

No Place To Park: The Uneasy Relationship Between a City and its Cars

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No Place To Park: The Uneasy Relationship Between a City and its Cars

In 1951, Richard C. Lee, a man who was soon to become one of the most famous mayors in America, addressed “one of the major problems of [his] community” at a meeting of New Haven, Connecticut’s Democratic Town Committee:

I cannot state too strongly that I consider this situation to be extremely serious.... [It] is sapping the lifeblood of our midtown business area and it takes little imagination to see how this, in a vicious progression, will gradually work against the well-being of all the other segments of our integrated community life....New Haven is not alone in its disease. Nearly all large American cities have been afflicted....A situation which is hurting our downtown business life should and must be corrected; this is a basic essential to civic betterment, and all citizens will share in that betterment.¹

Lee was not talking about crime, unemployment, inflation, racial tensions, or the slums he would become known for razing and “redeveloping.” Instead, he was talking about parking.

On one level, the importance of parking to cities needs hardly be stated. Trying to find parking where it is in short supply is one of urban life’s most frustrating pursuits: it uses up time and gas and sanity yet results in no payback other than the ability to get out of one’s car. More than half a century after Lee gave his speech, Connecticut Governor John Rowland, attending a ceremony celebrating the renovation of downtown New Haven’s largest garage, declared that “if you don’t have parking, nothing else works.”² If there is any doubt as to the stakes involved, consider the following three anecdotes, all of which occurred in 2006: a downtown Boston resident purchased an outdoor parking

¹ Richard Lee, Remarks at the Democratic Town Committee Meeting (Aug. 16, 1951) (transcript available in the Yale University Library).

² Joseph Straw, *Rowland Dedicates Parking Garage*, NEW HAVEN REGISTER, Sept. 11, 2002, at B3.

space for \$250,000;³ UPS racked up nearly \$19 million worth of parking tickets in New York City;⁴ and a San Francisco teenager was killed in an argument over a parking space he was trying to save for a friend.⁵

As a subject of study, though, parking has long been considered so banal as to warrant little thought. For many years, academics and even planning professionals have all but ignored the topic. Although parking is the urban land use with the biggest footprint, *Urban Land Use Planning*, a seminal work which has been described as the bible of its field, never even mentions the subject.⁶

Parking is fast becoming a subject of vital importance, however, as people begin to take stock of the far-ranging effects a city's parking policies have on every aspect of urban life--from safety to aesthetics, economic viability, congestion, environmental damage, blight, housing costs, exclusionary zoning, vibrancy, and historic preservation. The question is no longer merely how to save downtowns from a surfeit of cars, as Lee sought to do, but rather how to save downtowns from parking itself.

At the time that Richard Lee gave his address, downtown New Haven was facing a severe shortage of parking. There was not nearly enough room on the sides of streets for all the cars that needed to park and what private lots there were barely put a dent in the problem. Retail sales and property assessments in downtowns across the country were declining as customers and businesses moved to suburban locations offering free

³ Kimberly Blanton, *Sold: 1 Open-Air Parking Space in the Back Bay for \$250,000*, BOSTON GLOBE, Nov. 26, 2006, at D1.

⁴ Associated Press, *Delivery Firms' Big Ticket Items: Parking Fines*, MSNBC, Sept. 1, 2006, available at <http://www.msnbc.msn.com/id/14602712/>.

⁵ See, e.g., Jaxon Van Derbeken, *Fatal Stabbing over Parking*, S.F. CHRONICLE, Sept. 19, 2006, at B3.

⁶ DONALD C. SHOUP, THE HIGH COST OF FREE PARKING 25 (2005).

and convenient parking.⁷ *Something* clearly needed to be done; the only question was *what*. One proposed solution involved turning the venerable New Haven Green, a landmark for three hundred plus years and the literal and figurative center of the city, into a parking lot. “Sentiment alone should not be the deciding factor,” commanded one 1950 radio editorial, “in considering what is to be done. It would be most unfortunate if the Green were allowed to become a memorial to past and more successful days in New Haven’s history and commerce.”⁸ The President of the local Employees Association noted that paving the Green would transform it “from a comparatively shabby grass plot into an attractive modern parking plaza...every central merchant would be served, and round-the-block, space-hunting driving would end—solving the traffic snarls...Mr. and Mrs. New Haven could enjoy a minute’s walk to the central store of their choice.”⁹

New Haven did not, despite a strong movement in favor, decide to pave over the Green. Instead, it developed two separate responses, to its parking problem. The first involved *private interests* pressuring the *city* to enter the off-street parking business; this led to the 1951 creation of the New Haven Parking Authority. The second response was something of a mirror image of the first. In the 1963 overhaul of New Haven’s Zoning Ordinance, the *city* forced *private interests* to provide more parking in more districts and for more land uses than ever before.

