



ZOMBIE CITIES: URBAN FORM AND POPULATION LOSS

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“I don't think the government can create communities. I think only people can create communities. But I do think that governments can help lay down the conditions for what kind of community you have a chance of having, for better and for worse.”¹

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¹ *Stevenage: A Place Where You Can't Be From*, NPR (May 15, 2012, 7:22 AM), <http://www.npr.org/2012/05/15/152735473/stevenage-a-place-where-you-cant-be-from>. The interview is based on journalist Gary Younge's essay entitled *Stevenage*, found in the literary magazine *Granta*. See Gary Younge, *Stevenage*, GRANTA: MAG. NEW WRITING, Spring 2012, at 7.

ABSTRACT

“Zombie” is a Haitian Creole term used to denote an animated corpse that is brought back to life by mystical means such as witchcraft.² Zombie cities, as I use the term here, are decimated urban areas that are brought back to life by mystical means such as public policy.³ The success of reviving and reanimating these zombie cities relies on the alchemy of initiatives — economic, social, and legal — that create the conditions that facilitate reanimation. This article focuses on the legal piece of the puzzle and turns on land use law and zoning codes that allow a city to reimagine itself in a rehabilitated form that is possibly quite different than its current dilapidated state. Land use law (and the planning policies that underpin such law) is deeply rooted in the concept of managing growth.⁴ The emphasis on growth is clearly misplaced for cities with huge population losses. The growth emphasis borders on perverse when one considers the link between the impact of single-use Euclidean zoning and the segregation of the poor into the urban core (where high-density and low-cost housing is available), which in many cases

² Amy Wilentz, Op-Ed., *A Zombie Is a Slave Forever*, N.Y. TIMES, Oct. 30, 2012, http://www.nytimes.com/2012/10/31/opinion/a-zombie-is-a-slave-forever.html?smid=fb-share&_r=2&.

³ Other scholars have focused on housing in “zombie neighborhoods.” Brian Reisinger, *Metro Strikes First Deal Under New ‘Zombie’ Neighborhood Plan*, NASHVILLE BUS. J., Mar. 12, 2012, <http://www.bizjournals.com/nashville/news/2012/03/12/metro-strikes-first-deal-under-new.html>; see also Robert M. Silverman et al., *Dawn of the Dead City: An Exploratory Analysis of Vacant Addresses in Buffalo, NY 2008–2010*, 35 J. URB. AFF. 2, 131-50 (2013). I take this notion one step further in applying the term to entire cities that are teetering on the line between the vibrancy of life and the stupor of death.

⁴ See, e.g., *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Indeed, the root of modern U.S. zoning law, Euclidean zoning, came about as a response to the fear of unregulated intrusion of multi-family units that would serve as a “nuisance” in the Cleveland suburb of Euclid Ohio. *Id.* at 388; see Richard H. Chused, *Euclid’s Historical Imagery*, 51 CASE W. RES. L. REV. 597, 597, 604-17 (2001) (providing a fascinating historical account of the history of the *Euclid* decision).

exacerbated losses in population.⁵ At best, traditional zoning law treats the city as a static concept; at worst, it imposes antiquated and unforgiving strictures that fail to provide enough flexibility for organic and dynamic change. For example, as cities lose population and increasingly contain hollow caverns of land as a result of the population shrinkage, local governments struggle to align the land use codes premised upon population growth with their new topographic reality.⁶

This article examines population losses in large American cities. I specifically focus on the largest cities because of the iconic position they hold in the American urban landscape. The City of Detroit, for instance, may be the most visible example of this phenomenon. Moreover, while there are certainly many smaller urban areas that suffer from population loss, the transmogrification of large cities such as Detroit, St. Louis, Pittsburgh, and Cleveland deal a harsher blow to our national identity. Cars. Beer. Steel. These are all industries that not only employ millions, but also serve as a unique moniker of a city's public face. Must these cities always follow such a hollow path when an established economic identity succumbs to a new economic reality? Historically, legal scholars have paid particular attention to local land use as a method to controlling growth.⁷ Not nearly enough attention, however, has been paid to local land use law as a method of managing population shrinkage.

In this examination, I will first set the stage by presenting U.S. Census data demonstrating trends in population loss in major American cities. Information presented in this section should not surprise the reader. Rather, it is included to quantify

⁵ See Lisa C. Young, *Breaking the Color Line: Zoning and Opportunity in America's Metropolitan Areas*, 8 J. GENDER RACE & JUST. 667, 667-70 (2005); see also Florence Wagman Roisman, *Housing, Poverty, and Racial Justice: How Civil Rights Law Can Redress the Housing Problem of Poor People*, 36 CLEARINGHOUSE REV. 21, 21-22 (2002).

⁶ See Tim Rieniets, *Shrinking Cities: Causes and Effects of Urban Population Losses in the Twentieth Century*, 4 NATURE & CULTURE 231, 251-52 (2009).

⁷ See John R. Nolon, *Historical Overview of the American Land Use System: A Diagnostic Approach to Evaluating Governmental Land Use Control*, 23 PACE ENVTL. L. REV. 821 (2006).

the scope of population loss in many U.S. cities. The economic,⁸ physical,⁹ and even climatic¹⁰ reasons for why some cities lose population, while others gain it, are certainly well researched. However, there is another thread of inquiry that deserves more attention, especially from land use scholars. The deindustrialization of the U.S. economy (and concomitantly of many U.S. cities) led to the phenomenon of U.S. population centers shifting from being centers of production to becoming centers of consumption and creation of social capital.¹¹ This article includes a review of the literature in urban planning and urban economics that examines this change.

The legal question presented is how zoning law and planning regulations are (or are not) keeping pace with this change. The viability of U.S. cities, for instance, will increasingly rely on a city's consumption profile,¹² so we must juxtapose current land use law against that trend. Traditional Euclidian zoning with its separation of uses is premised upon the city as a center of

⁸ See, e.g., Edward L. Glaeser & Janet E. Kohlhase, *Cities, Regions and the Decline of Transport Costs*, 83 PAPERS REGIONAL SCI. 197, 198-200 (2004) (citing the decrease in transportation costs as a reason for urban center population loss); Rieniets, *supra* note 6, at 231-254 (focusing on deindustrialization); David Wilson & Jared Wouters, *Spatiality and Growth Discourse: The Restructuring of America's Rust Belt Cities*, 25 J. URB. AFF. 123, 128-32 (2003) (discussing impact of globalization).

⁹ There is a link between age of housing stock and population growth. See generally Moon Jeong Kim & Hazel A. Morrow-Jones, *Intrametropolitan Residential Mobility and Older Inner Suburbs: A Case Study of the Greater Columbus, Ohio, Metropolitan Area*, 21 HOUSING POL'Y DEBATE 133, 133-41 (2011). It should be noted though that the interaction of new housing and good schools could not be separated. See *id.* at 158. Kim and Morrow-Jones acknowledge this aspect in their paper. See *id.*

¹⁰ See, e.g., Jordan Rappaport, *Moving to Nice Weather*, 37 REGIONAL SCI. & URB. ECON. 375, 375-76 (2007).

¹¹ See generally RICHARD DOBBS ET AL., MCKINSEY GLOBAL INST., URBAN WORLD: CITIES AND THE RISE OF THE CONSUMING CLASS (June 2012) (addressing the rise of consumerism in cities as opposed to the meccas of skilled workers they once attracted), available at http://www.mckinsey.com/insights/urbanization/urban_world_cities_and_the_rise_of_the_consuming_class.

¹² See, e.g., Rieniets, *supra* note 6, at 238-39.

production.¹³ But modern U.S. cities are no longer centers of production. Zoning, if done correctly, can capture the value of consumption in the urban setting. The next task is to re-imagine traditional zoning in conformity with the new economic reality of a city being the center of consumption. This article will present examples of zoning initiatives that support the consumption-based city form. Deindustrialization devastated not only the economic viability of many U.S. cities, but also their social fiber. The new economic order based on a strong service sector lends itself to a new zoning pattern that supports the development of a consumption-oriented urban form.

The goal of this examination is to push local governments in the direction of breaking the pattern of trying to recreate days of past glory of a manufacturing economy that necessitated the separation of land uses. These attempts often rely on policies that reinforce economic realities that will not be coming back. Not all historically large cities have suffered devastating population declines. Moreover, there are cities where population loss has at least been attenuated if not completely reversed.¹⁴ Cities that have survived this metamorphosis have learned to accept the city as it is, rather than a city as it was or could have been. City leaders must move towards visualizing their cities poised for viability in a new economic world order where the consumptive needs of its citizens are satisfied.

¹³ See, e.g., *id.* at 237.

