
Stopping Sprawl in Lancaster County, Pennsylvania: Making the Case for Mandatory Urban Growth Boundaries

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I. INTRODUCTION

Effective control of low-density, scattered development in Lancaster County, Pennsylvania requires the state legislature to delegate real, legal power to a countywide land use planning body, so that the measures the entity proposes have the force of law. In fast-growing areas such as Lancaster County, an urban growth boundary or border around specific land areas beyond which future land development is strictly controlled, when combined with other zoning measures, can be part of an effective growth management strategy. Urban growth boundaries (UGBs) have worked other places, such as the Portland, Oregon metropolitan region,¹ and can work in Lancaster County, too. Lancaster County has in place the resources to control sprawl, except for one major deficiency. Specifically, the County has a strong planning commission, a longstanding and widespread practice of municipal cooperation, and a successful farmland protection program. The Lancaster County Planning Commission (LCPC) has the authority under

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¹ “Under Oregon law, each city or metropolitan area in the state has an urban growth boundary. The boundary controls urban expansion onto farm and forest lands.” Metro, Urban Growth Boundary Definition and Facts, Land Use Planning (n.d.) [hereinafter UGB Definition and Facts], <http://www.metro-region.org/article.cfm?articleID=277>.

Pennsylvania's Municipalities Planning Code (MPC) to implement a voluntary urban growth boundary;² however, as long as the UGB is effectively advisory, and not mandatory, the countervailing pro-development forces are likely to obtain the upper-hand. Thus, the Pennsylvania legislature needs to delegate real power to an LCPC-like entity, so that the measures the body proposes have the effect of law.

This comment investigates the Lancaster County UGB, one of the land protection mechanisms implemented to control fast urban and suburban growth. This comment does not focus on the success of the much-touted farmland protection in Lancaster County, which was developed in 1980³ and is well-documented.⁴ In fact, the imminent urbanization happening in Lancaster County and the use of a UGB may prove challenging to some of the ideals of the farmland protection program.⁵

Part II of this comment presents background information including the definition of urban growth boundaries, a summary of Pennsylvania state planning law, and a description of the unique characteristics of Lancaster County, Pennsylvania. This comment gives a brief characterization of the County because exploration of urban growth boundaries involves place-specific inquiries.⁶ Any evaluation of a land use regulation has an element of specificity tied to its region's demographics, economy, and topography; therefore, solely comparing measures of affordable housing and preserved open space acreage of Lancaster County to other places with growth boundaries⁷ does not adequately indicate "success" or "failure" without accounting for each region's distinctiveness.

Part III is a discussion of the reasons Lancaster County is ready for mandatory, countywide planning. I describe the current role of the County's competent planning commission, venerable history of municipal cooperation throughout the County, and discuss parts of the lauded farmland protection program that help complete urban growth boundary efforts.

Part IV analyzes various impediments to countywide planning such as politics, consumer preferences and public perceptions, which can particularly affect housing

² Pennsylvania Municipalities Planning Code Act (MPC) of 1968, 53 P.S. § 10105 (2004).

³ Pennsylvania Farmland and Forest Land Assessment Act of 1974 (Clean and Green Act), PA. STAT. ANN., tit. 72, § 5490.1 (2004); "Clean and Green" is actually ACT 319. Clean and Green is a state program designed to preserve agricultural and forest land by providing a real estate tax benefit to owners of such land by taxing it on the basis of its "use value" rather than its market value. This Act preferentially assesses the land if the owner agrees to maintain it solely for agricultural use or reserve use. Pennsylvania Department of Agriculture, Clean & Green, <http://www.agriculture.state.pa.us/agriculture/cwp/view.asp?a=3&q=129083> (last visited Oct. 1, 2005); see discussion *infra* pp. 179-81. (role of Agricultural Preserve Board explained).

⁴ Press Release, American Farmland Trust, Pennsylvania Wins National Farmland Protection Award (Feb. 5, 2001), available at <http://www.farmland.org/news/020501.htm> (American Farmland Trust honored Pennsylvania in March 2001 for preserving more farms than any other state in the nation.).

⁵ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, POLICY DEVELOPMENT & RESEARCH, ANALYSIS OF THE LANCASTER, PA. HOUSING MARKET AS OF SEPT. 1, 2003 4 (n.d.), available at <http://www.huduser.org/Publications/PDF/LancasterPAComp.pdf> (from 1990 to 2000 the population in Lancaster County increased 11.3% to 470,658); see discussion *infra* pp. 146-48 (discussing real estate pressures on land cost).

⁶ Lancaster County is comprised of sixty municipalities. COMMONWEALTH OF PENNSYLVANIA. PA DEPT. OF GEN. SERV., THE PENNSYLVANIA MANUAL VOLUME 116, at 6-10 (2003).

⁷ *E.g.*, Portland, Oregon and Lexington, Kentucky

and farmland protection. The LCPC looked to past examples of UGBs when creating its Growth Management Plan in 1993, including two of the most established examples, Oregon and Kentucky.⁸ Using the Oregon and Kentucky cases, the analysis pays particular attention to the current strategy's Achilles' heel⁹—the fact that municipalities' compliance with urban growth boundaries is voluntary in Pennsylvania.

Part V contains a proposal to reach growth management "success" in Lancaster County. First, the discussion focuses on how the County's guidelines interplay with state and municipal laws,¹⁰ and the government structure's inherent problems at the state and municipal levels that result in legal barriers for the county-level LCPC.¹¹ The comment concludes that LCPC, or a similar county-level land use planning entity, should be given jurisdiction (legal power, not merely supervisory or consultancy power) over all land use matters of countywide concern. A new entity can combine the existing success of LCPC's efforts to help localities and the public understand growth issues, with legal mandates to enforce localities' county-scale, land use responsibilities.

This inquiry about UGBs in Lancaster County is timely. LCPC is in the process of updating the Growth Management Plan (GMP),¹² an element of the Lancaster County Comprehensive Plan that contains the County's UGB guidelines.¹³ LCPC appointed a sixty-member Task Force in December 2003 to help with the revisions.¹⁴

⁸ Interview with Mary L. Frey, AICP, Senior Planner, Lancaster County Planning Commission, in Lancaster, Pa. (Nov. 5, 2004) (coordinates the Smart Growth Initiative, Growth Tracking Reports, Growth Management Plan update). LCPC also studied Colorado, Florida and New Jersey when creating its Growth Management Plan. *Id.*

⁹ A mythical Greek hero of the Iliad, when he was a baby his mother tried to make him immortal by bathing him in a magical river but the heel by which she held him remained vulnerable—his "Achilles' heel." NEW WEBSTER'S DICTIONARY AND THESAURUS OF THE ENGLISH LANGUAGE 6 (1993).

¹⁰ *See* Construction Indus. Ass'n v. City of Petaluma, 522 F.2d 897, 908-09 (9th Cir. 1975), *cert. denied*, 424 U.S. 934 (1976) (the first example of a court upholding a "greenbelt" around the city to serve as a boundary for urban expansion, a.k.a. growth boundary).

¹¹ A legal cause of sprawl is "reliance upon certain government models and public policies invented to address the problems of a different era. As lawyers, we are trained to work within the system, but the system itself is broken." Lee R. Epstein, *Where Yards Are Wide: Have Land Use Planning and Law Gone Astray?*, 21 WM. & MARY ENVTL. L. & POL'Y REV. 345, 362-63 (1997).

¹² LCPC is updating the Growth Management Plan now because the original was created in 1993 and revised slightly in 1997 to include UGBs adopted by municipalities in the Plan's first five years. LANCASTER COUNTY PLANNING COMMISSION (LCPC), LANCASTER COUNTY, PA GROWTH MANAGEMENT ELEMENT UPDATE, Oct. 1, 2004 [hereinafter ELEMENT UPDATE], http://www.co.lancaster.pa.us/planning/lib/planning/long_range/growth_management/GMUTFScope_of_Work.pdf; Pennsylvania Municipalities Planning Code Act (MPC) of 1968 § 302(d), 53 P.S. § 10302(d) (2003) (MPC has been updated since 1968 and requires growth plans to be updated "at least every ten years."); *see* discussion *infra* pp. 149-52 (details about MPC, PA and voluntary growth boundaries).

¹³ Complete list of elements in the County's Comprehensive Plan: Policy Plan, Growth Management Plan, Functional Plans (Housing, Tourism, Water Resources, Regional Open Space, Transportation, and Historic Preservation). LANCASTER COUNTY PLANNING COMMISSION, POLICY PLAN OF THE LANCASTER COUNTY COMPREHENSIVE PLAN (1999), *available at* <http://www.co.lancaster.pa.us/planning/lib/planning/pdfs/revisions.pdf>.

¹⁴ The Task Force is comprised of Lancaster County stakeholder groups and regional representatives. It includes representatives of local government, business, industry, agriculture, banking, education, preservation, environmental interests, community-based organizations, social services, youth, health care, and utilities. The chief responsibility of the Task Force is to develop an Update to the Growth

The update will guide growth in Lancaster County through the year 2030.¹⁵

II. BACKGROUND

A. Urban Growth Boundaries Defined

Urban growth boundaries (UGBs) are basically lines “drawn beyond which development will be prohibited, thus directing growth pressure inward instead of sprawling out.”¹⁶ UGBs, however, are not merely arbitrary lines separating cities from the countryside. They are “a tool that can be used to build on and implement a comprehensive plan.”¹⁷ A UGB is a long-term boundary used as a pro-active growth management tool that seeks to contain, control, direct or phase growth to promote more compact, contiguous urban development.¹⁸ The boundaries aim to protect farmlands, watersheds, wildlife habitats and other “resource lands” from sprawl¹⁹ by *controlling* limited urban expansion onto farm and forest lands.²⁰ UGBs stabilize agricultural zoning designations and guard against “leapfrog” development²¹ that

Management element by reviewing data, trends, and issues; evaluating current and projected growth patterns; reviewing existing Growth Areas; analyzing urban and rural issues; and generating recommendations which balance growth consistent with smart growth principles and the preservation of farmland and open space. The process will continue through June 2005 and the revision should be adopted in June, as well. ELEMENT UPDATE, *supra* note 12.

¹⁵ Compare to Oregon’s 2040 Growth Concept, the Portland region’s growth management policy, which defines development in the metropolitan region through the year 2040 by guiding the management of the UGB. UGB Definition and Facts, *supra* note 1.

¹⁶ Mark W. Cordes, *Agricultural Zoning: Impacts and Future Directions*, 22 N. ILL. U. L. REV. 419, 424 (2002).

¹⁷ Governor’s Center for Local Government Services, *Planning for Infrastructure and Growth*, in LAND USE IN PENNSYLVANIA: PRACTICES AND TOOLS, AN INVENTORY 61-62 (2000), available at http://www.landuseimpa.com/docs/Land_Use_in_PA-Inventory/Land_Use_in_PA-Inventory-InfraGrowth.pdf.

¹⁸ E. KELLY, AMERICAN PLANNING ASSOC., PLANNING ADVISORY SERVICE REPORT NO. 447, PLANNING, GROWTH, AND PUBLIC FACILITIES: A PRIMER FOR LOCAL OFFICIALS 16 (1993), reprinted in DANIEL R. MANDELKER & JOHN M. PAYNE, PLANNING AND CONTROL OF LAND DEVELOPMENT: CASES AND MATERIALS, at 637-38 (2001) (providing brief descriptions of types of growth management programs); Growth Boundaries have a number of purported advantages: assurances that adequate infrastructure will be available where growth is targeted; encouragement of reinvestment in developed areas; taxes that support infrastructure construction are spent more efficiently by concentrating the spending in smaller areas; more predictable development process by delineating where development will and will not be provided with public infrastructure; relief of development pressure on farmland; promotion of long-term strategic thinking about a community’s future. 10,000 Friends of Pennsylvania, Frequently Asked Questions: Setting the Record Straight on Growth Boundaries [hereinafter Setting the Record Straight], www.10000friends.org/web_pages/newfaqs/FAQs_growth_boundaries.htm (last visited Jan. 6, 2005).

¹⁹ Sprawl is “[a] term of art employed to describe the uncontrolled development of land situated on the outskirts of America’s major cities. It refers to an unfettered form of urban expansion which is characterized by the initial nonuniform improvement of isolated and scattered parcels of land located on the fringes of suburbia, followed by the gradual urbanization of the intervening, undeveloped areas.” DAVID L. CALLIES ET AL. CASES AND MATERIALS ON LAND USE 679 (4th ed. 2004).

²⁰ KELLY, *supra* note 18.

²¹ “Leapfrog development” is rapid, haphazard development in outlying, non-regulated areas to escape (or at least out-pace) impending land regulation. Developers build in metropolitan fringe jurisdictions that have fewer barriers and lower development costs. See Justin Phillips & Eban Goodstein, *Growth Management and Housing Prices: The Case of Portland, Oregon*, 18 CONTEMPORARY ECONOMIC POLICY 334, 336 (2000); ERIC S. BELSKY & MATTHEW LAMBERT, WHERE WILL THEY LIVE:

leads to sprawl.²²

Within a UGB, a “growth area” is a geographic delineation where development at higher densities is encouraged and infrastructure to serve such development is provided for or planned.²³ Land inside the UGB supports infrastructure and services such as roads, water and sewer systems, parks, schools and fire and police protection.²⁴ Because of growth areas’ accommodation of density and availability of infrastructure, UGBs motivate the development and re-development of land and buildings in the urban core,²⁵ which keep “downtowns” vibrant.²⁶ UGBs enable businesses and local governments to rely on the placement of future infrastructure (e.g. roads and sewers), to help dictate future development and its associated impacts.²⁷ This reliance leads to efficiency for businesses and local governments because “instead of building roads further and further out as happens in urban ‘sprawl,’ money can be spent to make existing roads, transit service and other services more efficient.”²⁸ In short, businesses and governments are not forced to catch up with development because development and infrastructure are planned concurrently.

B. Glimpse of Lancaster County, Pennsylvania

In 1988, the National Trust for Historic Preservation (“Trust”) named the entire area of Lancaster County (950 square miles) a “most endangered place.”²⁹ The County’s rolling green hills are dotted with 18th-century German settlements, Civil War-era downtowns, historic inns, churches and old barns. The designation allows the Trust to justify the importance of staving off suburban sprawl, the phenomenon that threatens the County’s “built space” and the community’s identity.³⁰ Once the idyllic home to Amish farmers living the simplistic lifestyle of their ancestors, now Lancaster County is characterized by strip malls, housing developments and big box retail stores all built on land formerly used for agriculture.³¹ Lancaster County has lost 72,000 acres of farmland to sprawling residential and commercial development since 1960.³²

METROPOLITAN DIMENSIONS OF AFFORDABLE HOUSING PROBLEMS, (Joint Center for Housing Studies-Harvard University, Sept. 2001), *available at* http://www.jchs.harvard.edu/publications/communitydevelopment/belskylambert_w01-9.pdf.

²² Cordes, *supra* note 16, at 455.

²³ Governor’s Center for Local Government Services, *supra* note 17.

²⁴ UGB Definition and Facts, *supra* note 1.

²⁵ Portland has seen high rates of both infill development and redevelopment. Phillips & Goodstein, *supra* note 21; *see* discussion *infra* pp. 151, 155 (UGBs in Oregon).

²⁶ UGB Definition and Facts, *supra* note 1. The term “downtowns” in this case means existing, higher-density built areas surrounded by less dense areas, not necessarily “the downtown” of an existing city.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Christopher Swope, *The Politics of Preservation*, GOVERNING MAGAZINE, Mar. 2002, *available at* http://www.preservationalliance.com/resources_PoliticsOf.php.

³⁰ *Id.*

³¹ *Id.*; ELEMENT UPDATE, *supra* note 12.

³² U.S. Environmental Protection Agency, EPA Green Communities—Where are we going?, Case study of Lancaster County, Pennsylvania, <http://www.epa.gov/greenkit/2case.htm> (last visited Oct. 10, 2004).

Lancaster County is an agricultural production region and a tourist destination related to the Pennsylvania Dutch Old Order Amish and Mennonite communities. The Mill Creek Valley, an area in the northeastern part of the County, has special soil that attracted the original settlers.³³ The Old Order Amish and Mennonites have been farming this ground for almost three-hundred years.³⁴ The area's warm temperatures, long growing season and substantial rainfall make this area the most productive non-irrigated farming ground in the United States.³⁵ Lancaster County is also one of the wealthiest farming communities in the country.³⁶ The Old Order's unique way of life attracts about eight million tourists spending \$2.2 billion annually.³⁷

The County has made an effort to sustain and even increase tourism, which marks a shift in the landscape of the area.³⁸ The shift is particularly evident in some new

³³ The area borders both Berks County and Chester County near West Earl and (northern) Earl Townships, East Earl and Caernarvon Townships, Salisbury Township, and Leacock and (southern) Upper Leacock Townships. The full name is the "Eastern Mill Creek Valley Rural Historic District." LANCASTER COUNTY PLANNING COMMISSION, PA 23 CORRIDOR STUDY (2001), *available at* <http://www.co.lancaster.pa.us/planning/cwp/view.asp?a=478&Q=388447#1.%20STUDY%20INTRODUCTION>; Lancaster Farmland Trust, What's New in the News-Statement of Position Regarding Route 23 (Sept. 11, 2003) [hereinafter What's New], <http://www.savelancasterfarms.org/savelanc/cwp/view.asp?a=3&q=570958> (Mill Creek Valley includes: East Lampeter, Upper Leacock, Leacock, West Earl, Earl and East Earl Townships, New Holland Borough).