This paper will take a look at some of the ways in which cities have sought to address their parking problems through the lens of New Haven, Connecticut. Lack of parking is a problem for any city but the most obvious solution—i.e., creating more

⁷ See, e.g., CHARLES S. LECRAW, JR. & WILBUR S. SMITH, ZONING APPLIED TO PARKING 4 (1947).

⁸ Transcript of radio editorial. Files of Mayor William Celentano. (on file with the New Haven Museum & Historical Society).

⁹ An Open Letter from Martin J. Griffin, President, the New Haven City Employees Association, NEW HAVEN JOURNAL-COURIER, Aug. 31, 1951 (on file with the New Haven Museum & Historical Society).

parking—begets many problems of its own. The paper’s main focus will be on the ways in which New Haven has sought to mandate—and subsequently to tame—the provision of parking through its zoning ordinance. Part I will provide an introduction to off-street parking requirements in general, and to the parking-related provision of New Haven’s Zoning Ordinance more specifically. Part II will present contemporary criticisms of off-street parking requirements, focusing on the many negative externalities which they produce as well as problems with the way they are calculated. Part III forms the descriptive heart of the paper. It will examine three sections of New Haven’s Zoning Ordinance: § 63, which deals with the ability of the Board of Zoning Appeals to grant variances and special exceptions from standard parking requirements; § 65, which addresses Planned Development Districts and the implementation of Overall Parking Plans for large institutions; and § 45, which exempts the city’s Central Business District from standard parking requirements.¹⁰ This Part will also discuss something which is *not* in the Zoning Ordinance: parking restraint provisions. Rather than implementing *maximum* parking standards or prohibitions on surface parking, as some other cities have recently done, New Haven controls the spread of parking in its downtown through the above-mentioned provisions of its Zoning Ordinance. This Part will consider some of the merits and constraints of this approach. Part IV will turn to two of the other types of parking over which the city exerts control: street spaces and municipally-owned garages and lots. This Part will examine some of the ways in which the existence of these other forms of parking impacts both the requirements enshrined in the Zoning Code and the

¹⁰ Residential uses must still provide parking at the normal ratio (1 space per dwelling unit). Section 45 also sets the requirements for parking in Business and Industrial Districts. NEW HAVEN, CONN., ZONING ORDINANCE §45(a)(1) (2006).

decisions of the Board of Zoning Appeals to grant variances from those requirements. Part V will conclude by looking to the future of parking and cities.

I. Off-Street Parking Requirements: What they Are and where they Came from

Off-street parking requirements have been a part of zoning codes since Columbus, Ohio made developers provide parking with new apartment buildings in 1923.¹¹ Sixteen years later, Fresno, California established the first parking requirements for non-residential land uses (hotels and hospitals).¹² By 1949, 185 cities across the United States had followed suit, amending their zoning ordinances to incorporate parking requirements for myriad land uses including office buildings, theaters, and factories.¹³ Today, almost every American city includes off-street parking requirements in its zoning code.

A minimum parking requirement is made up of three components: a land use, a basis for the requirement, and a number of spaces required per unit of the basis.¹⁴ Taken together, American cities currently require parking for at least 662 different land uses, including batting cages, convents, diet clinics, furriers, pet cemeteries, tea rooms, and sex novelty shops.¹⁵ Although the number of spaces required is most often calculated on the basis of square footage,¹⁶ the Planning Advisory Service lists 216 different factors which jurisdictions use as bases for minimum requirements including the number of amusement devices, dental chairs, emergency room tables, video game machines, visiting doctors,

¹¹ JOHN A. JAKLE & KEITH A. SCULLE, *LOTS OF PARKING: LAND USE IN A CAR CULTURE* 77 (2004).

¹² SHOUP, *supra* note 6, at 607.

¹³ JAKLE & SCULLE, *supra* note 11, at 77.