¹⁴ While no declining major city has rebounded to its record-high 1950 population level, the City of Boston, for example, now has a population greater than its 1970 level, despite hitting a population nadir in 1980. See *State & Country QuickFacts: Boston, MA*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/25/2507000.html> (last updated July 08, 2014, 6:44 AM); see also U.S. DEP'T OF COMMERCE: BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1980 24 tbl.28 (1980), available at <http://www2.census.gov/prod2/statcomp/documents/1980-02.pdf> [hereinafter 1980 STATISTICAL ABSTRACT]. Kansas City hit its low point in 1990 and now has a population greater than that of 1980. See *State & Country QuickFacts: Kansas City, KS*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/20/2036000.html> (last updated July 08, 2014, 6:44 AM); see also 1980 STATISTICAL ABSTRACT, *supra*, at 25 tbl.28. Philadelphia posted its first (modest-2%) increase in 2009. See *State & Country QuickFacts: Philadelphia, PA*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/42/4260000.html> (last updated July 08, 2014, 6:45 AM).

Moreover, in zombie cities, the leaders will stand a better chance of re-animating the corpse by putting together plans based on managing shrinkage and re-imagining their city as a consumption center with a smaller population.

I. PHOENICIA VS. PHOENIX

History is replete with once thriving cities that dwindle to nothing. Ancient cities like Carthage (destroyed by war), Pompeii (destroyed by nature), and Tanis (destroyed by economic changes) rose and fell. Even the modern day city of Phoenix, Arizona pays homage to a lost civilization of the “Ho Ho Kam” (a Native American title for “the people who have gone”), who once lived there but disappeared because of drought.¹⁵ In the relatively short period of American history, we have seen countless U.S. towns rise and fall on changing industrial and mercantile winds. For example, the somewhat famous ghost town of Bodie, California represents an urban center that initially thrived on gold, but then died when the rush ended.¹⁶

On the other hand, international cities such as Addis Ababa and Riyadh, which were relatively small urban centers in 1950, are now home to millions of residents in 2010.¹⁷ Moreover, in

¹⁵ *Out of the Ashes*, CITY OF PHX., <http://echris.phoenix.gov/pio/publications/history/index.html> (last visited Sept. 12, 2014).

¹⁶ Jane Bosveld & Josie Glausiusz, *The Most Famous Ghost Town in America*, DISCOVER, Mar. 17, 2008, available at http://discovermagazine.com/2008/apr/17-the-most-famous-ghost-town-in-america/article_view?b_start:int=1&-C= (providing that gold miners operated in Bodie from the 1870’s until 1940 with up to 8,000 inhabitants). Today, only 170 of original structures remain, which is about twenty percent of the number that stood in the 1870s. *Id.*

¹⁷ The population of Addis Ababa was less than 400,000 in 1950; population in 2010 was 4.07 million. See *Population Estimates for Addis Ababa, Ethiopia, 1950-2015*, MONGABAY.COM, http://books.mongabay.com/population_estimates/full/Addis_Ababa-Ethiopia.html (last visited Sept. 12, 2014). Riyadh grew from 111,000 residents in 1950 to about 4.6 million in 2010. See *Population Estimates for Riyadh, Saudi Arabia, 1950-2015*, MONGABAY.COM, http://books.mongabay.com/population_estimates/full/Riyadh-Saudi_Arabia.html (last visited Sept. 12, 2014).

the United States, cities like Phoenix (despite its historically ironic moniker) have literally exploded in population.¹⁸ In 1950, the top-twenty U.S. cities¹⁹ for population involve the following areas:²⁰

City	Population (Thousands)
New York City	7,892
Chicago	3,621
Philadelphia	2,072
Los Angeles	1,970
Detroit	1,850
Baltimore	950
Cleveland	915
St. Louis	857
Washington, D.C.	802

¹⁸ In 1950, the population of Phoenix, Arizona was 107,000. See *State & County QuickFacts: Phoenix, AZ*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/04/0455000.html> (last updated July 08, 2014; 6:42 PM); see also 1980 STATISTICAL ABSTRACT, *supra* note 14, at 25 tbl.28.

¹⁹ City is defined by the politically bounded city, not the metropolitan area. See Edward L. Glaeser, *Are Cities Dying?*, 12 J. ECON. PERSP. 139, 141-42 (1998).

²⁰ See 1980 STATISTICAL ABSTRACT, *supra* note 14, at 24-26 tbl.28.

Boston	801
San Francisco	775
Pittsburgh	677
Milwaukee	637
Houston	596
Buffalo	580
New Orleans	570
Minneapolis	522
Cincinnati	504
Seattle	468
Kansas City	457

By 2009 the top twenty had shifted:²¹

City	Population (Thousands)
New York City	8,392
Los Angeles	3,832
Chicago	2,851
Houston	2,258
Phoenix	1,594
Philadelphia	1,547
San Antonio	1,374
San Diego	1,306
Dallas	1,300
San Jose	965
Detroit	911
San Francisco	815
Jacksonville	814

²¹ See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011 34 tbl.27 (2011), available at <http://www.census.gov/compendia/statab/2011/tables/11s0027.pdf> [hereinafter 2011 STATISTICAL ABSTRACT].

Indianapolis	808
Austin	786
Columbus	769
Fort Worth	728
Charlotte	704
Memphis	677
Boston	645

Although New York, Chicago, and Los Angeles remained at the top of the heap, the remainder of the listed cities represents more than a reshuffling of the deck chairs. If we match the lists of population gains against that of population losses, it becomes clear that some cities that weren't on the list of large cities in 1950 (e.g., Phoenix and San Antonio) catapulted to the top of the 2010 list. Likewise, some very large cities in 1950 disappeared altogether from the list by 2009 (e.g., St. Louis, Pittsburgh, Baltimore, Cleveland).

It is not just the decrease in population that matters; the percentage loss is a more pointed indicator of whether a city takes on zombie characteristics. A 300-pound woman can lose 100 pounds and still be healthy. A 175-pound woman who loses 100 risks death. Here is a list of the cities that were among the two twenty in population in 1950 and the percentage they lost by 2009:²²

²² See 1980 STATISTICAL ABSTRACT, *supra* note 14, at 24-26 tbl.28; 2011 STATISTICAL ABSTRACT, *supra* note 21, at 34 tbl.27.

City	Percent Change
St. Louis	-58%
Pittsburgh	-54%
Buffalo	-53%
Cleveland	-53%
Detroit	-51%
New Orleans	-38%
Cincinnati	-34%
Baltimore	-33%
Minneapolis	-26%
Philadelphia	-25%
Washington, D.C.	-25%
Chicago	-21%
Boston	-19%
Milwaukee	-5%

Interestingly, once these cities start losing population, they are rarely resuscitated to their former size.²³ If a city falls off of

²³ New York and Seattle are notable exceptions. See 1980 STATISTICAL ABSTRACT, *supra* note 14, at 24-26 tbl.28; 2011 STATISTICAL ABSTRACT, *supra* note 21, at 34 tbl.27. These cities had managed to actually gain back early losses, allowing them to post a net increase over the sixty-year period.

the “top twenty” list, it never goes back on. Although the years between 2000 and 2009 demonstrate a slowing of decline (and even some increases), the bounce backs are increasingly less. Like a patient experiencing rally periods of comparatively renewed health, these increases are not enough to regain full vitality. Even worse, there are some cities, such as Cleveland and Detroit, that have experienced fifty years of unrelenting population loss.²⁴

By way of comparison, here are the cities that were in the top twenty in population in 2009 and the percentage growth since 1950:²⁵

City	Percent Change
San Francisco	5%
Kansas City	5%
New York City	6%
Seattle	32%
Memphis	71%
Indianapolis	89%

2011 STATISTICAL ABSTRACT, *supra* note 21, at 34 tbl.27.

²⁴ One commentator has dubbed these cities as “hard core” in terms of population loss. See Robert A. Beauregard, *Urban Population Loss in Historical Perspective: United States, 1820-2000*, 41 ENV'T & PLAN. 514, 521 (2009).

²⁵ See 1980 STATISTICAL ABSTRACT, *supra* note 14, at 24-26 tbl.28; 2011 STATISTICAL ABSTRACT, *supra* note 21, at 34 tbl.27.

Los Angeles	95%
Columbus	105%
Fort Worth	161%
Dallas	199%
San Antonio	237%
Houston	279%
San Diego	291%
Jacksonville	297%
Charlotte	425%
Austin	496%
San Jose	915%
Phoenix	1389%

The pattern of growth mirrors the pattern of decline. Once a city started to grow, the growth continued unabated through 2009. This is not just a regional phenomenon (admittedly, though, the cities in the South and West have been growing for nearly half a century). This pattern holds true within many regions of the United States.

The economic, social, and geographic similarity between each group of winners and losers (and conversely the dissimilarity between the groups) is a well-travelled discussion. Population gainers tend to have lower density, warmer weather, and service-based employment. Population losers tend to be denser, colder weather, and an industrial based employment. An additional lens that I would like to introduce into the discussion is the role of iconic identity. If one looks at the cities that lost population, they often are associated with an iconic

product (Pittsburgh is steel; Detroit is cars; St. Louis is beer). This is more than a story of loss of the jobs in the manufacturing sector. This is a story of a lost identity. This loss will serve as a persistent undertow in formulating policy. In essence, this demographic change is more than population loss; this is loss of identity.

