a zoning inspector in Monroe County, Ind. he indicated that each inspector has a priority, such as run-off control or elimination of junk cars on front lawns. These priorities focus the inspectors’ activities, but not all plan components and zoning ordinances may be a priority. Therefore, if non-conforming landowners recognize that no one cares about compliance with a particular ordinance, the owner probably will continue the illegal use with limited fear of getting caught or fined.

On the other hand, in some jurisdictions there have been instances where noncompliance has lead to costly fines or injunctions, where the landowner was required to tear down a building or to remodel it to fit the zoning ordinance. In one case in New York, an apartment developer was required to remove twelve stories of thirty-one story complex to conform to the ordinance, as an expense of $2 million (Ellickson and Been 2000). As mentioned earlier, variances are sometimes granted for landowners that experience a hardship due to the regulation, although frequently self-created hardships are exempt qualify for a variance (Ellickson and Been 2000). In order for land use regulation to be effective the de jure rules
must match the *de facto*. There must be a credible threat of enforcement of the rules in order for the land use regulation to be effective.

*Property Sale for Development*

The first game in the development process is the sale of land to the developer. Often the land is from a farmer, especially along the urban-rural fringe. The landowner may evaluate the feasibility of continued production on the land, prior to sale. The landowner may or may not be aware of the technicalities of the development process, or the development potential of his land. After the developer approaches the landowner about developing the land, the landowner’s awareness of the investment quality of the land has increased and he may begin a development project on his own. Frequently, obtaining permits for development is a complex and risky process, so the landowner will enter into a contract game with the developer. Of course, there are information asymmetries between each party. The landowner may be more aware of the community characteristics, and whether there will be opposition to the development. On the other side, the developer probably has more extensive knowledge about the legal and business aspects of development.

One common type of sale arising from this contracting game is the conditional sale, where the landowner receives a deposit with the rest due upon rezoning approval, or building permit approval (Ellickson and Been 2000). The landowner receives a higher payment because he shares the risk of approval with the developer. It is easy to see why such a contract would evolve out of this game, as there are information asymmetries amongst the parties, and the permitting process is typically risky. Another interesting aspect about the conditional contract is that it creates an alliance between the developer and landowner, which may help in the permitting process. If the landowner has been a longtime resident his fellow citizenry on the plan commission and the local government unit may trust his judgment and proposal more than if a developer came in by himself with no ties to the community.

*Opposition Coordination*

In the process to rezone the property, the developer needs to notify the planning department that she is proposing a rezone. Then the public is notified of the public hearing for the rezoning. Then there
is the collective action game amongst the neighboring landowners. The landowners, and possibly other environmental or residential advocacy groups, may organize to protest the rezone.

Babcock and Siemon describe a case in Palm Beach, Florida, where wealthy residents sought to prevent multi-family condominium development. This particular case was interesting as many of the opponents were new Palm Beach apartment and condominium residents whose buildings had “slipped in before the Town could change rules (Babcock and Siemon 1985).” Frequently, the opposition to development is a diverse coalition of homeowners, environmentalists, and competitors (Ellickson and Been 2000).

In many communities, environmental concerns are a rallying point for opposition coalition formation. In Bloomington, Indiana, environmental groups tried to prevent the commercial development of an apartment development in a karst area and were able to gain support from nearby landowners (Hinnefeld 2002). Similarly in Sea Ranch, Calif., Babcock and Siemon (1985) describe a heated controversy over environmental protection of the coastline and a group of landowners with clearance for construction. There are many different motives for the anti-development contingency in rezoning cases, although frequently the opposition is made up of residents seeking to maintain their property value.

Similar to the collective action problem with citizen enforcement of zoning, opposition formation and protest of rezoning proposals creates a free-riding problem. Each individual opposing citizen would be happiest with the defeat of the proposal without having to attend meetings or expend time or effort in the process.

**Rezoning strategy**

The rezoning game is a complicated, risky multi-step game. The proposal comes before the governing body with the plan commission’s recommendation. The developer and neighbors are allowed to voice their viewpoints at the plan commission and government unit hearings. The game is quite complicated with the governing officials balancing political considerations with the merits of the individual rezoning proposal. The officials need to think about the public’s reaction to their decision, especially if it is a high-profile rezone and they hope to retain their seat at the next election. The officials
may also have some interest in preventing the developer from creating a new apartment complex or commercial development, especially if the official is a competitor. Many of the plan commission members have outside commercial or political connections to land use policy, and frequently are real estate agents, land use lawyers, environmental activists, and developers. Some of the members may have a decidedly pro-growth stance considering their occupations. Other members may need to make recommendations about a competitor’s or client’s proposal. Recently, in Bloomington, Ind. a county commissioner, a lawyer, had to make a recommendation about a former client’s proposal for a rural single-family home development (Van der Dussen 2003). The citizenry that make up the vocal opposition to developments often include neighbors, environmental NGOs, and competitors (Ellickson and Been 2000). Therefore, we can see that there are several different types of games occurring simultaneously within the rezoning process with actors making strategic moves that take into account the community’s well-being, the comprehensive plan, and more selfish, personal economic motives.