¹⁴ SHOUP, *supra* note 6, at 608.

¹⁵ *Id.* at 76.

¹⁶ *Id.* at 78.

interments in one hour, and persons lawfully permitted in pool.¹⁷ In addition, banks and other lenders often have their own minimum parking standards that must be met in order to receive a loan.¹⁸ As to how cities determine the number of parking spaces required per 100 square feet of pet cemetery or per every ten persons permitted in a pool, the answer is something along the lines of not very accurately (*see* discussion, *infra*, Section II.D).

It is not hard to see the appeal to a municipality of forcing private developers to provide their own parking. Safety codes, as well as permitted use and permitted bulk zoning, offered precedents for burdening private developers for the public good. Besides, if a large portion of the benefit of public parking accrued to specific private interests (downtown retailers, for example), was it not reasonable that builders, rather than taxpayers, should internalize the costs of the parking needs they generated?¹⁹

Developers, of course, felt differently about the matter and, in the early days of off-street parking requirements, attempted to fight them on the grounds that they were unconstitutional takings. Perhaps not surprisingly, considering courts' permissive attitudes more generally towards zoning regulations, only one court has ever been sympathetic to a takings claim applied to off-street parking requirements. In *Denver v. Denver Buick Inc.*, a 1959 case, the Colorado Supreme Court held that "compulsory, involuntary off-street parking maintained at the expense of the property owner as a prerequisite to the exercise of his constitutional right to do business, is out of harmony with fundamental constitutional concepts."²⁰ The court elaborated that:

¹⁷ *Id.* at 611.

¹⁸ MARK C. CHILDS, PARKING SPACES: A DESIGN, IMPLEMENTATION, AND USE MANUAL FOR ARCHITECTS, PLANNERS, AND ENGINEERS 204 (1999).

¹⁹ *See* 5 E.C. YOKLEY, ZONING LAW AND PRACTICE § 33-2 (4th ed. 2004).

²⁰ 141 Colo. 121, 132 (Colo. 1959).

[t]he legal effect of the argument of the City is that it has a problem of concentration of traffic in the streets and that accordingly there is a right, under the zoning ordinance, to appropriate for off-street parking substantial portions of property of citizens desiring to use that property for a legitimate purpose, and to prohibit the use of that property for any purpose until its owners devote a substantial portion thereof to parking; ... No such power exists in the city thus to take private property for a public purpose without compensation to the owner for the taking. It would be quite as proper to argue that the city had the right, under the guise of "zoning" to require dedication of private property for the street itself, if it were considered that a given street was generally inadequate to carry the traffic....If it be true that a traffic problem exists, it cannot be legally solved by confiscation of private property without compensation, under a pretense of "zoning."²¹

Denver Buick was very much an exceptional ruling.²² Law review articles immediately criticized the decision²³ and it was overruled in 1975.²⁴ Other courts that have faced the issue have either assumed or explicitly held that there is nothing per se unconstitutional about off-street parking requirements.²⁵ On the contrary, courts have dismissed the very premise that the requirements are properly framed as a takings issue, viewing them instead as simply part of a municipality's police powers. As the Fifth Circuit noted in 1968:

²¹ *Id.* at 132.

²² *See, e.g.,* *Yates v. Mayor and Commissioners of the City of Jackson*, 244 So.2d 724 (Miss. 1971); *Overhill Building Co. v. Delany*, 28 N.Y.2d 449, (1971); *Central Bank and Trust Co. v. City of Miami Beach*, 392 F.2d 549 (5th Cir. 1968); *Sisters of Bon Secours Hospital v. City of Grosse Pointe*, 8 Mich. App. 342, (1967); *State ex rel. Associated Land and Investment Corp. v. Lyndhurst*, 168 Ohio St. 289, (1958).

²³ *See, e.g.,* Eldon Olson, *Constitutional Law: Due Process: Zoning Restrictions Requiring Land Owners to Provide Off-Street Parking*, 58 MICH L. REV. 1068 (1960); *Constitutional Law--Zoning--City Ordinance Requiring Private Off-Street Parking Facilities in Business District Violates Due Process Clause of Fourteenth Amendment*, 46 VA. L. REV. 999 (1960).