Iconic city identities are rooted in manufacturing. In 1950, seven of the eight largest American cities had a greater share of their workforce in manufacturing than found on a nationwide basis (only Los Angeles had fewer people employed proportionately in manufacturing).²⁶ By 1990, only two cities had a larger workforce sector in manufacturing than the national average.²⁷ Clearly, the loss of manufacturing jobs dealt a mighty blow to many cities. However, loss is only part of the story.

Job *gain* in the service sector stands as important as job *loss* in manufacturing. U.S employment in the service sector grew from 62.2% in 1960²⁸ to 79% in 2010.²⁹ The differentiating point in whether a city becomes a zombie (or whether it escapes that fate) is whether other sectors (most likely service) pick up employment. In essence, we should compare the slope in the line in the number of manufacturing jobs and the slope in the line of the number of service jobs to begin the discussion of the likelihood of a city pushing itself forward. As an illustration, Boston had 43,240 people employed in manufacturing industry in 1970, but by 2000 this number dropped to 21,329.³⁰ In 1970, the city had 84,433 people employed in service jobs and by

²⁶ Glaeser, *supra* note 19, at 141-42, 144-45.

²⁷ *Id.* at 141-42, 145.

²⁸ Ronald E. Kutscher, *The American Work Force, 1992-2005: Historical Trends, 1950-92, and Current Uncertainties*, 116 MONTHLY LAB. REV. 3, 7 (1993), available at <http://stats.bls.gov/mlr/1993/11/art1full.pdf>.

²⁹ Richard Henderson, *Employment Outlook: 2010-2020: Industry Employment and Output Projections to 2020*, 135 MONTHLY LAB. REV. 65, 66 tbl.1 (2012), available at <http://www.bls.gov/opub/mlr/2012/01/art4full.pdf>.

³⁰ See *SOCDS Census Data: Output for Boston City, MA*, U.S. DEPARTMENT OF HOUSING & URB. DEV., http://socds.huduser.org/Census/industry.odt?msacitylist=1120.0*2502507000*1.0&metro=msa (last visited Sept. 12, 2014).

2000 this number increased to 142,131.³¹ As other commentators have noted, metropolitan areas with high levels of education and significant manufacturing as of 1940 switched from manufacturing to other industries faster than high-manufacturing areas with less human capital.³² These results suggest that skills are valuable because they help cities adapt and change their activities in response to negative economic shocks. High skills allow reinvention. “We should not be surprised if a high-skill New England city manages to reinvent itself while a low-skill rust belt town does not.”³³ Boston shines as a great example of a city that managed to escape zombie status despite its decline in population.

In contrast, Detroit represents the opposite phenomenon. In 1970, Detroit had 186,215 manufacturing jobs, which slid to 64,586 in 2000.³⁴ Unlike Boston, though, jobs in the service sector did not pick up the slack. In fact, service jobs declined from 131,969 in 1970 to 128,559 in 2000.³⁵ Failure to adapt to the dynamics of a new economy serves as a marker for a Zombie City. A nuanced, but critical, point should be highlighted here. It is not necessary for cities to regain their lost population in order to escape zombie status. There are several cities (Chicago, Washington D.C., in addition to Boston) that had a decline in absolute population, but whose proportion of service sector employment either rose or declined at a much slower pace.³⁶

³¹ *Id.*

³² See Glaeser, *supra* note 19, at 144-45.

³³ Edward L. Glaeser & Albert Saiz, *The Rise of the Skilled City*, BROOKINGS-WHARTON PAPERS ON URB. AFF. 47, 84 (2004), available at <http://www.nber.org/papers/w10191>.

³⁴ *SOCDS Census Data: Output for Detroit City, MI*, U.S. DEPARTMENT OF HOUSING & URB. DEV., http://socds.huduser.org/Census/industry.oddb?msacitylist=2160.0*2600022000*1.0&metro=msa (last visited Sept. 12, 2014).

³⁵ See *id.*

³⁶ See *SOCDS Census Data: Output for Chicago City, IL*, U.S. DEPARTMENT OF HOUSING & URB. DEV., http://socds.huduser.org/Census/industry.oddb?msacitylist=1600.0*1700014000*1.0&metro=msa (last visited Sept. 12, 2014); *SOCDS Census Data: Output for Washington City, DC*, U.S. DEPARTMENT OF HOUSING & URB. DEV.,

This distinction serves as an important starting point for later policy discussions on when and how government can assist in the revival of zombie cities.

II. ROLE OF ZONING

In their attempt to turn the tide on population loss, many cities have implemented various strategies such as tax based incentives (e.g. tax abatements)³⁷ and eminent domain (often as a precursor to large scale redevelopment projects). The success of these efforts, whether it is Renaissance Center in Detroit or the Inner Harbor in Baltimore, fell short in repositioning the respective cities back to their former stature. Targeted, place-based efforts such as these do not go deep enough into the nucleus of the issue. The core of the problem rests in changing not an individual facet or neighborhood, but rather, reformulating the essence of the city itself.

Zoning stands out as an important ingredient in the alchemy of policy that influences whether a city becomes a zombie. Cities with strict land use and zoning laws differ systematically from cities where the code is more lenient.³⁸ Strict land use laws are a

http://socds.huduser.org/Census/industry.odt?msacitylist=8840.0*1100050000*1.0&metro=msa (last visited Sept. 12, 2014); *SOCDS Census Data: Output for Boston City, MA*, U.S. DEPARTMENT OF HOUSING & URB. DEV., http://socds.huduser.org/Census/industry.odt?msacitylist=1120.0*2502507000*1.0&metro=msa (last visited Sept. 12, 2014). Cities, such as Phoenix and Houston, that had phenomenal growth between 1950 and 2000 experienced substantial growth in number of service jobs. *SOCDS Census Data: Output for Phoenix City, AZ*, U.S. DEPARTMENT OF HOUSING & URB. DEV., http://socds.huduser.org/Census/industry.odt?msacitylist=6200.0*0400055000*1.0&metro=msa (last visited Sept. 12, 2014); *SOCDS Census Data: Output for Houston City, TX*, U.S. DEPARTMENT OF HOUSING & URB. DEV., http://socds.huduser.org/Census/industry.odt?msacitylist=3360.0*4800035000*1.0&metro=msa (last visited Sept. 12, 2014).

³⁷ Another popular incentive is Tax Increment Financing (TIF), which declining cities generally do not use because they are a tool for financing based on growth. See Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 80 (2010).

³⁸ See Wayne Batchis, *Enabling Urban Sprawl: Revisiting the Supreme Court's Seminal Zoning Decision Euclid v. Ambler in the 21st Century*, 17 VA. J. SOC. POL'Y & L. 373, 381 (2010).

hindrance to zombie cities in two salient fashions. First, these codes tend to be based on the theory of separation of uses. As housing stock ages and becomes uninhabitable the ability to quickly readapt the property for non-residential use is hampered. Second, most of the existing law is zoning for the control of growth; not zoning for planned decline. This results in an awkward focus on what, in some instances, is a quixotic fantasy of revival to former glory.

A. EUCLIDIAN ZONING

Very few regulatory decisions have stood the test of time as the case of *Village of Euclid v. Ambler Realty Co.*³⁹ This case upheld the constitutionality of the Standard Zoning Enabling Act of 1922.⁴⁰ The Act formed the basis upon which most zoning in the United States is modeled and carried with it the implementation of both density prevention and separation of uses as fundamental goals of zoning and land use.⁴¹ Adoption of zoning was swift and pervasive. By 1926, more than 426 municipalities containing more than 27 million inhabitants (then over half of the total urban population in the United States) lived in zoned cities.⁴²

As a groundbreaking decision, *Euclid* was monumental in its day and continues to serve as the foundation for development of many generations.⁴³ In *Euclid*, the Supreme Court legitimized

³⁹ 272 U.S. 365 (1926). This case is commonly understood to be “one of the most influential and enduring judicial decisions upholding the rights of communities to determine their demographic, economic, and societal future.” Michael Allan Wolf, *Euclid at Threescore Years and Ten: Is This the Twilight of Environmental and Land-Use Regulation?*, 30 U. RICH. L. REV. 961, 961 (1996).

⁴⁰ See 272 U.S. at 397.

⁴¹ Janice C. Griffith, *Green Infrastructure: The Imperative of Open Space Preservation*, 42/43 URB. LAW 259, 267 (Fall 2010/Winter 2011).

⁴² Garrett Power, *The Unwisdom of Allowing City Growth to Work Out Its Own Destiny*, 47 MD. L. REV. 626, 626 (1988).

