THE "MALLING" OF VERMONT: CAN THE "GROWTH CENTER" DESIGNATION SAVE THE TRADITIONAL VILLAGE FROM SUBURBAN SPRAWL?

> Today one looks with a fresh eye on . . . [the] New England village [as an expression] of a new kind of dynamic ecological balance, superior to either the urban monopolies of the Middle Ages or the unregulated sprawl, industrial or suburban, that followed.[1]

INTRODUCTION

The Vermont village is in jeopardy. Never before has Vermont felt such intense pressure for growth—pressure which unaddressed has led to unplanned, large-scale development outside village centers, in the form of strip malls and shopping centers. The suburban sprawl associated with unplanned development sounds the death knell for that which attracts people to Vermont: the traditional Vermont townscape.

This Note seeks to examine the continued viability of Vermont's traditional village in the face of adversity, the result of which has placed the entire State of Vermont at the top of the National Trust for Historic Preservation's list of "America's Eleven Most Endangered Places."[2] Part I of this Note traces the origins of the Vermont village, identifies its unique features, and details the benefits of its preservation.[3] Part II illustrates the results of unplanned development as they manifest themselves in suburban sprawl.[4] This section contrasts the evolution, defining features, and land usage of sprawl with the traditional village, and the increasingly popular Neo-traditional movement, which seeks to abolish sprawl and embrace features of the traditional village. Part III sets out the land use approaches currently favored by municipalities and states to guide growth and discusses the land use controls of zoning and planning, and compares these with Vermont's own growth-management statutes: Acts 250 and 200.[5]

Vermont employs growth-management statutes to prevent widespread sprawl. The State designates areas within municipalities as "growth centers" and manages growth according to that designation. Part IV of this Note examines the capacity to address large-scale development through

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1. LEWIS MUMFORD, THE CITY IN HISTORY 334 (1961).
2. Candace Page, *The Sprawl that Ate Vt.*, BURLINGTON FREE PRESS, June 23, 1993, at 8-A.
3. *See infra* Part I and accompanying text.
4. *See infra* Part II and accompanying text.
5. *See infra* Part III and accompanying text.

such designation by scrutinizing two Vermont towns' creation of growth centers, and their resulting responses to growth pressure.[6]

This Note concludes that neither reliance upon features of Vermont's growth management statutes, such as the growth center designation, nor traditional land use controls alone will prevent the inception of sprawling land uses. Rather, growth must be addressed on the local level with a combination of foresight, planning, and community involvement. The growth center designation, when used in conjunction with these elements, proves to be a factor critical to the preservation of that which is intrinsic to Vermont's allure: the traditional village townscape.

I. THE VERMONT VILLAGE: ORIGINS, DEFINING CHARACTERISTICS, AND THE NEED FOR PROTECTION

We often take for granted that which has always existed. Unfortunately, although the traditional village has survived from the time of Vermont's settlement to the present day, continued viability of the village in Vermont is far from guaranteed. In fact, municipal responses to mounting growth pressures throughout the State have endangered, and not preserved, this form of community. A close examination into the origins and the defining characteristics of the traditional village provides insight into the benefits derived from preserving the Vermont townscape.

A. History of the Vermont Village

The State of Vermont was settled frontier style by woodsmen, squatters, speculators, and draft avoiders as the result of a grant of land by New York and New Hampshire governors in the 1700s.[7] These early Vermont settlers cleared heavily forested lands to create homesteads and farms for subsistence.[8] Villages, or those settlements "larger than a hamlet and smaller than a town,"[9] developed around the central markets and meeting places of farmers traveling by wagon to sell and purchase products.[10] The heart of the traditional Vermont village was the "common," or centrally located open area, where sheep and cattle often grazed, and which ranged in design from an oblong or square shape, to "a

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6. *See infra* Part IV and accompanying text.

7. *See* FREDRIC O. SARGENT ET AL., RURAL ENVIRONMENTAL PLANNING FOR SUSTAINABLE COMMUNITIES 21 (1991).

8. *See id.*

9. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2552 (1986).

10. Lawrence O. Houstoun, Jr., *Living Villages: Thoughts on the Future of the Village Form*, SMALL TOWN, Nov.-Dec. 1988, at 14.

wide strip of a hundred and fifty or two hundred feet, running the length of the village."[11] Public buildings, including the town meeting house, the town hall, and the school, as well as privately owned houses, inns, and general stores, often surrounded the common area.[12]

Concurrent with the growth of such village centers was a minimal and informal government, the primary function of which was to locate and build military highways to ensure adequate security for Vermont's sovereignty.[13] As a result of both this skeletal form of government and the fierce independence of Vermont settlers, land use was determined on an individual basis by the land owner.[14] Without comprehensive public planning to designate specific uses of land, villages evolved into compact, mixed-use areas which relied heavily on pedestrian movement and wagons for transportation in and out.[15]

The most common use of land outside the village center was for "low productivity and low income hill farms," upon which the early Vermont economy was based.[16] These subsistence farms gradually gave way to textile manufacturing in the late 1700s, supported by the addition of water and rail transportation in the early 1800s.[17] Although these forms of transportation enabled the efficient removal of both manufacturing and agricultural products to markets across the nation and abroad, transportation alone could not sustain Vermont in the forefront of a booming industrial era. As a result, Vermont's economy stagnated during the first half of the twentieth century.[18] At this time, the vast network of interstate highways had yet to broach Vermont's borders, the skiing industry was still in its infancy, and the recreation industry that did exist

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11. MUMFORD, *supra* note 1, at 331; *see also* NORMAN WILLIAMS, JR. ET AL., VERMONT TOWNSCAPE 28-30 (1987).

12. *See* MUMFORD, *supra* note 1, at 331; *see also* Houstoun, *supra* note 10, at 14. These general stores not only served as post offices but provided a broad range of services and crafts. *See id.* Most often, they were located in close proximity to the homes of those engaged in the service industries. *See id.*

13. *See* SARGENT ET AL., *supra* note 7, at 21. These governments were designed primarily by local landowners to ensure the continued independence of Vermont from New York and New Hampshire. *See id.*

14. *See id.* This form of negligible town planning continued in Vermont, and most of the United States, until the 1930s, when federal agencies entered states to plan for rivers and watersheds, construct dams, and plan scenic parkways, national forests and parks. *See id.*

15. *See id.*

16. JOHN M. DEGROVE, THE NEW FRONTIER FOR LAND POLICY: PLANNING AND GROWTH MANAGEMENT IN THE STATES 67 (1992).

17. *See id.*

18. *See id.*

catered solely to summer tourists.[19] These factors contributed to land use in the form of the small, family owned, low-productivity farm, of which there were about 10,000.[20]

When interstate highways 89 and 91 effectively linked Vermont to Boston and New York City in the 1960s, Vermont's natural scenic beauty became a major attraction for tourists, and a prime source of real estate for nearby metropolitan residents and second home buyers.[21] The resulting increase in the State population spawned Vermont's first attempt at state level growth management in the form of Act 250, which the Vermont Legislature passed in 1970.[22] Vermont continued to experience rapid growth and subsequent change throughout the 1970s and 1980s.[23] This created increases in real estate value, development of mobile home parks, and an influx of strip development along the newly built highways, all of which strained municipal services and increased property taxes.[24] These common growth pressures continue today, threatening the survival of the Vermont village as we know it.

B. Today's Vermont Village and its Distinguishing Features

> Vermont is a village culture; it began as a state of frontier settlements and remains a small world where people know and care about one another. To know the teacher who teaches your children, the lawyer who writes your deed, the legislator who writes your laws, the grocer who sells you your food and in some cases the farmer who grew it makes people more responsible toward one another and promotes the economic diversity of our communities.
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> Sometimes we speak most forcefully about our values when we fear we are losing them.[25]

Although threatened by continued growth patterns, the Vermont village has survived through to the present day. There is a widespread

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19. *See id.*; *see also* REPORT OF THE GOVERNOR'S COMMISSION ON VERMONT'S FUTURE: GUIDELINES FOR GROWTH 4 (1988) [hereinafter GUIDELINES FOR GROWTH].

20. *See* DEGROVE, *supra* note 16, at 67; *see also* GUIDELINES FOR GROWTH, *supra* note 19, at 4.

21. *See* DEGROVE, *supra* note 16, at 67.

22. *See id.*

23. *See* Thomas R. Melloni & Robert I. Goetz, *Planning in Vermont*, *in* STATE & REGIONAL COMPREHENSIVE PLANNING: IMPLEMENTING NEW METHODS FOR GROWTH MANAGEMENT 158, 160 (Peter A. Buchsbaum & Larry J. Smith eds., 1993). Vermont's population increased from 420,000 to 548,000 from 1967 to 1987. *See id.*

24. *See* GUIDELINES FOR GROWTH, *supra* note 19, at 4.

25. *Id.* at 6.

belief, however, that development pressures in Vermont are out of control, and that rapid growth, in addition to changing demographics, have negatively impacted the spirit of community in many towns.[26] Vermont towns are struggling to resist both devolution into city-centered, bedroom-communities,[27] and domination by second homeowners. They do so by retaining and reinvigorating their village centers, the principal distinguishing characteristic of these towns.

Several common features unite traditional Vermont villages: first, a densely populated center of town surrounded by limited residential neighborhoods, creating a community where residents generally live no more than five minutes walking distance from the center;[28] second, centrally located public common areas, such as a town square or green, surrounded by homes, churches, inns or business establishments, and often town civic buildings, such as the school, library, post office or town hall;[29] third, a small commercial district in the center of town with grocery stores, news agents, drugstores, hardware stores, and retail stores, meeting the everyday shopping needs of residents;[30] fourth, architecture which harmonizes the village due to similar scale, roof shape, and building materials which are often, but not exclusively, wooden clapboard, shingle, or red brick;[31] fifth, pedestrian-friendly, but car-accessible streets in the town center which are narrow enough to require cars to slow down when passing each other and therefore promote a feeling of safety for pedestrians walking on abutting sidewalks;[32] sixth, a sense of spatial enclosure created by the town buildings and large shade trees which line streets and town

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26. *See id.* at 8.

27. *See id.* Bedroom communities occur when residents of one town "work outside the communities in which they live," creating a sort of subsistence community outside of the community providing the employment. *Id.*

28. *See* Andres Duany & Elizabeth Plater-Zyberk, The Decline of the Suburbs, Lecture delivered at the Harvard Graduate School of Design (Nov. 1990) (summary of lecture on file with author).

29. *See id.* Civic buildings placed on squares, therefore, "receive important locations to serve as landmarks." *Id.*

30. *See* Houstoun, *supra* note 10, at 21. Most villages' residents therefore live within walking distance of typical town amenities, such as schools, shops, churches, and playgrounds. This mix of density and land uses in the town village encourages pedestrian access to and about the town. *See id.* Additionally, these mixed-use village buildings often provide affordable housing in the form of second floor apartments. *See* Duany & Plater-Zyberk, *supra* note 28.

31. *See* RANDALL ARENDT ET AL., RURAL BY DESIGN: MAINTAINING SMALL TOWN CHARACTER 108 (1994). This harmony, although unintentional, is difficult to replicate in new housing developments and is therefore highly valued where it naturally occurs. *See id.*

32. *See* Duany & Plater-Zyberk, *supra* note 28.

squares, providing both visual and physical continuity;[33] and seventh, clearly defined open spaces at the boundaries of the town itself, symbolizing a visual "edge," or termination of the village area.[34] Based on these common characteristics, a clear picture of the traditional village emerges as a compact, predominantly residential area, with supporting commercial and public activities lying near the core, but with no clear distinction between residential and nonresidential areas and no separation of seemingly incompatible uses.[35]

The traditional village layout has positive consequences. By bringing most of the activities of daily living within walking distance of residents, nearly everyone in the community can gain freedom of movement and independence.[36]. By all but eliminating reliance upon the automobile, traffic congestion and the number and length of automobile trips are minimized within the town.[37] Because streets and squares are built on a pedestrian scale, neighbors come to know and watch over each other.[38] Residents of villages often feel and express a sense of attachment to their neighborhood and the street they live on, where they know many of the neighbors and enjoy the feeling of community associated with living in a small, close-knit town.[39] James Rouse, the innovative developer of the Town of Columbia, Maryland, characterizes this sense of community as "the greater liklihood [sic] for a broader range of relationships and friendships, an increased sense of mutual responsibility and support among

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33. *See id.* The spatial boundaries for these streets are the buildings which continually abut the sidewalks within the town center, uninterrupted by parking lots. *See id.* However, the streets and visual vistas are interrupted by buildings and monuments, which effectively promote the visual and physical sense of village enclosure and circuity. *See id.*

34. *See* Houstoun, *supra* note 10, at 15-16, 21. The presence of open space in the form of agricultural land, preserved park land, and low-density residential housing create this "edge effect" and result in obvious boundaries between townships—an effect which cannot occur when strip development runs uninterrupted from one town to another absent any open space. *See id.* at 15.

