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## The Ambiguous Role of *Private* Voluntary Methods in *Public* Land Use Policy: A Comment

Harvey M. Jacobs

Let me begin this comment by expressing my basic sympathy with the argument of the authors. For more than 20 years, I have worked to create organizations that utilize voluntary methods of land use control, and in my teaching I have stressed the importance of these approaches as part of a larger institutional ecology of approaches that need to exist, so planners and others could appropriately and creatively respond to the land use situation of the people and places where they work. Having said this, however, I have to disagree with a number of the authors' most central assertions and arguments.

In "The Rising Importance of Voluntary Methods of Land Use Control in Planning," Wright and Czerniak frame their presentation around two points: (1) that such methods are a necessary supplement and, in fact, superior approach to the more traditional land use regulatory schema when applied to the permanent protection of critical open spaces, natural lands, and productive landscapes and (2) that planning practitioners are uneducated and uninvolved in the utilization of these alternative, voluntary methods of land use control. The bulk of the Wright and Czerniak article provides data to support the first point, but it is really the second that seems to be the authors' motivation in preparing this article, and in offering it for publication in this journal. In this comment, I offer observations on both of these points.

I start with the second point. Wright and Czerniak begin their article by claiming "... few practitioners of the voluntary approach have been educated and trained in these methods within university planning departments and programs. This is true because such academic departments largely ignore or significantly downplay the relevance and importance of voluntary tools" (419). They then return to this line of thinking in the article's conclusion. They note, "... planning students must receive more education and training in voluntary methods of land use control .... To date, curricula of most university planning departments and programs have not been adequately updated to reflect the rising importance of voluntary techniques .... We believe all planning students must be conversant with the concepts ...." (422-423). The problem with this line of argumentation is that the authors have little but their hunches and experience to support it. And even with these, their explanation may be inadequate.

Until Wright and Czerniak or someone else does a detailed survey of exactly how land use planning techniques and policy are currently taught, we cannot know how most university planning departments and programs address these subjects—whether they ignore or embrace it. Titles of courses will not tell us this, nor will old survey data. As most of us are aware, there has been what seems to be an explosion of land use related positions advertised over the last few years at the annual ACSP meetings, through mailings to departments, and via the ACSP newsletter and other job advertisement venues. Either a prior generation of land use instructors is retiring or new land use positions are being added to reflect the apparent growth of citizen and policy interest in this area. What we need to know to address the authors' contention is what current instructors are teaching in their current classes. This is especially interesting because the new generation of land use teachers and scholars are individuals likely to have been educated with a full exposure to the literature on the shortcomings of traditional land use control techniques, and the need for creativity in land use policy design and implementation.

In addition, the authors seem to have a conflated sense of logic in their presentation. That is, because practitioners of voluntary methods are not trained in planning programs, then we are to take it that planning programs are not educating planners in voluntary methods. But let me offer forth my own course and the experience of my students as a case, and see what we might learn from it.

I have taught the principal graduate course in land use policy and planning at the University of Wisconsin-Madison for 16 years. Multiple weeks within the course are devoted to land trusts, easements, and other voluntary methods, as well as a range of nontraditional public sectors approaches such as TDR (transfer of development rights) and PDR (purchase of development rights). The course is cross-listed between my two home departments, Urban and Regional Planning and Environmental Studies; students, overwhelmingly terminal professional master's degree candidates, are roughly equally divided between the two units (about 15 students from each group). Thus all the students get the same orientation to and training in the subject matter of the course. Yet, it is largely the students in environmental studies who pursue jobs utilizing the voluntary approaches. Planning students accept more traditional planning related jobs. Therefore, it does not appear to be the subject matter that explains this outcome, but rather the orientation of the students in the programs—an orientation that may reflect their reason for coming to school, their personalities, or some other or additional factor.

The bottom line for the second point—are planners uneducated about voluntary methods? We don't know, though it would be an interesting question to answer. Are planners uninvolved in the utilization of voluntary methods? In the way the authors have defined the issue, yes it would appear

to be so. Is this a bad thing, as they imply? Who knows. Though this latter question leads us back to point one.

The authors provide excellent summary data on the activity of local and regional land trusts in the U.S., and the ways in which the trusts have been able to be proactive in the protection of certain classes of lands. However, here too I believe there is reason to question the authors' perspective on this phenomenon.

On the one hand, I fully agree with some of what they want to say, e.g., "... the number and effectiveness of land trusts is largely due to broad public dissatisfaction with regulatory planning's failure to secure important open land from development" (420). In other words, private sector organizations such as land trusts provide a vehicle for those intensely concerned about an issue (permanent land protection) to be able to act upon that issue. But what concerns me is a tone in the presentation that seems to provide an uncritical acceptance of what land trusts and related organizations do. "Today, the country's larger, more successful land trusts are operating as de facto land use and open-space planning agencies" (419). Is this a good thing? We could make the same argument about many of the large private sector land and housing development corporations in the U.S. And what is wrong with this argument?

Land trusts are private, membership organizations. While most are chartered as nonprofit, public interest bodies, ultimately their accountability is to their membership bodies. They are not subject to the requirements and complexities of public laws requiring public input through hearings; they do not have to accommodate diverse views; their decision-makers are not recallable or accountable through an electoral process. Yes, I would agree that they are engaged in de facto land use planning, and as much as I might support the goals of selected land trusts, as a broad social phenomena, they worry me. The growth of land trusts can be positively viewed within the U.S. tradition, noted by de Tocqueville (1990 [1835]), to form private associations. They may also be one more example of the privatization of civic life, and the potential marginalization of individuals and groups with unpopular views who cannot afford or may not feel welcome to be members of a private, membership, dues-paying organization.