⁴³ See generally 272 U.S. at 379-98; see also Nadav Shoked, *The Reinvention of Ownership: The Embrace of Residential Zoning and the Modern Populist Reading of Property*, 28 YALE J. ON REG. 91, 91-99 (2011) for more background and analysis of *Euclid*.

local government's ability to control development within its boundaries, ruling that local municipalities can oversee industrial development to ensure that it "shall proceed within definitely fixed lines."⁴⁴ As enunciated by the Supreme Court, the constitutionality of the separations of uses explicitly rests on the notion that single-family uses must be insulated from the perceived negative impact of non-residential uses.⁴⁵ When we consider the plight of zoning in cities with declining residential population, the primacy of the single-family dwelling in zoning codes severely limits what could hollow out neighborhoods. In its opinion, the Court found in favor of an ordinance which limited the construction of multi-family apartment buildings next to single family homes, explaining that "apartment houses, which in a different environment would be not only entirely unobjectionable but highly desirable, come very near to being nuisances[.]" as they destroy the quiet character of detached family neighborhoods.⁴⁶

As we move into the twenty-first century, it is becoming clear that a new American reality is emerging. Cities continue to change and evolve; some shrinking, some growing, as the centers of population shift. While this is not a new phenomenon, there is a need for reformation of local zoning codes to meet the changing dynamics. As the dynamics of the city transform, so too must the zoning codes. Concurrent with this resizing of American cities, comes a shift in employment trends. There is no longer a definitive need for clean, quiet residential areas located apart from the noise and filth of factories and other commercial enterprises.⁴⁷ In fact, the advent

⁴⁴ *Euclid*, 272 U.S. at 389.

⁴⁵ See *id.* at 391; see also Gerald A. Fisher, *The Comprehensive Plan Is an Indispensable Compass for Navigating Mixed-Use Zoning Decisions Through the Precepts of the Due Process, Takings, and Equal Protection Clauses*, 40 URB. LAW. 831, 832 (2008).

⁴⁶ *Euclid*, 272 U.S. at 394-95.

⁴⁷ Separation of land uses originated in part from an effort to improve inner-city conditions; "the proximity of polluting industry to housing, paired with overcrowding and the widespread lack of sanitation, contributed to making the industrial city a center of disease and misery." Sonia Hirt, *The Mixed-Use Trend: Planning Attitudes and Practices in Northeast Ohio*, 24 J. ARCHITECTURAL & PLAN. RES. 224, 225 (2007).

of the digital age has brought the actual workplace to the worker's living room in some instances.

B. ZONING FOR POPULATION GROWTH

Few zoning ordinances, the most commonly used mechanism in American local land use, anticipate that the locality will experience dramatic population loss.⁴⁸ In fact, this is the major flaw in adopting the New Urbanism matrix on declining urban cores. As zoning has evolved there has been an increasing emphasis on "smart growth" and sprawl deterrence.⁴⁹ The community creation of New Urbanism is a means, not an end. Planners and urban economists have a robust literature in the area of shrinking cities.⁵⁰ By contrast, legal scholarship on zoning historically has focused heavily on growth and sprawl containment.⁵¹ Whether for environmental reasons⁵² or open

⁴⁸ Deborah Popper & Frank Popper, *Smart Decline in Post-Carbon Cities: The Buffalo Commons Meets Buffalo, New York*, in *THE POST CARBON READER: MANAGING THE 21ST CENTURY'S SUSTAINABILITY CRISIS 2* (Richard Heinberg & Daniel Lerch eds., 2010), available at <http://www.postcarbon.org/Reader/PCReader-Popper-Decline.pdf>. An interesting exception to this statement is Youngstown, Ohio. For years, despite massive population losses, the zoning code planned for growth. Finally, the 2010 Plan acknowledged the shrinking population and took steps to plan for a smaller city. *Preface, CITY OF YOUNGSTOWN, OHIO*, http://www.cityofyoungstownoh.com/about_youngstown/youngstown_2010/preface/preface.aspx (last visited Sept. 12, 2014).

⁴⁹ Janice C. Griffith, *Regional Governance Reconsidered*, 21 J. L. & POL. 505, 525 (2005); see generally Patricia E. Salkin, *From Euclid to Growing Smart: The Transformation of the American Local Land Use Ethic into Local Land Use and Environmental Controls*, 20 PACE ENVTL. L. REV. 109, 117-27 (2002).

⁵⁰ See, e.g., Justin B. Hollander & Jeremy Németh, *The Bounds of Smart Decline: A Foundation Theory for Planning Shrinking Cities*, 21 HOUSING POL'Y DEBATE 349 (2011) (focusing on ethics, equity and social justice); Rieniets, *supra* note 6, at 231-50 (providing an international perspective on shrinking cities); James Rhodes & John Russo, *Shrinking 'Smart?': Urban Redevelopment and Shrinkage in Youngstown, Ohio*, 34 URB. GEOGRAPHY 305 (2013) (analyzing planning efforts of Youngstown, OH); Robert Mark Silverman, et al., *Dawn of The Dead City: An Exploratory Analysis of Vacant Addresses in Buffalo, NY 2008-2010*, 35 J. URB. AFF. 131 (2013) (linking neighborhood poverty rates to prevalence of vacant properties).

space preservation,⁵³ land use is viewed through the lens of growth. Even writers in Michigan, one of the few states that *lost* population in the previous decade,⁵⁴ focus on sprawl when discussing zoning.⁵⁵ Those who do write about zoning and population loss focus instead on specific palliative remedies such as urban farming⁵⁶ and land banks.⁵⁷ To their credit, there have been radical proposals put forth recently, such as decommissioning neighborhoods through the use of eminent

⁵¹ One interesting direction is the notion of municipal dissolution as set forth in Michelle Wilde Anderson, *Dissolving Cities*, 121 YALE L.J. 1364 (2012); see also Ashira Pelman Ostrow, *Emerging Counties? Prospects for Regional Governance in the Wake of Municipal Dissolution*, 122 YALE L.J. ONLINE 187 (2013), <http://www.yalelawjournal.org/forum/emerging-counties-prospects-for-regional-governance-in-the-wake-of-municipal-dissolution>. Dissolution is the final step, and despite its use in Miami, it is one that has limited practical implication for the large cities under inspection here. The Planning community on the other hand has several footholds into the notion of planning for shrinking cities. See generally Hunter Morrison & Margaret Dewar, *Planning in America's Legacy Cities: Toward Better, Smaller Communities After Decline*, in REBUILDING AMERICA'S LEGACY CITIES: NEW DIRECTIONS FOR THE INDUSTRIAL HEARTLAND 115, 115 (Alan Mallach ed., 2012); SHRINKING CITIES: INTERNATIONAL PERSPECTIVES AND POLICY IMPLICATIONS (Karina Pallagst et al. eds., 2013).

⁵² See, e.g., Michael Bothe, *Property Rights and Local Zoning v. Nature Protection: Some Comparative Spotlights*, 42/43 URB. LAW 357, 363-65 (Fall 2010/Winter 2011); Charles M. Haar & Michael Allan Wolf, *Planning and Law: Shaping the Legal Environment of Land Development and Preservation*, 40 ENVTL. L. REV. 10419, 10430 (2010).

⁵³ See, e.g., Griffith, *supra* note 41, at 270.

⁵⁴ See *State & County QuickFacts: Michigan*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/26000.html> (last updated July 08, 2014, 6:47 AM).

⁵⁵ See H. William Freeman, *A New Legal Landscape for Planning and Zoning: Using Form-Based Codes to Promote New Urbanism and Sustainability*, 36 MICH. REAL PROP. REV. 117, 120-24 (2009).

⁵⁶ See, e.g., Susanne A. Heckler, *A Right to Farm in the City: Providing a Legal Framework for Legitimizing Urban Farming in American Cities*, 47 VAL. U. L. REV. 217, 218-31 (2012); Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 URB. LAW. 225 (2010).

⁵⁷ See, e.g., Julie Tappendorf & Brent Denzin, *Turning Vacant Properties into Community Assets Through Land Banking*, 43 URB. LAW. 801, 801-04 (2011).

domain.⁵⁸ In this article, however, I advocate a more inclusive mode of transformation by allowing the neighborhood (rather than City Hall) to determine the form of the city.

C. ZONING FOR POPULATION DECLINE

One commentator has noted that the population declines experienced by many of America's manufacturing centers might be the final stage of trauma positioning these cities for the next stage of urbanization.⁵⁹ As with any crisis, medical or demographic, the problem rests in identifying the nadir. While cities such as Pittsburgh (PA) and Philadelphia (PA) have seen population and property values stabilize in the last decade, there is still considerable skepticism as to whether this change is sustainable and impactful.⁶⁰ Even in the face of population loss, though, few cities have taken on the challenge of addressing this problem with changes to land use law.