³⁴ Pennsylvania Dutch Convention & Visitors Bureau Public Relations Dept., The Amish of Lancaster County-About PA Dutch County, http://www.padutchcountry.com/about_pa_dutch_country/the_amish_of_lancaster_county.asp (last visited Oct. 1, 2005); *see also* PENNSYLVANIA DUTCH CONVENTION & VISITORS BUREAU, AMISH BROCHURE (n.d.), <http://www.padutchcountry.com/files/amishbrochure.pdf>.

³⁵ What's New, *supra* note 33; Lancaster County Planning Commission, County of Lancaster, PA Land Use: Preliminary Problem Statements, Land Use Analysis, http://www.co.lancaster.pa.us/planning/CWP/view.asp?A=478&QUESTION_ID=388475 [hereinafter Problem Statements].

³⁶ U.S. Environmental Protection Agency, *supra* note 32.

³⁷ Pennsylvania Dutch Convention & Visitors Bureau Public Relations Dept., Facts & Figures from the Press Room Information and Assistance (n.d.), http://www.padutchcountry.com/press_room/facts_figures.asp; but see Lancaster Farmland Trust, Facts about Lancaster County, Lancaster County's Economy, <http://www.savelancasterfarms.org/savelanc/cwp/view.asp?a=3&Q=555334> (last visited Nov. 1, 2004) (seven million tourists spend \$1.3 billion annually); *compare* OLD DOMINION UNIVERSITY, THE STATE OF TOURISM (2000), *available at* <http://www.odu.edu/bpa/forecasting/2000chapter5.pdf> (\$661.2 million spent annually by tourists in Colonial Williamsburg, tourists' spending in the Hampton Roads region where Williamsburg is located equaled \$2.2 billion, the entire state of Virginia was \$11.7 billion).

³⁸ By the mid-1980s, local leaders and sociologists spoke of sustainability, suggesting the County capitalize on its disparate tourism growth possibilities. The Amish, most agreed, would probably always be the main draw. Diversification, however, promised livable communities and viable future for everyone - the Plain People, other residents, and the tourism industry. In 1987 the Pennsylvania Dutch Visitors Bureau was renamed the Pennsylvania Dutch Convention and Visitors Bureau (PDCVB), signifying its broadening role in this conversation . . . [T]he Heritage Tourism Initiative set out to propose a tourism management plan and to outline ways 'to move tourists between attractions without transportation problems' (Scott Standish quoted in David O'Conner, Lancaster New Era, June 23, 1994). The pilot project energized the industry . . . Many proudly displayed the quilt-like banner proclaiming "Lancaster County Heritage" . . . As the 20th century came to a close, the Heritage Initiative, along with other innovations in the industry, helped redefine the landscape of Lancaster tourism.

real estate projects. A hotel and convention center are going to be built in downtown Lancaster City; the \$45 million hotel and \$30 million convention center have an anticipated ground breaking in Spring 2006 with grand opening in Spring 2008.³⁹ This is the first full-service hotel to be built in Lancaster County in twenty-five years.⁴⁰ Tourism offers numerous opportunities for new employment sectors. Already, approximately twenty-eight thousand Lancaster County residents work in the expanding tourism industry.⁴¹

Nonagricultural employment is also experiencing a steady expansion at a rate of almost two percent annually, which feeds Lancaster County's fairly diverse economy.⁴² The County economy includes health services, educational services, a large manufacturing base, food-processing, metal fabricating and finishing and printing, all of which it strives to maintain.⁴³ The economy in the County is consistently healthy, even during recessions, and employment rates are higher than the state-wide average.⁴⁴ Lancaster's manufacturing sector, services sector, wholesale and retail trade sectors each represent approximately one-quarter of total employment.⁴⁵

Agriculture is experiencing a decline. Between 1997 and 2002, Lancaster County lost more than four hundred farms, over 16,500 acres.⁴⁶ Still, one in five Lancaster County workers is employed by the agriculture industry.⁴⁷ Despite the decline in number of farms, LCPC sees no impending end to farming in Lancaster County.⁴⁸

Pennsylvania Dutch Convention & Visitors Bureau Public Relations Dept., History of Tourism from the Press Room Information and Assistance, http://www.padutchcountry.com/press_room/history.asp.

³⁹ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF POLICY DEVELOPMENT AND RESEARCH, REGIONAL ACTIVITY, THIRD QUARTER U.S. HOUSING MARKET CONDITIONS (2001), available at http://www.huduser.org/periodicals/ushmc/fall2001/mid_atl.html; see also ELEMENT UPDATE, *supra* note 12 (Lancaster City has a declining tax base, businesses are closing and crime has been increasing.). E-mail from Shelly Weikert, Executive Assistant, Lancaster County Convention Center Authority, to Rachel D. Jaffe, author (Oct. 2, 2005) (on file with author). See also John M. Spidaliere, Hotel Occupancy up 7.6 percent; 2005 Revenue Totals \$74 million (Lancaster New Era, Pa.), Tribune Business News, Oct. 14, 2005, http://www.hotel-online.com/News/2005_Oct_14/k.LNH.1129657004.html.

⁴⁰ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *supra* note 39.

⁴¹ Pennsylvania Dutch Convention & Visitors Bureau Public Relations Dept., *supra* note 37.

⁴² U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *supra* note 39; Martin Shields, An Economic and Demographic Profile of Lancaster County, Penn State Cooperative Extension and the Center for Economic and Community Development (n.d.), <http://cecd.aers.psu.edu> (last visited Jan. 6, 2005) (business services added 5866 jobs between 1991 and 2001; industrial/commercial machinery lost 2356 over the same period).

⁴³ Frey, *supra* note 8; Shields, *supra* note 42.

⁴⁴ *Id.*

⁴⁵ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *supra* note 39; LANCASTER CHAMBER OF COMMERCE & INDUSTRY, LANCASTER COUNTY FARMING FACTS (3d. ed. n.d.) (Lancaster County's total workforce is 257,100 persons).

⁴⁶ UNITED STATES DEPARTMENT OF AGRICULTURE, NATIONAL AGRICULTURAL STATISTICS SERVICE, 2002 CENSUS OF AGRICULTURE 269 tbl.8 (2002).

⁴⁷ LANCASTER CHAMBER OF COMMERCE & INDUSTRY, *supra* note 45; Martin Shields, The Role of Production Agriculture in the Lancaster County Economy, Penn State Cooperative Extension, <http://agimpact.aers.psu.edu> (last visited Jan. 6, 2005) (Lancaster County farm employment decreased eighteen percent 1969 to 2000, the county's total employment increased eighty-seven percent over the same period).

⁴⁸ Frey, *supra* note 8; see also LANCASTER CHAMBER OF COMMERCE & INDUSTRY, *supra* note 45

Between 1994 and 2001, for every acre of farmland lost to development, two acres have been preserved.⁴⁹

Even with farmland preservation, however, Lancaster County is inevitably changing.⁵⁰ Increasingly, visitors are coming to enjoy not just historic farms, but outlet shopping, Amish-made furniture, building supplies, quilts and crafts marketed to outsiders.⁵¹ Lancaster County has experienced high population growth rates, in part because it is located near a number of large cities.⁵² In fact, the Lancaster County metropolitan area is the second fastest growing county in the state of Pennsylvania.⁵³ In a decade, the number of households in the metropolitan area of Lancaster Township increased by more than 21,600 to 172,560 in the year 2000.⁵⁴ Some of the suburbs of Lancaster have become bedroom communities for persons employed in Harrisburg, Hershey, Philadelphia suburbs and York.⁵⁵ LCPC has also noted an “in-migration”⁵⁶ of elderly persons coming to the County to retire.⁵⁷ For many, Lancaster County offers attractive and cheaper land and relatively cheaper housing.⁵⁸ The County must strive for balance between tradition and the needs of new families, the elderly and tourists.⁵⁹

In response to changing demographics and development pressures and as part of the County comprehensive plan, Lancaster County Planning Commission (LCPC) applied its own progressive smart growth program—policies directed toward preserving farmland and controlling growth.⁶⁰ In 1993, LCPC added a growth

(ninety-nine percent of farms are family-owned, farming in Lancaster County generates four billion dollars per year, between 1994 and 2001, for every acre lost to development two acres have been preserved).

⁴⁹ LANCASTER CHAMBER OF COMMERCE & INDUSTRY, *supra* note 45.

⁵⁰ Pennsylvania Dutch Convention & Visitors Bureau Public Relations Dept., *The Amish: From Plows to Profits*, About Pennsylvania Dutch Country, http://www.padutchcountry.com/about_pa_dutch_country/the_amish_from_plows_to_profits.asp [hereinafter *Plows to Profits*] (last visited Jan. 6, 2005) (Amish taking on new, non-farming occupations).

⁵¹ *Plows to Profits*, *supra* note 50.

⁵² LAQUATRA, J. ET AL., *SOME STATES’ SELECTED EXPERIENCES-FACT SHEET FROM CORNELL UNIVERSITY’S BUILDING A BALANCE: HOUSING AFFORDABILITY, ENVIRONMENTAL PROTECTION, AND SMART LAND USE DECISIONS PROJECT 2* (n.d.), http://www.cdtoolbox.org/development_issues/babstateexp.pdf (last visited Oct. 12, 2004).

⁵³ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 4.

⁵⁴ *Id.* at 6.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Frey, *supra* note 8; Shields, *supra* note 42 (Over seventeen percent of the county population is expected to be at least sixty-five years old in 2020).

⁵⁸ The U.S. Department of Housing & Urban Development establishes a “Fair Market Rent” (FMR) for all metropolitan areas. The FMR includes an allowance for any utility costs paid by the tenant. The 2004 FMR for a two-bedroom apartment in Lancaster County is \$624 per month compared to \$892 for the same in Philadelphia County, \$589 in York County. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *DATA SETS* (n.d.), <http://www.huduser.org/datasets/pdrdatas.html> (last visited Oct. 1, 2005).

⁵⁹ *Plows to Profits*, *supra* note 50.

⁶⁰ LAQUATRA, *supra* note 52; Swope, *supra* note 29.

management element to its Comprehensive Plan.⁶¹ The Growth Management Plan designates specific growth areas and is periodically updated to account for development needs.⁶²

C. Pennsylvania's *Voluntary* Growth Boundaries

The LCPC has limited power; it cannot control growth at the county level above and beyond the state's smart growth initiative.⁶³ As has long been accepted, the state promulgates zoning power to local governments.⁶⁴ That is, land use is still enforced at the local level through each municipality's zoning code in Pennsylvania.⁶⁵ Upon guidance (not legally-binding) from LCPC and in conjunction with local zoning, many of the counties' local municipal governments have chosen to use growth boundaries as one of many growth control tools in their local comprehensive plans.⁶⁶

Many states and regions use growth boundaries⁶⁷ as a way of saving taxes, controlling traffic and other costs of sprawl⁶⁸ by funneling development to areas where infrastructure exists or is planned.⁶⁹ In Pennsylvania, the Municipalities Planning Code (MPC), Act of 1968 promotes the preservation of natural and historic resources and farmland, and encourages the revitalization of existing urban centers through a system of Designated Growth Areas.⁷⁰ Growth areas are places within a county that include and surround a city, borough or village and within which residential and mixed use development is permitted at densities often greater than one unit per acre.⁷¹ These growth areas are the spaces contained by urban growth

⁶¹ LANCASTER COUNTY PLANNING COMMISSION, A DECADE OF SMART GROWTH MANAGEMENT, LANCASTER COUNTY GROWTH TRACKING REPORT 1993-2003 1 (June 2004) [hereinafter A DECADE OF SMART GROWTH MANAGEMENT]; *see also supra* note 11.

⁶² *Id.* *See* discussion *infra* pp. 151-52 (resulting conflicts among localities, county and state).

⁶³ Frey, *supra* note 8. "Section 502(a) of the MPC provides that "[t]he powers of the governing bodies of counties to enact . . . land development ordinances shall be limited to land in those municipalities . . . within the county which have no subdivision and land development ordinance . . ." *Herr v. Lancaster County Planning Comm'n* 625 A.2d 164, 168 (Pa. Commw. Ct. 1993) (quoting 53 P.S. § 10502(a)).

⁶⁴ Article X of the United States Constitution reserves the power of local government for the states. U.S. Const. amend. X. "It is fundamental that municipalities are creatures of the state and that the authority of the Legislature over their powers is supreme." *Denbow v. Borough of Leetsdale*, 729 A.2d 1113, 1118 (Pa. 1999). *See also Shirk v. Lancaster City*, 169 A. 557 (Pa. 1933) (state authority over municipalities).

⁶⁵ Municipalities Planning Code, 53 P.S. 10105 (2004).

⁶⁶ A DECADE OF SMART GROWTH MANAGEMENT, *supra* note 61, at 4.

⁶⁷ Only Oregon, Washington, Tennessee, New Jersey, Maryland, Maine and Hawaii mandate UGBs by state statute. KELLY KOLAKOWSKI ET AL., MICHIGAN STATE UNIVERSITY, URBAN GROWTH BOUNDARIES: A POLICY BRIEF FOR THE MICHIGAN LEGISLATURE 1 (2000), *available at* <http://www.ippsr.msu.edu/Publications/ARUrbanGrowthBound.pdf>.

⁶⁸ CALLIES ET AL., *supra* note 19, at 679 (quoting Note, *A Zoning Program for Phased Growth: Ramapo Township's Time Controls on Residential Development*, 47 N.Y.U. L. REV. 723, 723-24 (1972) ("high monetary costs accompany urban sprawl since the price of providing municipal facilities and services such as sewers, waterlines, roads and public transportation is substantially increased when the population is scattered throughout the region.")).

⁶⁹ *But see* Problem Statements, *supra* note 35 (describes problem that arises when development occurs outside of the UGB/VGB areas in areas that already provided public sewer and water service and were zoned for development before the boundaries were set).

⁷⁰ Pennsylvania Municipalities Planning Code Act (MPC) of 1968, 53 P.S. § 10302(d) (2004).

⁷¹ A DECADE OF SMART GROWTH MANAGEMENT, *supra* note 61, at 3.

boundaries.⁷² Furthermore, commercial, industrial and institutional uses and public infrastructure services are ideally planned in advance by LCPC, not left to the whim of real estate developers constructing subdivisions ad hoc.⁷³

In June of 2000, Pennsylvania embraced a version of smart growth by amending the MPC.⁷⁴ Prior to the smart growth program, Pennsylvania's state laws had resulted in a "balkanized planning process."⁷⁵ The MPC's stated purpose certainly promotes cooperation in general terms: "It is the intent, purpose and scope of this act to . . . encourage municipalities to adopt municipal or joint municipal comprehensive plans generally consistent with the county comprehensive plan . . . to ensure that municipalities adopt zoning ordinances which are generally consistent with the municipality's comprehensive plan."⁷⁶ Furthermore, the current version of the MPC⁷⁷ specifically allows local governments to plan together regionally:

Section 801-A. General Powers.

(a) For the purpose of permitting municipalities which cooperatively plan for their future to also regulate future growth and change in a cooperative manner, the governing body of each municipality, in accordance with the conditions and procedures set forth in this act, *may* cooperate with one or more municipalities to enact, amend and repeal joint municipal zoning ordinances in order to implement joint municipal comprehensive plans and to accomplish any of the purposes of this act.

(b) A joint municipal zoning ordinance shall be based upon an adopted joint municipal comprehensive plan and shall be prepared by a joint municipal planning commission established under the provisions of this act.⁷⁸

The state's MPC embraces the spirit of smart growth by proposing interaction among municipalities, but the law is tentative and leaves the final decision about whether or not to plan jointly to the municipalities themselves. Pennsylvania's

⁷² A DECADE OF SMART GROWTH MANAGEMENT, *supra* note 61, at 1.

⁷³ *Id.*; see also CALLIES ET AL., *supra* note 19, at 679 ("the unintentional planning decisions made by businessmen and developers who are rarely committed to the best interests of the entire community, have a direct bearing upon the shape of subsequent development.")

