



2011

How Suburbia Happened In Toronto

Michael Lewyn

Touro Law Center, mlewyn@tourolaw.edu

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/scholarlyworks>



Part of the [Land Use Law Commons](#), [Transportation Law Commons](#), and the [Water Law Commons](#)

Recommended Citation

6 Fla. A & M U. L. Rev. 299 (2010-2011)

This Book Review is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ Touro Law Center. It has been accepted for inclusion in Scholarly Works by an authorized administrator of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

HOW SUBURBIA HAPPENED IN TORONTO

by Michael Lewyn*

Review, John Sewell, *The Shape of the Suburbs: Understanding Toronto's Sprawl* (University of Toronto Press 2009)

TABLE OF CONTENTS

I. INTRODUCTION	299
II. SPRAWL IN TORONTO	301
A. <i>Highways and Transit</i>	301
1. Creating Sprawl Through Highways	301
2. Transit Responds to Sprawl.....	303
B. <i>Sewer and Water</i>	304
C. <i>Not Just Sprawl, But Low-Density Sprawl</i>	305
D. <i>The Future of Sprawl</i>	308
III. A COMPARATIVE PERSPECTIVE	309
IV. SUMMARY	311

I. INTRODUCTION

From an American perspective, Toronto may seem like the kind of walkable, transit-oriented city beloved by critics of automobile-dependent suburbia. Toronto has extensive subways¹ and commuter train² services, and therefore higher transit ridership than most other Canadian and American cities.³ While some North American down-

* Associate Professor, Florida Coastal School of Law. B.A., Wesleyan University; J.D., University of Pennsylvania; L.L.M., University of Toronto.

1. See JOHN SEWELL, *THE SHAPE OF THE SUBURBS: UNDERSTANDING TORONTO'S SPRAWL* 86 (Univ. of Toronto Press 2009). (Showing map of existing and planned subway lines).

2. *Id.* at 79 (map of commuter train lines).

3. See JOHN LORINC, *THE NEW CITY 100*, 231 (The Penguin Group 2008) (breaking down ridership by distance from downtown. In five of the six categories listed, Toronto had highest ridership of eight Canadian cities listed; for example, 53.3 percent of commuters living within five kilometers of work used public transit while in other cities listed, transit "market share" ranged from 14.8 percent to 44.7 percent; transit "market share" of commuters more than twice as high in Canada as in the United States).

towns have languished in recent decades,⁴ some of Toronto's downtown neighborhoods are more prosperous than the rest of the city.⁵

Yet Toronto has experienced considerable sprawl (that is, automobile-dependent suburban development).⁶ The population of metropolitan Toronto doubled in the second half of the 20th century⁷, but the amount of land consumed by metropolitan Toronto more than tripled, increasing from 193 square miles in the 1950s to 656 in the 1990s.⁸ Because newer suburbs are far less dense than the old city of Toronto, suburbanites are far more likely than urbanites to drive to most destinations, arguably increasing traffic congestion and air pollution.⁹ In addition, low-density development arguably increases the costs of some public services- because where lots are large, service vehicles have to travel further to reach the same number of houses.¹⁰

Why did Toronto sprawl? Some commentators argue "urban sprawl merely represents the results of the free market economy."¹¹ However, in *The Shape of the Suburbs*, former Toronto Mayor John Sewell¹² explains that Toronto has sprawled at least partially because of a series of sprawl-inducing policy decisions. This review essay addresses the issues that Sewell focuses on: transportation, water/sewer infrastructure, and (to a lesser extent) land use regulation.¹³ This re-

4. See *Robins v. Pruneyard Shopping Center*, 23 Cal. 3d 899, 907, 592 P.2d 341, 345 (1979), *aff'd*, 447 U.S. 74 (1980). ("central business districts apparently have continued to yield their functions more and more to suburban centers.").

5. See *Coming By-Elections*, *GLOBE AND MAIL*, January 30, 2008, at 10A, 2008 WLNR 1720655. (in downtown Toronto parliamentary district, "the average family income of \$124,082 is the third highest in Canada.").

6. See Michael Lewyn, *You Can Have It All: Less Sprawl And Property Rights Too*, 80 *TEMPLE L. REV.* 1093, 1093 (2007) (defining sprawl as development that is both automobile-oriented and far from urban cores).