35. *See id.* at 21.

36. *See* Duany & Plater-Zyberk, *supra* note 28. This flexibility is most valued by the children and the elderly of a community. *See id.* Further, those who cannot walk to the concentrations of mixed-uses may be able to use public transportation, which is still a viable alternative to the automobile. *See id.*

37. *See id.* The expenses of road construction and air pollution are also both reduced when use of the automobile declines. *See id.*

38. *See id.*

39. *See* Houstoun, *supra* note 10, at 21. Also influential is the integration of a full range of housing types and workplaces which provide mixing of age and economic class, thus encouraging the bonds of community. *See* Duany & Plater-Zyberk, *supra* note 28.

neighbors, [and] a closer relationship to nature through informal outdoor recreation opportunities."[40]

The community ethic prevalent in Vermont towns has made residents not only aware of one another's needs, but also willing to lend each other a helping hand during times of need.[41] In fact, Vermont allocates more money annually to social services than most other states in the country.[42] Vermonters attribute this policy to the recognition that a strong social fabric is largely responsible for ensuring the provision of and support for good schools, transportation systems, hospitals, and recreation areas.[43]

The ethic of care common to the Vermont village constitutes the primary reason identified for the number one ranking of the "small town" as the most preferred living place by Americans.[44] In fact, Americans nationwide faced with a housing shortage, long commutes to work complicated by invariable traffic congestion, and increasing pollution, desire a return to traditional towns and villages, where shopping, housing, and work are within walking distance from each other, and where there also exists an actual sense of community, long abandoned by many of today's sterile suburbs.[45]

C. Benefits of the Vermont Village and the Need for Preservation

In addition to the profound sense of community, rural Vermont villages also possess what most people value today, a cleaner environment and beautiful scenery—qualities which do not exist in suburbs or urban areas.[46] Much of the attraction to Vermont is based upon the visual pleasure derived from admiring stunning views surrounding villages and from the quaint appearance of the enclosed villages themselves. The farms which dot the landscape and act to keep the base of the rolling Green Mountains open, create scenic vistas not available anywhere else in the country. They are also mainly responsible for creating the "edge" effect of separating townships.

The open squares in the center of villages invoke a sense of welcoming and provide the onlooker with adequate space from which to

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40. ARENDT, *supra* note 31, at 4 (citing GURNEY BRECKENFELD, COLUMBIA AND THE NEW CITIES 175-76 (1971)).

41. *See* GUIDELINES FOR GROWTH, *supra* note 19, at 6.

42. *See id.*

43. *See id.*

44. *See* ARENDT, *supra* note 31, at 4.

45. *See* Henry R. Richmond, *From Sea to Shining Sea: Manifest Destiny and the National Land Use Dilemma*, 13 PACE L. REV. 327, 337 (1993).

46. *See* SARGENT, *supra* note 7, at 184.

observe the carefully laid out buildings and monuments. The Vermont landscape is not swallowed up by its surroundings, such as traffic lights or busy multi-lane intersections abutted on each side by strips of commercial structures where all the buildings are identical. Rather, the Vermont landscape stands alone, pristine for now, and each new season offers a new palate burgeoning with a myriad of contrasting colors—a wealth of beauty provided for the visitor and resident alike. Compared to the smog and pollution which has settled so heavily over many parts of the country, the natural environment of the Vermont village is pristine, and the clear sky and fresh air lay testament to this fact. For these reasons, the village offers peace of mind.

The unique Vermont townscape[47] not only offers solace to its residents, it also contributes greatly to Vermont's economic base. Vermont's attractive towns and surrounding landscape are responsible for bringing a significant number of people to the State.[48] Tourism creates the most employment opportunities in Vermont, second only to manufacturing.[49]

Exploiting the significant differences between rural and suburban communities can result in an economic boon for a state. For instance, it is well documented that open space helps to increase tourism.[50] A poll commissioned by the President's Commission on American Outdoors verified what most Vermonters already know—that natural beauty is the single most important criterion for tourists when choosing vacation and recreation sites:

> Greenways, rivers, and trails, which attract visitors from outside the local area, can stimulate the local economy by infusing it with "outside" dollars. A recent trend analysis shows that weekend trips to nearby areas are on the increase, while the traditional two-week summer vacation is on the decline for today's travelers, strengthening the market for local and regional recreational opportunities.[51]

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47. *See* WILLIAMS, *supra* note 11, at 1. Townscape has been defined as the "overall visual impression of a town," including both the village center and the surrounding land. *Id.*

48. *See id.* at 2.

49. *See id.* As Norman Williams was fond of pointing out, the economic viability of Vermont's attractive townscape is widely recognized, nowhere more clearly than by the Vermont motel lobby, who took an active part in pushing through the legislature the state law to abolish billboards. *See id.* Williams often characterized this move as "a striking [and rare] example of enlightened self-interest." *Id.*

50. *See* ARENDT, *supra* note 31, at 283 (citing RIVERS AND TRAILS CONSERVATION ASSISTANCE, NATIONAL PARK SERVICE, THE ECONOMIC IMPACTS OF PROTECTING RIVERS, TRAILS, AND GREENWAY CORRIDORS: A RESOURCE BOOK (1990)).

51. *Id.* at 285 (citation omitted).

Not only does Vermont's scenic beauty attract tourists, but Vermont also provides many of Americans' most popular tourist activities:

> Observing, photographing, and feeding fish and wildlife provided enjoyment for 134.7 million Americans in 1985, . . . participants spent [an estimated] $14.3 billion for their activities in that year, an average of $221 per spender. The total spending included $4.4 billion for trip-related expenditures, nearly $9.4 billion for equipment, and $480 million for other expenditures.[52]

Unfortunately, the beauty and wealth associated with the Vermont village cannot continue to exist without protection. Threats to the village include unchecked population growth within the State, strip commercial development along the outskirts of town, highways leading through the center of villages, and reforestation[53] of previously open farm lands.[54] If not for aesthetic or ethical reasons, the strong incentives for economic gain alone provided by Vermont's natural resources and villages demonstrate the necessity to protect these characteristics by designating specific areas to accommodate such growth.

II. IMPACTS OF UNPLANNED DEVELOPMENT UPON VERMONT'S VILLAGES

Despite Vermont's consistent emphasis on the importance of environmentally conscious economic development, traditional villages continue to lose ground to sprawl.[55] Now, more than ever, it is critical to help Vermont communities plan to protect their existing village centers and surrounding countryside.[56] For as former Vermont Governor Hoff commented: "Without the benefit of an explicit policy determination to set a desirable pattern of physical development, Vermont will surely [and already has begun to] mimic the sprawl pattern found in virtually all urbanizing areas of this country. . . . Such a pattern can and must be

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52. *Id.* (quoting U.S. FISH AND WILDLIFE SERVICE, U.S. DEP'T OF THE INTERIOR, 1985 NATIONAL SURVEY OF FISHING, HUNTING AND WILDLIFE ASSOCIATED RECREATION (1989)).

53. While the author concedes that reforestation has significant environmental advantages, it is the author's contention that such efforts detract from the aesthetic quality of the Vermont landscape by filling the open spaces that add dramatic punctuation to the beauty of the village center.

54. *See* ELIZABETH HUMSTONE & ELIZABETH COURTNEY, GROWTH CENTER PILOT PROJECT SUMMARY, VERMONT DEP'T OF HOUSING AND COMMUNITY AFFAIRS 1, 3 (1995). Strip development destroys the clearly delineated edges of the village and steals customers away from the village commercial center. *See id.* at 3.

55. *See id.*

56. *See id.*

avoided."[57] A detailed look at the characteristics which define sprawl and the resulting suburban form of land use underscore the need for preservation of the unique entity which is the Vermont village. The need for protection is perhaps best illustrated by the Neo-traditional movement[58] occurring in areas where communities are demanding a return to the traditional village land use patterns and rejecting the current forms of suburban development.

A. The History of Suburban Sprawl

Beginning around 1870, the United States' population began to concentrate in the cities as the nation's economy shifted from reliance on agriculture to manufacturing.[59] Industrialization, combined with a tremendous amount of people moving into the cities, had disastrous effects on both people and the environment, as each "were exploited to serve the growing economy."[60] One commentator described the effects on the environment as follows: "[t]he air became heavily polluted with smoke from the factories; soot covered the land; and waterfronts . . . were destroyed."[61] These deplorable conditions eventually drove people out of cities in search of a healthier living environment.[62] The decentralization of cities continued for four decades following World War II, and was "characterized by a massive shift in the location and design of housing, shopping, work places and jobs."[63] Thus, the suburbs were born.

Terms such as "suburban sprawl" and "suburbanization" are used to describe the resulting form of development, which spreads out from city centers, consuming acre after acre of land in wasteful, nonsensical strips of commercial development, and spotting the landscape with "box retailers,"[64] four-lane highways, sixteen light intersections, and

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57. *Id.* (quoting GOVERNOR PHILLIP H. HOFF, "VISION AND CHOICE" VERMONT PLANNING COUNCIL).

58. *See infra* Part II.C.

59. *See* Richmond, *supra* note 45, at 328.

60. *Id.*

61. *Id.*

62. *See id.*

63. *Id.* at 329.

64. "'[B]ox retailers' [are] large discount retailers characterized by their economies of scale, warehouse-type stores, and low prices" (e.g., Wal-Mart). Jonathan Moore Peterson, *Taming the Sprawlmart: Using an Antitrust Arsenal to Further Historic Preservation Goals*, 27 URB. LAW. 333, 335 (1995). These stores generally locate themselves outside of the traditional downtown, near highway access, and are typical precursors of suburban sprawl. *See id.*

prefabricated, low-density housing developments.[65] This morass of commercial, retail, office, and entertainment development is often referred to as "agglomerations" of development, "edge cities," or "suburban megacenters."[66] The identifying feature of development within the suburbs is the consistent dedication of land to single uses, such as shopping malls, industrial parks, and residential clusters, all of which prove to be virtually inaccessible except by car, and which thereby are effectively isolated from one another.[67]

One of the startling and unintended results of this sprawling pattern of development was the swift, silent death of the traditional downtown, as it no longer functioned as the epicenter of the community.[68] By the early 1990s, almost fifty percent of the country's population resided in suburbs, and the structures built to support such growth have flourished proportionately.[69] Shopping malls and centers, each with their own seemingly infinite parking lot, have sprung up in order to serve the new, "centerless suburbia."[70] In addition to these supporting systems, many white collar industries have also relocated to suburbia, attracted by the low costs and reduced commutes.[71]

In response to the race to suburbia that followed World War II, a large number of towns enacted land use regulations in an attempt to protect their village centers and control this widespread and unprecedented growth.[72] Zoning is the most popular tool used by local governments as a method of preventing types of development which are incompatible with the continued existence of the village center.[73] Unfortunately, this near complete reliance upon zoning has resulted in a new, unforeseen type of incompatibility—that of conventional zoning versus the livable, walkable

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65. *See id.* at 331. It strikes this author as ironic that these housing developments are often named for that which preceded them in time and place, but which no longer exist. For instance: "Pinecrest Estates," "Birchwood Homes," "Dogwood Manor," or "Taft Farms."

66. *See id.*

67. *See* Andres Duany & Elizabeth Plater-Zyberk, *supra* note 28; *see also* Duany & Plater-Zyberk, *The Second Coming of the Small Town*, UTNE READER, May-June 1992, at 97.

68. *See* Richmond, *supra* note 45, at 33.

69. *See id.* at 331-32.

70. *Id.* at 332 (citation omitted).