How much impact are land trusts actually having on the landscape? Well, the truth is, we don't know. Yes, there are approximately 1,300 local and regional land trusts in the U.S. But research that I supervised more than a decade ago showed that most of these organizations were small, held little if any land, were founded to protect a single piece of threatened property, and had essentially no engagement with the public planning process or any interest in such engagement (Foti and Jacobs 1989). While the efforts of the prominent land trusts is impressive—everyone cites the activities of the Marin County (California) Agricultural Land Trust; the Big Sur (California) Land Trust; the land trust in Jackson Hole, Wyoming; and the Vermont Land Trust—

most of us also recognize that the success of these efforts is tied to their location in a particular socioeconomic locale, which allows them to tap significant private resources. And, last time I checked, the land protection activities of the Vermont Land Trust (an organization I helped found) were equal in area to no more than two of Vermont's approximately 250 towns. Most land use decisions were made within the framework of public planning activity.

And the activities of land trusts, especially the so-called nationals (The Nature Conservancy, the American Farmland Trust, and the Trust for Public Land), are by no means without controversy. Despite their supposed respect for private property rights and market-based transactions over government regulation, the private property rights movement, about which I have written extensively (e.g., Jacobs 1999, 1998), is highly critical of efforts by the national trusts to secure large land holdings in the Western U.S.

What does all this mean? Am I just being hyper-critical of colleagues whose work I greatly respect and use in a central way in my teaching? I hope that my comments are not perceived this way. I believe Wright and Czerniak bring to our attention a critical element of contemporary land use planning and policy activity. And I believe they are correct in identifying the growth of this element, and its likely staying power. I believe, however, that it is essential that we (1) separate their non-databased arguments about planning education from their databased arguments about voluntary methods themselves and (2) critically assess the role and place of voluntary methods and voluntary organizations within the schema of public land use policy and planning.

From my perspective, voluntary methods have a critical place in the land policy landscape; that is exactly the point that Whyte (1968) made so many decades ago. But their place is as a supplement, not as a replacement, to vigorous public sector land use planning and policy. It is public sector policy that needs to establish the framework within which voluntary methods are exercised. If this does not occur, then we will have to wonder who is in the driver's seat, and where are we going?

By its very nature, public sector land use planning and policy are complex, messy, and dissatisfying, in part because they are fraught with intense social conflicts (Jacobs 1999). But this doesn't mean we should walk away from the public sector. Instead, I would urge that we continue to refine our approaches for public sector planning and policy, that we encourage voluntary approaches that offer citizens an opportunity for clear impact and action, and that we make sure that all of these efforts are open to input from the diverse communities that want the freedom, justice, equity, and sustainability that land offers and promises.

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## Comment on Voluntary Methods of Land Use Control in Planning

*Arthur C. Nelson*

Wright and Czerniak present an intriguing argument for adding voluntary landscape preservation efforts to existing curricula. I could not agree more. Like many of my colleagues, I teach courses in land use planning and growth management that include such subjects as conservation easements, land trusts, transfer of development rights (a form of "voluntary" land preservation since landowners need not participate), charitable contributions and the like. We could probably do more. From my perspective, their article is likely to become required reading.

Let us not, however, overestimate the role of voluntary open space preservation. In truth, regulation is far superior. The problem is that states and their local governments are less aggressive than they may be. Wright and Czerniak allege a "clear concession to the failure of regulations to conserve key lands" for explaining why Boulder County, Colorado, is

proposing a \$220 million bond issue to purchase development rights to targeted areas. The failure is not regulation per se but the lack of rigorous regulation.

Land use regulation exists because the market for land does not internalize negative externalities: In other words, the market for land fails to be efficient. New subdivisions impact the environment unquestionably. If the buyer of a new home is confronted with the marginal social cost of their impacts, they may decide differently. The problem is that usually marginal social costs exceed marginal social benefits. Hence, the real costs of a new suburban home are not paid by the developer or home buyer but society as a whole.

Regulation forces players in the development process to internalize their externalities. Voluntary open space preservation is not capable of doing this. To be sure, regulation is clumsy, yet, considering the state of econometric models to value the intergenerational effects of development patterns on society, regulation is at worst a second best alternative to a Malthusian outcome.

What is the main difference between voluntary open space preservation and regulation? Voluntary efforts lead to piecemeal outcomes. Put a subdivision in the middle of an agricultural area, and agricultural production for three miles around is reduced. In a forest, voluntary open space efforts may preserve a square mile here and a half-square mile there but endangered species are not surveyors capable of knowing where safe-havens exist. In contrast, regulation is capable of restricting land uses everywhere.

Despite the authors' concern, most open space preservation regulations meet constitutional tests. Through regulation, Oregon, for example, has preserved almost all its prime agricultural land, but Georgia, despite state planning mandates, has not, even though it has more land preserved through voluntary efforts than Oregon.

Wright and Czerniak miss an opportunity to discuss how voluntary and regulatory approaches can be complementary. Regulation is the necessary broad brush to preserve large landscapes, while voluntary efforts can fill in the gaps.

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