⁷⁴ In June 2000, Pennsylvania adopted "smart growth" legislation. Act 67 (House Bill 14) and Act 68 (Senate Bill 300) both amend the Municipalities Planning Code (MPC). These reforms enable counties and municipalities to take more control of land use planning for both development and conservation purposes, and, to implement plans through cooperative agreements and consistent ordinances and actions. 10,000 Friends of Pennsylvania, Why Municipalities Should Consider Multi-Municipal Planning (Dec. 18, 2000), http://www.10000friends.org/Web_Pages/News/MultiMunicipalPlanningBenefits.htm [hereinafter Multi-Municipal Planning].

⁷⁵ Swope, *supra* note 29; see also James H. Wickersham, *The Quiet Revolution Continues: The Emerging New Model for State Growth Management Statutes*, 18 HARV. ENVTL. L. REV. 489, 503 (1994).

⁷⁶ Municipalities Planning Code, 53 P.S. § 10105 (2004).

⁷⁷ *Id.*

⁷⁸ *Id.* at Article 8-A, Joint Municipal Zoning, § 801-A General Powers (emphasis added).

approach to joint planning contrasts with Oregon's approach, which has perhaps the most successful urban growth boundary in the United States.⁷⁹ Oregon created UGBs as part of its state and regional land use policies.⁸⁰ The UGB program in Oregon "is the first [to have a] statewide *requirement* that local governments designate enforceable UGBs."⁸¹ Oregon drew boundaries around each of its cities in 1973,⁸² with streamlined permitting and public infrastructure provided within those boundaries.⁸³ Oregon's success may be attributed to the fact that it does not merely embrace the spirit of smart growth by proposing interaction among municipalities, the state *mandates* such interaction.

UGBs seem to work best as part of a collection of inherently regional growth management strategies.⁸⁴ "For growth areas to be effective, municipalities must implement related ordinances and plans such as zoning ordinances and sewage facilities plans."⁸⁵ For example, in Lancaster County, agricultural zoning has been combined with UGBs to preserve farmland.⁸⁶ But while the state, through the MPC, enables municipalities to strive for growth management, the MPC does not set a growth management standard which all municipalities should attain.⁸⁷ Therefore, each municipality can opt to accommodate its own level of development by whatever means depending on its choice about sewer infrastructure, for example. The individual municipality's choice could be wholly incompatible with a neighboring municipality's choice about sewer infrastructure. So, municipalities can successfully have designated growth areas enforced through zoning at the municipal level;⁸⁸ but the trouble is that the other necessary growth management strategies—which are inherently regional—cannot be designed by only one or a couple of locales at the municipal level.

⁷⁹ CALLIES ET AL., *supra* note 19, at 720 ("most frequently cited").

⁸⁰ UGB Definition and Facts, *supra* note 1.

⁸¹ CALLIES ET AL., *supra* note 19, at 721.

⁸² The first state to use a growth boundary was actually Kentucky, which drew a (still-enforced) boundary around Lexington in 1958 to protect the Bluegrass Country outside the city. Brent W. Ambrose & John Gonas, *Urban Growth Controls and Affordable Housing: The Case of Lexington, Kentucky Final Report* (UK Center for Real Estate Studies, Gatton College of Business and Economics, University of Kentucky), January 2003, at iii, available at http://www.lfuchrc.org/Fair_Housing/Lexington_Zoning_Report_3_edited.pdf.

⁸³ The Fannie Mae Foundation recognized states that have made changes in local codes, zoning regulations, fees, and procedures to stimulate affordable housing: "Oregon and Florida provide two examples of streamlined permitting to promote production of housing." Arthur C. Nelson, *Top Ten State and Local Strategies to Increase Affordable Housing Supply*, 5 HOUSING FACTS AND FIGURES (Fannie Mae Foundation D.C.), 2003, available at <http://www.fanniemaefoundation.org/programs/hff/v5i1-topten.shtml>; Setting the Record Straight, *supra* note 18.

⁸⁴ Governor's Center for Local Government Services, *supra* note 17, at 61-2 ("[Growth areas] should be used in connection with the Official Map provisions."). Official Map provisions are considered a sort of illustrated land use ordinance under the MPC and used in conjunction with the zoning ordinance. Governor's Center for Local Government Services, *Developing a Plan*, in LAND USE IN PENNSYLVANIA: PRACTICES AND TOOLS, AN INVENTORY 27 (2000), available at http://www.landuseinpa.com/docs/Land_Use_in_PA-Inventory/Land_Use_in_PA-Inventory-DevPlan.pdf.

⁸⁵ A DECADE OF SMART GROWTH MANAGEMENT, *supra* note 61, at 3.

⁸⁶ Cordes, *supra* note 16, at 424.

⁸⁷ Municipalities Planning Code, 53 P.S. 10105 (2004) (nor does the law set county-wide standards).

⁸⁸ *Id.*; COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-3.

Because of the state's seeming reluctance to require mandatory joint planning, the MPC's ability to actually foster regional planning is debatable. Pennsylvania's law (the MPC), as written, uses incentive-based strategies to "encourage" and "promote" smart growth.⁸⁹ The state encourages compact development in communities where adequate infrastructure is available using common infill development programs⁹⁰ and policies, particularly by reducing regulatory burdens in designated growth areas.⁹¹ Pennsylvania's smart growth program describes a vision of towns and cities working together to create regional plans, targeting areas to develop and pinpointing areas to leave green and undeveloped.⁹² Pennsylvania encourages this regional cooperation, responding to the growing awareness that growth issues cross traditional boundaries⁹³ by allowing counties to share revenues if they jointly plan.⁹⁴ Furthermore, municipalities can swap transferred development rights (TDRs) across local borders so that larger, uninterrupted swaths of farmland can remain undeveloped.⁹⁵ Yet, a state law *describing* its vision, *encouraging* compact development and *preferring* cooperation does not make a regional planning strategy.

Lastly, the state still adheres to a policy that can defeat all efforts for regional planning; the MPC allows municipalities' zoning to take precedent over county zoning. Section 802-A describes the relationship a joint municipal zoning ordinance has with the county: "The enactment by any municipality of a joint municipal zoning ordinance whose land is subject to county . . . zoning shall constitute an immediate repeal of the county . . . zoning ordinance."⁹⁶ Section 802-A suggests that the actions of a select few municipalities can trump any existing county zoning ordinance. Thus, while Pennsylvania state law has at least laid a usable groundwork for Lancaster County's plan to preserve its existing historic and cultural identity, whether Pennsylvania smart growth laws actually facilitate regional planning in practice is debatable.

III. LANCASTER COUNTY RIPE FOR MANDATORY REGIONAL PLANNING

A. Strong, Visionary Planning Commission

Lancaster County is the first county in Pennsylvania to have growth boundaries,

⁸⁹ Municipalities Planning Code, 53 P.S. § 10105 (2004).

⁹⁰ "Infill development" is redevelopment within existing development. The infill developer, instead of starting with raw land, creates new and usually higher density uses for land within existing developed areas.

⁹¹ Ed Bolen et al., *Smart Growth: State by State*, 8 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 145, 148 (2002).

⁹² Swope, *supra* note 29.

⁹³ "Sprawl is the root cause of many of the land use problems across the country and does not end at municipal or state lines. The control of sprawl requires cooperative national, state and local government efforts to effectuate regional solutions." CALLIES ET AL., *supra* note 19, at 681.

⁹⁴ Ed Bolen et al., *supra* note 91, at 149.

⁹⁵ Swope, *supra* note 29; *see also* § 10105 ("It is the intent, purpose and scope of this act . . . to encourage the preservation of prime agricultural land and natural and historic resources through easements, transfer of development rights and rezoning").

⁹⁶ Municipalities Planning Code, 53 P.S. § 10105 (2004), at Article 8-A, Joint Municipal Zoning, Section 802-A Relation to County and Municipal Zoning.

which it implemented seven years before the MPC explicitly provided for such boundaries.⁹⁷ This forethought about the importance of measured growth demonstrates the County's long-standing commitment to protect land and to encourage cohesive development aligned with infrastructure expansion. LCPC continually strives for county-wide growth management even without legal authority, but the breadth of its solutions is limited. LCPC's commitment to shaping urban growth is clear in its successful roles as teacher, communicator, land assessor, and liaison.

1. LCPC as Teacher

LCPC is only empowered to *guide* the municipalities through their individual or joint planning processes.⁹⁸ The County merely has "influence"⁹⁹ because county governments in Pennsylvania cannot create regulations, much less stricter regulations, without state mandate.¹⁰⁰ Even though LCPC has no ability to enforce land use laws, LCPC serves a key role by teaching municipalities about growth management.¹⁰¹ LCPC implements its Growth Management Plan using guidelines "marketed" to municipalities over a long period of time.¹⁰² The planning commission works one-on-one with local government officials to implement land use laws that work together at a regional level *as if* the UGBs were mandated.¹⁰³ A County community planner is assigned to each of the sixty municipalities in the County to provide technical assistance at no cost.¹⁰⁴ Through conversations, workshops, town meetings and continuous contact with community planners from LCPC over the past decade, Lancaster County has started to think and act regionally without any legal mandate.¹⁰⁵ The MPC merely creates conditions in which regional planning *could* work and LCPC has the task of bringing regional-scale planning to fruition without legal authority.¹⁰⁶

⁹⁷ Frey, *supra* note 8; Pennsylvania did not adopt "smart growth" legislation until June of 2000. Act 67 (House Bill 14) and Act 68 (Senate Bill 300) both amend the Municipalities Planning Code (MPC). Multi-Municipal Planning, *supra* note 74.

⁹⁸ A county has the function to be the agent of the state for law enforcement, judicial administration and to conduct elections. The county also serves the property assessment function. Counties are only "involved" in planning and solid waste disposal. The MPC grants the actual power to plan developments, adopt zoning, subdivision and land use ordinances to municipalities. Similarly, The Solid Waste Management Act grants the power to municipalities to manage solid waste and The PA Sewage Facilities Act grants the power to municipalities to regulate sewage facilities. COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-3, 6-4.

⁹⁹ COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-3, 6-4.

¹⁰⁰ Frey, *supra* note 8.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* (Community planners provide direct planning assistance to municipal governments. Some areas of assistance include: subdivision and land development, comprehensive planning, residential planning, zoning, infrastructure planning, and municipal planning program implementation and administration.)

¹⁰⁵ *Id.*

¹⁰⁶ See Municipalities Planning Code, 53 P.S. 10105 (2004).

2. LCPC as Communicator

Another way LCPC is making multi-municipal planning easier is to align planning terminology so all stakeholders speak the same language.¹⁰⁷ For example, in the current revision of the County Comprehensive Plan's Growth Management Plan, the County's term "urban growth boundaries" will be changed to the state's term "designated growth areas" to avoid confusion over semantics.¹⁰⁸ The term "affordable housing" is being changed to "work force housing" to ease the stigma of the former term as a housing project.¹⁰⁹ Another tool LCPC developed to foster inter-municipal real estate development and zoning decisions is the zoning lexicon.¹¹⁰ Using Geographic Information Systems (GIS),¹¹¹ the County categorized zoning districts in each municipality using one common set of categories.¹¹² For example, single family residential in one municipality could be named "R-1," in a neighboring municipality a zoning district with similar characteristics could be called "R-200," and in a third municipality single family residential could be labeled "SFR."¹¹³ As part of the process of getting every stakeholder to speak the same language, LCPC streamlined zoning so that single-family residential, for example, has one label in this multi-municipal planning tool.¹¹⁴ The tool is meant to help municipalities exchange land information and to help real estate developers make better choices.¹¹⁵ Developers benefit from the zoning lexicon because zoning rules are generally different from one municipality to another and this tool enables developers to compare land more easily.¹¹⁶ Improving stakeholders' communication makes the development process more efficient and the results more compatible across boundaries.

3. LCPC as Assessor

Assessing land for development is another key undertaking of the LCPC. LCPC discovered that developers needed more detailed information about the types of land slated for development rather than solely a map of the land with zoning designations and no other descriptions.¹¹⁷ Zoning alone inadequately describes the land

¹⁰⁷ Frey, *supra* note 8.

¹⁰⁸ *Id.* ("designated growth area" terminology used at the state level).

¹⁰⁹ Judy A. Strausbaugh, Bold Move Made by Mount Joy: Florin Hill Saves Land, Mixes Homes and Allows Developer Leeway, SUNDAY NEWS (Lancaster County), Mar. 7, 2005, at A1, available at <http://www.lancasteronline.com/pages/news/local/4/12543>.

¹¹⁰ A lexicon "is a stock of terms used in a particular profession, subject, or style; a vocabulary." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 570 (4th ed. 2000); Frey, *supra* note 8 (lexicon developed by a consultant in conjunction with LCPC's GIS, Community Planning and Long-range planning departments).

¹¹¹ "A GIS is a computer system capable of capturing, storing, analyzing, and displaying geographically referenced information; that is, data identified according to location. Practitioners also define a GIS as including the procedures, operating personnel, and spatial data that go into the system." U.S. Dept. of the Interior, U.S. Geological Survey-GIS Information (n.d.), http://erg.usgs.gov/isb/pubs/gis_poster/.

¹¹² Frey, *supra* note 8.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Frey, *supra* note 8.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

conditions.¹¹⁸ Currently, consultants are helping LCPC evaluate the amount of land in the UGBs, its quality, location, proximity to infrastructure and parcel size.¹¹⁹ After the evaluations, the community planners help municipalities decide whether or not the zoning and the actual land quality correlate.¹²⁰ The local zoning codes alone may not hinder certain types of development; the land quality may simply preclude it. The practical, development-side of the process requires the understanding of certain conditions not necessarily embodied in zoning law (e.g. whether actual land quality is workable for a specific use).¹²¹

The understanding of whether actual land quality is workable for a specific use also helps maximize land use efficiency. After the consultants' initial analysis, LCPC should have on-going land assessment activities to monitor the land use efficiency and better assess when UGB expansion is necessary. Metropolitan Portland Oregon's urban growth boundary encompasses approximately 369 square miles (about 236,000 acres).¹²² As of February 2000, about 1.3 million people lived within the UGB.¹²³ Metro, a regional government agency led by elected Council persons, protects open space, plans for land use and transportation and manages the UGB for residents in three counties and twenty-five cities in the Portland, Oregon region.¹²⁴ Metro expanded the region's UGB in 2004 by adding 1940 acres to the boundary because it discovered, through careful data analysis, a need for more industrial lands.¹²⁵ By maximizing the use of land parcels within the UGB, the boundary has prevented the razing and subsequent development of huge forests and farms at the city's edge.¹²⁶ The UGB, by maximizing the efficient use of vacant and already-developed land, has also increased the amount of housing inside the UGB

¹¹⁸ Frey, *supra* note 8.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² The UGB crosses three county lines Multnomah, Clackamas, Washington, the counties serving the Portland metropolitan area. See Metro, Current UGB Map-Land Use Planning (Dec. 12, 2002), http://www.metro-region.org/library_docs/land_use/current_ugb_map.pdf; UGB Definition and Facts, *supra* note 1.

¹²³ UGB Definition and Facts, *supra* note 1.

¹²⁴ See Metro Charter Committee, Metro Charter (Jan. 6, 2003), http://www.metro-region.org/library_docs/about/charter.nov2000.may2002.clean.03.pdf.

¹²⁵ UGB Definition and Facts, *supra* note 1; see also Metro, Planning for the Region's Industrial Land-Land Use Planning, <http://www.metro-region.org/article.cfm?articleID=5370> [hereinafter Industrial Land] (last visited Oct. 1, 2005) (Manufacturing, warehousing or fabrication uses occur on industrial lands. Under Oregon law, Metro must provide a twenty-year supply of land within the urban growth boundary for residential, commercial and industrial uses. The supply is reviewed every five years. Projections showed a shortfall; Metro was required to provide for that shortage and responded by adding 1940 acres by expanding the boundary.)

¹²⁶ Daniel R. Mandelker, *Managing Space to Manage Growth*, 23 WM. & MARY ENVTL. L. & POL'Y REV. 801, 813 (1999) (the preservation of agricultural and other natural resource areas was the primary motivation behind Oregon's UGB policy); *Industrial Land*, *supra* note 125 (Metro was able to lower the need by including land already inside the UGB but not yet zoned as industrial and by recalculating the efficiency with which land within the boundary is redeveloped for industrial use.). See discussion *supra* p. 155 (LCPC's attempts to reassess land uses).

and catalyzed the revitalization of Portland's downtown.¹²⁷ On-going land assessment activities maximize land use efficiency because detailed information about the types of land illuminates the county's land use needs more easily.