71. *See id.* at 332-33. The nation's population is projected to increase to 383 million by the year 2050, a fifty percent increase. *See id.* at 336. Growth in cities is projected to drop off in the coming years, but development in other regions will continue to increase at about fifty percent faster than the growth rate of the U.S. population. *See id.* About eighty percent of the growth in population and jobs is projected to occur in the suburbs. *See id.* at 336-37.

72. *See* ARENDT, *supra* note 31, at 8.

73. *See id.*

community.[74] In fact, it is the adoption of forms of conventional zoning which promotes patterns of standardized, sprawling development incompatible with the "ambiance, character, and vitality" of traditional towns.[75] These characteristics, endemic to small town communities, are encouraged by the traditional layout, structure, uses, and densities of villages, which most zoning and land use regulations currently forbid.[76]

Very few communities have acknowledged the importance of planning by and for the community in the zoning process, and most towns fail to connect their regulations with any sort of vision for the future.[77] Even when a comprehensive plan is written and enacted, indicative of such foresight, the plan itself is often advisory, rather than mandatory, and usually ignores a most critical factor—determining how to grow "in a manner consistent with the traditional character of the community, so that new development fits harmoniously into the town fabric and helps to reinforce the local sense of place."[78] For the last fifty years, the zoning codes for most communities have mandated features of suburban sprawl rather than development compatible with the traditional village composition.[79] For the first time in its two-hundred year existence, Vermont's traditional villages are experiencing tremendous pressure to accommodate growth and must be wary of the ills associated with current zoning patterns.

B. Features of Suburban Sprawl as Distinct from Villages

When pondering the features of suburban sprawl, rural Vermont, with its rolling green hills, open landscape, and quaint town commons, is probably not the first image which springs to mind. In contrast to the Vermont townscape, the typical modern suburb is laid out entirely for the convenience of the automobile and consists, except for the streets, of exclusively private space, much of this devoted to the "single most useless form of plant life in all botany, the ornamental lawn."[80] Although houses with lawns featuring such flora may occupy lots of up to one to two

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74. *See id.*

75. *See id.*

76. *See id.*

77. *See id.*

78. *Id.*

79. *See* Maggie Malone et al., *Paved Paradise*, NEWSWEEK, May 15, 1995, at 42, 45. Vermont is no different from other states which have, through local zoning ordinances, not only refused to control residential growth, but have permitted the construction of wider roads leading to strips of commercial development. *See id.* at 43.

80. *Id.* at 43.

acres,[81] due to creative landscaping, children are often forced to play in the largest open space available, the paved street.[82] The large residential lots, with at least one hundred feet between houses, increase the amount of roads and utility lines stretching between them, and practically defy the goal of a pedestrian-friendly community.[83] The extensive front yards in such developments have a profound impact on residents and visitors alike, who see a desolate streetscape of houses considerably set back from the street, a vision that prompts both a feeling of disconnection from other residents and a feeling of lostness.[84]

Because modern subdivisions are designed to be driven through, rather than walked, even infrequently used streets are thirty-six to forty feet wide and are characterized by unnecessarily broad, sweeping turns for corners. Both of these features are intended to encourage the steady flow of traffic, but have the effect of terrifying pedestrians.[85] As a result of the total reliance upon the automobile and the hostile pedestrian environment that is inherent to the suburban layout, neighborhood shopping markets and mom and pop corner stores have difficulty surviving. This problem is especially profound when "mom and pop" are faced with competition from shopping malls and mega-supermarkets, which although are usually located some distance from the residential district, often have lower prices and greater selection.[86]

To reach these remote shopping districts, a driver must navigate the cul-de-sac or dead-end due to the street plan utilized by most suburbs to eliminate through-traffic.[87] The cul-de-sac discourages unwanted transient traffic by simply and abruptly ending roads, forcing anyone traveling by car, on foot, or by bicycle to eventually confront the fenced-in barrier edge of the housing development.[88] Because such developments often shoulder busy highways, these barriers are all but impassable.[89] Additionally, as a result of the cul-de-sac, residential traffic is funneled

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81. *See id.* at 43.

82. *See* Malone, *supra* note 79, at 43.

83. *See* Sandy Felsenthal, *15 Ways to Fix the Suburbs*, NEWSWEEK, May 15, 1995, at 46, 47.

84. *See id.* It is not uncommon for lawns to begin more than thirty feet from the street; houses are set even further back on the property, virtually nullifying any prospect of neighborly interaction between people on the road and owners of the home. *See id.*

85. *See id.*

86. *See id.*

87. *See id.* at 49.

88. *See id.*

89. *See id.*

from driveways to the few through-roads which do exist, creating heavy traffic at rush hours within the residential area.[90]

Consistent with this automobile-reliant layout, most suburban houses give the appearance that they are primarily places to keep the car, with facades dominated by garage doors and potential yard space gobbled up by blacktop.[91] The architecture of houses is usually mind-numbingly homogeneous, as one architect usually designs an entire development, and any possible diversity, such as duplexes, apartment buildings, shops, or businesses, is generally prohibited or strongly discouraged by local zoning ordinance.[92]

In order to prevent unnecessary suburban development in Vermont, alternatives to traditional zoning must be explored. Although the growth center designation being utilized by several Vermont towns stems from the traditional zoning rules that are responsible for suburban sprawl, planners can use such designations in conjunction with community involvement to implement long-term planning goals which exemplify the vision required to address the continuing growth pressures in Vermont. The popularity of the Neo-traditional movement, which heralds the return of the traditional village as the most desirable form of community, underscores the importance of addressing these concerns before growth pressures begin to dictate land uses within the Vermont townscape.

C. The Neo-traditional Land Use Movement

"[T]he new town, the old ways" is the motto of Andres Duany and Elizabeth Plater-Zyberk, a Miami-based husband and wife team of architect-planners at the forefront of the Neo-traditional movement.[93] The principal agenda of actors within the Neo-traditional movement, like Duany and Plater-Zyberk, is to produce alternatives to twentieth century suburban sprawl, the primary goal being to create new neighborhoods that not only build upon past successes, but that also ensure a future "of equal value to the past, [so] that tomorrow's preservationists have something worth conserving from our own time."[94] As proponents point out, vast differences exist between the traditional village and that model presented

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90. *See id.* Such residential traffic merely foreshadows what awaits the rush hour driver on the secondary roads and highways beyond.

91. *See id.* at 50.

92. *See id.*

93. *See* Duany & Plater-Zyberk, *supra* note 28.

94. *Id.*

by suburban sprawl.[95] Suburban sprawl is targeted not only as lacking aesthetic appeal, but also as a source of social isolation, traffic congestion, and the separation of the work force from job locations.[96] These architect-planners aim to revoke damaging zoning ordinances which encourage the congested, fragmented, and car-centered suburban layout, and inadvertently subsume the traditional village pattern of walkable, mixed-use neighborhoods. The implementation of a new form of mixed-use zoning ordinance, rather than an ordinance which separates uses, seeks to turn back the clock to a time before such rigid zoning, when villages were first created.[97]

The "Traditional Neighborhood Development" (TND) mixed-use ordinance is designed to restore the ability of town planners and designers to build new towns in the manner of the much-admired traditional villages.[98] The TND ordinance restores the option of creating villages, not suburbs, by prescribing a physical layout which creates clear edges, focused mixed-use centers near residential areas, pedestrian-friendly streets, and places for social interaction and recreation.[99] Essentially, these planners strive to reinvent that which once occurred naturally upon the rural landscape but is now effectively prevented by current zoning practices—the traditional village.[100]

III. TRADITIONAL LAND USE CONTROLS

> It is within the power of the legislature to determine that the community should be beautiful as well as healthy.[101]

In order to fully comprehend both the barriers to and the opportunities for preservation of the Vermont townscape, it is critical to define and describe the land use controls available to municipalities across the country, as well as to Vermont. Traditional land use controls refer to all those actions taken by a government which affect the use of land

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95. *See* Duany & Plater-Zyberk, *supra* note 67, at 97-98.

96. *See generally id.*

97. The traditional pattern of walkable, mixed-use neighborhoods has been inadvertently required by zoning ordinances which separate out ostensibly "incompatible" uses to different parts of a township. *See* Duany & Plater-Zyberk, *supra* note 28; *see also supra* notes 27 and 35 and accompanying text.

98. *See* Duany & Plater-Zyberk, *supra* note 28.

99. *See id.*

100. *See infra* Part III.

101. *See* Berman v. Parker, 348 U.S. 26, 33 (1954).

including, but not limited to, zoning and planning.[102] Land use controls commonly fall under the scope of a state's police power to ensure the general health, safety, and welfare of its residents.[103] Tools such as zoning and planning therefore can operate as a form of public regulation without compensation, and have become the dominant form of land use control in the United States.[104]

Although zoning and land use planning are distinct from one another, they also are interwoven. Land use planning determines the future uses of land within a municipality in furtherance of residents' general welfare.[105] Municipalities use zoning as a tool to implement land use planning decisions upon the property contained within the municipality.[106]

A. Zoning

The first zoning ordinance in the United States was passed by New York City in 1916, in order to guide the regulation of rapid and disorganized land development occurring within the city boundaries.[107] The popularity and success of this city ordinance led the U.S. Department of Commerce to publish the Standard State Zoning Enabling Act in 1922 as a model statute, in the hopes of encouraging states to enable municipalities to similarly regulate land development.[108] By 1926, forty-three states had adopted enabling statutes based on the Standard State

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102. *See* Norman Williams, *And Now We Have Four Systems—*, 12 VT. L. REV. 1, 2 (1987).

103. *See* Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 387 (1926). In *Euclid*, the United States Supreme Court first upheld the concept that "public authorities [such as municipalities] could control the use of land without paying compensation," through zoning. *See* Norman Williams, *And Now We Are Here on a Darkling Plain*, 13 VT. L. REV. 635, 635 (1989).

104. *See* Norman Williams, *Planning Law in the 1990s*, 31 ARIZ. L. REV. 471, 475-76 (1989). While Norman Williams argues vigorously that land use, shaped by the traditional system of land use controls (such as zoning), is overshadowed by the reliance upon and influence of both the property-tax and public works systems, *see id.* at 475-76, there are still those who believe that traditional tools such as zoning continue to influence land use decisions. As John Nolon states, "[l]and use in this country is determined by zoning ordinances adopted by local governments. . . . Zoning is a key method by which society encourages the development of jobs and housing, protects natural resources and the environment, and defines the character of its communities." John R. Nolon, *Comprehensive Land Use Planning: Learning How and Where to Grow*, 13 PACE L. REV. 351, 351 (1993).

105. *See* Nolon, *supra* note 104, at 351.

106. *See id.*

107. Board of Estimate and Apportionment, New York City, N.Y., Building Zone Resolution (July 25, 1916); *see also* Nolon, *supra* note 104, at 357.

108. *See* ADVISORY COMMITTEE ON ZONING, U.S. DEP'T OF COMMERCE, A STANDARD STATE ZONING ENABLING ACT (1926); *see also* Nolon, *supra* note 104, at 357.

Zoning Enabling Act, and five hundred towns had adopted zoning ordinances pursuant to them.[109]

Zoning provisions dictate types of land uses, as well as the permitted density of development, height, size, and shape of buildings.[110] Vermont, like most states, employs standard Euclidean zoning.[111] Euclidean zoning operates to divide municipalities into separate and distinct zones with specific enumerated uses, as opposed to permitting mixed-uses to occur within the same zone.[112] For instance, commercial, industrial, and residential uses are distinguished and relegated to non-overlapping zones within a municipality, thereby providing a definite, predictable (for developers), and consistent pattern of use.[113] By dictating how certain types of land will be used, zoning is therefore a method by which municipalities aim to facilitate the development of jobs and housing, protect natural resources and the environment, and ultimately, define the character of their communities.[114] Separating uses into different zones also keeps residential areas and commercial centers distinct. Thus, Euclidean zoning impedes mixed-uses within the village center, a feature upon which traditional villages thrive.

B. Planning

The law of most states stipulates that zoning ordinances are valid only if they are created in accordance with a comprehensive land use plan, implying that creation of the comprehensive plan precedes the zoning ordinance.[115] This is not always the case. Although the Standard City Planning Enabling Act was designed to promote the adoption of local comprehensive land use plans as a document separate and distinct from

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109. *See* Nolon, *supra* note 104, at 357.