One study found that the “best predictor of a local governing body’s decision in a rezoning case is the recommendation of the appointed planning commission (Fleischmann and Pierannunzi 1990).” Interestingly, Fleischmann and Pierannunzi found that the plan commission’s denial recommendations for rezoning proposals were more consistently ratified by the local government boards in Illinois than commission’s recommendations for approval (1990). Perhaps, this illustrates that during the rezoning approval process the local government body faces more intense political pressure than the plan commission members and professional planners who are not elected, thus possibly creating a higher threshold for plan approval. Babcock found that the professional planners, plan commission members, and government officials often had very different opinions with respect to development approval (1965). In a famous case in Tuxedo, New York, Babcock and Siemon (1985) spoke with an official who stated he was not going to vote for rezoning approval for a multi-family development because of political pressure, even though he conceded that it may be the “right” thing for the community’s economic development.

In some jurisdictions the approval process is so risky that developers have created a niche market for rezoned land. The developers buy land zoned for less profitable use and take it through the approval
process to rezone it multi-family or single-family residential, for example. Then they resell the property to a builder at a premium. These developers establish strong political connections to plan commission members and elected officials in order to reduce the rezoning risk, and in some markets they receive substantial profits selling rezoned land (Ellickson and Been 2000). These market incentives lead to problems of collusion and suspicion with regard to campaign financing. In Monroe County, Ind. there were concerns about conflict of interest when a decisive rezoning vote was cast by a county commissioner who was the former lawyer for the development proposal (Van der Dussen 2003). The developers’ ability to establish a good relationship with the Plan Commission and local officials may directly correlate into rezoning success. Likewise, if a developer violates zoning ordinances officials may reject rezoning proposals in the future due to liability concerns.

**Litigation**

At all points in the planning process, both sides need to make a credible threat of litigation. Without this crux either side will not have the bargaining power to make the hard choices during the development and enforcement process. In Babcock and Siemon (1985), there is a description of many notable court cases where the battles were very heated probably because of the high court expense and long periods of time involved with litigation. These court cases represent a wide range issues, ranging from discriminatory land use regulation to environmental protection through regulation, but all illustrate similar final step in the land use policy arena. If any of the games fail, the players end up in court, if both are willing to make the sacrifices. After the court battle, judges may send the players back to the local authority and to the bargaining table, thus they reenter some of the games described above. The threat of litigation is essential in order to force the actors to “hold up their end of the bargain” whether in the compliance with zoning ordinances or in the “legal” creation of the comprehensive plan. Therefore, litigation serves as an essential and often overlooked part of the zoning and planning arena, which must be utilized in order to effectively implement planning policies like control of urban sprawl.

**DISCUSSION AND FUTURE PLANS**
The games discussed in the previous section represent a preliminary effort to sketch out the zoning and planning arena. This study serves as a base to generally understand the strategic behavior amongst actors in the development arena. As can be seen in the previous discussion, it is vital to analyze the general games associated with development in order to understand the inherent tension among players. There have been several important works evaluating of strategic behavior amongst actors in the development arena, including the groundbreaking Babcock’s *The Zoning Game*, but few people have tried to sketch out the key interrelationships in the process. This preliminary institutional analysis will focus future research on specific strategic interactions, in order to better understand the regulatory process.

These strategic land use regulatory games may exacerbate the problem of urban sprawl because it is difficult or impossible to create and enforce comprehensive policies that address growth. On the other hand the inherent tension between the actors increases the difficulty for any one actor to control the entire planning process. Thus sprawl may also be slowed in some communities by the same policymaking barriers.

Zoning and planning games are complicated multi-level games that cannot be solved easily. Future efforts to control sprawl may try to monopolize on the barriers to rezone property, or may try to increase the ties between zoning inspection and planning departments. Essentially, the effectiveness of land use regulation to handle contemporary issues such as urban redevelopment and urban sprawl requires monitoring and sanctioning. Land use regulation fights cover substantial ground in American policy from issues of race and class, economic development, and environmental protection. In order to effectively curb urban sprawl policymakers need to navigate this complicated regulatory arena, a battlefield littered with big winners and losers created by complicated strategic games.
Bibliography


Department of Metropolitan Development, and Division of Planning. 1991. Marion County Comprehensive Plan. Indianapolis, Ind.


Figure 1. Overview of Land Use Regulatory Arena.

Figure 2. Comprehensive Plan Enforcement
Endnotes


ii The plan language may also serve to signal a change in preferences, for example an increased environmental concern, which may deter development or promote growth. The plan language also may raise awareness within the community about the loss of greenspace (City of Bloomington Planning Department 2002) or the need for industrial development.

iii This occurred in Tuxedo, New York, which declared a building moratorium in order to review existing zoning ordinances when faced with a large development proposal (Babcock and Siemon 1985)

iv Karst is a type of broken limestone terrain characterized by caves and underground streams that is prone to sinkholes Isaacs, Alan, John Daintith, and Elizabeth Martin (eds.) 1999. Oxford Dictionary of Science. New York: Oxford University Press.

v There may be a few citizens that enjoy the fight or have political ambitions who may actually get utility out of the zoning game.