7. SEWELL, *supra* note 1, at 159.

8. *Id.*

9. *Id.* at 160-62. See also LORINC, *supra* note 3, at 107 (in core of Toronto, 49 percent of households owned one or more cars, as opposed to 87 percent in inner suburbs and 96 percent in outer suburbs). *But see* OLIVER GILLHAM, *THE LIMITLESS CITY* 93-94, 113-15 (Island Press 2002) (noting that there is some dispute over whether negative effects of increased car travel are outweighed by positive effects of lower density, since densely populated urban centers tend to be more congested than suburbs; author concludes, however, that even dense areas would be less congested if suburbanites drove less).

10. SEWELL, *supra* note 1, at 163. *But see* Amy Helling, *Advocate For A Modern Devil: Can Sprawl Be Defended?*, 17 *GA. ST. U. L. REV.* 1063, 1068-69 (2001) (utility expenditures in low-density areas may be lower than in more compact neighborhoods since low-density areas sometimes have fewer public services).

11. Gregory V. Jolivet, Jr., *Kelo v. City of New London: A Reduction of Property Rights But A Tool To Combat Urban Sprawl*, 55 *CLEVE. ST. L. REV.* 103, 107 (2007).

12. SEWELL, *supra* note 1, at ix (noting author's background).

13. I note [in] passing that Sewell does not address every government policy favoring suburbanization: for example, he does not focus on federal housing subsidies favoring

view also discusses Sewell's critique of current regional attempts to control sprawl. Finally, it compares Toronto's policies to those of American cities.

II. SPRAWL IN TORONTO

Sewell asserts that the provincial government of Ontario (the Canadian province that includes Toronto)¹⁴ and Toronto-area municipal governments have facilitated sprawl by supporting the construction of highways and sewers in suburbia.¹⁵ In addition, local land use regulation has favored low-density development.¹⁶

A. Highways and Transit

1. Creating Sprawl Through Highways

Toronto's local and provincial planners have generally favored highway construction. In 1927, the province of Ontario began to subsidize suburban road construction; the province paid 40 percent of the cost of road construction and 20 percent of the cost of road maintenance.¹⁷ In addition, the province required the city of Toronto to help pay for suburban roads, on the ground that city-generated traffic led to suburbia.¹⁸

In 1942, the city created the Toronto City Planning Board¹⁹ which adopted a plan proposing six new expressways.²⁰ The Toronto City Council formally endorsed the plan in 1944,²¹ and many of these highways were, in fact, built. For example, the Toronto-Barrie Highway, also known as Highway 400²², was open by 1959²³ as was the

sprawl. Cf. RICHARD HARRIS, *CREEPING CONFORMITY* 132-33 (2004) (Canadian federal government favored suburban sprawl by financing construction of new housing which tended to be suburban).

14. Cf. Ron Levi & Mariana Valverde, *Freedom of the City: Canadian Cities and the Quest for Governmental Status*, 44 *OSGOODE HALL L.J.* 409, 429-39 (2006) (describing Ontario legislation limiting powers of Toronto and other cities).

15. See *infra* Parts II-A, II-B.

16. See *infra* Part II-C.

17. SEWELL, *supra* note 1, at 14.

18. *Id.*

19. *Id.* at 30.

20. *Id.* at 33.

21. *Id.* at 34.

22. *Id.* at 63.

23. *Id.* at 64 (highway "recently opened" by 1959).

Toronto Bypass²⁴, also known as Highway 401.²⁵ These new highways made it easier for suburban commuters to access downtown, thus encouraging additional suburban development.²⁶ As a result, the new highways soon became crammed with suburban commuters. For example, the Toronto Bypass was planned to accommodate 35,000 vehicles per day but by 1961 it was used by 70,000 vehicles per day.²⁷

Nevertheless, Ontario's provincial government²⁸ continued to build highways into the hinterlands beyond Toronto. Don Valley Parkway, opened in the 1960s,²⁹ was extended into Toronto's northern suburbs as Highway 404 a decade later.³⁰ Highway 427, west of the city,³¹ opened in 1972.³² During the 1980s,³³ the province built Highway 410 to Brampton, a city northwest of Toronto,³⁴ as well as Highway 407, also north of the city.³⁵

Ontario built these highways in order to relieve congestion³⁶ but their impact on congestion was, at best, unclear. Sewell notes that by the 1990s, 70 percent of the Toronto-area highway system was congested at peak periods.³⁷ As government built expressways to suburbia, those suburbs and their roads filled up with cars.³⁸

It could be argued that the relationship between highways and sprawl is purely coincidental because commuters would naturally prefer the extra living space and cheaper land of suburbia, regardless of

24. *Id.*

25. *Id.* at 63.