110. *See id.* at 351. "Use" restrictions, or those designating the mix of commercial, residential, industrial, public, or other land uses within a municipality generally receive the most attention from both municipalities and potential developers. *See* Michael Fedun, *A Proposal for Improving Vermont's Statutory Requirements for Planned Unit Development*, 14 VT. L. REV. 591, 597 (1990).

111. *See* Fedun, *supra* note 110, at 595. This term stems from *Village of Euclid v. Ambler Realty Co.*, in which the Supreme Court first upheld the general principle that public authorities could control the use of land by zoning for specific uses, without paying compensation to the owners of the land. Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). *See* Williams, *On a Darkling Plain*, *supra* note 102, at 635.

112. *See* Fedun, *supra* note 110, at 595-96.

113. *See id.*

114. *See* Nolon, *supra* note 104, at 351.

115. *See* ADVISORY COMMITTEE ON ZONING, U.S. DEP'T OF COMMERCE, A STANDARD CITY PLANNING ENABLING ACT (1928); *see also* Nolon, *supra* note 104, at 351-52.

zoning, this Act was passed in 1928, after most states had already created a legal framework for zoning under the Standard Zoning Enabling Act.[116] So, in many instances, the comprehensive plan followed the zoning ordinance.[117] The Standard Enabling laws were part of a system designed to protect low-density uses—such as single-family residential areas—against the impact of high-density uses—such as industrial, commercial, and multiple-dwelling development—based on the widespread belief that high-intensity uses produce unwanted pollution and generate excessive traffic.[118] Unfortunately, most states fail to describe how zoning and planning are to interact with one another, which consistently has led to widespread confusion within legislatures, municipalities, and courts.

For instance, although Vermont's municipalities have had the power to regulate land use in Vermont for decades under their zoning authority, such zoning regulations and ordinances frequently are held against the municipality in favor of property owners.[119] The enactment of the Vermont Planning and Development Act[120] in 1968 increased municipal regulation in the planning area. This proved to be the first of several attempts by Vermont to cure the planning and zoning ambiguity, as well as to address unprecedented growth and development occurring within the State.[121]

C. Vermont's Chapter 117

The Vermont Planning and Development Act (Chapter 117)[122] was Vermont's first attempt to control land uses within the State through planning and zoning. It was created in order to expand the land use planning authority of Vermont's municipalities by allowing the legislative bodies of municipalities to work in conjunction with Regional Planning Commissions (RPCs). The goal of this effort was to adopt zoning ordinances and subdivision regulations for specific municipalities, as well as to give RPCs the ability to provide for coordinated land use planning

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116. *See id.* at 352.

117. *See id.*

118. *See* Williams, *Four Systems*, *supra* note 102, at 3.

119. *See, e.g.*, City of Rutland v. Keiffer, 124 Vt. 357, 205 A.2d 400 (1964); *see also In re* Jed Willey, 120 Vt. 359, 140 A.2d 11 (1958).

120. Vermont Planning and Development Act, Pub. L. No. 334 (1968) (codified as amended at VT. STAT. ANN. tit. 24, § 4301-4351 (1975 & Supp. 1989)).

121. *See* Melloni & Goetz, *supra* note 23, at 159. The enactment of Chapter 117 was in response to the sharp increase in Vermont's population experienced in the 1960s. *See id.*

122. VT. STAT. ANN. tit. 24, §§ 4301-4351 (1975 & Supp. 1989).

throughout the State.[123] Chapter 117 also gave specific RPCs the authority to adopt regulations necessary to perform their permitted functions,[124] such as establishing comprehensive planning programs for the municipality and recommending new zoning regulations and changes to local legislative bodies,[125] who can then choose to enact the regulations into law.[126] Unfortunately, the Chapter did not solve Vermont's planning and zoning difficulties, and other approaches were pursued.

In addition to delegating specific authority to RPCs through Chapter 117 to encourage local land use controls, Vermont also attempted to protect its environment through legislation in the form of the State Land Use and Development Bill (Act 250).[127] Act 250 provided a development project review process in which certain specified types of land development and land subdivision were to be approved by state-created regional environmental review commissions.[128]

D. Vermont's Act 250

In anticipation of development-related problems in the 1970s, Vermont passed a growth management statute with a discretionary land use permit system intended to operate as a statewide control on development.[129] Entitled the "State Land Use and Development Bill,"[130] the purpose of Act 250 was to "protect and conserve the lands and the environment of the State and to ensure that these lands and environment are devoted to uses which are not detrimental to the public welfare and interests."[131] The distinguishing and ambitious feature of this Act was its proposal for a

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123. *See* VT. STAT. ANN. tit. 24, § 4321(a) (1975), § 4401(b)(1) (Supp. 1989); *see also* Melloni & Goetz, *supra* note 23, at 159.

124. *See* VT. STAT. ANN. tit. 24, § 4323 (1975); *see also* Melloni & Goetz, *supra* note 23, at 159.

125. *See* VT. STAT. ANN. tit. 24, §§ 4323, 4325, 4382 (1975 & Supp. 1989); *see also* Melloni & Goetz, *supra* note 23, at 159.

126. *See* VT. STAT. ANN. tit. 24, §§ 4323, 4325(2) (1975); *see also* Melloni & Goetz, *supra* note 23, at 159.

127. Act of April 4, 1970, Pub. L. No. 250 (codified as amended at VT. STAT. ANN. tit. 10, §§ 6001-6086 (1993 & Supp. 1996)).

128. *See* Melloni & Goetz, *supra* note 23, at 159. The commissions created under Act 250 are regional Environmental District Commissions which are separate and distinct from Chapter 117's regional planning commissions. *See id.*

129. *See* James H. Wickersham, *The Quiet Revolution Continues: The Emerging New Model for State Growth Management Statutes*, 18 HARV. ENVTL. L. REV. 489, 489 (1994).

130. *See* VT. STAT. ANN. tit. 10 (1993 & Supp. 1996).

131. VT. STAT. ANN. tit. 10, § 1 (1993 & Supp. 1996).

statewide land use plan. For this reason, legislators thought that Act 250 might provide some protection to the traditional Vermont village.

Act 250's land use plan was to emerge in three stages: first, the creation of a temporary plan to guide early regulatory activity; second, a land development and capacity plan; and third, a statewide land use planning law.[132] Vermont adopted the temporary plan as part of the first phase of the Act without much fanfare in 1972. The State adopted the second phase, the land development and capacity aspect, the next year.[133] It failed to adopt the third phase of the Act, however, which was the statewide land planning law.[134] The failure to enact the third phase of Act 250 was due, in large part, to strong opposition within the State to any state role in growth management. This position was voiced largely by new landowners who felt that this aspect of the Act would provide for state mandated zoning, a tool still viewed with some suspicion.[135] Fortunately, in the absence of the statewide plan, passage of phase two of Act 250 successfully created environmental criteria to guide growth, and clarified the relationship between the Act and local governments.[136] Additionally, phase two added a provision that permitted the regional Environmental District Commissions to reject a project if it overburdened public facilities.[137] Still, without the statewide planning component feature of phase three, Act 250 reached only about a third of Vermont's development projects; the other two-thirds proceeded unchecked by any environmental considerations.[138]

For the one-third of development which Act 250 does affect, regional District Environmental Commissions are able to examine projects using the

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132. *See* DEGROVE, *supra* note 16, at 68.

133. *See id.*

134. *See id.*

135. *See id.*

136. *See id.*

137. *See id.* The commissions created under Act 250 are separate and distinct from Chapter 117's RPCs; instead, they are regional Environmental District Commissions. *See* Melloni & Goetz, *supra* note 23, at 159.

138. *See* Melloni & Goetz, *supra* note 23, at 159.

> Act 250 was viewed as a compromise, giving substance to a desire to protect and control all of the lands and environment of Vermont while simultaneously avoiding [the fear] of imposing undue burdens or interfering with local control of land use. The legislation was intended to involve the state in land use decisions only where values of state concern were implicated through large-scale changes in land use.

Id.

land capacity and development plans as criteria for their evaluation.[139] At the outset of the process, a developer must obtain a project permit from one of the regional Environmental District Commissions. These three-member panels, appointed by the governor, may approve, reject, or modify a project to bring it into conformance with these criteria.[140] The threshold level of review is very low, as it affects all public and private construction projects "involving" ten or more units, but a commission may at this stage deny a permit if it finds a proposed project to be detrimental to the public health, safety, or general welfare.[141] Before a project is given approval, the Commission must determine that all of the pertinent criteria have been met.[142] The developer shoulders the burden of proving that a project will not cause undue air pollution, water pollution, soil erosion, or strain on water supplies.[143]

A proposed project must also conform with local and regional land use plans.[144] Further, the project may not unreasonably impact roads and other public services nor may it have an undue adverse effect on natural,

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139. *See id.* at 159. See also VT. STAT. ANN. tit. 10, § 6086(a) for the conditions and criteria district commissions must find to be satisfied before development may go forward.

For the purposes of Act 250, development is defined as "the construction of improvements on a tract or tracts of land, owned or controlled by a person, involving more than 10 acres of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes." VT. STAT. ANN. tit. 10, § 6001(3) (1993 & Supp. 1996). The kinds of development projects which are subjected to formal Act 250 review include: (1) any commercial and industrial improvements on more than one acre of land within a municipality which has not adopted permanent zoning laws; (2) any commercial or industrial proposal greater than one acre in size, if the local municipality in which the project is planned has enacted a zoning scheme which falls under the jurisdiction of Act 250; (3) any cooperatives, condominiums, houses, mobile homes, or trailer parks of more than ten units; (4) any construction for farming, logging, or forestry above altitudes of 2500 feet; and (5) any municipal or state purpose requiring over ten acres where local municipalities have enacted a zoning scheme. VT. STAT. ANN. tit. 10 § 6001(3) (1993 & Supp. 1996).

140. *See* VT. STAT. ANN. tit. 10, § 6086(a) (1993); *see also* Richard H. Cowart, *Vermont's Act 250 After 15 Years: Can the Permit System Address Cumulative Impacts?*, 6 ENVTL. IMPACT ASSESSMENT REV. 135, 135-36 (1986).

141. *See* Cowart, *supra* note 140, at 135-36.

142. *See* VT. STAT. ANN. tit. 10, § 6086(a)(1)-(10) (1993). The criteria under Act 250 stipulate that a development project shall: (1) not result in undue water or air pollution; (2) have sufficient water for its reasonably foreseeable needs; (3) not cause an unreasonable burden on an existing water supply, if one is to be used; (4) not cause unreasonable erosion or reduction in the ability of a municipality to provide education services; (5) not cause unreasonable congestion or unsafe conditions on highways or other transportation facilities; (6) not cause an unreasonable burden on the ability of a municipality to provide education services; (7) not place an unreasonable burden on the ability of local governments to provide governmental services; (8) not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas; (9) be in conformance with statewide development plans; and (10) be in conformance with any duly adopted local or regional plan or capital program. *See id.*

143. *See id.*

144. *See id.* § 6086(a)(10).

aesthetic, or historic sites.[145] The permit system is designed to operate with speed and efficiency. In practice, most applicants receive permits within thirty to ninety days.[146] However, once the developer receives a regional permit, it still must receive all other necessary state agency and local approvals, a process that can take much longer.[147]

Unfortunately, the permit system under Act 250 has not prevented the encroachment of large-scale development in the form of "box retailers"[148] into Vermont.[149] As growth pressures mounted during the 1980s, it increasingly became apparent that while Act 250 was a good approach for specific developments, it was an insufficient system for managing Vermont's growth overall.[150] The Act's insufficiency was a result of its reactionary and piecemeal focus and its inability to address cumulative impacts, such as strip development and other elements of sprawl.[151] In a

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145. *See id.* § 6086(a).

146. *See* Cowart, *supra* note 140, at 136.

147. *See id.* An appeals process is also available for those dissatisfied with the board's rulings. *See* VT. STAT. ANN. tit. 10, § 6089 (1993).

148. Jonathan Moore Peterson, *Taming the Sprawlmart: Using an Antitrust Arsenal to Further Historic Preservation Goals*, 27 URB. LAW. 333, 335 (1995).