²⁴ *Stroud v. Aspen*, 188 Colo. 1 (1975) ("We... hold that off-street parking requirements are not per se unconstitutional as a taking of property without just compensation, expressly overruling *Denver Buick* on that point. We reach this conclusion with no reluctance. We take judicial notice that off-street parking is a fact of life...").

²⁵ The validity of off-street parking requirements applied to churches is a more complicated issue. "The courts have divided on this issue, one view being that there is nothing in the circumstances to take the matter outside the principle which has been recognized in zoning cases that churches are subject to a reasonable, nondiscriminatory regulation of the use of their property. Opposed to this is the view that when the value of religious associations to the general welfare of the community is weighed against the purpose to be served by such regulations, their enforcement against such groups constitutes an unjustifiable restriction upon the freedom of religion and assembly." 74 A.L.R.2d 418 at *1b.

Considering the great number of automobiles moving in traffic, the fact that Miami Beach is a fully developed tourist city, and the relationship of congested traffic to the health, safety, and welfare of the people of Miami Beach -- it is not even "fairly debatable" here that the off-street parking regulation was a reasonable exercise of the city's police power.²⁶

The Massachusetts Supreme Court went so far as to deem off-street parking provisions no more objectionable than requirements for fire escapes:

The reasonable premise of a requirement for off street parking spaces for new buildings is that parking automobiles near by is an established function of the use of any building wherein people live, work, study or congregate for other purposes. Such a requirement is analogous to the statutory requirements of public corridors and exits of certain size and number and somewhat analogous to requirements of fire walls, fire escapes and fireproof construction.²⁷

Today, parking minimums are so taken for granted that even Houston, a city famous for its lack of traditional zoning, has a litany of enigmatically detailed off-street parking requirements.²⁸

A. New Haven's Off-Street Parking Requirements

1. Pre-1963

New Haven promulgated its first zoning code in 1926 but it was not until more than twenty years later that reference to any sort of parking requirements was to appear. The 1949 version of New Haven's Zoning Ordinance introduced the following provision, applicable only to new or converted multi-family dwellings in Residential A-1 districts:

²⁶ Central Bank & Trust Co. v. Miami Beach, 392 F.2d 549, 550-51 (5th Cir. 1968).

²⁷ Radcliffe College v Cambridge, 350 Mass. 613, 617 (1966).

²⁸ For example, 1.33 spaces for every one-bedroom residential unit, 5 spaces per golf course green, 9 spaces per swimming club employee). Houston Ordinance code *available at* <http://www.houstontx.gov/codes/codes26-2and3.pdf>.

“a private or community garage or off-street parking facilities shall be provided sufficient to supply storage or parking for a number of vehicles equal to 4/5 the number of family dwelling units.”²⁹ No requirements of any kind were imposed on non-residential land uses, single-family homes, or on any type of land use outside the Residential A-1 districts, nor was any mention made of a maximum permissible distance between the parking and the dwelling to which it was assigned. Although the Ordinance underwent revisions in 1951 and 1956, the parking requirements remained unchanged until 1958. In that year, for the first time, the city mandated parking for multiple residential districts and for certain offices and stores in Business Districts.

2. Post-1963

The real sea change, however, and the source of most of the current Zoning Ordinance’s parking provisions, was the 1963 rezoning. This new incarnation of the Ordinance set out to correct the problems of “half-hearted zoning” that had resulted in such “errors” as allowing houses next to factories, crowding buildings together, permitting excessive population density, and, most relevantly for present purposes, “*placing automobile parking in the streets.*”³⁰

The first problem with the old ordinance, as the redrafters saw it, was the lack of sufficient residential parking requirements. In 1962, there were 49,000 passenger cars registered in New Haven for 51,000 families—a ratio of nearly one car per family—with many additional cars entering the city daily for work, shopping, and other purposes, yet four of the residential districts required no off-street parking whatsoever, three districts

²⁹ NEW HAVEN, CONN., ZONING ORDINANCE art. III-A, § 1011-A (2)(b) (1949).