26. *Id.* at 64 ("New highways signaled that the fringes could now easily access downtown, and development proceeded accordingly.").

27. *Id.* at 67.

28. In Canada, provinces are primarily responsible for highway finance. *Id.* at 63 ("roads constituted the largest source of provincial spending" in the 1950s), 70 ("the expressway system that the province had built was its key planning tool."). See *infra* notes 81-82 and accompanying text (describing provincial highway plans for coming decades).

29. SEWELL, *supra* note 1, at 67.

30. *Id.*

31. *Id.*

32. *Id.* at 70.

33. See Allison Jones, *Lightning Strikes Leaves Two Young Boys Clinging to Life*, GUELPH MERCURY August 13, 2009, at A6, 2009 WLNR 15749851 (Brampton "45 kilometres northwest of Toronto"). 45 kilometres is roughly comparable to 25-30 miles. See Goh Yihan, *Tort Law in the Face of Land Scarcity in Singapore*, 26 ARIZ. J. INT'L & COMP. L. 335, 339 (2009) (42 kilometres equal to 26 miles).

34. SEWELL, *supra* note 1, at 70.

35. *Id.* at 57, 72.

36. *Id.* at 59.

37. *Id.* at 74.

38. *Id.* at 70-71, 74 (suggesting that auto-oriented suburban design actually increased congestion by increasing driving).

convenience.³⁹ But this argument proves too much: if transportation facilities did not affect where people lived every suburb would be as populous as it is today, even if it was accessible only through two-lane dirt roads- obviously an absurd result. Moreover, surveys of homeowners show that many homeowners prefer locations with highway access⁴⁰ which means that in the absence of such access, many suburbs would be less popular with homeowners.

In sum, Sewell shows that Toronto-area governments actively favored sprawl by building highways that made suburbanization more convenient; moreover, it is unclear whether these highways succeeded in their goal of reducing traffic congestion.

2. Transit Responds To Sprawl

Highway-oriented development adversely affected public transit. When Toronto's suburbs began to grow, its transit policymakers were faced with a choice: either to refuse to build public transit to those suburbs (thus ensuring that those suburbs became completely automobile-dependent)⁴¹ or to bring suburbanites into the transit system by expanding suburban transit service.

Toronto's transit agencies chose the latter option, reducing fares for suburban riders⁴² and expanding service to suburban areas.⁴³ The results of this policy were mixed. On the one hand, transit ridership rose throughout the 1970s and 1980s.⁴⁴ But because Toronto's

39. Cf. ROBERT BRUEGMANN, *SPRAWL: A COMPACT HISTORY* 10-11 (2005) (sprawl a result of increased affluence), 108 (suggesting that highways helped American cities because American mayors originally supported them).

40. See Ralph Bivins, *Las Vegas To Get Metropolis Condo Transplant*, HOUSTON CHRONICLE, Mar. 30, 2003, at 8, 2003 WLNR 16439507 ("The most important characteristic of a housing community is convenient highway access, according to a recent survey of home buyers. Forty-four percent of buyers surveyed ranked highways as a very important characteristic, said the survey conducted by the National Association of Home Builders."); Michael Lewyn, *Campaign of Sabotage: Big Government's War Against Public Transportation*, 26 COLUM. J. ENVTL. L. 259, 272-73 (2001) ("in 1999 the National Association of Home Builders (which favors increased road spending) conducted a survey that asked respondents what amenities would encourage them to move to a new area; respondents' top choice (endorsed by fifty-five percent of respondents) was 'highway access'") (citations omitted).