149. *See* ARENDT, *supra* note 31, at 139. Some of the failures of Act 250 can be attributed to the persistence, creativity, and wealth of applicants for development. *See id.* Developers in jeopardy of failing the permitting process have been willing to purchase any building when its owners have demonstrated that the proposed development would make it impossible for them to continue their business. *See id.* The Act contains no restrictions requiring that traditional retail functions be maintained within these buildings. Once the developer has purchased the property in question, he or she can use the property however he or she sees fit, which is not always to continue the competing retail uses. *See id.* Therefore, with the increasing appearance of the box retailer, the retail element of the Vermont village is being rapidly bought out by developers and replaced with non-retail uses.

150. *See* DEGROVE, *supra* note 16, at 67. Although "criteria nine" of Act 250 mandates that the district commission take into consideration the growth in population and the strain on existing support systems created by new development, this criterion is incapable of operating in lieu of comprehensive statewide planning. Section 6086(a)(9) (criteria nine) states that:

> (a) Before granting a permit, the board or district commission shall find that the subdivision or development; . . . (9) Is in conformance with a duly adopted capability and development plan, and land use plan when adopted. . . . (A) In considering an application, the district commission or the board shall take into consideration the growth in population experienced by the town and region in question and whether or not the proposed development would significantly affect their existing and potential financial capacity to reasonably accommodate both the total growth and the rate of growth otherwise expected for the town and region and the total growth and rate of growth which would result from the development if approved. After considering anticipated costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services and other factors relating to the public health, safety and welfare, the district commission or the board shall impose conditions which prevent undue burden upon the town and region in accommodating growth caused by the proposed development or subdivision.

VT. STAT. ANN. tit. 24, §§ 6086(a)(9)(A) (1993).

151. *See* DEGROVE, *supra* note 16, at 68; *see also* Cowart, *supra* note 140, at 140.

nutshell, Act 250 lacked, and continues to lack, a planning component which would allow municipalities the foresight to assess impacts of *all* potential and proposed developments. Instead, the Act addresses only the individual developments and their impacts as they arise.[152] Therefore, Act 250 cannot adequately protect the traditional village.

To improve the administration of the permitting process of Act 250, the Vermont Environmental Board has recently proposed several changes.[153] Underlying many of the public hearings conducted in conjunction with these proposed changes was a pronounced tension between Vermonters' goals for the environmental protection of their land and future business development.[154] While there is strong support for the Act itself and the values set forth by its criteria, there is also a marked concern for shortcomings of the process required by the Act: "Timeliness, less complexity and improved efficiency are recurring themes."[155] These new rules are aimed at amending the Act 250 process by continuing to emphasize citizen participation, improving accessibility to the system by reducing the complexity of the Act, and eliminating duplicative permitting, all of which have been persistent and detrimental features of Act 250.[156]

Although these proposed rule changes are an important step towards solving some of the problems surrounding Act 250, the Act, reformed or not, still fails to prospectively address large-scale statewide development. Rather, it continues to address piecemeal development, usually long after proposals and financial investment have been made. Further, it fails to provide adequate opportunity for inquiry into long-term cumulative effects of statewide or regional growth in development. Conversely, the growth center designation is intended to involve prospective evaluation of state actions and provide incentives to facilitate growth in specifically designated areas, rather than addressing proposals for such growth after it occurs.

E. Vermont's Act 200 and the Growth Center Designation

In an effort to address some of the aforementioned shortcomings of Act 250 and attempt once again to institute a statewide planning law,

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152. *See* Cowart, *supra* note 140, at 140.

153. *See* Press Release from John T. Ewing, Chairperson, State of Vermont Environmental Board (Oct. 18, 1995) (on file with author).

154. *See id.*

155. *Id.*

156. *See id.*

Vermont enacted growth management legislation in 1988.[157] Act 200, entitled the Vermont Growth Management Act, took shape from a series of amendments to Chapter 117. In contrast to Act 250, Act 200 provides an integrated system of state, regional, and local planning by giving regional planning commissions the ability to review and approve town, state agency, and state capital expenditure plans.[158] This program is based on incentives, as opposed to mandatory requirements, and sets forth thirty-two statewide policy goals for state agencies.[159] Act 200 encourages regional planning consistent with state goals by making approval contingent upon agreement by at least sixty percent of the regional planning commissions.[160] At the local level, Act 200 encourages towns to adopt comprehensive plans by withholding government funding pending approval of a local plan consistent with state, regional, and local goals.[161] The comprehensive plan must include a vision which specifies current and prospective uses as well as intensity and sequence of development, factors which are ignored by Act 250.[162]

One of the key elements of Act 200 is the examination and designation of potential "growth areas" at the local level in order to target areas of future development before development targets them.

> Among the most basic tenets of Act 200 is an ordering of land use, based on a pattern of compact settlements, well-defined and distinguished from the surrounding open countryside. This pattern will not emerge without guidance from the planning process. . . . The designation of growth areas is fundamental, it is unavoidable, and it is desirable.[163]

The term "growth areas" originated under Act 200 and was first defined in the *Report of the Governor's Commission on Vermont's Future: Guidelines for Growth,* as "an area where future growth is planned so as

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157. *See* Theodore C. Taub, *Update on Local Growth Management*, C431 ALI-ABA 1097, 1099 (1989).

158. *See id.*

159. *See id.* These agencies are able to participate in the planning process by overseeing plans which are "consistent with state goals, compatible with regional plans, and review[able] by the Council of Regional Commissions." *Id.*

160. *See id.* at 1100. This emphasis on regional planning in Act 200 also enables a majority of towns in a region to veto a regional plan. *See id.*

161. *See id.*

162. *See id.*

163. Allen Gilbert, *Growth Center in Vermont: An Idea Whose Time Has Come?*, VERMONT ENV'T. REP., Winter, 1992, at 13 (quoting ACT 200 STUDY COMMITTEE REP. (1988)).

to create a compact settlement pattern surrounded by rural countryside."[164] The goals of Act 200's growth area designation are to encourage planned development so as to protect the mixed-use, compact-settlement pattern of the village center.[165] Reaching the goal of planned development requires the encouragement of high-density residential development near the centers of town, and the discouragement of strip development along highways.[166]

Certain criteria have been developed to determine what already is a growth center, and what will qualify for growth center designation.[167] The designated area must promote a concentrated pattern of development.[168] The compact area must be surrounded by open, undeveloped lands, distinguishing it from other local or regional growth centers.[169] It must be sized to accommodate both current and projected development, while still maintaining reasonable accessibility for walkers and bikers.[170] The designated area must continue to promote a mixture of uses, including: residential, light industrial, commercial, and civic; as well as conservation, and recreation.[171] The pursuit of mixed-uses must not trammel any significant natural, cultural, historic, or scenic resources targeted for protection by local or regional plans.[172] Perhaps the most important feature of all, the growth center designation process must involve participation by the interested public to allow for the identification of community interests which may then be incorporated into the planning process for the future center.[173]

Based on these goals, four key elements of the growth center designation emerge to make it a powerful tool. First, a clearly defined area must be selected. Mixed-uses such as residential, commercial, manufacturing, and recreation should, or will, be channelled into this area.[174] Second, a plan for the growth center's development is created by incorporating community input into a long-term plan.[175] Third, although development of farmland and wildlife habitat within a designated growth

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164. HUMSTONE & COURTNEY, *supra* note 54, at 1; *see also* GUIDELINES FOR GROWTH, *supra* note 19, at 4.

165. *See* HUMSTONE & COURTNEY, *supra* note 54, at 4.

166. *See id.*

167. *See id.* at 8.

168. *See id.*

169. *See id.*

170. *See id.*

171. *See id.* at 9.

172. *See id.*

173. *See id.*

174. *See* Gilbert, *supra* note 163, at 13.

175. *See id.*

center may occur, it would be permitted only in exchange for restricted development outside the growth center.[176] Fourth, in exchange for the increase in high-density growth in town centers, when allocating funds, the State would give priority to projects within the growth center plan.[177]

If the State successfully can incorporate these four elements, growth center planning could prove to be the solution Vermont needs to fight sprawl and retain both the village center and rural character of the State. One of the most important features of the growth center designation is that it does not operate to exclude growth. Instead, it focuses desired development into existing town centers, or designated growth areas, thus allowing towns to plan for growth and channel it to where it will be most beneficial and non-threatening. The growth center concept strives to foster healthy communities by providing housing, employment, and human services, and not by excluding growth altogether, thus ensuring that growth will proceed as the town envisions it.[178]

IV. THE GROWTH CENTER DESIGNATION: IS IT AN ANSWER TO LARGE-SCALE DEVELOPMENT? AN EXAMINATION OF ITS USE BY TWO VERMONT TOWNS

One common practice of developers is that, generally, it is financially more appealing to build from scratch on a vacant lot than it is to revamp an existing building in a downtown area.[179] The economic disincentive to develop in downtown areas conflicts with the values of citizens and merchants who use the downtown district as the epicenter of community life.[180] Unfortunately, because the basis for development outside of town centers is economic, and not aesthetic or quality-of-life oriented, communities in rural Vermont must have the foresight to discourage building in remote areas and create incentives to investing in existing downtown areas.[181] Extending public water and sewer services along a roadway leading into or out of a village is an excellent example of a town's lack of foresight. In providing such services, the town has

176. *See id.* at 13-14.

177. *See id.* at 14.

178. *See id.* at 13.

179. *See* CENTRAL BUSINESS DISTRICT COMMITTEE, DOWNTOWN MIDDLEBURY ACTION PLAN, app. H at 3 (1992).

180. *See id.*

181. *See id.*

basically opened an invitation to develop along that road—outside the town center.[182]

Local zoning tools, such as the growth center designation, enable residents of towns such as Middlebury and Williston to protect the character of their community and to have input into the future of their town.[183] Zoning enables residents to control the land uses within their villages and allows them to protect the emotional and financial investment they have in their houses, neighborhoods, and towns.[184] It is for this reason that zoning tools, such as the growth center designation, are an imperative element of community self-determination, allowing residents to oversee the pace and pattern of change within their towns.[185]

Lest the growth center tool be construed as exclusionary, let it be understood that box retailers such as Wal-Mart may be permitted to develop, so long as they do so on the town's terms.[186] Frequently, without tools such as the growth center designation to guide growth, the pressure to permit development overwhelms a town's desire to set limits and goals consistent with the vitality of their village.[187] Rather, in most American towns, "the political pressure is on the side of bringing . . . discount stores in. It's not that people want their downtown to dry up; it's just that those problems are off in the distance, and bargain prices are just one simple rezoning away."[188] Few communities anticipate the potential for the economic and social harm that shopping malls and box retailers, such as Wal-Mart, can cause a village center.[189]

While Vermont has been exemplary in enacting historic preservation, environmental, and land use planning legislation, its local zoning ordinances have just begun to be tested by big chain discounters and mega-

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182. *See* Norman Williams, Jr., *The Three Systems of Land Use Control*, 25 RUTGERS L. REV. 80, 85-87 (1987). Williams identifies at least two major public works which influence land use in areas "ripe" for development: building interchanges for interstate highways, and costly sanitary sewer systems. *See id.*

183. *See* Peterson, *supra* note 148, at 375.

184. *See id.*

185. *See id.*

186. *See* Alan Ehrenhalt, *Up Against The Wal-Mart*, GOVERNING, Sept. 1992, at 7.

187. *See* Peterson, *supra* note 148, at 338.