There are a few brave cities hitting this issue head on. For example, Youngstown (OH), Buffalo (NY), Braddock (PA), and Flint (MI) have all recognized that radical transformative change may be their only salvation.⁶¹ The most visible effort of zoning to address population decline is Detroit. The *Detroit Works Project* seeks to turn large swaths of the city back into farmland by demolishing whole neighborhoods.⁶² These ambitious aspirations are rooted in a two-pronged development

⁵⁸ See, e.g., Ben Beckman, Note, *The Wholesale Decommissioning of Vacant Urban Neighborhoods: Smart Decline, Public-Purpose Takings, and the Legality of Shrinking Cities*, 58 CLEV. ST. L. REV. 387 (2010).

⁵⁹ Beauregard, *supra* note 24, at 515.

⁶⁰ One commentator has noted that any claim of a turnabout, from massive decline to mere shrinkage, is doubtful. *Id.* at 521.

⁶¹ For more information on these efforts, see Popper & Popper, *supra* note 48.

⁶² See *Detroit Wants to Save Itself by Shrinking*, NBCNEWS.COM (Mar. 8, 2010, 4:45 PM), http://www.nbcnews.com/id/35767727/ns/us_news-life/t/detroit-wants-save-itself-shrinking/from/toolbar#.U4I3dvldWSE; see also David Sands, *Detroit Works Project Explores Green Uses for Detroit Land*, HUFFINGTON POST (May 9, 2012, 11:34 AM) http://www.huffingtonpost.com/2012/05/08/detroit-works-project-green-environmental_n_1500521.html.

plan that invites community engagement.⁶³ As highlighted by Detroit's recent declaration of bankruptcy, these drastic measures seem to be too late.

It requires strong political will to suggest zoning for shrinkage. Unfortunately, this will rarely exist absent dire circumstances. In this vein, I propose that we instead view this change in direction as zoning for consumption instead of zoning for decline. In fact, this is the shift that post-industrial cities are attempting to make.⁶⁴ They must shed the model of land use built on a production-based scheme and embrace the notion that cities, if they are to survive, need to first meet the consumption needs of present and future citizens. The image of a manufacturing powerhouse, along with its signature product, can no longer define the identity of a city.

III. ZONING AND CITIES: CENTERS OF PRODUCTION OR CONSUMPTION?

A. CITIES AS CENTERS OF PRODUCTION

From the tables above we can see that most of the U.S. cities that were the major population losers in the last sixty years were also the major centers of industrial production in the preceding era. Job loss in former industrial cities was not a matter of industries changing locations. Industrial companies did not simply pull up stakes in Pittsburgh and move their operations to Charlotte (NC). Rather, the percentage of people employed in industrial jobs steadily dropped in the United States from 33.7%

⁶³ See generally DETROIT FUTURE CITY, <http://detroitfuturecity.com> (last visited May 25, 2014). For specific details about the plan, see DETROIT FUTURE CITY: 2012 DETROIT STRATEGIC FRAMEWORK PLAN (2d prtg. May 2013), available at http://detroitfuturecity.com/wp-content/uploads/2014/02/DFC_ExecutiveSummary_2ndEd.pdf.

⁶⁴ See, e.g., DETROIT FUTURE CITY: 2012 DETROIT STRATEGIC FRAMEWORK PLAN, *supra* note 63.

in 1950 to 13% in 2000.⁶⁵ In 1950, seven of the eight largest United States cities had a larger manufacturing sector than the United States average.⁶⁶ By 1990, only two cities had a larger workforce sector in manufacturing than the national percentage.⁶⁷ As industrial employment moved outside the U.S., population loss did not occur evenly across urban centers. Industrial cities (including port cities) bore the brunt of these losses.⁶⁸

As jobs shifted away from manufacturing, employment and population patterns likewise shifted. As one economist noted, the mobility of employment to different sectors moves more quickly than city population.⁶⁹ Furthermore, it has also been shown that cities lose workers in a sector much more quickly than they add employment in another. This means that a city once dependent on a dying industry, such as manufacturing, will lose jobs in that sector much more quickly than it will add jobs in a non-manufacturing sector.⁷⁰ Just as Edward Glaeser and Joseph Gyourko determined about housing, urban decline is not the mirror image of growth.⁷¹ The resulting situation reflects more than a temporary business cycle shock; it signals a

⁶⁵ See Bureau of Labor Statistics, *Employment, Hours, and Earning from the Current Employment Statistics Survey (National)*, U.S. DEPT LAB., <http://www.bls.gov/home.htm> (in search box type “CES0700000001”; click US Bureau of Labor Statistics link; then change output options at the top to date range of 1950 - 2000) (last visited Sept. 12, 2014).

⁶⁶ Glaeser, *supra* note 19, at 144.

⁶⁷ *Id.* at 141-42, 145.

⁶⁸ *Ranking Tables for Incorporated Places of 100,000 or More: 1990 and 2000*, U.S. CENSUS BUREAU (Apr. 2, 2001), <http://www.census.gov/population/cen2000/phc-t5/tab02.pdf>; Beauregard, *supra* note 24, at 522.

⁶⁹ Gilles Duranton, *Urban Evolutions: The Fast, the Slow and the Still*, 97 AM. ECON. REV. 197, 201 (2007).

⁷⁰ *Id.*

⁷¹ Edward L. Glaeser & Joseph Gyourko, *Urban Decline and Durable Housing 1* (Nat'l Bureau of Econ. Research, Working Paper No. 8598, 2001), available at <http://www.nber.org/papers/w8598>.

permanent problem in the city's labor market.⁷² Detroit has been studied as a city that has not successfully balanced the loss of production jobs with an increase of jobs in the service sector.⁷³

Manufacturing cities lost more than residents and jobs during this era. City amenities, such as restaurants, culture, and beauty, suffered as well. Some studies have shown that this decline in amenities is an ongoing struggle that continues to plague former manufacturing centers.⁷⁴ This lack of amenities hampers growth because cities are increasingly oriented around consumption amenities, which more quickly spur population growth in higher amenity areas.⁷⁵ Research has found a strong positive correlation between population growth and consumption amenities, suggesting that quality of life is becoming an increasingly more important determinant of where people choose to live.⁷⁶

The land use regulatory backdrop to the production center city was built upon the pervasive adoption of *Euclidian* zoning statutes that sought to separate factory from home. Despite its longevity and indelible imprint on the planning of U.S. cities, *Euclidian* zoning has been routinely criticized as “functionalist”⁷⁷ and “rigid.”⁷⁸ Such criticisms pointedly

⁷² Edward L. Glaeser, *Cities, Information, and Economic Growth*, 1 CITYSCAPE 9, 21 (1994), available at <http://www.huduser.org/periodicals/cityscape/vol1num1/current.html>.

⁷³ Thierry J. Noyelle, *The Rise of Advanced Services: Some Implications for Economic Development in U.S. Cities*, 49:3 J. AM. PLAN. ASS'N, 280, 285 (1983).

⁷⁴ See James Feyrer et al., *Did the Rust Belt Become Shiny? A Study of Cities and Counties that Lost Steel and Auto Jobs in the 1980s*, BROOKINGS-WHARTON PAPERS ON URB. AFF. 41, 87 (2007).

⁷⁵ Glaeser & Saiz, *supra* note 33, at 47; see Edward L. Glaeser, Jed Kolko, & Albert Saiz, *Consumer City*, 1 J. ECON. GEOGRAPHY 27, 39 (2001), available at <http://joeg.oxfordjournals.org/content/1/1/27.full.pdf+html>. In fact, one standard deviation increase in the amenity value increases local population growth by 0.34 of a standard deviation. Glaeser, Kolko, & Saiz, *supra*, at 41.

⁷⁶ Jordan Rappaport, *Consumption Amenities and City Population Density*, 38 REGIONAL SCI. & URB. ECON. 533, 534 (2008).

⁷⁷ Eliza Hall, *Divide and Sprawl, Decline and Fall: A Comparative Critique of Euclidean Zoning*, 68 U. PITT. L. REV. 915, 918 (2007).

challenge cities with declining populations. This type of land use regulation may serve the model of a city as a center of production but is poorly suited for the city as a center of consumption. This mismatch stems from using the regulatory utility of zoning codes as a means of controlling production and growth. They provide a long-term promise of maintaining the status quo for one's property and the exclusive character of a place. This was based partly on nuisance principles — a facet of American law that prevents a person from interfering with his neighbor's enjoyment or use of his own property. However, in *Euclid*, the Court also noted that urban life was becoming increasingly more complex.⁷⁹ Even in the original *Euclid* opinion, Justice Sutherland argued that new innovations required new zoning.⁸⁰ It should be noted that a more modern view maintains that this move towards separate uses was due less to modern inventions, such as the automobile, and more to the movement of social norms towards a separation between work and the residence and the residence and the city.⁸¹

The separation of work and home is no longer practical given the lifestyle and housing climate of today. Instead, zoning needs to turn on a different axis — towards the goals of consumption and the creation of social capital. These two prongs are in keeping with the progression of social norms as they are today.