41. As has occurred in many American suburbs. See Margery Austin Turner, *Limits on Housing and Neighborhood Choice: Discrimination and Segregation in U.S. Housing Markets*, 41 IND. L. J. 797, 810-11 (2008) ("Nearly half of all low-skill jobs in the white suburbs are inaccessible by public transportation.").

42. SEWELL, *supra* note 1, at 82.

43. *Id.* at 77, 83-84 (citing examples).

44. *Id.* at 79 (ridership on Toronto Transit Commission, or TTC, transit vehicles increased from 324 million in 1970 to 460 million in 1990), 78 (GO Transit commuter rail

suburbs were less dense and more automobile-dependent than Toronto's older areas,⁴⁵ suburban rail lines had fewer riders (and thus less revenue) per mile than urban lines.⁴⁶

According to Sewell, the added expense of suburban service made the Toronto Transit Commission (TTC), the region's leading transit provider,⁴⁷ less financially viable.⁴⁸ In 1970, the TTC ran a surplus.⁴⁹ But as suburban transit service expanded, TTC's deficit rose to \$275 million in 1991.⁵⁰ As a result of these deficits and a recession during the 1990s, TTC sought to save money by reducing service on urban transit routes and raising fares, thus ultimately reducing ridership from 460 million in 1990 to less than 400 million in 1994.⁵¹

According to Sewell, highway-generated sprawl encouraged TTC to bring more service to suburbia, causing TTC's costs to increase and ultimately reducing urban transit service in the long run. Thus, Toronto's suburban highways both encouraged migration to Toronto's suburbs and led to reduced public transit service for people who chose to stay in urban Toronto.

B. Sewer and Water

Sewell explains that although roads enable suburban growth, "that growth does not actually occur until water and sewage services

service, which serve suburbs to a greater extent than TTC vehicles, had 4 million riders in 1969 and 25 million in 1985).

45. *Id.* at 80-81. *See infra* note 66 and accompanying text (explaining why low-density areas are more dependent on automobiles).

46. *Id.* at 78 (noting that GO Transit ran larger deficits than Toronto Transit Commission). *Cf.* Daniel Girard & Tess Kalinowski, *The genuinely better way; Slogans won't lure the transit-leery, but shining customer service could*, TORONTO STAR, Apr. 14, 2008, at A07 2008 WLNR 6943737 (in Toronto, public transit has 175 yearly rides per capita, as opposed to 40 for suburban Mississauga).

47. SEWELL, *supra* note 1, at 78-79 (TTC ridership far higher than GO Transit; at start of 1970s, for example, TTC had 324 million riders and GO Transit had 4 million and the gap narrowed only slightly in later decades).

48. *See infra* notes 49-51 and accompanying text.

49. SEWELL, *supra* note 1, at 14.

50. *Id.* at 82. But even now, Toronto transit is closer to paying for itself than more sparsely used American transit systems. *See Transit In Canada at a Crossroads*, <http://www.roadsbridges.com/Transit-in-Canada-at-a-Crossroads-article3725> (Toronto transit revenues cover 80 percent of costs, compared to Canadian average of 63 percent and U.S. average of 36 percent) (last visited Aug. 17, 2009).

51. *Id.* at 87. However, TTC regained much of this lost ground during the 21st century. *See* Danna Zabrovsky, *TTC Posts Record Year for Ridership: 470 Million Trips*, <http://network.nationalpost.com/np/blogs/toronto/archive/2009/05/27/ttc-posts-record-year-for-ridership-470-million-trips.aspx> (discussing recent ridership increases) (last visited Aug. 17, 2009).

are in place.”⁵² In the 1940s, the absence of water and sewer services impeded suburban growth: for example, in one Toronto suburb, 20 percent of homes used outhouses.⁵³ But in 1957, the government of Ontario established the Ontario Water Resources Commission (OWRC) to improve public services in growing areas of that province.⁵⁴ In 1965, the provincial government announced that through the OWRC it would fund sewage and water services for some of Toronto’s existing suburbs and for proposed development sites⁵⁵ – even sites that were not slated for development under the region’s land use plans.⁵⁶

Although OWRC was willing to charge suburbs for water and sewer service, its rates were not break-even rates. Therefore, OWRC effectively subsidized suburban development.⁵⁷ By contrast, the city of Toronto and its older suburbs financed their own water and sewage services with minimal provincial assistance.⁵⁸

Sewell notes that because the province assumed financial responsibility for water and sewer service, it “freed municipalities from having to worry about whether the development they were approving could sustain the cost of the infrastructure.”⁵⁹ Thus, government-subsidized water and sewer service encouraged suburban development both by making suburban land more desirable to developers and potential homeowners, *and* by encouraging municipalities to approve development of such land.