4. LCPC as Liaison

LCPC also serves as a liaison among numerous other organizations and agencies, coordinating ideas and development schemes to produce desired kinds of real estate and related economic development from a county-wide perspective.¹²⁸ In fact, LCPC is the only organization that sees the "big picture" with regard to planning, land use, growth and development across the entire County.¹²⁹ LCPC as an entity is *thinking* like the regional planning authorities established in states such as Oregon.¹³⁰ The LCPC is not legally empowered, however, to *function* exactly as Oregon's Metro.¹³¹ Still, LCPC works with the Chamber of Commerce, Lancaster County Housing and Redevelopment Authorities, Team Lancaster and other coalitions to strive for similar regional planning-like results.¹³² The Lancaster County Commissioners¹³³ have also established The Lancaster County Housing and Redevelopment Authorities to help "administer . . . community planning and economic development activities."¹³⁴

This type of interaction among various stakeholders yields faster results than each working in a vacuum. In the Portland area, the land use initiatives received broad support from divergent groups including urban, environmental, agricultural, and grass-roots groups, the governor, a large portion of the business community and the homebuilding industry.¹³⁵ "This ability to create common interests through a political process is one of the most striking features of the implementation of land-use law in Oregon. It has allowed the law to withstand . . . major challenges in statewide initiatives."¹³⁶ The Portland metropolitan area's UGB program is

¹²⁷ UGB Definition and Facts, *supra* note 1; Phillips & Goodstein, *supra* note 21, at 336 (The UGB leads to an increase in land prices, higher land prices lead to greater density. Density is often analogous to "efficient" land use.).

¹²⁸ Frey, *supra* note 8.

¹²⁹ *Id.*

¹³⁰ *Id.* Portland, Oregon has created a *regional* planning agency called the Metropolitan Council ("Metro"), which administers the UGB program in the Portland metropolitan area and is responsible for making decisions about the boundary. Mandelker, *supra* note 126, at 811-17. *See also* CALLIES ET AL., *supra* note 19, at 721 (Voters in three counties created an elected regional government to oversee issues that confronted the traditional city and county boundaries. Numerous cities, counties, and other entities worked together to establish a council to "eliminate duplication of services" and otherwise amend the UGB and adopt planning goals for the region that are consistent with state goals.).

¹³¹ COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-3 to 6-5.

¹³² Frey, *supra* note 8.

¹³³ The chief governing body in county government is the three-member board of county commissioners. County government includes other elected officials, too (e.g. district attorney, recorder of deeds etc.). A total of eleven elective county officers are enumerated in the PA Constitution. The officers' powers are defined by statutes found in the county codes and general state laws. COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-4.

¹³⁴ *See generally* The Lancaster County Housing and Redevelopment Authorities, <http://www.lchra.com>.

¹³⁵ Margaret Weir, *Coalition Building for Regionalism*, in REFLECTIONS ON REGIONALISM 137 (Bruce Katz ed., 2000).

¹³⁶ *Id.*

supported by divergent groups such as the Sierra Club, the Oregon Homebuilders Association, local-area businesses and the Oregon State Farm Bureau.¹³⁷ Similarly, LCPC, though currently not an actual political body, gives guidance and has been able to wield some influence over localities' land use decisions by bringing the views and impacts on other stakeholders to meetings for discussion.¹³⁸

While both Metro and LCPC have the ability to act as liaisons among stakeholders, once a decision has been reached, implementation is much different. Unlike municipal officials' required acceptance of Metro's mandates, Lancaster County municipal officials merely consider the LCPC's UGB concept. Many officials implement the LCPC's concept, but only to the degree their constituents want to see it in their localities.¹³⁹

B. Lancaster County Municipal Cooperation Longstanding and Widespread

Lancaster County also has a long history of cooperation among the municipalities.¹⁴⁰ Well before formalizing the multi-municipal planning process, localities entered into regional purchasing agreements, shared municipal equipment (e.g. snow-clearing devices) and otherwise resolved issues across boundaries because of the obvious economic advantages of sharing costs.¹⁴¹ For example, Lancaster Inter-Municipal Committee (LIMC) is comprised of representatives from the City of Lancaster and eleven surrounding municipalities.¹⁴² Some programs include park and open space coordination, zoning, purchasing of bulk supplies, and the sharing of heavy equipment.¹⁴³ The Lancaster Area Sewer Authority (LASA) is an entity of seven municipalities that own and operate sewage treatment facilities.¹⁴⁴ The entity's Board of Directors meets monthly and is comprised of a representative from each of the participating municipalities appointed by municipality officials to serve staggered five-year terms.¹⁴⁵

¹³⁷ Weir, *supra* note 135; *see also* discussion *infra* pp. 159, 170-71 (coalition-building supporting growth management).

¹³⁸ Frey, *supra* note 8.

¹³⁹ *Id.*; "The main areas of local services include . . . local planning and zoning, parks and recreation . . . licensing of businesses and code enforcement." *Id.*; "Municipal governing bodies make policy decisions, levy taxes, borrow money, authorize expenditures and direct administration of their governments by their appointees. The scope of their functions and responsibilities is broad." COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-4.

¹⁴⁰ Frey, *supra* note 8.

¹⁴¹ Other intergovernmental efforts include the Hempfield Area Recreation Commission, Lancaster Recreation Commission, and Lampeter-Strasburg Recreation Commission, which all work cooperatively to provide recreational opportunities. The Susquehanna Regional Police Department was created in 1996 to combine police services of Conoy and East Donegal Townships and Marietta Borough (one elected official from each municipality sits on a commission to oversee the police force). LEAGUE OF WOMEN VOTERS OF LANCASTER COUNTY & LANCASTER NEWSPAPERS, INC., GUIDE TO LANCASTER COUNTY: TOWNSHIPS AND BOROUGHs (Jan. 2003) [hereinafter LEAGUE OF WOMEN VOTERS], <http://specialsections.lancasteronline.com/guidetolanc/0401/townships.shtm>; Frey, *supra* note 8.

¹⁴² LEAGUE OF WOMEN VOTERS, *supra* note 141; Frey, *supra* note 8.

¹⁴³ LEAGUE OF WOMEN VOTERS, *supra* note 141; Frey, *supra* note 8. In 2003, LIMC began developing its version of a regional comprehensive land use plan. Frey, *supra* note 8.

¹⁴⁴ LEAGUE OF WOMEN VOTERS, *supra* note 141; Frey, *supra* note 8.

¹⁴⁵ LEAGUE OF WOMEN VOTERS, *supra* note 141; Frey, *supra* note 8.

Transportation cost-sharing has also been particularly successful in the County.¹⁴⁶ By allowing municipalities to share tax revenues with each other, the County has ensured that the different localities share the costs and benefits of growth.¹⁴⁷ As demonstrated by the Portland metropolitan area case, broad support for cross-boundary cooperation can effect positive change and stave unwanted pressure.¹⁴⁸

Finally, multi-municipal comprehensive plans, which are developed as a voluntary version of regional planning, are now widely, though not universally, accepted in Lancaster County.¹⁴⁹ Grants to cover around fifty percent of the multi-municipal planning process are available from the County Commissioner's budget—a budget funded solely by real estate taxes.¹⁵⁰ Such existing cooperative efforts in Lancaster County indicate a strong foundation upon which a mandatory multi-municipal land use scheme could be built. Yet, these strides in multi-municipal planning are impermanent without legal support from a government entity that can grasp the entire regional picture.

C. Agriculture Zoning: A Necessary But not Sole Partner of the UGBs

1. Agricultural Zoning

UGBs must be part of a collection of growth management strategies to be productive. Similarly, restrictive zoning laws without other managed growth strategies such as UGBs may do more harm than good. Half of Lancaster County's land has been zoned for agricultural use and thirty-thousand acres have been placed in a land reserve.¹⁵¹ Restrictive zoning laws implemented alone may hurt landowners. Zoning laws alone can

preclude conversion of farmland even when significant development pressure exists. By placing public restrictions on the property, the landowner is not free to sell the land for nonagricultural use when development pressure and attendant financial incentives become great. The result [however] is to place

¹⁴⁶ Frey, *supra* note 8.

¹⁴⁷ COUNTY COMMISSIONERS ASSOCIATION OF PENNSYLVANIA, THE BLUEPRINT FOR LOCAL TAX FAIRNESS: A PLAN FOR PENNSYLVANIA'S COMMUNITIES 2 (2004), available at <http://www.pataxfairness.info/pataxfairness/lib/pataxfairness/blprint04.pdf> (County governments (i.e. county commissioners) rely almost exclusively on the real property tax as the local tax base.).

¹⁴⁸ Weir, *supra* note 135, at 137.

¹⁴⁹ COUNTY COMMISSIONERS ASSOCIATION OF PENNSYLVANIA, *supra* note 147; Municipalities Planning Code, 53 P.S. 10105 (2004), at Article 8-A, Joint Municipal Zoning, Section 801-A General Powers.

¹⁵⁰ COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-3 (Legislative provisions outside of the local government codes include real estate tax collection).

¹⁵¹ Agricultural Zoning is a “zoning category designed to protect farmland from incompatible uses that would adversely affect the long term economic viability of agriculture within the region. Agricultural zoning ordinances strictly limit the construction of all buildings and structures unrelated to agricultural land uses and activities.” Lancaster County Planning Commission, Planning Glossary [hereinafter Glossary], <http://www.co.lancaster.pa.us/planning/cwp/>; Swope, *supra* note 29; Cordes, *supra* note 16, at 424 (criticism of agricultural zoning as a means to preserve farmland).

the cost of preservation, as reflected in diminution in land value, on the restricted landowner.¹⁵²

Besides taking away some of the landowners' expectations about his property's value, landowners' support is needed as part of a broader coalition to sustain land protection initiatives. Without their votes and the approval of politicians at the local level, growth management may fall to the wayside in deference to profit from land sales to "suburban 'super developers' with overwhelming political clout."¹⁵³ Therefore, zoning must be perceived as "fair" by landowners, not deemed an either/or proposition (i.e. either land protection or profit).¹⁵⁴

Furthermore, implementing zoning laws without other managed growth strategies may not stave off inappropriate development. Zoning ordinances provide three primary ways in which a land use restriction might be changed: variances, special-use designations, and rezoning of the land.¹⁵⁵ Such change mechanisms provide flexibility to zoning schemes so that they can be sensitive to changing societal and local needs.¹⁵⁶ The trouble is that the mechanisms' inherent flexibility also undermines long-term needs; such flexibility bends for short-term political and market influences.¹⁵⁷ For example, an influential developer may be able to rezone the land to accommodate inappropriate development by convincing the local Zoning Board to loosen land restrictions. UGBs, however, provide "a solid basis for the denial of zoning change requests" and thus help resist development that does not fit the existing plan.¹⁵⁸

2. Farmland Protection Program

Agriculture zoning is a necessary, but not the sole, mechanism required for the success of UGBs. Besides agricultural zoning, Lancaster County employs two strategies to temper the impact on landowners and to fulfill a long-term vision that is less susceptible to short-term influences. The first is the County's farmland protection program,¹⁵⁹ which provides funds to purchase the development rights of land.¹⁶⁰ The purchase of development rights (PDRs) directly addresses the equity

¹⁵² Cordes, *supra* note 16 at 424.

¹⁵³ Weir, *supra* note 135, at 137.

¹⁵⁴ Cordes, *supra* note 16 at 436 ("Whatever the merits of preservation, it is . . . unfair to force a few landowners to bear the burden of bestowing benefits on the rest of society. Thus, the argument is made that if the benefits from preservation go to society as a whole, then society should pay for such benefits in the form of compensation to affected landowners.").

¹⁵⁵ Cordes, *supra* note 16 at 425.

¹⁵⁶ *Id.*

¹⁵⁷ Cordes, *supra* note 16 at 425; see also David L. Szlanfucht, *How to Save America's Depleting Supply of Farmland*, 4 *DRAKE J. AGRIC. L.* 333, 348 (1999) ("Agricultural zoning is not a permanent measure to preserve farmland because rezonings can occur by a vote of the local legislature.") (referring to Sean F. Nolon & Cozata Solloway, Note & Comment, *Preserving Our Heritage: Tools to Cultivate Agricultural Preservation in New York State*, 17 *PACE L. REV.* 591, 628 (1997)).

¹⁵⁸ Cordes, *supra* note 16, at 456.

¹⁵⁹ Agricultural Preserve Board Department

¹⁶⁰ LAQUATRA, *supra* note 52. The Purchase of Development Rights (PDR) program in Lancaster County means that "[l]andowners apply to sell development rights to the [Agricultural] Preserve Board which then ranks the applications for priority, hires appraisers to estimate the value of development

issue because such a program shifts some of the cost of preservation from the regulated landowner back to society.¹⁶¹ At least five hundred Lancaster County farmers have received \$80 million in government funds after promising to never develop their lands.¹⁶² A farmer chooses to preserve a one hundred-acre farm in exchange for \$450,000 in County money. The farmer could have sold his farm for approximately \$2 million to developers who would have built subdivisions on the property.¹⁶³ The farmer's decision to accept less money may have been motivated by his rural values, a desire to preserve a way of life and a certain sense of pride in his community.¹⁶⁴ Lancaster County's program has been called a "role model for a new era of land stewardship."¹⁶⁵ The program has a considerable waiting list, and more than 55,000 acres (fifteen percent of total County farmland) have been permanently preserved.¹⁶⁶

3. Existing, Voluntary Urban Growth Boundaries

The second strategy Lancaster County employs to temper growth management's impact on landowners and to fulfill a sustainable, long-term vision is the establishment of growth boundaries, an urban version and a village version.¹⁶⁷

rights, and makes a formal offer to the landowner. Landowners who sell their development rights must maintain the land in farming." County of Lancaster Agricultural Preserve Board Department (May 2004), <http://www.co.lancaster.pa.us/lanco/site/default.asp>. A Conservation Easement is an "easement granted by the owner of a property that is designed to limit or preclude future development of the property. This land preservation tool is typically used by governmental entities and non-profit land trusts to preserve farmland and important natural areas." Glossary, *supra* note 151. In the United States, a landowner owns a bundle of rights that run with the land. Tom Daniels, Ph.D. *et al.*, Proceedings for 1997 American Planning Association National Planning Conference in San Diego, California: Contrast and Transitions, GIS and Farmland Protection: The Case of Lancaster County, Pennsylvania, <http://www.asu.edu/caed/proceedings97/daniels.html> (last visited Oct. 1, 2005). These rights include: water rights, air rights, the right to sell the land, the right to pass land to one's heirs, the right to use the land, and the right to develop the land. *Id.* Each of these rights can be separated from the bundle and sold, donated, or otherwise encumbered. *Id.* Under a PDR program, a farmland owner voluntarily sells the development rights (i.e. creates a Conservation Easement) to a government agency or private land trust and receives compensation in return for the restrictions he has chosen to place on his land. *Id.* The farmer retains title to the land and can sell or pass the farm to his heirs, but the use of the land is now limited to farming and open space. *Id.* An easement is placed on the landowner's deed and "runs with the land," either in perpetuity or for a period of time specified in the easement document. *Id.* The easement typically prohibits residential development by everyone except for the owner, the owner's children, or farm labor. *Id.* For the donation of a perpetual easement, a landowner may receive a deduction for federal income tax purposes. *Id.*

¹⁶¹ Cordes, *supra* note 16, at 436.

¹⁶² County of Lancaster, *supra* note 160.

¹⁶³ John Bebow, *2 States Put Brakes on Runaway Growth: Maryland, Pennsylvania May be Models for Michigan*, THE DETROIT NEWS, Dec. 23, 2002, available at <http://www.detnews.com/2002/specialreport/02122/23/a01-43107.htm>.

¹⁶⁴ "[T]he success of farmland protection depends on the farmland owners. In Lancaster County, landowners have demonstrated a fairly strong commitment to remain in farming. This commitment is partly due to the presence of the Plain Sect [(i.e. Amish)] community for whom farming is an integral part of their culture, and partly due to the fact that farmers can make a living in farming." Daniels et al., *supra* note 218.

¹⁶⁵ Bebow, *supra* note 163.

¹⁶⁶ Lancaster Farmland Trust, *supra* note 37.

¹⁶⁷ LAQUATRA, *supra* note 52; A DECADE OF SMART GROWTH MANAGEMENT, *supra* note 61, at 4.

Pennsylvania has no mandate that *requires* UGBs.¹⁶⁸ Growth boundaries in Lancaster County are part of the County's comprehensive plan; the comprehensive plan is figuratively layered on top of the state's existing voluntary growth areas discussed in *but not mandated* by the MPC.¹⁶⁹ Some states mandate UGBs through state legislation, promulgating the law by giving regional government entities authority to require UGBs.¹⁷⁰ No such authority or requirement exists in Pennsylvania.¹⁷¹

The County's Growth Management Element designates specific "growth areas" that have to be accepted by the localities.¹⁷² These growth areas are urban or village enclaves defined by growth boundary lines.¹⁷³ LCPC proposed these areas for the land contiguous to Lancaster City,¹⁷⁴ the County's eighteen boroughs¹⁷⁵ and forty-one townships.¹⁷⁶ Lancaster County established thirteen growth boundaries around existing urban centers in its 1993 Growth Management Plan (GMP).¹⁷⁷ The GMP was revised in 1997 to add more growth boundaries.¹⁷⁸

The Lancaster County Planning Commission (LCPC) led the growth management planning process and included municipal and public involvement at all stages to convince localities to participate since their participation is not mandated by the state.¹⁷⁹ The current Task Force updating the GMP is following the same municipal and public involvement strategy.¹⁸⁰

Through the LCPC's extensive campaign to educate local government officials, multi-municipal plans have turned "voluntary" into reality for many (but not all)

¹⁶⁸ See Municipalities Planning Code, 53 P.S. 10105 (2004); c.f. California.