B. CITIES AS CENTERS OF CONSUMPTION

At the dawn of the Internet age, some predicted that technological innovation would eviscerate the role of urban centers as providing the hub for employment. This

⁷⁸ Brian W. Ohm & Robert J. Sitkowski, *The Influence of New Urbanism on Local Ordinances: The Twilight of Zoning?*, 35 URB. LAW. 783, 785 (2003); see also Jay Wickersham, *Jane Jacob's Critique of Zoning: From Euclid to Portland and Beyond*, 28 B.C. ENVTL. AFF. L. REV. 547, 548 (2001).

⁷⁹ See 272 U.S. 365, 386-87 (1926)

⁸⁰ *Id.*

⁸¹ Shoked, *supra* note 43, at 114.

prognostication proved incorrect.⁸² However, changes in how we work blurred the distinction between work and home.⁸³ As these lines shift so must the proper role of zoning. As noted above, city amenities have emerged as a crucial factor in population growth. Cities that will thrive in the future will do so because they provide an attractive place to live and enjoy, and less so because they are centers of production.⁸⁴ Population growth is strongly positively correlated with consumption amenities.⁸⁵ However, zoning based on separation of uses clashes with the consumption-based model of urban design. For a city to become a center of consumption residents cannot be walled off from places of commerce. Mixed-use zoning, particularly of the type which includes urban villages, is an important first step. As will be discussed, *infra*, urban villages exemplify the correct match of land use regulation to urban form. Besides offering localized variety of use, these plans decentralize the city, creating multiple focus areas throughout the city with increased accessibility.

This consumption model, as expressed through the decentralization of urban form, facilitates the creation of social capital. Although notoriously difficult to clearly define, social capital can be thought of as “connections among individuals — social networks and the norms of reciprocity and trustworthiness that arise from them”⁸⁶ Land use regulations impact how communities are structured and the interpersonal networks of social capital that populate them.⁸⁷

⁸² See Markus Moos & Andrejs Skaburskis, *Workplace Restructuring and Urban Form: The Changing National Settlement Patterns of the Canadian Workforce*, 32 J. URB. AFF. 25, 25 (2010) (citing Stephen Graham, *Telecommunications and the Future of Cities: Debunking the Myths*, 14 CITIES 1 (1997)).

⁸³ *Id.* at 27.

⁸⁴ See Glaeser, Kolko, & Saiz, *supra* note 75, at 39.

⁸⁵ Rappaport, *supra* note 76, at 534.

⁸⁶ Steven Durlauf, *On the Empirics of Social Capital*, 112 ECON. J. 459, 460 (2002) (citing ROBERT PUTNAM, *BOWLING ALONE* 19 (2000)).

⁸⁷ For an interesting discussion of this, see Stephen Clowney, Note, *A Walk Along Willard: A Revised Look at Land Use Coordination in Pre-Zoning New Haven*, 115 YALE L.J. 116, 121 (2005).

Social capital encourages action and the realization of goals through personal interactions between individuals and the positive qualities associated with them, like trust and reciprocity. Benefits can be community-wide, measured by economic success, or on an individual level.⁸⁸

The social capital of a community formulates the interaction between the inhabitants of a place to each other, and to the place itself, creating a symbiotic relationship between neighbors and also between local business owners and residents. Social capital builds reciprocity, trust, and mutual benefit. It is “the ways in which individuals and communities create trust, maintain social networks, and establish norms that enable participants to act cooperatively toward the pursuit of shared goals.”⁸⁹ It is the various social networks we as individuals encounter every day.⁹⁰ Whether this is the neighborhood butcher who knows your order when you walk through the door, or a neighborhood watch, or a network of neighbors who look out for one another’s kids as they play outside in common areas, social capital brings a sense of belonging, community, and productivity. Social capital comprises:

[T]he web of relationships and cooperative action between people who share a geographic space in big cities and/or an interest in maintaining a healthy neighborhood. What emerges from these relationships over time are established networks of ‘small-scale, everyday public life and thus of trust and social control’ necessary to the ‘self-governance’ of urban neighborhoods.⁹¹

⁸⁸ Lawrence W. Libby & Jeff S. Sharp, *Land-Use Compatibility, Change, and Policy at the Rural-Urban Fringe: Insights from Social Capital*, 85 AM. J. AGRIC. ECON. 1194, 1194 (2003).

⁸⁹ Sheila R. Foster, *The City as an Ecological Space: Social Capital and Urban Land Use*, 82 NOTRE DAME L. REV. 527, 529 (2006); see DAVID HALPERN, SOCIAL CAPITAL 1-19 (2004).

⁹⁰ “The core idea of social capital theory is that social networks have value.” PUTNAM, *supra* note 86, at 18-19.

⁹¹ Foster, *supra* note 89, at 530 (citing JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 146-83 (1961)).

Areas with generous amounts of social capital enjoy livable spaces and prosperity. Studies indicate that “where trust and social networks flourish, individuals, firms, neighborhoods, and even nations prosper.”⁹² So, too, do organizations. A large part of social capital includes involvement in civic organizations. In short, location matters. Face-to-face interaction and exchange is key to the strength of an organization, a neighborhood, and a corporation.⁹³

Creation of social capital has the added benefit of encouraging economic growth. Strong social capital is key to companies seeking success across many areas, such as filling jobs and increasing job retention, product innovation, and promoting the formation of start-up companies.⁹⁴ Economic growth benefits from the more social exchanges and face-to-face contact, in addition to the strictly business relationships. In similar fashion, neighborhood social capital benefits residents in myriad ways, from personal satisfaction and community involvement to strong economic interactions. Zoning and the resultant division of uses can greatly affect these social exchanges. Land use regulation can encourage mutually beneficial interactions or it can fabricate an artificial frame in

⁹² PUTNAM, *supra* note 86, at 319 (citing Stephen Knack & Philip Keefer, *Does Social Capital Have an Economic Payoff? A Cross-Country Investigation*, 112 Q. J. ECON. 1251 (1997); Rafael La Porta et. al., *Trust in Large Organizations*, 87 AM. ECON. REV. 333 (1997)).

⁹³ In the corporate world, social capital is perceived as the intangible benefits a company gives back to the community it serves. See Laurence Lock Lee, *Social Capital: The New Driver for Corporate Success in the Knowledge Era*, in KNOWLEDGE MANAGEMENT: ORGANIZATIONAL AND TECHNOLOGICAL DIMENSIONS 129 (Joseph Davis et al. eds., 2005). There are best practices, which cross over between the corporate and the social contexts, and serve to benefit both realms. Society, in general, is moving away from the industrial era of the last century to an era of knowledge in which connections are widespread and no longer bound by geographical limitations. These corporate alliances aim to achieve goals through collaboration rather than through competition, and in many ways are more effective than competitive means. See David Knoke & Emanuela Todeva, *Strategic Alliances and Corporate Social Capital*, in KÖLNER ZEITSCHRIFT FÜR SOZIOLOGIE UND SOZIALPSYCHOLOGIE 1 (Jutta Allmendinger & Thomas Hinz eds., 2002).

⁹⁴ Paul S. Adler & Seok-Woo Kwon, *Social Capital: Prospects for a New Concept*, 27 ACAD. MGMT. REV. 17, 17 (2002).

place of a city's natural course. Strict land use regulation, in particular, dampens the organic flow of a city's growth,⁹⁵ both structurally and demographically.

Areas of mixed-use seem to enjoy abundant social capital stemming from the social interactions arising from the daily activities around a given neighborhood. The varied uses allow for many different types of traffic and commerce.⁹⁶ Busy streets feel more secure and more alive. Indeed, one generally feels a greater sense of security on a busy, thriving street than on a deserted one.⁹⁷ Moreover, busy streets have an indescribable, unintelligible excitement about them. A Boston (MA) planner once explained, "I often go down there [to Boston's North End] myself just to walk around the streets and feel that wonderful, cheerful street life."⁹⁸

IV. RE-IMAGINING ZONING FOR A SHRINKING POPULATION

What should consumption-based zoning look like? Certainly a more mixed-use environment tops the list. However, this alone is insufficient to potently sustain a consumption-based, amenity-driven urban form. The goal should be to create an environment, through zoning and land use initiatives, which allows the city resident easy access to work, commerce, and leisure activities. Based on attributes of the urban villages model,⁹⁹ key ingredients for the plan should include:

⁹⁵ JONATHAN LEVINE, ZONED OUT: REGULATION, MARKETS, AND CHOICES IN TRANSPORTATION AND METROPOLITAN LAND USE 6 (2005).

⁹⁶ "[N]eed of cities for a most intricate and close-grained diversity of uses that give each other constant mutual support, both economically and socially. The components of this diversity can differ enormously but they must supplement each other in certain concrete ways." JACOBS, *supra* note 91, at 14.

⁹⁷ Foster, *supra* note 89, at 543.