C. *Not Just Sprawl, But Low-Density Sprawl*

As early as 1943, Toronto’s planners sought to limit density in newly developed suburbs; the city’s 1943 plan stated that a suitable density for those suburbs would be 10,000 people per square mile, half the density of existing Toronto neighborhoods.⁶⁰ Ultimately, suburban Toronto became even less dense, with 8,000 residents per square mile in Toronto’s older suburbs and 4,700 in the developed portion of To-

52. SEWELL, *supra* note 1, at 94.

53. *Id.*

54. *Id.* at 97.

55. *Id.* at 106.

56. *Id.*

57. *Id.* at 110 (noting Ontario Premier Bill Davis’ admission that suburban water and sewer service “was heavily subsidized, no question.”). *See also id.* at 68 (noting Davis’ position).

58. *Id.* at 127.

59. *Id.*

60. *Id.* at 33.

ronto's suburban fringes.⁶¹ Most of this new growth has taken place at a density between six and ten residential units per acre,⁶² as opposed to 20-30 units per acre in Toronto's older residential neighborhoods.⁶³ Job density was also lower in suburbia; the portion of Toronto lying within the city's pre-1945 boundaries has 49 residents and jobs per urbanized acre, as opposed to 23 in the region as a whole and nine in suburbs such as Vaughan and Richmond Hill.⁶⁴

Low-density areas tend to be automobile-dependent because if each block has only a few residences, only a few people can walk to nearby destinations. For example, imagine that there is a transit stop on Street X, and that residents of Street X and nearby streets are willing to walk five blocks to the transit stop. If each block has five commuters, only 25 residents of each nearby street can walk to the transit stop. But if each block has 20 commuters, 100 residents per street can walk to the transit stop.⁶⁵

Sewell's discussion of density is far skimpier than his discussion of transportation issues; a more complete book would have discussed in detail the extent to which low suburban densities were a result of government regulation as opposed to consumer preferences for low-density development. However, he does cite one instructive example of anti-density government regulation. In the late 1980s, a local developer proposed a development called the Heart of Springdale, with 20 dwelling units per acre and apartments over shops.⁶⁶ Municipal planning staff vetoed the project.⁶⁷

In fact, Toronto-area suburbs do restrict density. For example, the village of Nobleton, part of suburban King Township⁶⁸, limits density to new residential areas to two units per acre.⁶⁹ This limitation is

61. *Id.* at 159.

62. *Id.* at 158.

63. *Id.* at 220. Sewell's "20-30 per acre" figure refers to three neighborhoods which, according to Sewell, are "known for their houses", implying that densities are higher in other neighborhoods less dominated by single-family homes.

64. *Id.*

65. LEWYN, *supra* note 6, at 1106-07 (explaining relationship between density and walkability in more detail).

66. SEWELL, *supra* note 1, at 158.

67. *Id.* Sewell notes that the staff was concerned that the development's proposed streets were too narrow. *Id.* This issue is closely related to density, since land used for wider streets cannot be used for housing, and so wider streets reduce neighborhood density.

68. *Id.* at 172 (map showing King as one of Toronto's suburbs); Nobleton Community Plan, <http://www.king.ca/files/documents/Nobleton%20Consolidation.pdf> (front page notes that Nobleton part of King) (last visited Aug. 18, 2009).