¹⁶⁹ Municipalities Planning Code, 53 P.S. 10105 (2004) at § 1103 (a)(1) ("The [county or multi-municipal comprehensive] plan *may* designate growth areas . . ." (emphasis added)).

¹⁷⁰ In Oregon, for example, "the principal state planning goal that mandates growth management is an urbanization goal that requires incorporated municipalities to adopt urban growth boundaries . . . A UGB can, and usually does, extend beyond municipal boundaries. The Portland regional planning agency administers this program in the Portland metropolitan area and is responsible for making decisions about the boundary." Mandelker, *supra* note 126, at 812-13.

¹⁷¹ Municipalities Planning Code, 53 P.S. § 10105 (2004).

¹⁷² ELEMENT UPDATE, *supra* note 12.

¹⁷³ *Id.*

¹⁷⁴ Lancaster City is a "third-class" city. "From 1957-1972, cities could adopt two other forms of government by referendum under the Optional Third Class City Charter law. The mayor-council form has a . . . council . . . elected at-large for overlapping four-year terms." COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-5.

¹⁷⁵ The borough government is the weak mayor form which governed all incorporated municipalities during the 19th century. Most cities were boroughs until their population increased. Boroughs have a strong, elected governing body called a council, a weak executive and other elected officers with powers independent of the council. COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-5.

¹⁷⁶ COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-3. See *generally* Lancaster Newspapers, Inc. - Guide to Lancaster County, <http://specialsections.lancasteronline.com/guidetolanc/0401/townships.shtm> (last visited Jan. 6, 2005).

¹⁷⁷ Pennsylvania Department of Environmental Protection, Learning about Land: A Guide for Educators (1999), http://www.dep.state.pa.us/earthdaycentral/99/learn_about/model.htm.

¹⁷⁸ ELEMENT UPDATE, *supra* note 12. US Dept. of Housing and Urban Development, Office of Policy Development and Research, *supra* note 112 (Initially, population growth centered in northern areas of the county, such as Brecknock, East Cocalico, Manheim, and West Donegal Townships).

¹⁷⁹ Pennsylvania Department of Environmental Protection, *supra* note 226.

¹⁸⁰ See *supra* note 13 (describing public involvement strategy).

areas of the County.¹⁸¹ As of June 2004, thirteen urban growth areas and twenty-six village growth areas existed in Lancaster County.¹⁸² That is, since 1993, thirty-one townships in conjunction with Lancaster County's eighteen boroughs and the City of Lancaster have worked with the LCPC to develop UGBs.¹⁸³ Eight townships have not been targeted for Growth Areas.¹⁸⁴ Yet, the current UGBs are impermanent without legal support from a government entity that can mandate them, making UGBs a permanent growth management mechanism for all of the County's municipalities.

IV. IMPEDIMENTS TO LANCASTER COUNTY-LEVEL PLANNING

A. Introduction

The fundamental concern about the effectiveness of UGBs is the impermanence of any system based on political choice. In Lancaster County, resulting development over the past decade indicates that the current Growth Management Plan in conjunction with the building permit process and the municipal zoning codes is too malleable, too accommodating of development pressure.¹⁸⁵ This inherent deficiency in the government structure, a situation in which a locality makes planning decisions without having to take into account the broader (say, county-wide) implications, could be difficult to change.

Resistance to higher density could be a result of the voice of the existing residents. "Upzoning to provide higher densities may lead to political lobbying and successful 'spot zoning' lawsuits by objecting neighbors."¹⁸⁶ Notwithstanding the LCPC's commitment to the Growth Management Plan, municipalities need better ways to respond when faced with a new development that may not conform to smart growth practices. "One of the reasons why higher-density development has not occurred inside the UGBs is that opposition to this type of development has become increasingly common."¹⁸⁷

Politics are likely the reason UGBs are voluntary in Pennsylvania and the reason not all Lancaster County municipalities are on-board with growth management. Yet, one source claimed that when polled, "a majority" of people in one Pennsylvania region *want* growth concentrated in existing communities, finding that fifty-one percent of those polled want to limit growth and development to areas that are already developed.¹⁸⁸ Another survey shows that sixty-four to seventy percent of those Americans surveyed favor investing resources in older, existing neighborhoods

¹⁸¹ A DECADE OF SMART GROWTH MANAGEMENT, *supra* note 61, at 5-6.

¹⁸² *Id.*

¹⁸³ *Id.* at 3.

¹⁸⁴ *Id.* at 5-6.

¹⁸⁵ See discussion *infra* p. 29, 35-36 (discussion of real estate developers and local political influence).

¹⁸⁶ Mandelker, *supra* note 126, at 826.

¹⁸⁷ *Id.* at 818.

¹⁸⁸ PEW CENTER FOR CIVIC JOURNALISM, PRINCETON SURVEY RESEARCH ASSOCIATES, RESEARCH - STRAIGHT TALK FROM AMERICANS: PHILADELPHIA AREA PART I, NATIONAL SURVEY (Feb. 15, 2000), http://www.pewcenter.org/doingcj/research/r_ST2000.html.

(i.e. infill and redevelopment in existing growth areas).¹⁸⁹ Yet Lancaster County shows signs of growth management acceptance: Mount Joy Borough, which already has a UGB, experienced no opposition from homeowners regarding the higher-density Florin Hill development.¹⁹⁰ The majority of residents in Lancaster County understands and supports the desire to control development and stop sprawl; however, two townships still opted out of the County's smart growth planning initiative the first time around. The power of only a couple of dissident towns' local politics can rupture an entire Growth Management Plan.

B. Staving Off Potential Problems with Mandatory UGBs

1. UGBs and Housing

Compared to unregulated conditions, UGBs restrict the supply of land usable for development.¹⁹¹ Such growth management controls place pressure on the price of housing, making it less affordable than it would likely be under sprawl-inducing conditions.¹⁹² Therefore, "[i]f land-restricting policies are adopted only locally, housing prices are very likely to rise. Only if such policies are adopted regionally, along with other policies that raise densities [such as revised zoning within growth areas], can smart growth avoid making housing less affordable."¹⁹³ The ability to produce affordable housing is essential to the success of growth management mechanisms such as UGBs.

2. Battling Consumer Preferences

In theory, the primary effect of the UGB is to force development into contained areas to protect open spaces and combat sprawl.¹⁹⁴ Sprawl is comprised, for the most part, of single-family houses.¹⁹⁵ The development resulting from UGBs is supposed to be the antithesis of sprawl, higher-density and more compact.¹⁹⁶ Such development has lower infrastructure costs, decreased transportation costs, decreased air pollution and energy consumption, and more efficient delivery of government services.¹⁹⁷ However, denser development opposes many Americans' consumer

¹⁸⁹ Setting the Record Straight, *supra* note 18 (quoting *National Association of Homebuilders Metropolitan Area Growth Issues Survey*, NATION'S BUILDING NEWS (National Association of Home Builders, Washington, D.C.), Feb. 7, 2000).

¹⁹⁰ Strausbaugh, *supra* note 109.

¹⁹¹ Anthony Downs, Keynote speech on the Relationship between Affordable Housing and Growth Management (including Smart Growth), at the Brookings Institution (May 29, 2003) (transcript available at http://www.brookings.edu/views/speeches/downs/20030529_downs.htm).

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ See *supra* note 15.

¹⁹⁵ "[Federal] legislation [the National Housing Act] nowhere mentioned an antiurban bias, it favored the construction of single-family projects and discouraged construction of multi-family projects through unpopular terms." KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 206 (1985).

¹⁹⁶ See *supra* notes 18 and 90.

¹⁹⁷ Cordes, *supra* note 16, at 441 (quoting Robert W. Burchell & Naveed A. Shad, *The Evolution of the Sprawl Debate in the United States*, 5 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 137 (1999)).

preferences for the single-family home on an individual lot.¹⁹⁸

Lancaster County's existing development reflects the predominating American consumer preference for the single-family home on an individual lot.¹⁹⁹ Furthermore, all of the building permits for new, privately-owned residential housing over the first nine months of last year in both the city of Lancaster (seventy-nine permits issued from January through September 2004) and Lancaster Township (221 permits issued from January through September 2004) have been for single-family houses.²⁰⁰ Between 1990 and 1994, approximately eighty percent of new permits were issued for single-family units, up to eighty-three percent in the second half of the 1990s and leveling off through 2003.²⁰¹ When denser development is unregulated or is otherwise not mandated, market patterns indicate that development is inclined towards the sprawl-inducing, single-family home on an individual lot.

The actual building permit numbers may be misleading about the housing types being built in Lancaster County. The Census Bureau building permit data does not reveal Lancaster County single-family housing's varied typologies in its results.²⁰² Townhouses are classified by the Census Bureau as single-family *attached*, which have been grouped with single-family *detached* housing, so perhaps some higher density townhouses have been built recently but are just not readily apparent since all the permits have been grouped together as "single-family."²⁰³ Older duplexes, another higher-density typology, exist in the County, though new duplexes have not been built in "some time."²⁰⁴ The resulting densities from attached compared to detached types are quite different.²⁰⁵ While the Census Bureau's data does not differentiate among single-family housing types, a cursory look at Lancaster County's newer housing stock reveals almost exclusively detached housing anyway.²⁰⁶

¹⁹⁸ Nicole Stelle Garnett, *Trouble Preserving Paradise?*, 87 CORNELL L. REV. 158, 183 ("Americans say that they worry about sprawl. But, they also say, overwhelmingly, that they prefer to live in suburban homes with yards and that they are willing to commute long distances to sprawling developments where this 'ideal' is an affordable reality.") (referring to William W. Buzbee, *Urban Sprawl, Federalism, and the Problem of Institutional Complexity*, 68 FORDHAM L. REV. 57, 72-75 (1999) (discussing ways in which sprawl contributes to air pollution and other environment harms)). See *supra* text accompanying note 230 (In May 2002, voters passed a ballot measure prohibiting Metro from making minimum density requirements within existing neighborhoods.)

¹⁹⁹ Garnett, *supra*, note 198, 183 ("Americans say that they worry about sprawl. But, they also say, overwhelmingly, that they prefer to live in suburban homes with yards and that they are willing to commute long distances to sprawling developments where this 'ideal' is an affordable reality.") (referring to Buzbee, *supra*, note 198, at 72-75 (discussing ways in which sprawl contributes to air pollution and other environment harms)).

²⁰⁰ U.S. CENSUS BUREAU, BUILDING PERMITS BY COUNTY (n.d.), <http://censtats.census.gov/bldg/bldgprmt.shtml> (interpretive assistance by Trent Langley, Survey Statistician, Manufacturing and Construction Division, Residential Construction Branch of the U.S. Census Bureau).

²⁰¹ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *supra* note 2, at 6.

²⁰² Interview with Patricia J. Kadel, Senior Planner, Lancaster County Planning Commission, in Lancaster, Pa. (Nov. 5, 2004) (administers the Community Parks Initiative Grants Program and provides support to the Healthy Communities Initiative and Community Indicators Project).

²⁰³ Kadel, *supra* note 202.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

The Lancaster housing market reflects Americans' consumer preferences for the single-family home on an individual lot, preferences which must shift to be more accepting of higher density development for a UGB to work.²⁰⁷ Duplexes and townhouses and other higher-density housing types are often seen as "unattractive and undesirable" by residents of suburbs and small towns.²⁰⁸ Similarly, the "image of a [higher-density] housing project going up next door usually creates a tide of opposition from homeowners who fear the low-income stigma."²⁰⁹ However, policy decisions based solely on consumer preferences do not take into account all costs and benefits.²¹⁰ Some costs and benefits are external to the specific transaction of an individual consumer.²¹¹ The individual consumer (or the single municipality or small-scale partnership of two or three municipalities) does not weigh the societal costs (i.e. external costs) associated with sprawl in addition to his own costs.²¹² For example, society pays taxes to pay for government infrastructure costs necessary to connect sprawl to the urbanized areas, thus taxes subsidize this consumer preference for low-density, scattered development.²¹³ Repelling sprawl, of which UGBs are one dimension, is more economically efficient and would result in social gains not accounted for in free market theory.²¹⁴ A UGB cannot work well, however, if consumer preferences preclude denser development. Perhaps LCPC can help change consumer preferences by continuing its efforts to provide a clearer understanding of the benefits of denser development in Lancaster County.

3. LCPC Combining Its Strengths to Shape Public Perception

LCPC realizes the importance of educating the public when trying to implement planning guidelines. LCPC holds public meetings to help residents (who are also conceivably voters) understand how the success of its progressive Growth Management Plan requires their acceptance of some denser housing, and more generally, a willingness to accept change. "Because rising land prices and increasing densities have opposite effects on housing prices, the impact of . . . [an] urban growth boundary on the housing market really depends on which of these two forces is stronger."²¹⁵ The impact of a UGB on the housing market also depends on the ability of localities to adapt to new ideas and the ability of a countywide planning entity to formulate new ideas about land use.

²⁰⁷ Cordes, *supra* note 16, at 441.

²⁰⁸ TOM JONES, WILLIAM PETTUS & MICHAEL PYATOK, GOOD NEIGHBORS: AFFORDABLE FAMILY HOUSING 34 (1995) (predominance of the single-family house and lack of multi-family models in suburbs and small towns).

²⁰⁹ Strausbaugh, *supra* note 109

²¹⁰ Cordes, *supra* note 16, at 441.

²¹¹ *Id.* (quoting Buzbee, *supra*, note 198, at 84-85).

²¹² *Id.*

²¹³ Cordes, *supra* note 16, at 441 (quoting Burchell & Shad, *supra* note 197, at 137).

²¹⁴ *Id.* "Free market theory" in this case meaning the market without government intervention to protect the public interest by exerting certain controls. A better study of land use regulation and its societal costs/benefits considers the "Mixed Economy," a model that combines the market and government controls. J. K. GALBRAITH, THE AFFLUENT SOCIETY 4 (1958).

²¹⁵ Phillips & Goodstein, *supra* note 21, at 336-37.

a) *Perceptions of Land Scarcity*

Already LCPC, by helping municipalities assess their developable land and change zoning to accommodate higher densities, helps stave off public perception that the UGB will cause a land shortage. Though adamantly debated, a social cost of UGBs is an increase in developable land costs resulting in increased housing costs.²¹⁶ The public reasons that if government regulation decreases the amount of developable land through UGBs and does not create growth alternatives, the cost of new housing could increase.²¹⁷ Land scarcity or even a perception of land scarcity impacts the cost of land.²¹⁸ For example, if government removes acreage from the market through UGBs, yet maintains existing low-density zoning (e.g. one-acre lot minimums), the cost of new housing almost certainly increases because the costs of land have been passed to the consumer.²¹⁹ The public may feel uncertain that proper safeguards are in place to implement a UGB and adjust zoning. LCPC counters public speculation with actual data of available parcels and community planners give residents an understanding of higher-density zoning's supporting role in the UGB concept.²²⁰ The proactive stance of LCPC helps promote the efficient use of land within growth areas, enables LCPC to know when to expand the UGB to prevent a land shortage and helps improve public perception of UGBs.

In Oregon, some members of the population perceive land use control as a land shortage even though zoning has been adjusted for higher-density development.²²¹ Metro already has the rule of law behind its mandates and therefore may not feel the need to spend time educating the public about its decisions. Oregon law has assigned Metro the task of keeping tabs on land availability to prevent a land shortage and making sure plenty of land is available and allotted for housing. The law requires Metro to provide a twenty-year supply of land within the urban growth boundary for various land uses, including residential.²²² In 2002, the Metro Council forecasted a need for an additional 38,700 residential units, after which Metro Council immediately added 18,638 acres of land to the urban growth boundary, part of which is slated for more housing.²²³ Metro's actual process of forecasting the need for housing and expanding the UGB worked; however, the mandates were seemingly applied without serious attempts by Metro to help the public *understand* the external costs of sprawl and the difference between land use control and land

²¹⁶ CALLIES ET AL., *supra* note 19, at 680 (quoting a study commissioned by the NJ legislature that concluded that the price of a house will cost \$12,000 to \$15,000 more over the next two decades if sprawl is permitted to continue at this rate).

²¹⁷ Cordes, *supra* note 16, at 443.

²¹⁸ Phillips & Goodstein, *supra* note 21, at 336.

²¹⁹ Cordes, *supra* note 16, at 443; Phillips & Goodstein, *supra* note 21, at 336.

²²⁰ Frey, *supra* note 8.

