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GUEST COMMENT

Growth management seen as "silent encroachment"

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The Growth Management Act (GMA) relies upon legislative findings that "uncoordinated and unplanned growth pose...a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents." Although "urban growth" is defined as "growth which makes intensive use of land and urban services," "growth" itself is not defined.

It may well be argued, contrary to GMA, that Clark County has no problem with growth. Projected population increases are manageable, and economic growth can be revived if provision is made to encourage industry. It may be possible even to provide affordable housing if sufficient land inventory is maintained and development fees are minimized.

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Actually, growth management is concerned more with land use and public facilities than the issues of growth. In summary, GMA requires counties and cities to delineate a boundary between urban and rural land uses, and to prevent the expansion of urban uses outside the boundary. Proponents assert that the boundary will minimize infrastructure costs, preserve the natural environment, and prevent "urban sprawl" (a term which remains undefined throughout the Act.)

Beyond the conceptual level, however, GMA is far more than generalized policies; it is a mechanism to shift the cost of public benefits to private landowners. Regardless of where the growth boundary is finally drawn, owners of land located outside the boundary will be severely restricted in the use of their property. These lands will be preserved in a natural state, will have little impact upon public facilities, and will not contribute to "urban sprawl", because the urban growth boundary will preclude development.

Clearly, growth management will compromise the rights of landowners outside the boundary. Even if they had no immediate plans for subdivision or sale, it would be hard to imagine the landowner who failed to contemplate all potential uses at the time of initial purchase. The typical landowner will begin planning immediately to realize the more feasible uses. Those who claim that growth management does not defeat private property rights have failed to realize that every investment, even a personal residence or farm, anticipates returns from development and sale.

"But wait," cries the regulator, "we never promised a financial return. Other investments are subject to the winds of fortune; shifts in the stock market often "wipe out" investors."

Yet, a fundamental difference remains; "the winds of fortune" are not driven by edicts of government. The regulator could not argue for the constitutionality of growth management without the fiction that investment-backed expectations are limited to uses which existed on the land at the time of purchase.

Fortunately for landowners, federal and state constitutions prohibit certain actions on the part of governing agencies. In comment to the Draft Growth Management Comprehensive Plan and the Draft Supplemental Environmental Impact Statement, I have argued that the Growth Management Act will result in violations of procedural and substantive due process and "takings" of private property without just compensation.

Basically these arguments address the allocation of societal costs and benefits. They do not address environmental issues because GMA is not about the environment. Vague "findings" in the Act regarding the preference for governmental control over free-market environmentalism are never explained. In point of fact, however, environmental decisions are contained in choices we make every day. Higher costs of environmental mitigation are justified because developments in preferential locations command a higher price.

Yet the regulator insists that human greed will enter the equation, so there must be limits upon the scope of market activity. For purposes of discussion, we concede this point because limits upon market activity already exist in the division between public and private ownership. This division reflects the current allocation of societal costs based upon land patents issued under governmental authority to private individuals.

Still the regulator dissents, "This allocation is not the 'environmentally preferred alternative,' and must be revised for the 'public good.' At stake are environmental resources, public services, and our 'high quality of life'."

Again, this point may be assumed for the sake of discussion. What may not be assumed, however, is that landowners are willing to bear the costs of societal benefits. Shifting the allocation of societal costs from public to private lands must be compensated.

Yet local implementation of growth management relies upon the assumption that the cost of societal benefits will be allocated to private lands located outside the urban growth boundary. Precluding the development of parcels lying outside the boundary for 20 years, 5 years or even 1 year has a time-value expense which should not be born by private landowners. GMA is a clear example of James Madison's admonition that "there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations."

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