69. *Id.* at 11.

far below the density normally required to support public transit.⁷⁰ Similarly, in the outer Toronto suburb of Burlington,⁷¹ houses in the city's least dense zone must consume at least 1850 meters, or 0.46 acres, of land.⁷²

Toronto suburbs also indirectly reduce density through minimum parking requirements. An example is Richmond Hill, a Toronto suburb,⁷³ which requires office buildings to provide 3.2 parking spaces per 100 square meters⁷⁴ This requirement equates to roughly 3 spaces per 1000 square feet.⁷⁵ These rules are not limited to commercial areas. For instance, in the Toronto suburb of Markham,⁷⁶ apartment buildings must provide more parking spaces than dwelling units.⁷⁷ Land that is used for parking lots cannot be used for housing or com-

70. See Reid Ewing, *Florida's Growth Management Learning Curve*, 19 VA. ENVTL L.J. 375, 386 (2000) (providing that density of four to seven units per acre can support hourly bus service, seven to fifteen units per acre may support more frequent bus service, and twenty units per acre or more required to support "high-capacity transit").

71. See Geoffrey York, *Before Madonna's Babies, There was Idaho*, GLOBE AND MAIL, June 22, 2009, at A1, 2009 WLNR 11895708 (describing Burlington as "outer suburb" of Toronto).

72. See Zoning By-Law 2020, Part 2- Residential Zones, at 12, <http://cms.burlington.ca/AssetFactory.aspx?did=10512> (last visited Aug. 21, 2009) (requiring 1850 meters in most rural zones); Boaz Green, *Drawing a Green Line: The Potential for an Environmental Challenge to Israel's Separation Barrier*, 10 UCLA INT'L L. & FOREIGN AFF. 503, 505 n. 11 (2005) (1,000 square meters equals one-fourth of an acre). If 1,000 square meters equals .25 of an acre, 1,850 square meters equals .4625 of an acre.

73. See *Lifetime Learning Inc. v. Richmond Hill Country Club*, (2000), 30 R.P.R. (3d) 85 at para. 1 (Ontario Superior Court 2000) (Richmond Hill "a suburb of Toronto").

74. See *High Street Dev. v. Richmond Hill*, 2009 CarswellOnt 5863, (Ontario Municipal Board) at Attachment 2.

75. I calculate as follows: one square meter is identical to 10.6 square feet. See *Vann Niagara Ltd. v. Oakville*, (2003), 3 S.C.R. 158, at para. 2, 234 D.L.R. (4th) 118 (7.5 square meters identical to 80 square feet). Thus, 100 square meters is identical to about 1066 square feet. Thus, the rule in question requires 3.2 parking spaces per 1066 square feet which is identical to 3 spaces per 1000 square feet. I note that this requirement is more lenient than is most American parking regulation. See DONALD SHOUP, *THE HIGH COST OF FREE PARKING* 31 (2005) (office buildings typically required to provide four parking spaces per 1000 square feet).

76. See *Honest Ed's v. Imbrogno*, (2006), 58 C.P.R. (4th) 168, at para. 3 (Markham "a suburb of Toronto").

77. See *1691126 Ontario Inc. v. Markham*, 2009 CarswellOnt 3888 (Ontario Municipal Board), at Attachment 2, Part 3.2.3 (approving plan requiring 1.1 parking spaces per dwelling unit without any distinction between units designed for one person and those designed to house more people and despite the fact that plan intended "to implement the transit-supportive policies of the approved policy framework"). See also *Dundas Sixth Line Dev. v. Oakville*, 2009 CarswellOnt 3292 (Ontario Municipal Board), at Attachment 2 (1.25 parking spaces per unit). I note, however, that some cities are less stringent than Markham. Toronto typically requires only 0.5 parking spaces per one-bedroom multifamily dwelling unit and 0.75 spaces per two-bedroom unit. See *Metropolitan Toronto Condominium Corp. v. Bloor/Avenue Road Investment Inc.*, 2009 CarswellOnt 5078 at para. 32.

merce. Thus, minimum parking requirements artificially reduce population and employment density.

It appears that suburban Toronto's low density requirements are, in part, due to municipal regulation. However, a full discussion of this point awaits a book more complete than Sewell's work.