³⁰ NEW HAVEN CITY PLAN COMMISSION, REZONING FOR NEW HAVEN 1 (1962) [hereinafter REZONING] (emphasis added).

called for 4 spaces for every 5 dwelling units, while only two districts had the “universally accepted elsewhere in zoning practice” ratio of 1 space per unit.³¹ Another problem was the near-absence of requirements for non-residential uses in residential districts, despite the “pronounced nuisance” of the parking demand these uses generated on their surrounding neighborhoods.³² In business and industrial areas, meanwhile, lack of off-street parking requirements had led to traffic hazards and an inefficiency in the functioning of stores and factories which put the city at a competitive disadvantage in drawing shoppers and businesses to New Haven.³³

The 1963 Zoning Code, which, with a few exceptions, lays out parking requirements as they exist today, changed all of that.³⁴ No longer could a dwelling unit be built with less than one parking space to its name, no matter the district it was in.³⁵ In the lowest density residential districts (RS-1 and RS-2), the parking had to be located on the same lot as the dwelling; for all other residences (those located in business districts or in denser residential ones), the space needed to be within 300 feet walking distance.³⁶

Detailed requirements for non-residential uses in Residential Districts also made their first appearance. Here, for example, are the rather dizzying minimums that apply to colleges and universities in RS-2 Districts:

³¹ *Id.* at 18-19.

³² *Id.* at 19.

³³ *Id.*

³⁴ Relevant exceptions are: in the 1963 Ordinance, residences in RS-1 and RS-2 Districts required only 1 parking space per unit (NEW HAVEN, CONN., ZONING ORDINANCE, § 32-11 (A)(1)(f), § 32-12 (A)(1)(f) (1963)) while in the 2006 version, they require 1 space for the first bedroom and ½ a space for each additional bedroom, rounded to the next higher number if a fraction (NEW HAVEN, CONN., ZONING ORDINANCE, § 11 (A)(1)(f), § 12 (A)(1)(f) (2006)). Also, the 2006 Ordinance includes provisions for the amendment of Overall Parking Plans in Planned Development Districts (NEW HAVEN, CONN., ZONING ORDINANCE, § 65 (e)(4) (2006)), which the 1963 version does not mention. *See infra* Part III.B.

³⁵ Except for elderly units, which are assigned 1 space per every two units. NEW HAVEN, CONN., ZONING ORDINANCE art. III, § 15(a)(1)(h) (2006). And today, RS-1 and RS-2 Districts require more than 1 space per unit. *See supra* note 34.

³⁶ *Id.* at § 13(a)(1)(g).

one parking space for each two full-time faculty members or the equivalent (two part-time members equaling one full-time member), plus one parking space for each three employees, plus one parking space for each three non-resident students, plus one parking space for each six beds if residents are allowed to keep automobiles, plus one parking space for each eight seats in each place of assembly (other than classrooms) commonly having one-half or more of its attendance made up of students (and otherwise having one parking space for eight four seats) based on the maximum occupancy of both fixed and movable seats.³⁷

Meanwhile, to counteract the “competitive disadvantage” which New Haven’s business districts faced from parking shortages, comprehensive requirements for all non-residential land uses were added. In Business and Industrial districts,³⁸ the requirements were set as: 1 space per unit for hotels, 1 space per 200 square feet for retail sales and services between 600 and 5000 square feet (with 1 space per 100 square feet for stores over 5000 square feet), 1 space per 600 square feet for offices, 3 spaces per practitioner for doctors’ offices, and 1 space per 4 seats for the strange-bedfellows category of “places of assembly, eating or drinking places, and funeral homes.”³⁹

Finally, minimal design standards were outlined. Each parking space must be at least 180 square feet in area⁴⁰ and be surfaced and drained. The spaces are not to be located within any required front yard and any grouping of three or more spaces in a Residence District has to have a “suitable fence, wall or evergreen planting at least five feet in height, designed to screen noise, odors, visibility and headlight glare.”⁴¹

³⁷ *Id.* at § 12(b)(1)(g).

³⁸ With the exception of the Central Business Districts (BD, BD-1, and BD-2), which are exempt from all non-residential requirements. *Id.* at § 45(1). *See* discussion, *infra*, Part III.

³⁹ *Id.* at § 45.

⁴⁰ This area requirement has remained unchanged since 1963, despite the fact that the average car in 2007 is significantly smaller than its 1963 precursor.

⁴¹ *Id.* at § 29(d).

II. The Problem with Off-Street Parking Requirements

Since their inception, off-street parking requirements have been treated by municipalities as something of a panacea. If residents complain about a shortage of parking, increasing parking requirements for a specific land use can at no cost (or, at least, at no *visible* cost) to the government demonstrate that the city is doing something about the problem.⁴² Recently, however, a number of critics, led by Donald Shoup, a UCLA economist who has revolutionized the way planners think about parking, have begun pointing out the significant and far-ranging costs of this approach to zoning.