188. Ehrenhalt, *supra* note 186, at 7.

189. Zoning is the preferred mode of dealing with the predation of box retailers because it has the greatest potential for excluding dangerous firms from a market protective of local interests. The most significant and practical obstacle to the effective use of zoning in this context is that towns cannot control where a box retailer goes outside of the town's boundaries. It could go next door and have the same effect on the town which fought it. Communities may be able to establish a united front on a small scale, but as the area requiring protection grows larger, it becomes more difficult to fend them off. *See id.*

mall developers. The potentially disastrous impact of commercial sprawl upon the towns and countryside of this State—and in traditional villages everywhere—is not only an economic, but a quality-of-life concern.[190] No one has stated this threat and its potential solution better than the Burlington Free Press:

> Sprawl consumes the fields and wooded hillsides that attract tourists, businesses and new residents. Sprawl spreads people thinly and weakens the ties among neighbors and between neighbors and their schools, town government and civic groups.
>
> The National Trust's list ought to remind Vermonters of one other thing: Perhaps more than residents of any other state, they can choose to slow the ooze of uncontrolled growth. Vermont has Act 250, . . . which has defeated some commercial sprawl. Vermont has Act 200, which encourages strong town plans that concentrate growth in limited areas. . . .
>
> Slowing down sprawl doesn't mean stopping growth. It doesn't mean slamming the door on any newcomer who wants to compete. It does mean directing growth and asking that it occur on a scale appropriate to an existing community.[191]

The designation of growth areas empowers Vermont towns to prevent such sprawl. Retaining control over the layout of towns requires gaining control over the development occurring within and around the village center, control which is provided through the growth center designation.[192]

There also exist foreseeable drawbacks inherent in the use of the growth center designation—residents will have to make definite choices about their town's future and sacrifice some protection of the natural resources which exist within the growth center area.[193] However, the end result ought to be forward thinking anticipation of growth and greater permanent protection of natural resources outside the growth center.[194]

At one time, Williston and Middlebury might have been described as traditional Vermont towns. While they both possess traditional village townscapes, both towns are experiencing very different, but equally threatening, growth pressures. Williston has essentially evolved into a

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190. *See* Peterson, *supra* note 148, at 337

191. Page, *supra* note 2, at 8-A.

192. *See* Gilbert, *supra* note 163, at 14. As one Vermonter aptly remarked: "[I]f we are serious about quality economic development and we're serious about having that development done in the most environmentally sensitive way and in keeping with the land use patterns most Vermonters desire, we need to target economic development." *Id.* (quoting Rep. Charles Ross of Hinesburg).

193. *See id.*

194. *See id.*

"bedroom community" for commuters who want to live outside the city of Burlington and commute to work. Middlebury lies in the Route 7 corridor between Burlington and Rutland, directly in the wake of the growth associated with that roadway. Williston's recent designation of Taft Corners as a growth center will be evaluated for its success, as will Middlebury's Downtown and Marble Works designations. In analyzing these towns' attempts to control growth in the village center via the growth center designation, the remainder of this Note will highlight the successes and failures of the growth center concept.

A. Williston, Vermont

"We're Building to Serve," states a sign posted in front of the newly refurbished First Congregational Church in Williston, Vermont. The phrase seems a fitting synopsis of the attitude of the Town itself, as it rapidly devolves into a "bedroom community" to support spill-over growth from the City of Burlington. Approaching the Town from Interstate 89, the onlooker cannot help but be struck by the beauty of the rolling flood plains and flat farmlands which surround the Town. From the highway, Williston appears to be another typical Vermont village—built in a low lying valley, cloaked by open farmlands, and abutted by the majestic Green Mountains.

Once one departs the highway, however, this perception fades quickly as the driver finds him or herself in the middle of an expansive three-lane roadway. A "Susse Chalet" and "Sunoco" mini-mart greet the prospective patron who unconsciously travels rapidly towards the district known as "Taft Corners." What was perceived to be open farmlands is discovered instead to be vacant commercial lots, awaiting development. To the side of the first major intersection (complete with multiple stoplights, various turn-lanes, and striped yellow medians demarking forbidden parts of the roadway) sits a formidable, albeit darkened, building upon which is inscribed, "Rising Star Bistro." The empty building bears a sign in a first story window reading, "For Lease," and another on the second story reading, "Office Space Available." After patiently pausing for the time allotted by the stoplight, one proceeds through this intersection, and immediately notices the construction and arrangement of similarly imposing buildings, scattered randomly through what was once lush agricultural land.

If one chose to drive along the winding, desolate roads leading to these buildings, one would encounter a "Computech," "United Parcel Service," "Vermont Furniture," and many more empty office buildings for lease, each dominating its own generous parking lot, acres away from the

nearest building. These structures, and their inhabitant businesses, seem to be patiently lying in wait, anticipating the inevitable growth which will eventually bring a flood of customers to their doors. The empty lots between the present structures sprout signs promising: "'Wal-Mart': coming soon," and "'Shop 'n Save' Spring 1996." What is so fundamentally disturbing about this present and impending development is not that it exists, or will exist (for economic vitality and good ratables are sought by every municipality),[195] but that the present development sadly has been permitted to take shape in the form of suburban sprawl.

The Town of Williston consists of just under 20,000 acres of land in the Champlain Valley of Chittenden County, and while less than one quarter of this land is committed to development, with the rest devoted to agriculture and forestry, the existing development sprawls across the countryside like the Long Island Expressway across Long Island.[196] With the significant shift from its farming heritage to suburbia, Williston has experienced a sixty-five percent increase in the number of residential and commercial plots, and a fifty-four percent decline in farmland.[197]

Between 1990 and 1994, an astronomical 482 new dwellings were built in Williston,[198] and the number of people moving to the Town continues to increase steadily.[199] The population growth between 1985 and 1990 averaged a four percent per year. This is more than any period of growth in Williston since the 1960s, and is significantly more rapid than growth overall in the State of Vermont.[200]

When one turns away from the Taft Corners development and onto Route 2, which leads into what was once the village of Williston, this tremendous growth in population becomes apparent, embodied by numerous subdivisions containing hundreds of identical, split-level, prefabricated structures which erratically blot the flat landscape. These residential areas sport names such as "Taft Farms," a startling reminder of that which preceded them, but which has since vanished. Several miles past these new housing developments, which are broken up by a few old farm houses and a corn field here and there, lies the former, now latent, village of Williston.

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195. *See* Williams, *supra* note 182, at 84.

196. *See* WILLISTON PLANNING COMMISSION, WILLISTON COMPREHENSIVE PLAN 19-20 (1995).

197. *See id.*

198. *See id.* Farmed areas in Williston declined by approximately 20% during the same period. *See id.*

199. *See id.* at 11.

200. *See id.*

The traditional Williston village is listed on the National Register of Historic Places as an "Historic District."[201] The village is home to a collection of nineteenth-century Greek Revival and federal-style buildings and is touted by the Town as an important stop along the historic route from the courthouse in Burlington to the capital building in Montpelier.[202] "The village center [is] the civic center of the Town, containing the Town offices, the Central school, the library, community park, the Town green, churches, the Armory, and the fire station."[203] But aside from these public buildings, there is nothing in the village to attract residents. There are no restaurants, grocery stores, general stores, pubs, or other features which might encourage people to spend time or money in the village center, other than to fulfill their civic duties.

It is the stated intent of Williston that the village remain its civic center, a desire which has been reinforced by the renovation of the Grange Hall and the Town Hall for use as Town offices, as well as by the purchase of additional land near the Town Hall to "provide for expansion of Town facilities, including office space, police and emergency services, and additional Town park land."[204] Unfortunately, the acquisition of any additional necessity a resident might require (such as food, drink, or clothing) must be accomplished by a car trip to the Taft Corners commercial development.

The Town of Williston has acknowledged in their plan that "the identity of any community is largely dependent on the visual character of its environment."[205] Although Williston intends to project the image of a traditional agrarian landscape, well-defined by farms and houses knit into and framed by a backdrop of open hillsides and mountains, it will first have to combat the sprawling development which has begun to swallow these lands and their image with them.[206] Williston claims that a closer look at the landscape within the Township demonstrates a series of fundamental physical relationships: open land in the form of cleared farms defined by hedgerows and wood edges; road systems logically laid out through the center of these cultivated lands; and steep forested hillsides rising behind these cleared lands.[207] Unfortunately, box retailers and service centers rapidly are purchasing these once open lands with hopes of

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201. *See id.* at 27.
202. *See id.*
203. *Id.*
204. *Id.* at 28.
205. *Id.* at 32.
206. *See id.*
207. *See id.*

servicing the projected and continually growing consumer base, thereby guaranteeing the demise of the desired visual character.

Williston also acknowledges in its plan that it must preserve the quality of its natural environment by supporting existing agricultural uses and future agricultural potential. The Town intends to do this through the conservation of the open space that has defined its scenic beauty and engendered its historic designation.[208] Williston hopes to achieve its conservation objective by controlling development with a growth center designation.[209]

The Town states that it has designated a growth center in order to: minimize adverse impacts on fragile environmental areas; accommodate future development while preventing further sprawl from occurring; and attempt to correct that sprawl which has already occurred.[210] Williston also proposes to support development in the growth center in order to encourage the traditional village pattern of compact settlement surrounded by open land, albeit outside of the original village of Williston.[211] Land uses within the center would be encouraged in a mixed pattern, not unlike the mixed uses of the Neo-traditional movement, so that density in the growth center would be significantly higher than in the countryside. Provisions for necessary support systems, such as sewage disposal and roads, would be included in such a mixed pattern plan.[212]

Through the mixed-use growth center, Williston seeks to encourage a framework for development by designating future road locations and varying standards for building setbacks, lot coverage, and height restrictions, in order to distinguish their new growth from suburban sprawl.[213] Shared parking lots and public areas, as well as pedestrian uses, would also be encouraged and accommodated.[214]

Outside the growth center, in areas where the current development pattern is generally that of one building per building lot, this form of development would be protected by Williston; however, the Town intends

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208. *See id.* at 5.

209. *See id.* at 6.

210. *See id.* "These fragile areas include flood prone lands, aquifers, wetlands, lands containing ecologically sensitive plant life, and critical wildlife habitat . . . . Open and natural areas and cultural resources including open space, woodlands, slopes and ridges, scenic vistas, recreation lands and trail corridors will also be preserved." *Id.* Subdivision and development permitted in proximity to the environmentally fragile resources is to be controlled so that protection of the resource remains possible. *See id.*

211. *See id.* at 6-7.

212. *See id.*

213. *See id.* at 7.

214. *See id.*

to prevent fragmentation of resource lands by carefully siting new development and by designated clustering of new growth.[215] In an effort to control the rate of new development, Williston plans to implement a "phasing program" based on the limits of the Town's facilities and services which includes schools, sewage systems, and roadways.[216]

The Vermont Planning and Development Act grants authority to communities like Williston to prepare and implement a comprehensive plan.[217] The stated objectives of Williston's comprehensive plan are to preserve what is left of the Town's identity, and to maintain and strengthen its sense of community by balancing projected future growth with conservation principles.[218] Williston is "determined to anticipate its needs and manage its future, and not merely to react to the forces of growth" which impose upon it.[219]

To be successful, Williston believes that it must control and guide future growth by implementing the growth center concept and managing commercial development.[220] The Planning Commission recognized that it is important to preserve Williston's character and heritage in order to maintain the Town's unique identity.[221] The growth center designation is therefore to be applied to the commercial district known as "Taft Corners" in the hopes of correcting some of the sprawling features which currently exist there and preventing future sprawl.