D. *The Future of Sprawl*

In 2005, Ontario's government passed enabling legislation for the region's "Places to Grow" plan.⁷⁸ At first glance, "Places to Grow" seems designed to curb sprawl; for example, the plan creates a greenbelt around Toronto and provides that land inside the greenbelt can not be used for suburban development.⁷⁹ The plan also mandates that 40 percent of new development occur within already urbanized areas⁸⁰ and endorses expansion of public transit.⁸¹ The plan has attracted considerable attention; for example, in 2006 the American Planning Association gave Ontario an award honoring the plan.⁸²

Sewell examines the details of Ontario's plan more closely and reveals that it is unlikely to significantly reduce sprawl for three reasons. First, "Places to Grow" sets aside 200,000 hectares of land (or approximately 500,000 acres)⁸³ for future development—enough land to accommodate all development for the next quarter century,⁸⁴ including three-fourths of the region's prime farmland.⁸⁵

Second, Ontario's "40 percent" requirement is toothless. During the 1990s, 43 percent of all Toronto-area development had occurred on already-urbanized land.⁸⁶ Thus, the "40 percent" rule merely replicates existing development rather than steering development towards existing areas.

Third, what the Ontario government gives with land use regulation, it takes with infrastructure policy. Although the province plans to expand public transit,⁸⁷ it also proposes to expand the Toronto re-

78. SEWELL, *supra* note 1, at 221.

79. *Id.* at 224.

80. *Id.* at 223.

81. *Id.* at 225-26.

82. *Id.* at 222.

83. A hectare is equivalent to 2.5 acres. See Robert DeLay, *Our Post-Kyoto Climate Change Framework: Open Market Carbon-Ranching as Smart Development*, 17 PENN ST. ENVTL. L. REV. 55, 73 (2008).

84. SEWELL, *supra* note 1, at 223.

85. *Id.* at 224.

86. *Id.*

87. *Id.* at 225-26.

gion's highway system by extending Highways 404, 407 and 427 further into suburbia.⁸⁸ In addition, the province proposes to add lanes to Highway 403 and 404.⁸⁹

Thus, "Places to Grow" is unlikely to slow Toronto's sprawl and may actually accelerate sprawl through highway expansions. In other words, "Places to Grow" should have been titled "Business as Usual."

III. A COMPARATIVE PERSPECTIVE

How do Toronto's urban planning policies compare with those of most American cities and states? At first glance, Toronto seems identical to most American cities. Just as Toronto has built sprawl-spreading highways,⁹⁰ so have most American cities. As early as 1927, American state and local governments spent more money on highways than on any government function other than education.⁹¹ The American federal government has supported highways since 1916,⁹² but did not begin to support public transit until the 1960s.⁹³ Today, the federal government spends four times as much on highways as on public transit.⁹⁴ In the United States, as in Ontario, these highways have enabled sprawl as people and jobs have moved to land near highway interchanges.⁹⁵ Highways make suburbs near highways more popular because home buyers highly value highway access: for example, a 2002 survey conducted for the National Association of Home Builders

88. *Id.* at 226 (describing regional plan), 228 (map of highway extensions).

89. *Id.* at 226.

90. *See supra* Part II-A.

91. *See* Richard Briffault, *Our Localism: Part II – Localism and Legal Theory*, 90 COLUM. L. REV. 346, 380 n. 149 (1990).

92. *See* Chad Emerson, *All Sprawled Out: How the Federal Regulatory System Has Driven Unsustainable Growth*, 75 TENN. L. REV. 411, 432-37 (2008) (describing 1916 Act and subsequent legislation).

93. *See* Mandy B. Seuffert, *Caught in A Cement Spider Web: Proposed Suburban Transportation Policies to Architecting Less Automobile Reliant Communities*, 15 PENN ST. ENVTL. L. REV. 295, 307 (2007) (federal aid to public transit began with Urban Mass Transit Act of 1964).

94. *See* Budget in Brief 2010, <http://www.dot.gov/budget/2010/bib2010.htm#fta> (in 2008, federal government spent just over \$50 billion on Federal Highway Administration and \$10.5 billion on Federal Transit Administration; 2010 Obama budget proposes \$41.8 billion for former and \$10.3 billion for latter); Philip A. Hummel, *Next Stop- A Cleaner and Healthier Environment: Global Strategies to Improve Public Transit*, 35 TRANS. L.J. 263, 282 (2008) (in recent decades, federal government has consistently spent more than four times as much on highways as on public transit).