A. A Fertility Drug for Cars

One objection to parking requirements is simply that they lead to more driving. This is problematic first because it creates a vicious cycle: increased driving only means an increased demand for parking. As one city planner commented in the early 1970s, “[t]he more parking you provide, the more cars you attract and you’re back where you started.”⁴³ Today’s planners and academics seem to favor the use of metaphors in discussing the problem; Shoup has referred to parking requirements as “fertility drugs for cars” while others have compared building more parking to “chasing your tail—it never solves the problem”⁴⁴ and pronounced that off-street parking requirements “ought to be a controlled substance...[t]hey breed car trips.”⁴⁵

⁴² See SHOUP, *supra* note 6, at 89.

⁴³ DAVID K. WITHEFORD, ENO FOUND. FOR TRANSP., ZONING, PARKING, AND TRAFFIC 33 (1972).

⁴⁴ Interview with Anstress Farwell, President, New Haven Urban Design League, in New Haven, Conn. (Feb. 1, 2007).

⁴⁵ Adam Millard-Ball, *Putting on Their Parking Caps*, PLANNING, Apr. 1 2002, available at http://goliath.ecnext.com/coms2/summary_0199-1687114_ITM.

To exacerbate matters, off-street parking requirements don't merely encourage driving by offering convenient and guaranteed terminal points for cars, they also *subsidize* it by almost always offering that parking without any sort of usage charge. Most often, a business's decision to offer free parking to its employees or customers is market-driven. Some ordinances, however, actually mandate that off-street parking be provided free. One section of Los Angeles's City Plan, for example, declares that offices must provide at least 3 parking spaces for each 1000 square feet of floor area "at no charge to all patrons and employees of those uses."⁴⁶ Monterey Park, California, meanwhile, forbids charging for *any* parking required by its zoning code.⁴⁷ Whatever the source of the decision to offer free parking, the result is that drivers park free for 99% of the trips they take.⁴⁸ The problem, however, is that the parking isn't really free; its cost is just not borne directly by those who use the parking:

Initially the developer pays for the required parking, but soon the tenants do, and then their customers, and so on, until the cost of parking has diffused everywhere in the economy....When the cost of parking is hidden in the prices of other goods and services, no one can pay less for parking by using less of it.⁴⁹

The cost of the parking, not incidentally, is quite substantial. In San Francisco, for example, parking typically accounts for twenty percent of a residential development's total outlay.⁵⁰ Construction costs for each space in a Bay Area garage are usually more than \$40,000—a figure which does not include annual expenses for maintenance,

⁴⁶ SHOUP, *supra* note 6, at 24-25.

⁴⁷ *Id.*

⁴⁸ *See id.* at 22.

⁴⁹ *Id.* at 2.

⁵⁰ Jeffrey Tumlin & Adam Millard-Ball, *The Mythology of Parking*, LINE MAGAZINE, Dec. 2004, available at <http://www.walkablestreets.com/parking.htm>.

cleaning, lighting, security, and financing.⁵¹ Furthermore, the last fifteen percent of parking spaces constructed on a site typically cost more than average to build and generate less income per space.⁵²

A different problem with encouraging driving is that it leads to a number of environmental harms, including increased pollution, gas consumption, and congestion. Interestingly, *Stroud v. Aspen*, the case that overruled *Denver Buick*, argued that minimum parking requirements *benefited* the environment by cutting back on the pollution generated by drivers circling block after block in search of a space.⁵³ The much more prevalent view, however, is that reducing the supply of parking is an effective way to combat pollution. When, for example, Congress enacted the Clean Air Amendments of 1970 requiring states to meet national standards for air quality,⁵⁴ New York responded with a plan to reduce available parking spaces in Manhattan’s business district by thirty to forty percent.⁵⁵ Massachusetts similarly formulated “a strategy of cutting down emissions by discouraging the use of vehicles. Off-street and on-street parking spaces are to be ‘frozen’ or cut back, and the construction of new parking facilities [is to be] regulated.”⁵⁶ More recently, the Oregon Department of Environmental Quality spearheaded an overhaul of Portland’s parking standards in an attempt to meet air quality standards for ozone.⁵⁷

⁵¹ *Id.*

⁵² Metro. Transpt. Commission, *Developing Parking Policies To Support Smart Growth in Local Jurisdictions: Best Practices*, Apr. 19, 2007, at 6, available at http://www.mtc.ca.gov/planning/smart_growth/parking_study/April07/bestpractice_042307.pdf.