B. The Growth Center Designation of Taft Corners: Williston, Vermont

Williston's Comprehensive Plan attempts to achieve the goals of Act 200 by describing a pattern for future land uses which permits growth in a compact manner and provides incentives in the form of denser development within the area designated as a growth center.[222] Taft Corners, as it sits today, consists of 700 acres surrounding the intersection of Routes 2 and 2A, which lie adjacent to an Interstate 89 interchange. As previously described, this area has already begun to develop in a mixture of retail, office, distribution, and service uses at low to moderate

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215. *See id.*
216. *See id.*
217. *See id.* at 2 (citing VT. STAT. ANN. tit. 24 §§ 4301-4351 (1975 & Supp. 1989)).
218. *See* WILLISTON PLANNING COMMISSION, *supra* note 196, at 5.
219. *Id.* at 12.
220. *See id.* at 11.
221. *See id.* at 5.
222. *See id.* at 21.

densities.[223] Denser growth will be encouraged in the areas where significant—but spread out—development already exists. These areas would also contain municipal facilities and services to accommodate this new growth.[224] Within the growth center, the Town will attempt to offset this increased development by preserving open and natural areas in other parts of Town.[225]

Williston based the Taft Corners Plan on two considerations: first, the existing characteristics of the commercial area—sparse commercial development; and second, "the characteristics preferred by survey respondents and participants in the Taft Corners design process," such as the view of the mountains to the east and west, as well as preservation of open spaces and historic buildings.[226] The Town recognizes that the sought-after compactness of the proposed development at Taft Corners probably will lead to the destruction of the panoramic views now provided by the location's relatively undeveloped lands.[227] However, Williston hopes new views will be provided by a recently developed street network within the commercial district which will be designed with pedestrian viewpoints in mind.[228] The specific location of existing open spaces invariably will change due to projected movement of the circumference road and the perceived difficulty of acquiring and preserving large parcels of open land near the development itself. However, the creation of open space at the outskirts of the growth center is a high priority of Williston's residents.[229]

The Williston Planning Commission states that a fundamental element of their plan is Taft Corners' role as a mixed-use activity center.[230] The Commission feels that to achieve this goal, no single use will be allowed to dominate the area.[231] For this reason, "the timing and location of proposed growth will be [closely] monitored" in order to ensure that the mixed-use goal within the commercial development includes some form of residential use.[232] Williston intends Taft Corners to become not only the Town's commercial and service center but also the location for a large

223. *See id.* at 22.
224. *See id.* at 21.
225. *See id.*
226. *Id.* at 22.
227. *See id.* at 25.
228. *See id.*
229. *See id.*
230. *See id.* at 26.
231. *See id.*
232. *Id.*

portion of housing.[233] Taft Corners is also projected to play a regional role, as a "sub-center within the Burlington metropolitan area" which will provide "commerce and employment opportunities to a portion of Chittenden County" and defeat the bedroom community syndrome which currently exists there.[234] The Town does not intend, however, for Taft Corners to become the only county center. Thus, the projected activities at Taft Corners are to be supported by a market based only on Williston and its surrounding communities.[235]

To encourage creative design, as well as the plan's implementation, Williston intends to recommend its own zoning regulations for Taft Corners.[236] Williston hopes to accomplish the non-suburban mixing of uses through cooperation between the Town and developers, rather than the application of outdated zoning rules.[237] As the plan for Taft Corners is proclaimed "to be an evolving product of [Williston's] partnership with property owners and other interested parties," continued modification of the Plan will likely take place as part of the normal planning process.[238] Williston hopes to create building design standards for Taft Corners which will harmonize with new and old architecture. A typical block pattern will be standard, but the Town will probably permit larger buildings, new streets, and parking lots, as long as these are consistent with the pedestrian-friendly, mixed-use goals of the Taft Corners plan.[239]

Unfortunately, even the best laid plans for Taft Corners, such as those carefully described in the Williston Comprehensive Plan and reiterated above, may be too late to save the rapidly disintegrating rural character of the Town. Sprawling growth threatens Williston's traditional agricultural base and its rural identity with it. The growth center designation used for Taft Corners might have alleviated some of the Town's well-founded concerns had it been implemented earlier.

The problem with Williston's Comprehensive Plan is not its future goals, but rather, what it overlooked in the past. Wal-Mart and other box retailers purchased property within Taft Corners during the mid-1980s and were approved for development under both Williston's zoning and Act 250. The purchases and approval occurred years prior to the growth center designation and without any foresight or formal planning

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233. *See id.*
234. *Id.*
235. *See id.* at 26-27.
236. *See id.* at 27.
237. *See id.*
238. *Id.*
239. *See id.*

considerations. The growth center designation may prevent future unplanned developments, but for now, the tail is wagging the dog in Williston. As currently employed, the growth center designation is a desperate attempt by the Town to catch up with and control the unplanned development it has already approved, while at the same time attempting to look prospectively toward the future in order to prevent further unplanned growth.

C. Analysis of the Growth Center Designation in Williston, Vermont

Although Williston's designation of Taft Corners as a growth center is well-intended, there exist two distinct problems which ultimately undermine the success of the designation. First, the designation is reactionary; the village itself is no longer a mixed-use meeting place needing protection; and second, the designation only addresses the commercial sprawl, and not the residential sprawl which is occurring simultaneously within the municipality.

The designation of Taft Corners is reactionary because a substantial amount of growth has already occurred in what was formerly farmland within Williston, long before the Town decided to address the problem of the uncontrolled nature of such growth. This growth was far beyond the village center, running in strips along the previously described interchange of Interstate 89 and Route 2. The Town was therefore responding to the growth itself, instead of guiding growth *before* or *as* it occurred. In order to curb further sprawling development in this area, the Town has been forced to make the growth center designation as a last chance attempt to regain control of land use planning within the municipal boundaries.

Fortunately, the village of Williston is not in danger of suffering from the vast development of Taft Corners, because there simply is nothing in the village, other than a church, and several lonely civic buildings to be threatened. Such existing structures will not be impacted economically as a traditional fully functioning downtown area might. There is no mixed-use commercial/residential district, as there are no retail, grocery, or general stores, and few residences. Therefore, there is nothing to compete with any of the appurtenances offered by Taft Corners. The self-described village of Williston is a civic center only.

Williston's sheer lack of economic development poses an interesting dilemma for developers and historic preservationists alike. Since all of the retail, service, commercial, and industrial uses for the Town have already been located at Taft Corners, what is left to protect in the village center? Because the village center is purely ornamental and no longer functional, the only reason to protect it is for aesthetics. The decision to protect a

purely symbolic village center inherently is flawed because the decision is akin to sweeping the dust under the carpet—the ugly, but necessary growth will be permitted down the road at Taft Corners, while the village center will continue to appear pristine but serve no actual purpose.

Furthermore, Williston is only addressing one half of the sprawl problem—that which surrounds the commercial district. Although the Town may attempt to create residential and commercial uses within the Taft Corners district, the challenge of residential sprawl remains completely ignored. Williston has not only permitted commercial development to proceed unimpeded prior to the recent growth center designation, but it also has allowed a tremendous amount of residential development to occur in the nature of a suburban development. Huge housing complexes and subdivisions have sprouted up like primary growth trees throughout Williston, complete with all the typical suburban features: identical houses, wide, winding, dead-end streets, and ornamental lawns set back far from the roads. Like the commercial development, this residential development has also gobbled up farmland and isolated residents from both the intended Taft Corners growth center and the village civic center. Therefore, no matter how successful the Taft Corners growth center is in and of itself, there will persist the pernicious problem of residents who are marooned in a sea of identical houses and cul-de-sacs, unable to reach either Taft Corners or the village civic center without using an automobile. By isolating these residents from both the civic center and proposed commercial district, Williston has succeeded in guaranteeing sprawl. If Williston was serious about attacking this invariable and existing sprawl problem, the Town should have considered the residential growth in conjunction with commercial development so that these areas would not continue to coexist independent of one another.

The retroactive use of the growth center designation to protect a non-functioning village center without consideration of concurrent residential and commercial sprawl effectively defies the four factors that make the growth center designation a powerful tool. First, while a clearly defined growth area has been established, the existence of a village center so far from both the commercial and residential centers defeats the purpose of integrating these uses. This inconsistency arises assuming the village will still be competing with the growth center.[240] Also, the supposedly clearly

240. The reality is that, in this circumstance, there is no competition for the customers or residents of the future Taft Corners growth center because neither the residential area nor the village of Williston possess commercial or mixed uses to compete with that provided by Taft Corners. In another circumstance where a vital village center exists, this would be a more grave concern, since both the new growth center and the old village would be competing for customers, thus defeating the attempted rejuvenation or protection of the village center. *See infra* Parts IV.D.-F.

defined area for growth was never clearly designated by the Town residents prior to such growth. Rather, the area was designated for use and defined by the investors who purchased the inexpensive farmland and applied for permits to build there.

Second, the proactive community involvement which allows residents the foresight to acknowledge that growth will occur and to plan accordingly, did not take place until after the growth had begun and was by definition reactive rather than proactive. Therefore, for all intents and purposes the community involvement and decisionmaking never occurred. The reactionary nature of the designation precluded long-term planning by the Township to determine what kinds of development to permit and what to prohibit as these decisions were foreclosed when investors purchased the land and made the determinations by sheer virtue of their own existence.

Third, permission to develop prime agricultural land and wildlife habitat was never consciously considered, weighed, or approved by the residents of Williston. The developers who bought the land made the decision to convert agricultural land and wildlife habitat to commercial uses for purely economic reasons. This decision occurred without any consideration for the balancing of uses required by the growth center designation.

Fourth, Vermont was not able to give higher priority to projects within the growth center when allocating funds and resources, since the growth center designation did not exist when the first investors moved into the area. Fortunately, such incentives still can occur subsequent to the designation, but the purpose of funneling growth into the centers with economic carrots has been eroded completely by the fact that the investors themselves predetermined where growth would occur.

In conclusion, the designation of the Taft Corners growth center was made necessary by uncontrolled development in the form of commercial sprawl, and not by conscious decision by the Town to channel new growth. The Town still has many issues to address in order to completely eradicate commercial and residential sprawl within its boundaries. While the designation is well-intended and may provide some solutions for the 700 acres that is Taft Corners, it will not address all the growth pressures occurring within Williston. Fortunately, other towns have had somewhat more success with the growth center designation than Williston.

D. Middlebury, Vermont

Route 7 runs between the Towns of Rutland and Middlebury, Vermont. It is a road notorious for its strip development, including, but not limited to, a plethora of car dealerships, service centers, fast-food

restaurants, motels, and mini-malls. However, as one approaches Middlebury via this route, such development appears to subside, until it is practically non-existent. Instead, farms and national forests begin to dominate the landscape abutting the route, save the occasional catalog store or bowling alley. Density increases just prior to the village of Middlebury, as the roadway narrows and tall Victorian houses containing practitioners' offices, as well as a recreational park and courthouse, greet the onlooker. With an abrupt right angle turn, forcing drivers to slow down and use caution, Route 7 winds past the Middlebury Inn and into the downtown area, without transecting the Town. The first features one notices upon entering the village are a white Congregational church, Town square and gazebo, post office, followed by a shopping district. The view is that of the quintessential Vermont village, emphasized by the fact that the route itself does not act to circumvent this vision, but rather to display it to the viewer.

The Town of Middlebury is in the Shire Town of Addison County and consists of two major population concentrations: Middlebury Village, which includes the business and shopping center, Middlebury College, and residential neighborhoods; and East Middlebury, "a second, smaller village in the southeast corner of the Town," comprised mostly of woodlands and farms at the foothills of the Green Mountains.[241] The Town consists of just over 8000 people, including approximately 2000 Middlebury College students.[242] Although Middlebury's population is rising, its growth rate is slightly lower than the sum of the growth rate of surrounding towns.[243]

Like Williston and so many other Vermont towns, Middlebury is blessed with "natural, scenic, historic, and cultural assets," as well as forests, agricultural land, gravel, and marble resources.[244] In contrast to Williston, Middlebury has had more success in preserving a traditional, and functioning, New England village townscape with historic and architectural landmarks of national significance.[245] However, Middlebury's central location between Burlington and Rutland targets it for growth resulting from transit along the Route 7 corridor. The presence of Middlebury College, which creates a level of market stability attractive to developers, also targets Middlebury for growth.[246] Therefore, like

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241. TOWN OF MIDDLEBURY, MIDDLEBURY COMPREHENSIVE PLAN 5 (1994). This discussion will focus primarily on Middlebury Village.

242. *See id.* at 6.

243. *See id.*

244. *Id.*

245. *See id.*

246. *See id.*

Williston, Middlebury faces pressures for growth and expansion, and has chosen the same tool to address such pressures—the growth center designation.