95. LEWYN, *supra* note 6, at 1106-07.

showed that recent home buyers ranked highway access above any other amenity listed.⁹⁶

Just as Ontario has subsidized water and sewer service in new suburbs,⁹⁷ so have most American state governments. Although urban governments built their own sewer systems in the 19th century, state governments typically subsidized new suburban sewer systems in the 20th century.⁹⁸ In the 1950s, the federal government began to support suburban sewer projects as well.⁹⁹

And in both Toronto and in American cities, local zoning codes reduce density¹⁰⁰- directly through limitations on the number of dwelling units per acre¹⁰¹ and indirectly through minimum parking requirements that require landowners to use land for parking instead of for housing.¹⁰²

But Toronto and its core suburbs are far more compact than most American cities and suburbs. Toronto's pre-World War II core has 20,000 people per square mile, its inner suburbs have 8000 people per square mile, and its most recently developed suburbs have 4700 people per square mile.¹⁰³ By contrast, nearly all American cities are less dense than Toronto's core, and many are less dense than its suburbs. Within the fourteen largest U.S. metropolitan areas, only one central city (New York) has over 20,000 people per square mile.¹⁰⁴ Six of these regions' fourteen major central cities (Atlanta, Seattle, Dallas, Houston, Detroit, and Phoenix) have fewer than 8,000 people per square mile¹⁰⁵ and are thus less compact than Toronto's inner suburbs.¹⁰⁶ Four of those six (Atlanta, Dallas, Houston and Phoenix) have

96. *Id.*

97. *See supra* Part II-B.

98. Briffault, *supra* note 91, at 380; Sheryll D. Cashin, *Localism, Self-Interest and the Tyranny of the Favored Quarter: Addressing The Barriers to New Regionalism*, 88 GEO. L.J. 1985, 2002 n. 102 (2000) (showing how most affluent suburbs received disproportionate amount of sewer funding in Minneapolis area).

99. *See* Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217, 225 n. 27 (1999).

100. *See supra* Part II-C (at least some Toronto suburbs limit density through regulation); LEWYN, *supra* note 6, at 1105-07 (describing American anti-density regulation).

101. *Id.* at 1105-06 (describing American regulation), *supra* notes 66-77 and accompanying text (giving Canadian examples).

102. LEWYN, *supra* note 6, at 1118 (describing relationship between parking regulation and density); Carol Goar, *Home ownership within reach*, TORONTO STAR, June 27, 2008, at 4, 2008 WLNR 12095121 (affordable housing advocates urge Toronto to relax minimum parking requirements in order to increase the amount of affordable housing).

103. SEWELL, *supra* note 1, at 159.

104. LEWYN, *supra* note 6, at 1110-11.

105. *Id.*

106. *See supra* note 103 and accompanying text.

fewer than 4,700 people per square mile¹⁰⁷ and are thus even less compact than Toronto's outer suburbs.¹⁰⁸ The overwhelming majority of American suburbs are less compact than Toronto's suburbs. As noted above, the average Toronto outer suburb has 4,700 people per square mile¹⁰⁹ while all but one of the fourteen largest American regions has fewer than 4,700 people per square mile.¹¹⁰

Because Sewell does not explore Canadian density regulation in detail, it is not clear exactly why American suburbs are so much more sprawling than Canadian suburbs. It may be that American land use regulation is less aggressive, or it may be the case that other factors (such as Toronto's excellent public transit system)¹¹¹ favor more compact suburban development in Toronto.

IV. SUMMARY

Sewell's book, despite its omissions, performs a valuable service. Toronto has experienced considerable suburbanization despite its high urban density and high transit ridership. It might be argued that if even Toronto has experienced sprawl, free market forces will inevitably lead to sprawl- but by discussing government support for suburbia Sewell shows that in Canada, as in the United States, suburbia has been a creature of politics.

107. LEWYN, *supra* note 6, at 1110-11.

108. *See supra* note 97 and accompanying text.

109. SEWELL, *supra* note 1, at 159.

110. LEWYN, *supra* note 6, at 1110-11. This statistic, of course, overestimates the density of American suburbs, since the density figures for American urbanized areas includes both cities and suburbs.

111. *See supra* note 3 and accompanying text (noting Toronto's high transit ridership compared to other Canadian cities).