²²¹ See, e.g., John A. Charles, *Squeezed Out: No Swingset, No Sandbox, No Space Left for the American Dream*, POLICY PERSPECTIVE 1 (Feb. 2000) ("[T]he government policy of creating a land shortage . . . in a state where only 1.8 percent of the land mass is urbanized, is having a significant effect—not just on price, but on quality [of land].")

²²² *Industrial Land*, *supra* note 125.

²²³ *Id.*

shortage.²²⁴ If LCPC combines its successful role as a public land use teacher with the legal power of Metro's long-term land supply requirement and its land assessment process to forecast land use needs on the countywide scale, Lancaster County could avoid public misperceptions about land scarcity with which Metro has grappled. A key aspect of sustainable growth management is educating the public to harness political support, and an asset of LCPC is its ability to educate the County's population.

b) Stigma against Density

Compact, high-density growth could itself decrease new housing costs, an idea the public can readily understand. Duplexes and townhouses and other higher-density housing types are often situated on smaller lots and developers admit that by "allowing greater housing density, smaller lots and attached or clustered housing," costs are reduced.²²⁵ "[T]he factor substitution inherent in increased densities (the substitution of capital for land)" may mitigate any increase in land prices.²²⁶ The mitigation occurs because consumers expect to pay less for housing as density increases. Consumers pay less because "higher densities usually mean smaller yards, fewer open spaces, and less privacy."²²⁷ If builders pass their savings to consumers, "compact forms of growth can result in savings of up to 8% of the cost of housing provided that the absolute supply of the number of housing units is not constrained."²²⁸ Infrastructure costs, such as costs for roads and sewer systems, are lower for denser housing, too.²²⁹ Therefore, housing prices could remain the same if increased land costs are passed on to the consumer in the form of smaller lot sizes.²³⁰

Sometimes existing residents have a resistance to changing density because they are accustomed to their current neighborhoods, but a regional planning entity with legal authority can overcome this challenge. In May 2002, Oregon voters passed a ballot measure prohibiting Metro from making minimum density requirements within existing neighborhoods; they wanted to preserve the *status quo*.²³¹ To allay residents' concerns, Metro plans to locate "higher density housing" (e.g. townhouses and apartments) in existing urban centers and along transportation corridors (e.g. along a light rail line) where higher density residential will coexist with commercial

²²⁴ Charles, *supra* note 221 ("One member [of Metro's Affordable Housing Technical Advisory Committee] asked about the widespread perception that the UGB is having an adverse effect on housing stock, and the committee broke out in laughter at the presumed silliness of such an assertion.").

²²⁵ Tom Jones, William Pettus and Michael Pyatok, *Good Neighbors: Affordable Family Housing* 34 (1995) (predominance of the single-family house and lack of multi-family models in suburbs and small towns).

²²⁶ Phillips & Goodstein, *supra* note 21, at 336.

²²⁷ *Id.*

²²⁸ 10,000 FRIENDS OF PENNSYLVANIA, EXECUTIVE SUMMARY OF THE COSTS OF SPRAWL IN PENNSYLVANIA 6 (Jan. 2000), available at http://www.10000friends.org/Web_Pages/News/Costs_of_Sprawl_in_Pennsylvania.pdf.

²²⁹ Cordes, *supra* note 16, at 443.

²³⁰ Phillips & Goodstein, *supra* note 21, at 336. Note that smaller lot sizes possibly result in fewer personal amenities.

²³¹ Metro, 2002 Growth Boundary: Frequently Asked Questions, Land Use Planning (Sept. 6, 2002), http://www.metro-region.org/library_docs/land_use/02340ugb5genfaq.pdf [hereinafter UGB FAQs].

and light industrial uses.²³² This case shows that a thoughtful and creative regional planning entity can overcome challenges, in part, because of its ability to both look at all available options for changing densities within the UGB and actually mandate the change.

Key variables regarding the acceptance of denser housing in Lancaster County include the market demand for compact housing in the community,²³³ the amount of appropriate developable land and developer incentives to construct such housing there.²³⁴ One response to all three of these variables is establishing inclusionary zoning ordinances, which set forth a minimum percentage of units in a specific, new residential development that must be affordable to households at a certain below-median income level.²³⁵ The share of units allocated to lower-income households is called a “mandatory set-aside.”²³⁶ The goal of inclusionary zoning is to establish a relatively permanent stock of affordable housing units provided by the private market (i.e. provided by private developers).²³⁷ A large development containing inclusionary zoning is often mixed-use, transit-oriented and surrounded by protected open spaces.²³⁸ The question now is whether communities will accept some of the higher-density housing typologies in Lancaster County localities.

While not directly spear-headed by LCPC, inclusionary zoning and the resulting higher-density housing are finding a place in the County. In the summer of 2004, Mount Joy Borough Council in Lancaster County was the first locale in the state to adopt inclusionary zoning to provide housing.²³⁹ The subsequent housing project, named Florin Hill, will contain 457 homes on sixty acres.²⁴⁰ Florin Hill involves an

²³² UGB FAQs, *supra* note 231; Phillips & Goodstein, *supra* note 21, at 336 (inevitable decline in house lot size after UGB implementation).

²³³ Breaking this impasse will require shifting some of the decision-making power over where housing is built to other levels besides suburban local governments. Alternative stakeholders include developers, state governments, regional agencies, and possible public-private partnerships created to develop more widespread affordable housing. Resistance to reducing local autonomy over housing is intense because it involves the social nature of who is going to live near me and who is going to attend school with my children. Most people accept regional approaches to infrastructures, such as sewage and transportation systems. But they reject regionalism regarding social aspects, such as schools and who lives where. Almost all attempts to create suburban affordable housing have been thwarted by such local NIMBYism.

Downs, *supra* note 191.

²³⁴ Cordes, *supra* note 16, at 444.

²³⁵ Dr. Robert W Burchell & Catherine C. Galley, *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis? Inclusionary Zoning: Pros and Cons*, 1 NEW CENTURY HOUSING (Oct. 2000), available at <http://www.inhousing.org/NHC-Report/NHC-2.htm>. (Generally, the income level is a certain set percentage of the median income of the area.)

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ Robert W. Burchell, David Listokin, & Catherine C. Galley, *Smart Growth: More Than a Ghost of Urban Policy Past, Less Than a Bold New Horizon*, 11 HOUSING POLICY DEBATE 1 (2000).

²³⁹ “Inclusionary zoning” is a land-use concept in which a local ordinance requires developers to include a certain amount of housing for low- and moderate-income households. Mark Hiester, Lancaster County Planning Commission, Mount Joy Borough Adopts Inclusionary Zoning Density Bonus (August 26, 2004), http://www.smartgrowthpa.org/news_detail.asp?ID=161.

²⁴⁰ “Inclusionary zoning” is a land-use concept in which a local ordinance requires developers to include a certain amount of housing for low- and moderate-income households. Hiester, *supra* note 239.

agreement called a “density bonus” made between a developer and the borough that assures a certain number of low- and mid-priced homes will be built.²⁴¹ If the developer dedicates fifteen percent of the designated land to affordable housing units, he can receive a number of lots free in return.²⁴² Thus, a Florin Hill lot with a market value of \$40,000 is given to the developer at no cost, on the lot he builds a higher-priced home and prices it below the market rate.²⁴³ A \$190,000 home could sell for \$150,000, giving the developer a profit and a family a nice, reasonably-priced home.²⁴⁴ Therefore, if UGBs are combined with revised zoning provisions (such as inclusionary zoning) and developer incentives that facilitate compact development, housing costs may remain affordable.

Inclusionary zoning provides the “critical mass” of people necessary to create a town center and to “reduce the proliferation of sprawled bedroom subdivisions.”²⁴⁵ To acquire the necessary density for this critical mass, inclusionary zoning often results in residential environments of a variety of housing types, not merely single-family detached houses.²⁴⁶ Florin Hill will have a mix of housing styles, “from three-story condos, to low-cost bungalows, to town homes to single-family residences.”²⁴⁷ The variety of architecturally-distinct housing types shapes public perception by enabling increased density to look attractive.²⁴⁸ The various housing types also enable lower-income persons to build wealth by owning property and to later move into a higher-priced dwelling, possibly also in Florin Hills. Similarly, “[i]f people are forced to move away from their families and communities because they cannot find an affordable place to live, it’s a crisis.”²⁴⁹ Such adaptable “continuum housing” insures that the critical mass of people is sustainable over the long-term because they will not be forced to leave the community for a different house.²⁵⁰

The residents of Mount Joy were able to adapt to new ideas about housing density and the Borough planners had enough foresight to formulate a new zoning code and give developer incentives to fortify the new housing development. A countywide planning entity must be both as aware of (although not necessarily responsive to) locals’ interests and innovative in its larger, growth management laws, as demonstrated in the Mount Joy case.

c) NIMBYism: Battle with a Diverse Coalition

While inclusionary zoning is a good mechanism to respond to the need for

²⁴¹ Strausbaugh, *supra* note 109.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Anthony Downs, *Creating More Affordable Housing*, 49 JOURNAL OF HOUSING 174-83 (July/August 1992); *see also* Innovative Housing Institute, *Inclusionary Zoning* (Oct. 1, 1999), <http://www.inhousing.org/Inclusionary%20Zoning/izoning.htm>.

²⁴⁶ Burchell, Listokin, & Galley, *supra* note 238.

²⁴⁷ Strausbaugh, *supra* note 109.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

affordable housing, to maximize the limited amount of developable land and to inform and incentivize developers, such zoning is often faced with a major impediment at the local level. One other key force dictating the impact of a UGB on the housing market is local politics, which produce obstacles that directly effect government's ability to create affordable housing, mitigate land scarcity issues, and otherwise manage growth. "NIMBYism" means Not-In-My-Backyard, a term for the behavior of existing residents or group of residents who resist unwanted development, including affordable housing development, in their community.²⁵¹ A "key reason why many proponents of smart growth have not emphasized creating affordable housing is that doing so would arouse strong opposition from suburban residents. Getting smart growth accepted by itself is hard enough" without promoting affordable housing, too.²⁵² The NIMBYism condition effectively leads to the exclusion of affordable housing because local political control of land use distorts market outcomes.²⁵³ In other words, though affordable housing demand exists, the supply is constrained by politically-motivated land use controls that restrict the ability to build such housing despite the demand.

The appeal of inclusionary zoning to housing advocates and farmland protection groups is clear. Additionally, real estate developers can also appreciate inclusionary zoning because the mechanism can make development easier. UGBs may actually promote affordable housing by reducing "traditional 'NIMBY' obstacles to housing production that developers face elsewhere," making the boundaries "pro-growth," in a sense.²⁵⁴ In the Oregon case, the pro-UGB coalition pressured local governments to eliminate restrictions on development within the boundary.²⁵⁵ Thus, the coalition has solidified the continued support of the homebuilding industry pleased with the ease of development resulting from the UGB.²⁵⁶ Similarly, in Mount Joy Borough, the developer of the first affordable housing development there supported the project, in part, because "the new [inclusionary zoning] rules grant [the developer] a 'right by use,' which allows him to make building and design decisions as the project progresses without [having] to run back to the zoning board to seek a special exception or a conditional use."²⁵⁷ Special exceptions and conditional use permits are normally costly and take a lot of time.²⁵⁸ This appeal of inclusionary zoning to a diverse group of pro-UGB stakeholders from developers to housing advocates

²⁵¹ Jaimie Ross, 1,000 Friends of Florida, Affordable Housing NIMBYism: Citizen Participation Gone Awry, http://www.1000fof.org/Affordable_Housing/NIMBYism.asp (last visited Oct. 1, 2005) (neighborhood opposition of an "active and misinformed citizenry" can frustrate planning); *see also* MICHAEL C. THOMSETT, NIMBYISM: NAVIGATING THE POLITICS OF LOCAL OPPOSITION 1-2 (Jessica Poppe ed., 2004).

²⁵² Downs, *supra* note 191.

²⁵³ BELSKY & LAMBERT, *supra* note 21, at 5.

²⁵⁴ Setting the Record Straight, *supra* note 18; Mandelker, *supra* note 126, at 813, 816; BELSKY & LAMBERT, *supra* note 21 (quoting Henry R. Richmond, Metropolitan Land-Use Reform: The Promise and Challenge of Majority Consensus, REFLECTIONS ON REGIONALISM 9-40 (Bruce Katz ed., 2000) (a chapter expounding on the advantages of consensus in land regulation, noting how certain regulatory mechanisms foster consensus and thus results in better land use).

²⁵⁵ Weir, *supra* note 135, at 137.

²⁵⁶ *Id.*

²⁵⁷ Strausbaugh, *supra* note 109.

²⁵⁸ *Id.*

bolsters opposition for NIMBY-supporters. Pro-UGB coalition building that includes such unlikely partners as developers and smart growth advocates is vital. Without acceptance of higher-density development in conjunction with growth management at the regional level, UGBs will restrict the supply of land usable for development and raise housing prices.

C. UGBs in Relation to Farming

The underlying assumption of Lancaster County's UGB strategy is that farming will remain viable.²⁵⁹ Whether or not farming can, in fact, be sustained depends on the general situation of the farming economy in the United States: "Should the economics of farming become less attractive and the lure of development dollars rise, then greater pressure could be brought to bear on agricultural zones . . . In such a scenario, public offers to purchase development rights may not be competitive with non-farm offers."²⁶⁰ Farming also depends on the industry's response to shifts in lifestyle preferences (e.g. an heir to a farm may not want to continue farming).²⁶¹ Many new Amish entrepreneurs try to maintain the "patterns and virtues of farm life," including a farm household, in their commercial context.²⁶² Moreover, one-third of the Amish-owned businesses (i.e. non-farms) are only part-time/seasonal operations for supplementary income, leaving time to farm the rest of the year.²⁶³ Farming is ingrained in the County residents' lifestyles and values.²⁶⁴

Despite a commitment by Lancaster County communities to the preservation of farm life, real estate development itself undermines the vitality of farming.²⁶⁵ An increasing trend across the United States is economic incentives to develop farmland reduce the local "farmland base."²⁶⁶ This elimination of a "critical mass" to sustain a local farm economy can also have an impact on farmers' reliance.²⁶⁷ Farmers stop investing in farming enterprises because of their perception that farming will not remain viable or they have impending "development expectations."²⁶⁸ If farmers continue to disinvest in their property, this behavior may hasten the conversion of farmland to developed land. Because UGBs can provide an additional legal basis for denying zoning change requests, the boundaries give farmland outside of the

²⁵⁹ Shields, *supra* note 47 (data of the PA Agricultural Statistics Service and Penn State Cooperative Extension show that in Lancaster County the number of farms and amount of acreage have declined over time—from 7,053 farms covering 482,579 acres in 1959 to 5,910 farms covering 421,000 acres in 2001. Land pressure for real estate development is one reason for the loss. Another reason is technological progress which has increased farming productivity (less land needed to produce same output)).

²⁶⁰ Daniels et al., *supra* note 160.

²⁶¹ Cordes, *supra* note 16, at 445.

²⁶² Pennsylvania Dutch Convention & Visitors Bureau Public Relations Dept., *supra* note 34.

²⁶³ *Id.*, *supra* note 37.

²⁶⁴ *Id.*

²⁶⁵ Cordes, *supra* note 16, at 445 (quoting Edward Thompson, Jr., "Hybrid" Farmland Protection Programs: A New Paradigm for Growth Management, 23 WM. & MARY ENVTL. L. & POL'Y REV. 831, 839-40 (1999)).

²⁶⁶ Cordes, *supra* note 16, at 445.

²⁶⁷ *Id.*

²⁶⁸ *Id.*; Ambrose & Gonas, *supra* note 82, at 28.

boundaries an “assurance of stability.”²⁶⁹

Lancaster County’s Growth Management Plan has had mixed results, so far. UGBs and the associated agricultural zoning laws remove the decision from the owner as to whether he can convert the farmland to developed land.²⁷⁰ In localities with a UGB and agricultural zoning in place, the land owner cannot convert his property to more intensive land uses no matter how great the economic incentives.²⁷¹ Also, the two growth management mechanisms create a prime farming environment by separating large areas of farmland from conflicting land uses.²⁷² Seemingly, the boundaries reduce conflicting land uses by moving uses that may be potential farming conflicts away from the existing farms.²⁷³ The Plan should create stability and reliance that would result in farmers’ reinvestment in their farms. Yet, as already discussed, farming is still declining in Lancaster County, not all municipalities have voluntarily committed to the plan and laws must be in place to contain the new forms of real estate development *before* they spring up over the hillsides.²⁷⁴

An important measure of a UGB program’s success is the extent to which growth has occurred inside rather than outside UGBs.²⁷⁵ Though forty-one municipalities are participating in voluntary, multi-municipal Growth Management Plans (a regional planning strategy), development has still resulted in lower densities in the urbanized areas than the plan envisioned.²⁷⁶ Sixty-three percent of all the acreage developed for residential use in the County from 1994-2002 was located outside of growth areas.²⁷⁷ In rural municipalities without growth areas, 1612 acres of land were developed from 1994-2002, compared to 1593 acres developed in the five biggest municipalities with urban growth areas.²⁷⁸ Furthermore, the County Growth Management Plan as it is currently drafted, “has not stimulated demand for high-density development, and farmland prices are now increasing, providing strong incentive for farmers to sell their land.”²⁷⁹ Current residential development density within growth areas in Lancaster County is five dwellings per acre.²⁸⁰ The goal is 5.5 dwellings per acre.²⁸¹ The density outside growth areas is 0.8 dwellings per acre.²⁸² A countywide, mandated UGB would help contain the development better within the boundary.

