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Cities must use 'smart growth' intelligently

“Smart growth” is the catch phrase for a renewed interest in controlling land development. “Smart growth” initiatives are a response to a concern that existing land use planning methods must be revised to meet today’s challenges.

The primary concern is that implementation of present land use regulations tends to result in sprawl, degradation of the environment and disproportionate demands on public resources.

Essentially, “smart growth” initiatives use new planning techniques that encourage growth where development already exists and discourage growth in rural areas and areas where public facilities and services do not exist.

For much of the 20th century, rapid growth and development were encouraged. Since the 1960s, local governments have felt a greater need to manage growth and have used various planning techniques.

However, proponents of “smart growth” contend that the existing meth-

DAVID S.
POKELA



Guest
Columnist

ods for managing growth are not effective and that new management methods must be created to contain sprawl and ensure that development does not outpace the availability of public facilities and services.

Also, some believe that “smart growth” is a thinly-veiled attempt to impose a strategy of “no growth.” Property rights advocates criticize “smart growth” initiatives by saying that the marketplace and individual choices — not the government — should determine how, when and where land is developed.

ALTHOUGH GROWTH management techniques may be used for the good of the general public, most have a detrimental impact on the value of individual property owners’ land.

Consequently, property rights advocates argue that if private landowners are subjected to regulation of their property for a public objective, then the government should bear the cost rather than the individual property owner.

Growth management often slows or stops development and decreases land

values, thereby raising legal issues of constitutional limitations on the government’s ability to regulate private property rights. The following are examples of how “smart growth” initiatives may either be invalid or require the payment of monetary damages by the government to private property owners:

- Regulations which have the effect of eliminating all economically viable use of property may require the payment of just compensation.

- Moratoriums or interim development controls on development may subject a governmental entity to damages for a temporary taking if such limits are unreasonable in purpose, duration or scope.

- Delays in development because of phased development controls may create a takings claim if the governmental entity does not make a good-faith effort to provide adequate public facilities and services within a reasonable time.

David S Pokela is a lawyer specializing in real property litigation, including land-use law, at Adams Kleemeier in Greensboro. He is also chair of the Litigation Committee of the Real Property Section Council of the North Carolina Bar Association. He can be reached at (336) 373-1600, ext 143.