⁹⁸ JACOBS, *supra* note 91, at 10. "General street atmosphere of buoyancy, friendliness and good health was so infectious that I began asking directions of people just for the fun of getting in on some talk." *Id.* at 9.

⁹⁹ See *Principles of Urbanism*, NEW URBANISM, <http://www.newurbanism.org/newurbanism/principles.html> (last visited Sept. 12, 2014).

- Mixed use zoning – allows for a variety of services, which will facilitate job creation of small businesses in residential areas
- Polycentric design – i.e., multiple centers of economic activity
- Increased residential density – allows for mixed housing
- Increased accessibility – i.e., public transportation, pedestrian friendly paths, and sufficient parking facilities
- Green space/Open space – encourages public use and activity

A. RECENT ZONING CHANGES IN DECLINING CITIES

Many of the cities that have experienced population loss have revised their zoning codes with varying degrees of radical change. On one end of the spectrum is Baltimore (MD), which has lost residents every decade since 1950, resulting in a 33% population loss.¹⁰⁰ Ignoring this entrenched trend, the Mayor of Baltimore recently announced her intentions to bring 10,000 new families to the city over the next ten years.¹⁰¹ Although the new zoning code¹⁰² does specifically endorse green space and mixed-use development, it lacks the urgency of a wholesale transformation approach to urban design that might give the Mayor's dream of population growth a fighting chance. This same lack of sweeping vision can be found in the new codes of Philadelphia (PA),¹⁰³ St. Louis (MO)¹⁰⁴ and Cleveland (OH).¹⁰⁵ Each of these cities chose a timid path of tepid modification.

¹⁰⁰ BRENT D. RYAN, DESIGN AFTER DECLINE: HOW AMERICA REBUILDS SHRINKING CITIES 44 (2012).

¹⁰¹ *Transforming Baltimore*, BALT. SUN, Nov. 15, 2012, http://articles.baltimoresun.com/2012-11-15/news/bs-ed-zoning-20121115_1_new-code-stores-in-residential-neighborhoods-new-businesses.

¹⁰² Baltimore, Md., Ordinance 12-0152 (Westlaw 2012).

¹⁰³ See generally PHILA. 2035, <http://www.phila2035.org> (last visited Sept. 12, 2014).

Detroit (MI) stands alone in its sheer willingness to attempt bold changes. A public announcement by its Mayor that citizens may be relocated from their homes in high vacancy neighborhoods may have been politically volatile, but was certainly audacious.¹⁰⁶ The *2012 Detroit Strategic Framework Plan* expressly states as one of its imperatives that planning must “focus on sizing the networks for a smaller population, making them more efficient, more affordable, and better performing.”¹⁰⁷ The *Plan* expressly acknowledges a smaller city calling for population stabilization by 2030 with 600,000-800,000 residents.¹⁰⁸ Unfortunately, the fate of the *Plan* is uncertain due to the city declaring bankruptcy.

Another city with a bold plan (and a much better resolution) is Pittsburgh (PA). While zoning plays an important role, it is the city’s embrace of a new identity that provided the cataclysmic spark for change. Long identified as a steel manufacturer, the city transformed itself into a center for the high-tech industry. Its success story has found its way into the media, starring in many articles applauding its rebirth¹⁰⁹ and for

¹⁰⁴ See St. Louis, Mo., Ordinance 69199 (2012). The city’s zoning law was last overhauled in 1994. See ST. LOUIS, MO., CODE tit. 26 (1994).

¹⁰⁵ See *Connecting Cleveland 2020 Citywide Plan: Land Use and Zoning*, CITY OF CLEV. CITY PLAN. COMMISSION, <http://planning.city.cleveland.oh.us/cwp/landuse.htm> (last visited Sept. 12, 2014).

¹⁰⁶ See *Can Urban Planning Rescue Detroit*, NEXT CITY (July 1, 2013), http://nextcity.org/daily/entry/forefront-excerpt-can-urban-planning-rescue-detroit#disqus_thread.

¹⁰⁷ 2012 DETROIT STRATEGIC FRAMEWORK PLAN: DETROIT FUTURE CITY, *supra* note 63, at 8.

¹⁰⁸ *Id.* at 12. It also states that this population will allow Detroit to remain among the twenty largest cities in the U.S. *Id.* In 1940, Detroit was the fourth most populous city in the U.S. *Id.* at 0. By 2010 it had dropped to the eighteenth most populous state. *Id.*

¹⁰⁹ See *The Rust Belt Revival, What’s Happening in Pittsburgh, Pennsylvania*, DETAILS (Apr. 1, 2012), <http://www.details.com/culture-trends/critical-eye/201204/rust-belt-revival-pittsburgh-pennsylvania> (bringing former rustbelt cities’ turnarounds into the spotlight); see also Caitlan Smith, *Pittsburgh, City of Renewal*, THE ATLANTIC (Sept. 24, 2009), <http://www.theatlantic.com/magazine/archive/2009/09/pittsburgh-city-of-renewal/307700/>.

its reuse of industrial sites for art centers, technology centers, and theaters.¹¹⁰ As one entrepreneur put it, "We're creating the place where we want to live now,"¹¹¹ a mantra certainly worth repeating. Pittsburgh was also recognized by President Barack Obama as:

[A] bold example of how to create new jobs and industries while transitioning to a 21st century economy. As a city that has transformed itself from the city of steel to a center for high-tech innovation – including green technology, education and training, and research and development - Pittsburgh will provide . . . a powerful example of our work.¹¹²

Pittsburgh is a rich example of repurposing and re-using in order to create a new cityscape from the remnants of the old.¹¹³ Pittsburgh's Zoning Code was written in 1958 and updated in 1999.¹¹⁴ The original plan, as was the standard for the day, "promoted suburban style growth."¹¹⁵ Interim plans recognized many of the same issues that were to plague the city in later years – "an overspecialized economy, degraded environment,

¹¹⁰ Smith, *supra* note 109.

¹¹¹ *The Rust Belt Revival*, *supra* note 109.

¹¹² President Barack Obama, President of the United States, Statement by the President on G-20 Summit in Pittsburgh (Sept. 8, 2009), *available at* http://www.whitehouse.gov/the_press_office/Statement-by-the-President-on-G-20-Summit-in-Pittsburgh.

¹¹³ *See* Smith, *supra* note 109.

¹¹⁴ *See* PITTSBURGH ZONING CODE, §§ 901.05, 901.06 (1999), *available at* <http://www.ecode360.com/13713882>.

¹¹⁵ Bradley E. Ellis, Zoning for Transit-Oriented Development in Minneapolis: Challenges and Opportunities 5 (Aug. 16, 2005) (a Master of Urban and Regional Planning professional paper), *available at* <http://www.reconnectingamerica.org/assets/Uploads/Zoning-for-TOD-in-Minneapolis.pdf>.

inadequate infrastructure, and deteriorating downtown.”¹¹⁶ These were later addressed by various means, including environmental regulations and redevelopment authorities.¹¹⁷

City officials are now overhauling the zoning and planning laws to reflect the new Pittsburgh. PLANPGH is the first comprehensive plan in the city’s history¹¹⁸ and is broken down into twelve components.¹¹⁹ LANDUSEPGH will integrate these components by 2014 into a land use vision for the future.¹²⁰ While all of the components are interesting, several stand out as taking a new approach to planning. DESIGNPGH divides the city into six study areas.¹²¹ OPENSAPCEPGH provides clear instructions and guidelines for land use and infrastructure decisions about the city’s green spaces.¹²² LIVEPGH inventories current housing stock to understand what types of housing work

¹¹⁶ Edward K. Muller, *Downtown Pittsburg: Renaissance and Renewal*, in A GEOGRAPHIC PERSPECTIVE OF PITTSBURGH AND THE ALLEGHENIES: FROM

PRECAMBRIAN TO POST-INDUSTRIAL 9 (Wash.: Ass’n of Am. Geographers, 2000), available at <http://upress.pitt.edu/htmlSourceFiles/pdfs/9780822942825exr.pdf>.

¹¹⁷ See generally *id.*

¹¹⁸ PLANPGH, <http://planpgh.com> (last visited Sept. 12, 2014).

¹¹⁹ *PLANPGH: Frequently Asked Questions*, PLANPGH, <http://planpgh.com/faq.htm> (last visited Sept. 12, 2014). The components are: Open Space, Preservation, Transportation, Public Art, Urban Design, City Owned Buildings, Energy, Infrastructure, Economic Development, Housing, Educational Facilities, and Land Use. *Id.*

¹²⁰ *PLANPGH: Process & Timeline*, PLANPGH, <http://planpgh.com/process.htm> (last visited Sept. 12, 2014).

¹²¹ See *PLANPGH: ARTPGH*, PLANDPGH, <http://planpgh.com/artpgh/> (last visited Sept. 12, 2014). As will be discussed, *infra*, these study areas fit neatly into the construct of urban villages.