The density of the new development may simply reflect consumer preferences,

²⁶⁹ Cordes, *supra* note 16, at 426.

²⁷⁰ *Id.* at 422.

²⁷¹ *Id.*

²⁷² *Id.* at 437.

²⁷³ *Id.*

²⁷⁴ Shields, *supra* note 47.

²⁷⁵ Mandelker, *supra* note 126, at 813.

²⁷⁶ A DECADE OF SMART GROWTH MANAGEMENT, *supra* note 61, at 5-6.

²⁷⁷ *Id.* at 8.

²⁷⁸ *Id.*

²⁷⁹ LAQUATRA, *supra* note 52.

²⁸⁰ A DECADE OF SMART GROWTH MANAGEMENT, *supra* note 61, at 8.

²⁸¹ *Id.*

²⁸² *Id.*

adherence to existing local zoning and building code issues and availability of only poor quality urban land, which all hinder development other than single-family housing.²⁸³ From 1994-2002, forty-four percent of all land development in urban growth areas occurred in one: the Central Lancaster County urban growth area.²⁸⁴ In short, twenty-four percent of total dwellings built between 1994 and 2002 were on fifty-three percent of total acreage developed.²⁸⁵ Though “where growth boundaries have been combined with both agricultural zoning and PDRs . . . such as in Lancaster, Pennsylvania . . . the success in preserving farmland has been even more apparent [compared to areas that only use UGBs *or* only use zoning],” the success in providing controlled development has not been as apparent.²⁸⁶

D. A Countywide UGB fosters Collective Responsibility

UGBs impact land use and land use decision-making across a range of different areas: from permitting to zoning to administrative enforcement efforts.²⁸⁷ In Lancaster County, already fifteen municipalities have changed their zoning ordinances, four municipalities have updated their sewage facilities plan and nine municipalities have updated both their zoning ordinance and their sewage facilities plan.²⁸⁸ Specifically, municipalities need to make sure land outside of the UGB is no longer zoned for urban-level development (areas that would need public sewer and water connections).²⁸⁹ Only agricultural and conservation districts are to be outside of the UGBs.²⁹⁰ Yet currently, agricultural and rural zones as defined by municipalities allow the construction of certain facilities that are not appropriate to locate outside of a UGB from LCPC’s regional perspective.²⁹¹ LCPC desires a tightening of zoning regulations (both ordinances and enforcement) at the municipal level to keep the areas outside of the UGBs in the less-developed state that LCPC interprets the state law has intended.²⁹² LCPC’s mere desires do not always generate municipal action; perhaps a newly-conceived County government entity could instead mandate a tightening of zoning regulations.

Updates to existing local planning and regulatory schemes are vital to the success of a UGB program. Some municipalities adopt the Growth Management Plan and make the other related, necessary changes concurrently.²⁹³ Others make the related changes over a longer period of time.²⁹⁴ The fewer the municipality’s resources, the

²⁸³ Frey, *supra* note 8.

²⁸⁴ A DECADE OF SMART GROWTH MANAGEMENT, *supra* note 61, at 8.

²⁸⁵ *Id.*

²⁸⁶ Cordes, *supra* note 16, at 446.

²⁸⁷ Frey, *supra* note 8.

²⁸⁸ A DECADE OF SMART GROWTH MANAGEMENT, *supra* note 61, at 3.

²⁸⁹ Problem Statements, *supra* note 35.

²⁹⁰ *Id.*

²⁹¹ Epstein, *supra* note 11, at 371 (“unsophisticated, and often completely unsuccessful, so-called ‘low-density’ or ‘rural conservation’ zoning—in the Eastern United States, on the order of one dwelling unit per two or three acres . . . a virtual formula for sprawl and . . . fragmentation.”).

²⁹² Frey, *supra* note 8.

²⁹³ *Id.*

²⁹⁴ *Id.*

longer the period of time required to implement new zoning ordinances and sewage plans to protect undeveloped areas.²⁹⁵ LCPC has been pushing municipalities to implement secondary strategies that foster UGB objectives, and LCPC realizes that municipal officials need to be continually educated about growth and its relationship to zoning and infrastructure to have long-term success.²⁹⁶ Still, thus far, higher-density development sometimes eludes Lancaster County's growth areas, as indicated by the apparent spillover effects outside of the UGBs.²⁹⁷

In Lancaster County, two townships exercised their legal right not to participate in the Growth Management Program.²⁹⁸ The townships are not participating for a number of reasons. The overriding reason is that neither township *viewed itself* as fitting the UGB concept.²⁹⁹ LCPC agreed somewhat with this self-assessment; UGBs, as they were designed, simply were not compatible with particular rural lifestyles.³⁰⁰ Furthermore, LCPC in the past did not have strong relationships with either township and therefore did not wield much influence.³⁰¹ These municipalities prefer a "hands-off," less regulatory way of managing land use.³⁰² During the current revision process, LCPC is going to try to address some of these issues to make the Growth Management Program more palatable to all localities.³⁰³ Growth management is most effective when the regulations are implemented universally across the County's municipalities.

Local preferences and political choices can have a major impact on a county-wide plan if opting out is an option. Constituents have no motivation to compromise if they can avoid bargaining altogether. Part of Oregon's UGB success is attributable to its *required* boundaries: "The principle [Oregon] state planning goal that *mandates* growth management is an urbanization goal that *requires* incorporated municipalities to adopt urban growth boundaries. Local governments *must* draw a clear line between areas that can urbanize and areas that must remain non-urban."³⁰⁴ An underlying consideration is that the single municipality does not weigh the societal costs (i.e. external costs) associated with sprawl in addition to his own costs.³⁰⁵ A single municipality's self-serving land use decision can have a dramatic impact on the County's Growth Management Plan.

The County should redefine how it targets areas for growth to ensure that

²⁹⁵ Frey, *supra* note 8.

²⁹⁶ Mandelker, *supra* note 126, at 818.

²⁹⁷ A DECADE OF SMART GROWTH MANAGEMENT, *supra* note 61, at 8.

²⁹⁸ *Id.* at 5-6.

²⁹⁹ Frey, *supra* note 8.

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*; see also Wickersham, *supra* note 75, at 502, for a discussion of "strong" home rule states. Presumably Pennsylvania would be considered a home rule state. Lancaster City has an Optional Charter adopted Nov. 1963. COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-3 to 6-4.

³⁰³ Frey, *supra* note 8.

³⁰⁴ Mandelker, *supra* note 126, at 812 (emphasis added); SAMUEL R. STALEY, PH.D. ET AL. A LINE IN THE LAND: URBAN-GROWTH BOUNDARIES, SMART GROWTH, AND HOUSING AFFORDABILITY (Reason Public Policy Institute, Policy Study No. 263 Nov. 1999) (Oregon, Tennessee, and Washington mandate UGBs).

³⁰⁵ See Cordes, *supra* note 16, at 441 (quoting Buzbee, *supra* note 198, at 84-85).

townships do not simply opt out. Lancaster County's current GMP does not have a strategy for rural municipalities, which have ended up developing over sixteen hundred acres in less than ten years.³⁰⁶ Sixty-three percent of total land developed was outside of growth boundaries. Some scattered development existed before the GMP was implemented in 1993; however, despite the existence of sprawl already, a number of these areas were not targeted as growth areas in the GMP.

Lancaster County can learn important information about the "spillover effects" of growth management on neighboring areas from the nation's oldest UGB, first implemented in Lexington, Kentucky in 1958.³⁰⁷ As growth controls, such as UGBs, begin to impact the supply of developable land, "growth moves to areas outside the sphere of influence."³⁰⁸ The areas outside of Lexington's UGB (i.e. counties beyond Fayette County) experienced a spillover effect. Households seeking lower-prices or lower densities migrated to areas without strict growth controls (Scott, Woodford, Jessamine and Madison Counties).³⁰⁹ In the impending revisions, LCPC should certainly have a strategy for rural municipalities and areas with *any* existing development to avoid the "spillover problem" that Lexington has tried desperately to contain.³¹⁰

To help stakeholders look beyond short-term financial gain, LCPC must continue to teach that, in fact, the long-term value of real estate development is strongly impacted by the quality of the surrounding environs which are protected by growth management strategies. Developers often do not or cannot place a value on protected lands. In part because of this inability to value growth management in relation to real estate values, developers believe that infill development may never be as cost-effective as new development, and "[z]oning restrictions have a significant impact on property utilization (and hence value)."³¹¹ Studies often conclude that "zoning restrictions force spillover."³¹² For example, an "ad hoc empirical" observation found that the supply of developable land in Lexington was constrained in the late 1990s,³¹³ thus Lexington's growth control ordinances were responsible for adversely impacting the city's growth rate during that period. Instead of developing in the city, developers built outside of the boundary even though Lexington's zoning code attempted to facilitate cost-effective development within the growth areas to dissuade spillover. Before spillover continues outside of Lancaster County's UGBs, LCPC must educate developers to make them understand that growth management is profitable and hopefully align developers' interests with a pro-UGB coalition.

Conversely, Lancaster County's implementation strategy must have enough muscle to counter traditional, one-house-on-one-acre developers' desires for inexpensive land backed by promises of huge amounts of revenue. The localities want the revenue in the short term, and politics are responsive to short-term

³⁰⁶ A DECADE OF SMART GROWTH MANAGEMENT, *supra* note 61, at 8.

³⁰⁷ Ambrose & Gonas, *supra* note 82, at 99.

³⁰⁸ *Id.*; "Spillover" is also called "leapfrog development." Phillips & Goodstein, *supra* note 21.

³⁰⁹ *Id.* at 100.

³¹⁰ See discussion *infra* p. 35-36.

³¹¹ Ambrose & Gonas, *supra* note 82, at 93.

³¹² *Id.* at 26.

³¹³ *Id.* at 88.

decisions at the expense of the greater, long-term good protected by growth management strategies. In Lexington, instead of producing spillover outside of the existing UGB, some developers lobbied the government to expand it. The UGB in Lexington has been expanded seven times since its inception, the last time in 2001.³¹⁴ Housing returns were “significantly” high in the six months prior to every urban growth boundary expansion, indicating a high housing demand and low supply.³¹⁵ Some developers want development to be as cost-effective as possible as to make the maximum, immediate profit possible. The influence of developers on local government officials is a powerful force behind boundary expansions in Lexington: “During periods of constrained supply, developers . . . effectively lobby the planning commission that the supply of developable land within the [growth area] is not sufficient to meet the city’s housing needs.”³¹⁶

Because of the inherent power of the real estate developer at the local government level, “local elected officials have come under increasing pressure to expand” the UGBs as soon as costs start to increase even slightly because of constrained supply.³¹⁷ Continual boundary expansion into more rural areas instead of increased building density within the existing boundaries results in spillover-like effects such as scattered single-family houses on one acre lots. Lancaster County needs a combination of developer education and a strong, diverse pro-UGB coalition of constituents to counter adverse demands and pressure local governments to stand their ground and maintain the boundary until land assessment data indicates an impending land shortage.

Finally, the tax structure in Pennsylvania is an inherent obstacle to regional planning. While the state and County allow tax-sharing to promote cross-bound cooperation, the tax-sharing is not regularized.³¹⁸ Pennsylvania gives both county and local governments (i.e. city, borough, township, school district) authority to levy taxes on real and personal property within their jurisdiction.³¹⁹ The state also provides for tax exemptions.³²⁰ One of the two primary sources of tax revenue at the local level is the real estate tax, authorized under respective municipal codes.³²¹ For the same reasons that local control of zoning can hinder growth management, local control of revenue solidifies localities ability to pick and choose from growth management suggestions.³²²

³¹⁴ Ambrose & Gonas, *supra* note 82, at 89.

³¹⁵ *Id.* at 90.

³¹⁶ *Id.* at 89.

³¹⁷ *Id.* at iii.

³¹⁸ Frey, *supra* note 8.

³¹⁹ COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-3; Tim Kelsey, Department of Agricultural Economics and Rural Sociology, The Pennsylvania State University, What are the local taxes in Pennsylvania?, <http://cax.aers.psu.edu/localgovernment/TAXES/taxdesc.htm> (last visited Oct. 1, 2005) (government and expenditures by Category based on audit reports filed annually with the Commonwealth).

³²⁰ COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-3.

³²¹ *Id.* (The other source is earned income tax, authorized by the Local Tax Enabling Act.).

³²² Counties only collect about thirteen percent of local taxes compared to twenty-five percent to cities and over fifty-percent to school districts. Kelsey, *supra* note 265.

V. PROPOSAL FOR A REGIME CHANGE IN LANCASTER COUNTY, PENNSYLVANIA

This comment posits a new kind of government entity to mandate UGBs and create related, legally-enforceable policies to better manage growth beyond the local government entity level. A new entity is necessary because of LCPC's lack of powers under the MCP and those limited powers, in combination with local political forces, limit the effectiveness of the existing initiatives. "We cannot and should not expect a system invented and constructed to resolve social and 'environmental' problems of the early twentieth century to serve us equally well as we enter the next millennium. On the other hand, we should expect such structures to require major revision."³²³

The state legislature should respond to the numerous impediments to regional planning by adding legal power for a county-level planning entity. The judiciary cannot make such a sweeping change alone. The Pennsylvania Supreme Court in *Naylor v. Township of Hellam* reiterated the judiciary's history of deferring to the legislature on matters of innovations in growth controls: "As we stated in *Kline* over fifty years ago, 'if the legislature wishes to authorize [a growth-management mechanism,] it can so provide by legislation with proper safeguards.'"³²⁴ The legislature (i.e. General Assembly) is "better suited to examine the significant policy issues at stake and to determine the appropriate legal standards to govern the application of such a powerful planning tool."³²⁵

Lobbying and then waiting for the legislature to act on every innovative growth management tool is the only ameliorating method under the current government structure. An unprecedented growth management decision in one township would need legislative action at the state-level *every time*. That means, for example, that if Pennsylvania's smallest municipality of Christiana Borough (population 1124) wanted to be part of a UGB, the only current means for its local officials to do so are voluntary.³²⁶ To change the governmental structure to mandate formalized Growth Management Planning at the County level, most of the sixty municipalities³²⁷ in Lancaster County would have to organize and mobilize to influence the state legislature. A more efficient procedure would have the municipalities abide by a new type of county-level planning entity empowered to make some of these legislative decisions.

A. A County Planning Entity with Legal Authority

I propose the creation of a county-level, legislative government entity. While LCPC facilitates smart growth planning from the County perspective, it only has a limited influence on the area's ultimate land use decisions.³²⁸ Instead of drawing entirely new boundaries at the "regional level" (Oregon's method), the state should

³²³ Epstein, *supra* note 11, at 378.

³²⁴ *Kline et al. v. Harrisburg et al.*, 68 A.2d 182, 189 (Pa. 1949).

³²⁵ *Naylor v. Twp. of Hellam*, 773 A.2d 770, 777 (Pa. 2001).

³²⁶ UNITED STATES GOVERNMENT, CENSUS (2000), available at <http://censtats.census.gov/data/PA/1604213512.pdf>.

³²⁷ COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 10.

³²⁸ Except subdivision approval—this is more in theory than practice.

work with existing legal/political boundaries and create a county-level planning entity with legal authority, its auspices aligned with the existing County boundary. The county-level entity may follow one of two models: Metro, the regional planning entity in Oregon, or the Agricultural Preserve Board, the quasi-governmental entity in Lancaster County that runs the successful farmland protection program.

1. Choosing an Entity Structure

a) Metro

The state Constitution was amended in 1990 making Oregon the only state in the nation with an elected regional government.³²⁹ The amendment allowed a regional planning entity, called Metro, jurisdiction over all matters of “metropolitan concern.”³³⁰ The charter setting forth Metro’s jurisdiction was adopted in November 1992.³³¹ The charter’s preamble is clear:

PREAMBLE

We, the people of the Portland area metropolitan service district, in order to establish an *elected, visible and accountable regional government* that is responsive to the citizens of the region and *works cooperatively with our local governments*; that undertakes, as its most important service, planning and policy making to preserve and enhance the quality of life and the environment for ourselves and future generations; and that provides regional services needed and desired by the citizens in an efficient and effective manner, do ordain this charter for the Portland area metropolitan service district, to be known as Metro.³³²

The state legislature authorized Metro to define and apply a planning procedure in certain areas of concern, such as the environment.³³³ Metro can also adopt functional plans to control the impact on air and water quality, transportation and other aspects of metropolitan development. The state required Metro to adopt a Regional Framework Plan (Plan) in which the 2040 Growth Concept was included.³³⁴ Metro’s responsibilities include: “regional coordination, comprehensive regional planning, and the delivery of regional services” in the Portland metropolitan

³²⁹ CALLIES ET AL., *supra* note 19, at 721-22; Phillips & Goodstein, *supra* note 21, at 335.