The Town of Middlebury vows in its Comprehensive Plan to take an active role in planning for its future. The Town guarantees this role will characterize the designation of a growth center not as "an intermittent event but [as] an on-going process."[247] Middlebury's broad-based goals are to protect its aforementioned centrally located village and the "surrounding rural, agricultural countryside by carefully guiding growth into designated areas . . . [encouraging] mixed-use neighborhoods . . . and alternative means of access to [the] downtown with bicycle and pedestrian-friendly roads."[248] Middlebury seeks to protect both the edge of its town, as well as the natural resources within its boundaries, from over-commercialization.[249] Middlebury recognizes in its plan that the spread of suburban housing around the village and into rural areas, combined with the commercialization (strip development) occurring along Route 7, already have begun to transform the tranquil village center into a bustling town, with fewer farms and less open space.[250] Although Middlebury still considers itself a very attractive community, the Town intends to address these pressure to change prospectively, by interactive planning through the growth center designation.[251]

Middlebury, therefore, makes a concerted effort to involve the citizens of the Town in this planning process by creating committees to include members of the public and holding all planning meetings in an open forum.[252] Middlebury recognizes that its "well-preserved, traditional New England town character is a [vital] asset" which has attracted the owners and founders of many of the major businesses and industries within the town, and that such continued health and prosperity of the town is largely contingent upon this feature.[253]

In 1987, when Middlebury first began to experience intense pressure for growth, the Town responded by creating a rural agricultural district to foster conservation of open space and agricultural land.[254] The Middlebury Land Trust was created to work with property owners and to encourage

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247. *Id.* at 3.
248. *Id.* at 2.
249. *See id.*
250. *See id.* at 6.
251. *See id.*
252. *See id.* at 5.
253. *Id.* at 15.
254. *See id.* at 16.

continued use of land for agriculture and for preservation of open space.[255] Then in 1990, the Town revised the zoning regulations in conjunction with these goals by including criteria such as "the conservation of open space, scenic beauty, and aesthetics."[256]

Although Middlebury has established a number of ways to deal with pressure for further development, there still remains a recognized and substantial challenge to accommodate the impending growth of the community, while still working to preserve open space and natural resources within the town.[257] Middlebury recognizes that it is essential that the Town be able to plan, provide, and pay for projected growth, in order to benefit, and not suffer from it.[258] When considering potential growth areas, Middlebury based its designation upon recent trends indicating that population, as well as household size, would continue to grow.[259] Middlebury has gained approximately 400 new homes between 1980 and 1990, and the Town estimates that another 400 houses will be required in the 1990s to support projected growth: an average of 40 houses per year.[260]

In order to accommodate this projected growth, Middlebury has studied its existing zoning ordinance and identified the major parcels of land which are attractive to residential developers. The Town has concluded that there are nearly 1000 acres available for intensive development, a figure which could provide well over 1200 houses, and thereby enable 400 houses to be built on each 100 to 150 acres of land.[261] Therefore, the Town estimates that over six times the land required for projected growth is available within its boundaries.[262] Middlebury is attempting to strike a balance between the need to accommodate this estimated growth and the need to supply sufficient housing, while still preserving its traditional townscape.[263]

To accommodate projected growth, Middlebury has identified areas adjacent to the village center which will accommodate over 1000 houses.[264] The Town feels, however, that because there is no guarantee

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255. *See id.*
256. *Id.*
257. *See id.*
258. *See id.* at 31.
259. *See id.*
260. *See id.*
261. *See id.* at 32.
262. *See id.*
263. *See id.*
264. *See id.*

that these areas will actually develop in the 1990s, it is too early to designate them as new major growth areas.[265] Instead, Middlebury is determined to focus on growth center areas within the village itself in order to allow the community to grow in a logical fashion as opposed to "leap-frogging of development out into isolated areas."[266]

Middlebury has designated "Land Use Districts" in an attempt to control future development by identifying, in advance, areas best suited for agriculture, commerce, forestry, industry, and housing. In conjunction with these designations, Middlebury is considering the effects of a particular land use designation on surrounding areas.[267] Consideration also is given to the "effect that various land uses may have on the environment, natural resources, transportation routes, municipal and private investments, community needs and the ability of the Town to provide public services and facilities."[268] Middlebury ultimately strives to funnel the majority of future growth within existing public water and sewer service areas in the form of compatible mixed-uses.[269]

Higher density neighborhoods, which the Town intends to develop within and on the edge of the village center, are to grow as an extension of the existing patterns of development within the village.[270] Mixed-uses and the provision for open space within local neighborhoods will be required by Middlebury in order to keep the quality of new residential development on par with existing residences.[271] The long-range goals of the Middlebury Land Use Plan are to design and develop neighborhoods which are consistent with the character of the area. Through the Plan, Middlebury is attempting to accomplish these goals within existing road and utility networks.[272] The Town hopes that the Land Use plan will blend the new development with the existing landscape and neighborhoods.[273] In other words, no new land use or activity will be permitted which would significantly disturb or damage existing property values within the neighborhood in which it is located.[274] The main goals of the Middlebury

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265. *See id.*

266. *Id.* at 33.

267. *See id.* at 40.

268. *Id.*

269. *See id.*

270. *See id.*

271. *See id.*

272. *See id.*

273. *See id.* at 41.

274. *See id.* Middlebury intends to provide the same controls as Act 250, such as planned unit development and conditional use review, as well as additional provisions, to ensure uses within the town which are clearly compatible with the character of the district. MIDDLEBURY, VT., ZONING

Plan therefore, pivot on protection of the character of the village center, as well as the surrounding residential areas—features the Town considers crucial to continued prosperity.

E. The Growth Center Designation of Downtown: Middlebury, Vermont

In the early 1990s, Middlebury created a "Central Business District Committee" to study ways to make Middlebury's downtown competitive as a shopping center, in response to the threat posed by potential predation of box retailers and shopping malls outside of the village center.[275] The Committee asked a group of residents what the downtown needed to continue to attract business.[276] The results of the public forum, held in 1992, provided clear indications of the extent of Middlebury residents' involvement in the planning process, as well as the value placed on the preservation of the village center.[277] The residents expressed concern that the vitality of the downtown area was threatened by strip development, shopping malls, and box retailers, but recognized that these threats were not yet at the crisis stage.[278] They understood that the time and opportunity to save the downtown district and thereby preserve the sense of community provided by the "embroidery" of the downtown fabric still existed.[279]

Residents expressed overall support for the continued preservation of the downtown entity prospectively, stressing that it would be "cost-

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ORDINANCE § 21 (1995). The purposes of planned unit development are:

> To encourage innovation and efficiency in the design and layout of residential, commercial, industrial, institutional and multiple-projects, . . . and . . . [t]o maintain or establish significant open spaces for agriculture, forestry, recreation, scenic or public purposes which are reasonably related in both nature and extent to the impact of such projects and the needs of the existing and planned growth areas described in the Town Plan.

Id.

Conditional use review contains general standards provided by statute as well as specific review criteria and standards for land development of special uses. *See id.* at 16.

275. *See* CENTRAL BUSINESS DISTRICT COMMITTEE, MIDDLEBURY DOWNTOWN ACTION PLAN 1 (1992). The goal of the Committee was to "give clear identity to the downtown Middlebury marketplace." *Id.* at 7. The town felt that a critical first step would be "the creation of a manager to work on implementation of these ideas and to aid in the ongoing marketing and management of the downtown marketplace." *Id.* Improved access was to be funded through tax increment financing which would allow the town to make downtown improvements without directly increasing town taxes, as well as the possibility of taking several buildings by eminent domain in order to facilitate public access and parking rights. *See id.* app. B at 13.

276. *See id.* app. E.

277. *See id.* app. E at 2-4.

278. *See id.* app. E at 4.

279. *See id.*

effective to preempt out-of-town development rather than pay to revitalize" the downtown later when it would be in competition with shopping malls and box retailers on the outskirts of town.[280] Specifically, the residents expressed support for the agenda of "crimping" the edges of the town in order to blunt strip development, and the effort to combine uses downtown in order to encourage mixed-uses.[281] The ultimate solution arrived at by the Town of Middlebury and its residents was to use the tool of the growth center designation to preserve continued vitality of the village area.

The growth center designation of the entire village of Middlebury focused initially upon improving access to the "Marble Works" development by creating a system of signage, decorative lighting, tree planting, street furniture, and sidewalks.[282] The Marble Works development provides an excellent example of turning seemingly empty space into a growth center capable of revitalizing the village shopping district. The Marble Works, as the name implies, is a series of old brick buildings once used for marble distribution, located directly behind the commercial district in the center of the Middlebury village. The Town chose to designate the Works as a growth center and intends to continue to funnel all potential forms of retail, food, and service industries into these buildings, as opposed to permitting brand new development and growth outside of and remote from the village center. The Town has provided monetary incentives in the form of tax cuts to encourage investment within the town center in an effort to combat the belief that development in town is more expensive than purchasing and developing less expensive land outside of the village. Investors who take advantage of such tax incentives also benefit in the long-term by preserving the character of the downtown area and guaranteeing its continued vitality through their own investment—another example of enlightened self-interest on behalf of Vermont businesses.

F. Analysis of the Growth Center Designation in Middlebury, Vermont

The growth center designation is successful in Middlebury for the very reasons it fails in Williston: the designation was implemented prospectively, to protect a village center which existed not in name only, but as a viable epicenter characteristic of the traditional Vermont town. However, Middlebury, like Williston, also has failed to adequately address problems of residential sprawl, and although the aforementioned

280. *Id.*

281. *See id.* app. E at 2.

282. *See id.* at 2.

Middlebury planning goals seem to imply a firm and calculated grasp on this situation, several residential pods have already arisen within the town boundaries precisely in the nature of suburban sprawl. In contrast, the implementation of the growth center concept within the village center itself has taken place successfully through use of the four key elements that make it a powerful tool to control growth: establishing a clearly defined area; creating a long-term plan for growth; realizing the potential necessity for sacrifice of valuable lands; and providing incentives for developers.

One of the primary reasons the growth center concept is successful in Middlebury is because the Town acknowledged long ago that it was vulnerable to growth pressures associated both with its attractiveness to potential developers, and those accompanying the burgeoning strip development along the Route 7 corridor. Once that realization was made, the Town was able to determine how to affirmatively protect its quaint village center from damage in a prospective, as opposed to a retrospective fashion.

Fortunately, Middlebury still has a village center to protect, which is another reason the growth center concept is successful in the town, and not in Williston. When the residents of Middlebury made the decision to prohibit growth from sprawling out along the roadways which bring visitors into the village, the village center was targeted for continued growth—growth consistent with its traditional Vermont village charm. Funneling prospective growth into the already vital village center, in areas like the Marble Works, allows the Town to avoid the trauma and difficulty of attempting to revitalize the village center later, in the face of fierce competition with box-retailers and shopping malls situated outside of the town center. The growth center concept does not attempt to protect the village by moving commercial development elsewhere; instead, it channels new growth directly into the heart of the village, thus ensuring continued vitality of that area as the town center.

Overall, the Middlebury case demonstrates that the growth center designation can be a powerful tool. Middlebury designated the whole village center as a growth area which provided a clearly defined area and also facilitated the use of such buildings as the Marble Works for concentrated development. A tremendous amount of local input in the form of commissions and public forums helped to form the long-term plan and vision for growth which facilitated the approval of proposed projects and initiated the permitting process. The Town also recognized that by recycling buildings within the village center, no prime agricultural land, nor wildlife habitat would need to be sacrificed. Finally, the Town gave higher priority for such development in the form of tax incentives to

developers willing to invest in the continued existence of the village center.

Although the Town of Middlebury has seen success in the protection of the village center, it has been less successful in the area of residential development. The 400 new houses built within the Town referred to in the Middlebury Plan occurred in the form of suburban subdivisions, complete with cul-de-sacs, wide streets, ornamental lawns, and dependence upon the automobile to reach the village center. These new houses are located quite a distance from the village center, which in contrast, strives to integrate residential and commercial uses. This occurrence raises the obvious question of why the features of sprawl, which were so vehemently opposed within the village center, are permitted to flourish just on the outskirts of town, within the realm of residential development. The disappointing design of these subdivisions underscores the difficulty towns face when attempting to address large-scale development. While Middlebury is successful in its protection of the village center, it has still succumbed to the features of suburban sprawl. Rather than continuing to funnel such residential growth into the village center, consistent with the mixed-use, pedestrian-friendly goals of the Town, Middlebury has facilitated suburban sprawl outside of the village center by providing new housing in the form of a low-density suburban subdivision.

If one could ignore the existing sprawling residential development within Middlebury, the Town's implementation of the growth center designation would exemplify the successes which can accompany such a plan. The existence of the residential sprawl, however, simply underscores the difficulties facing towns under intense pressure for both residential and commercial growth. Such sprawl stands as a reminder that where pressure for growth is not aggressively and prospectively addressed, it will proceed on its own, unimpeded.

CONCLUSION

As demonstrated by examination of the two town cases above, neither reliance upon features of Vermont's growth management statutes, nor traditional land use controls alone can prevent the inception of sprawling land uses. Rather, pressure for growth must be addressed at the local level with a combination of foresight, planning, and community involvement. As illustrated by the Williston and Middlebury cases, the

growth center designation, when used in conjunction with these elements, proves to be a powerful tool, and an important step toward preservation of the traditional village so intrinsic to Vermont's allure.

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