¹²² See *OPENSAPCEPGH Policy Framework*, PLANPGH EXCHANGE, <http://exchange.planpgh.com/portal/openspace/openspacepgh?pointId=1365444094858#section-1365444094858> (last visited Sept. 12, 2014). This plan confronts population loss head-on stating that “Pittsburgh has an extensive parks and recreation system that evolved to serve a population twice its current size.” *Id.* A goal of the new policy will be to “transition to the right size and mix of opportunities and resources.” *Id.*

well in certain locations, which ones do not work, and why they do not work.¹²³ The refreshing honesty of expressly acknowledging population shrinkage, along with the new economic vitality, provides a strong base for forward thinking planning. When the PLANPGH is finalized and implemented, a review to gauge success is in order.

B. URBAN VILLAGES

Instead of the tentative steps taken in Baltimore (MD), Philadelphia (PA), St. Louis (MO), and Cleveland (OH), cities should take the bold steps of adopting a radically different zoning construct — urban villages.¹²⁴ Zoning polycentric urban villages diverges from the historical urban form of the so-called “natural evolution,” monocentric model of urban economics.¹²⁵ Lauded by Jane Jacobs decades ago, the city as an urban village continues to be a vibrant example of a living, thriving metropolitan form found in today’s growing cities.¹²⁶ The strategy advocated here differs from the historical urban village model of the late nineteenth century in that this is not the creation of a whole town.¹²⁷ Rather, it is a call for cities to

¹²³ LIVEPGH, PLANPGH, <http://planpgh.com/?showplan=live> (last visited Sept. 12, 2014).

¹²⁴ I wish to clearly differentiate urban villages are different from new urbanism. Although the term is more prevalent in the United Kingdom (UK), urban villages can be distinguished from new urbanism by the “greater emphasis on the ratio of employment to residential uses.” Ed Morgan, *The Sword in the Zone: Fantasies of Land-Use Planning Law*, 62 U. TORONTO L.J. 163, 181 n.149 (2012) (citing Bridget Franklin & Malcolm Tait, *Constructing an Image: The Urban Village Concept in the UK*, SAGE (2002), available at <http://plt.sagepub.com/content/1/3/250.full.pdf+html>).

¹²⁵ See WILLIAM ALONSO, LOCATION AND LAND USE 109 (1964); RICHARD F. MUTH, CITIES AND HOUSING: THE SPATIAL PATTERN OF URBAN RESIDENTIAL LAND USE 327 (1969); Edwin S. Mills, *Transportation and Patterns of Urban Development: An Aggregative Model of Resource Allocation in a Metropolitan Area*, 57 AM. ECON. REV. 197, 200 (1967), available at http://www.vwl.tuwien.ac.at/hanappi/AgeSo/rp/Mills_1967.pdf.

¹²⁶ JACOBS, *supra* note 91, at 9.

¹²⁷ George Pullman created the completely industrial-based town of Pullman, IL based on mixed-use ideals. See Hannah Wiseman, *Public Communities, Private Rules*, 98 GEO. L.J. 699, 722 (2010).

rethink the notions of centralization and separation of the uses that hinder consumption.

Cities that adopt this format strive to be polycentric cities in which there are “multiple centers of economic activity” as opposed to monocentric cities where work, shopping, and cultural activities are all located in a downtown area.¹²⁸ The rationale behind this layout is that people live in multiple places, not just where they sleep.¹²⁹ Additionally, the trend towards urban villages complements the shift from a manufacturing industry-based economy to a service industry-based economy that some older cities are making,¹³⁰ as people generally do not want to travel for services. Therefore, urban villages offer the convenience of all of the necessary amenities one might need, coupled with easy access. Advocates of the urban village contend that people are more inclined to live next to their job now that they do not work in a polluted factory, and that advances in technology make it easier to transact business remotely.

Although there are several cities that have adopted this planning model,¹³¹ Phoenix (AZ) is the best example. The city of

¹²⁸ William T. Bogart, “Trading Places”: *The Role of Zoning in Promoting and Discouraging Intrametropolitan Trade*, 51 CASE W. RES. L. REV. 697, 699-700 (2001). Half of employment is concentrated in a city’s center. *Id.* at 701.

¹²⁹ *Id.* at 703 (citing MARION CLAWSON, SUBURBAN LAND CONSERVATION IN THE UNITED STATES: AN ECONOMIC AND GOVERNMENTAL PROCESS 16 (1971)).

¹³⁰ Christopher B. Leinberger & Charles Lockwood, *How Business is Reshaping America*, THE ATLANTIC (October 1986), available at <https://www.theatlantic.com/past/docs/issues/95nov/malls/howbiz.htm>.

¹³¹ Notably Seattle (WA), Fort Worth (TX), and San Diego (CA) have elements of urban villages. See CITY OF SEATTLE DEPT. OF PLANNING & DEV., CITY OF SEATTLE COMPREHENSIVE PLAN 1.3 (2005), available at http://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informati_onal/dpddo16610.pdf; FORT WORTH PLANNING DEP’T, FORT WORTH’S URBAN VILLAGE DEVELOPMENT PROGRAM 1 (2006), available at http://fortworthtexas.gov/uploadedFiles/PlanningandDevelopment/My_Urband_Village/Urban%20Village%20Development%20Program%20Brochure-4-03-06_streets%20labeled%281%29.pdf; CITY OF SAN DIEGO LAND USE & CMTY. PLANNING ELEMENT, CITY OF SAN DIEGO GENERAL PLAN LU-6-7 (2008), available at <http://www.sandiego.gov/planning/genplan/pdf/generalplan/landuse2010.pdf>.

Phoenix is divided into fifteen urban villages,¹³² which in turn are composed of five key components — core, neighborhoods, open space, community service areas, and regional service areas.¹³³ Each village has its own planning committee, appointed by the City Council. The planning committees are responsible for “balancing housing and employment opportunities, concentrating intensity in the village core . . . [and] promoting the unique character and identity of each village.”¹³⁴ The *Phoenix General Plan 1985-2000* was updated on March 12, 2002.¹³⁵ The map of the *Plan* marks off primary core areas around which the urban villages are located.¹³⁶ These core areas are situated in mixed use, commercial, or high-density residential districts.¹³⁷ The City of Phoenix Planning Department took the “idea of living, working, and playing in the same village” as the principal focus of its city plan,¹³⁸ which debuted in 1985 as the *Phoenix Concept Plan 2000* and was revised in 1994 and 2002.

The *Plan* calls for a “balanced city-wide distribution” of private and public services so that no one village will house the majority of them.¹³⁹ It is fluid in that it takes into account the specific resources and features of each village so that each has something unique to offer. Each village has its own unique feel, some more urban, some more suburban or rural, some catering

¹³² CITY OF PHX., THE VILLAGE PLANNING HANDBOOK 3 (1986), available at http://phoenix.gov/webcms/groups/internet/@inter/@dept/@dspd/documents/web_content/pdd_pz_pdf_00020.pdf.

¹³³ CITY OF PHX. PLAN. DEP'T, THE PHOENIX URBAN VILLAGE MODEL: GENERAL PLAN FOR PHOENIX 1985-2000 5 (1994), available at http://phoenix.gov/webcms/groups/internet/@inter/@dept/@dspd/documents/web_content/pdd_pz_pdf_00330.pdf.

¹³⁴ CITY OF PHX., *supra* note 132, at 1. The impact of land use decisions on neighboring villages was addressed, but not specifically resolved in this plan.

¹³⁵ *Id.*

¹³⁶ CITY OF PHX. PLAN. DEP'T, *supra* note 133, at 2.

¹³⁷ *See id.* at 8.

¹³⁸ *Id.* at 3.

¹³⁹ *Id.* at 4.

to automobile traffic and others to pedestrians.¹⁴⁰ The number of jobs for each village is determined based on the development patterns of each village.¹⁴¹

V. CONCLUSION

In the world of science fiction a zombie cannot be brought back to life. Dead is dead.¹⁴² However, in the world of urban life, zombie cities can be brought back to health and vitality, albeit in a form and size that differs from their historical identity. Maximizing consumption and social capital should form the cornerstone of reconstituting failing cities. Zoning is a powerful tool that can facilitate these goals. Instead of trying to reclaim the golden times of years gone by, cities can view population loss as a natural outcome of changing economies and evolving social structures. Land use regulation can, likewise, evolve and adapt to new circumstances.

Beginning with increased provisions of mixed-use zoning and moving on to include neighborhood-based planning that promotes the creation of social interaction and social capital, zoning can serve as an enabler rather than an impediment to envisioning the re-birth of cities. By building on the polycentric notion of urban villages, adding attention to public open space, and addressing easy access to all types of commercial use, the city forges a new identity and life.

¹⁴⁰ *Id.* at 28.

¹⁴¹ *Id.* at 3.

¹⁴² I must credit the AMC show *The Walking Dead* for the limited amount of information that I possess about zombies.