³³⁰ CALLIES ET AL., *supra* note 19, at 721-22; UGB Definition and Facts, *supra* note 1. Metro’s predecessor, the Columbia Region Association of Governments (CRAG), proposed an urban growth boundary (UGB) for the region in 1977. Voters created Metro in 1979 and Metro inherited CRAG’s effort to plan a UGB. In 1980, the Land Conservation and Development Commission approved the UGB because this growth management strategy was aligned with statewide planning goals. Plans and growth projections of Washington, Multnomah and Clackamas counties, twenty-five cities and at least sixty special service districts dictated the location of the Metro urban growth boundary. *See* discussion *supra* notes 124-25 and accompanying text (Metro’s entity structure).

³³¹ CALLIES ET AL., *supra* note 19, at 721-22.

³³² Metro Charter, Nov.1992 (amended Nov. 2000), *available at* <http://www.metro-region.org/article.cfm?articleid=629> (emphasis added).

³³³ CALLIES ET AL., *supra* note 19, at 722.

³³⁴ *Id.*

area.³³⁵ Oregon's legislature has reserved a protective check on the regional entity; according to state law, Metro's boundary expansions cannot go into effect until the Land Conservation and Development Commission³³⁶ reviews and acknowledges Metro's decision and until both state and regional agencies' actions have passed "legal challenges."³³⁷ Part of Metro's success is attributable to the support of the pro-UGB coalition. The coalition raised awareness and defeated naysayers.³³⁸ Overall, Metro is considered the model in regional planning entities.

Like Metro, Lancaster County Planning Commission's (LCPC) current responsibilities include regional coordination and comprehensive planning, yet LCPC's actions are considered guiding principles or suggestions, not enforceable law.³³⁹ LCPC has also successfully raised growth management awareness throughout the County.³⁴⁰ LCPC even has a Growth Management Plan, which is meant to guide growth in Lancaster County through the year 2030. Now LCPC just needs legal authority; a county-level governmental body would merely legitimize the precise functions that LCPC is already attempting to perform and add to the County's power to establish planning policies.³⁴¹ Currently, Pennsylvania's state legislature in conjunction with local zoning boards, have total legal power over the region's land use laws, laws which dictate the ultimate success of the Growth Management Plan.

b) Agricultural Preserve Board

The Lancaster County Commissioners appointed a nine-member Agricultural Preserve Board to develop guidelines for purchasing conservation easements in 1980.³⁴² In 1983, the Preserve Board became a County department. Since 1983, the Preserve Board has administered a purchase of development rights (PDR) program to preserve land for farming.³⁴³ Landowners apply to sell development rights to the Preserve Board which then ranks the applications for priority, hires appraisers to

³³⁵ CALLIES ET AL., *supra* note 19, at 722.

³³⁶ Department of Land Conservation and Development (DLCD) is the state agency that administers Oregon's statewide land-use planning program. About LCDC, <http://www.lcd.state.or.us/LCD/lcdc.shtml> (last visited Oct. 1, 2005). The Land Conservation and Development Commission (LCDC) guides the policy of DLCD. *Id.* The Commission "adopts state land-use goals and implements rules, assures local plan compliance with the goals, coordinates state and local planning, and manages the coastal zone program." *Id.* The seven Commissioners are unpaid citizen volunteers appointed by the Governor and confirmed by the Senate. *Id.* A statute established the Commission and instructed that the members represent certain regions of the state, and that one member is a current or former elected official of a city and a county. *Id.*; see also About DLCD, http://www.lcd.state.or.us/LCD/about_us.shtml (last visited Oct. 1, 2005).

³³⁷ Planning for the Region's Industrial Land, <http://www.metro-region.org/article.cfm?articleid=5370> (last visited Oct. 1, 2005) ("state approval process"). "Legal challenges" are appeals by local governments, organizations, residents and other persons to challenge Metro's UGB expansion. *Id.* These parties can file "objections" with Oregon's Land Conservation and Development Commission (LCDC), alleging that the UGB expansion violates state land use laws. *Id.*

³³⁸ Weir, *supra* note 135, at 137.

³³⁹ Frey, *supra* note 8.

³⁴⁰ *Id.*

³⁴¹ See discussion *supra* Part III(A).

³⁴² County of Lancaster, *supra* note 160.

³⁴³ *Id.*

estimate the value of development rights, and makes a formal offer to the landowner.³⁴⁴ Notably, the role of the Board is not necessarily to work with the communities' leaders, but more one-on-one with individual farmers; the Board seems to circumvent local government bureaucracy. The Preserve Board funding comes from both the County and the state.³⁴⁵ The Lancaster County Board of Commissioners appoints the Director of the Lancaster County Agricultural Preserve Board.³⁴⁶ In 1989, the Preserve Board started participating in Pennsylvania's statewide PDR program.³⁴⁷

The form of the Agricultural Preserve Board makes sense. Unlike Metro, the structure does not create a new political scale at a yet-to-be-defined "regional" level. The Agricultural Preserve Board structure works with the existing County boundary. The farmland protection program has been successful countywide and this quasi-governmental structure has proven acceptable, in part because the Board has its own sources of political power (Board appointments, not elections) and funding.

The proposed county-level entity for Lancaster County should not be a Preserve Board-like, quasi-entity.³⁴⁸ To maximize productivity, the newly-created, countywide planning entity would require either the explicit weakening of preexisting local governmental units' power or the authority to "sidestep or trump" local entities' planning power.³⁴⁹ A quasi-entity has a substantial drawback for citizens: being ignored by the government because the officials are not elected but appointed.³⁵⁰ Quasi-governmental entities are vulnerable to "entrenched bureaucracies, special interest capture, and insensitivity to citizen needs and desires."³⁵¹ A regional-level, quasi-governmental planning entity would address growth management issues, but would be "insulated from democratic accountability," therefore "legal and political constraints on their actions are few."³⁵² To ensure accountability and to address growth issues, the ideal county-level entity should be formed like Metro as "an elected, visible and accountable" government body, cooperative with local government entities.³⁵³ Yet the new entity's jurisdiction should be aligned with the existing County boundary like the Preserve Board and should be empowered to make land use policy applicable to all of the County's localities.³⁵⁴

A new County planning entity would have its own funding source, much the same as the Preserve Board quasi-entity, a form which has its own budget allocation or revenue source.³⁵⁵ The County Commissioner's budget—a budget funded solely by

³⁴⁴ County of Lancaster, *supra* note 160.

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ Buzbee, *supra* note 198, at 96-7.

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ See *supra* note 275; Metro Charter, *supra* note 332.

³⁵⁴ *Id.*

³⁵⁵ Buzbee, *supra* note 198, at 96-7.

local real estate taxes—provides the grant funding already in place to cover some costs of the voluntary multi-municipal planning process in Lancaster County.³⁵⁶ Since one of the primary sources of tax revenue at the local level is the real estate tax,³⁵⁷ using the County Commissioner’s budget to fund regional planning is a fair way to funnel localities’ revenue to evenly distribute costs. Just as local control of revenue can hinder growth management, regional control of some local revenue to support a County planning entity would advance growth management solutions.

B. Legalities of Creating a County-Level Government Entity

Major revision of a government’s structure—a new county-level, government planning entity—has some obvious legal hurdles to overcome.³⁵⁸ No authorization for county governance of planning exists in Pennsylvania. In fact, two laws are on the books that would have to be revised that speak directly to the issue of county-level government power in the state.

First, Lancaster County should adopt a Home Rule Charter to acquire this basic legal authority. Pennsylvania has had home rule powers since a new article was added to the Pennsylvania Constitution in 1968 and the Home Rule Law was enacted in 1972.³⁵⁹ The article allows municipalities *and* counties to “adopt home rule charters and exercise home rule powers.”³⁶⁰ Home rule means that the “basic authority to act in municipal affairs is transferred from state law, as set forth by the General Assembly, to a local charter, adopted and amended by voters.”³⁶¹ While home rule is perceived as an increase in *local autonomy*, the state legislature can still manage problems with uniform state laws that can override local discretionary authority.³⁶² Furthermore, the home rule law as written does not merely mean individual municipalities exercise power (i.e. the status quo), but could mean the County as a whole exercises its power if the County adopts a Home Rule Charter or Optional Plan, meaning the County has basic authority to act in municipal affairs.³⁶³ Though a law allows counties to adopt their own form of government, Lancaster County has not yet adopted a Home Rule Charter.³⁶⁴

In the current version of § 2962 of the Home Rule Charter and Optional Plans law found in the Pennsylvania Constitution, the state has limited some home rule powers:

³⁵⁶ COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-3 (legislative provisions outside of the local government codes include real estate tax collection). *See also* Kelsey, *supra* note 265.

³⁵⁷ *Id.* (The other source is earned income tax, authorized by the Local Tax Enabling Act.).

³⁵⁸ Janice C. Griffith, *Local and Comparative Perspectives on Managing Atlanta’s Growth: Smart Governance for Smart Growth: The Need for Regional Governments*, 17 GA. ST. U.L. REV. 1019, 1039 (2001).

³⁵⁹ PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, GOVERNOR’S CENTER FOR LOCAL GOVERNMENT SERVICES, HOME RULE IN PENNSYLVANIA 3 (7th ed. Mar. 2003), available at: <http://www.inventpa.com/docs/Document/application/pdf/a882c48f-b26e-4cc0-9b3d-0681c5662df4/home-rule.pdf>.

³⁶⁰ PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, *supra* note 291, at 3.

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-3.

³⁶⁴ *Id.* at 6-4.

Limitation on municipal powers: (a) POWERS GRANTED BY STATUTE—With respect to the following subjects, the home rule charter shall not give any power or authority to the municipality contrary to, or in limitation or enlargement of, powers granted by statutes which are applicable to a class or classes of municipalities [including] . . . Municipal planning under the act of July 31, 1968 (P.L. 805, No. 247), known as the Pennsylvania Municipalities Planning Code.³⁶⁵

A home rule municipality can create its own charter and perform and function or exercise any power *not* denied by the Pennsylvania Constitution, the General Assembly or the municipality's own home rule charter.³⁶⁶ If this clause of the Home Rule Law were revised, the County could develop a county-level planning entity. Then, the state's MPC and the County's Growth Management Plan could legally work together through the newly-created, county-level government entity. The County would have increased power over planning and the state could reserve some powers to manage larger-scale planning problems when needs required such state action (compare to Oregon reserving some state power over Metro).

The MPC itself also needs a revision. The MPC currently provides that the County's planning agency is a decision-maker for a municipality in a limited situation (by default): "where a municipality has not adopted its own subdivision ordinance, the County's ordinance will control."³⁶⁷ Furthermore, "if a municipality fails to enact its own ordinance, it has, by operation of law, delegated all subdivision matters, including review and approval of applications, to the County."³⁶⁸ Section 502(c) of the MPC, 53 P.S. § 10502(c) states:

[A]ny municipality other than a county *may* adopt by reference the subdivision and land development ordinance of the county, and *may* by separate ordinance designate the county planning agency, with the county planning agency's concurrence, as its official administrative agency for review and approval of plats. We conclude, therefore, that the Commission is, in effect, an "agency" of the Township for the purposes of Section 1004-A of the MPC.³⁶⁹

Therefore, currently a Pennsylvania municipality can adopt a county's subdivision ordinance by reference and at the same time establish its own agency for the administration and review of plats (i.e. pieces of land; plots) submitted under that ordinance.³⁷⁰ This MPC section, which applies only to subdivisions, is a model that demonstrates how a county-level entity can be created for the purpose of making *all*

³⁶⁵ Home Rule Charter and Optional Plans Law, § 2962(10), 53 Pa.C.S. 2962(10) (amended in 1974).

³⁶⁶ COMMONWEALTH OF PENNSYLVANIA, *supra* note 6, at 6-3.

³⁶⁷ Herr, 625 A.2d at 168 (quoting 53 P.S. § 10502(a)).

³⁶⁸ *Id.*

³⁶⁹ *Id.* (emphasis added).

³⁷⁰ Herr, 625 A.2d at 168.

land use decisions for a municipality. To create a county-level government authority, the MPC would have to be revised to say that municipalities *shall* adopt the land development ordinance of the county.³⁷¹

C. Conclusion

To control the rapid, sprawling development in Lancaster County, the state legislature must delegate real, legal power to a countywide land use planning entity, so that proposed growth management mechanisms are actually legal requirements. For a mandatory UGB to be sustainable, the countywide entity must continue its awareness efforts. Localities must accept their part of a collective responsibility to adjust zoning measures, adapt infrastructure and consider new housing typologies, not just because they are law, but because the real costs of traditional, self-serving, low-density development cost all of society greatly. This new, empowered entity is the last resource the County needs to fully-implement its Growth Management Plan. Legal power added to the visionary LCPC's existing spirit of municipal cooperation and noteworthy farmland protection program could make Lancaster County a model for a new kind of growth management at the county-level.

Some key ingredients for truly successful planning at the county-level are already present in Lancaster County. For example, the County has programs for intergovernmental and inter-jurisdictional review of regionally significant actions and regional revenue-sharing to even out fiscal disparities among local jurisdictions in a metropolitan region.³⁷² In both Oregon and Washington, counties *and* municipalities must adopt comprehensive plans.³⁷³ If Pennsylvania follows the Oregon-Washington model, most Lancaster County municipalities already have a plan and Lancaster County itself has a successful Comprehensive Plan, full of ideas.³⁷⁴ Also, a county-level entity fits easily into an already-prescribed governmental framework (the common local-county-state framework) in Pennsylvania; that is, a "county level" of government exists, it just is not legally empowered to make growth management decisions. Finally, the proposed entity's organizational skeleton presumably exists: LCPC. Substantive county-wide coordination cannot occur until some entity at the countywide level has legal authority to mandate planning regulations.

Since "consumers" (i.e. residents) in some cases have indicated an unwillingness to completely change the *status quo*, yet are willing to take "half-stepping" measures,³⁷⁵ prescience indicates that a majority of residents of Lancaster County would be willing to empower a County government agency, actually implementing directly what LCPC is already attempting to do indirectly. "Local and county governments are often the only levels of government that knows of, or [have] the capacity to discover, the preferences of local constituencies."³⁷⁶ County government

³⁷¹ Herr, 625 A.2d at 168.

³⁷² Epstein, *supra* note 11, at 366.

³⁷³ But see Wickersham, *supra* note 75, at 528 (quoting OR. REV. STAT. § 197.175 (1993); WASH. REV. CODE ANN. § 36.70A.040 (West 1991)).

³⁷⁴ A DECADE OF SMART GROWTH MANAGEMENT, *supra* note 61, at 1.

³⁷⁵ Garnett, *supra* note 199, at 183 (discussing politics and growth control opponents).

³⁷⁶ Buzbee, *supra* note 198, at 92.

is the only level that is in the position to see the municipalities collectively, to see the big picture.³⁷⁷ Furthermore, most residents would perceive that regional planning entities are more responsive to local concerns than state government entities.³⁷⁸ Any shift away from state and local governments' primacy in regulating land use, however, would be a major change in long-standing allocations of governmental responsibilities.³⁷⁹

Continuing the status quo is not likely to achieve either smart growth or more affordable suburban housing in most metropolitan areas. What is needed is greater receptivity to region-wide tactics. That must in turn be grounded in widespread citizen dissatisfaction with both existing sprawl development and existing shortages of local housing affordable to those workers who are necessary to run suburbs efficiently. The best way to create such dissatisfaction is for advocates of both smart growth and affordable housing in the suburbs to work together to promote regional tactics aimed at their combined goals.³⁸⁰

Lancaster County, through a decade of education by the LCPC, has created a "greater receptivity" to regional planning tactics. LCPC has been promoting smart growth, but the guidelines can only have a modicum of influence without the rule of law behind them. A county-level government planning entity is the next step in continuing to change the *status quo*.

³⁷⁷ Frey, *supra* note 8.

³⁷⁸ *But see* Wickersham, *supra* note 75, at 503 (State government may help resolve "the balkanized political landscape we see today . . . where large metropolitan regions that show a logical unity in geographic, economic, and social terms are broken up politically into dozens or even hundreds of independent municipal governments." Wickersham suggests that even regional entities may have fragmentation problems, their scope is still too small.).

³⁷⁹ Buzbee, *supra* note 198, at 91.

³⁸⁰ Downs, *supra* note 191.