⁵³ *Stroud*. (“In these days of environmental concern, we cannot believe that it is unconstitutional to require those who invite large numbers of people to their establishments—who in turn clog the streets, air and ear of our citizens—to provide parking facilities so that automobiles may be placed in a stall and stilled.”).

⁵⁴ 42 U.S.C. § 1857-58a

⁵⁵ *Friends of Earth v. United States EPA*, 499 F.2d 1118 (2d Cir. 1974).

⁵⁶ *South Terminal Corp. v. EPA*, 504 F.2d 646, 655 (1st Cir. 1974).

⁵⁷ Millard-Ball, *supra* note 45.

B. Effects on the Housing Market: A Form of Exclusionary Zoning

Parking requirements also have wide-ranging effects on a city's housing stock. First, residential parking requirements serve to restrict consumer choice. Most homeowners or renters aren't able to "unbundle" a parking space from their dwelling unit, that is, they can't choose to pay less and not acquire a parking space or to pay the same amount but get an extra room or more yard space instead.⁵⁸

Parking requirements can also debase the quality of new urban design in both residential and commercial structures. Even putting aside the inherent unattractiveness of most lots and garages, "[f]itting both a building and the required parking onto the site can be difficult, and the building's design often must be compromised to accommodate the parking.... Removing off-street parking requirements can therefore increase the potential for better design."⁵⁹

Perhaps most importantly, minimum requirements raise the price that consumers pay for housing by both increasing costs of construction and by restricting supply (fewer units can be built when a specified amount of land needs to be devoted to parking spaces.)⁶⁰ A 1996 San Francisco study, for example, showed that single family houses and condominiums cost ten percent more if they included off-street parking than if they did not.⁶¹ The study estimated that tens of thousands of additional households could

⁵⁸ SHOUP, *supra* note 6, at 169. This may, however, be changing. *See, e.g.*, Linda Baker, *No Parking: Condos Leave out Cars*, N.Y. TIMES, Nov. 12, 2006, § 11, at 12.

⁵⁹ SHOUP, *supra* note 6, at 102.

⁶⁰ *See* SHOUP, *supra* note 6, at 143.

⁶¹ Wenyu Jia & Martin Wachs, *Parking Requirements and Housing Affordability: A Case Study in San Francisco 1* (Univ. of Cal. Transp. Ctr., Working Paper No. 380, 1998).

qualify for home mortgages if units without off-street parking could be legally provided.⁶²

Parking requirements impose a particular burden on the development of low-income housing. According to the Chief of Comprehensive Planning in San Francisco, “[p]arking requirements are a huge obstacle to new affordable housing and transit-oriented development....Nonprofit developers estimate that they add 20 percent to the cost of each unit, and reduce the number of units that can be built on a site by 20 percent.”⁶³ Looked at in this light, parking requirements join minimum lot size standards in acting as a form of exclusionary zoning.

The requirements also mean that less money and land is available for purposes such as childcare facilities and community rooms.⁶⁴ Meanwhile, because low-income households tend to own far fewer cars than uniform parking requirements assume, cities essentially force developers to build parking that most likely will not be used.⁶⁵ At a March 2007 Board of Zoning Appeals public hearing in New Haven, for example, an applicant sought a special exception to permit 2 parking spaces where 4 were required to convert a three-family dwelling to a four-family dwelling. The applicant (and owner of the building) explained that he was living in the basement unit and that, of his three tenants, all of whom were low income, *none owned cars*. One of the tenants, who received § 8 vouchers and had just lost her job, spoke up in favor of the application. “I don’t know anything about zoning,” she said. “All I know is [if the exception is not

⁶² *Id.*

⁶³ Millard-Ball, *supra* note 45.

⁶⁴ S. Cal. Ass’n of Non-Profit Housing, *Parking Requirements Guide for Affordable Housing Developers* 3 (Feb. 17, 2004), available at http://www.cacities.org/resource_files/24076.ParkingGuide.pdf.

⁶⁵ See Millard-Ball, *supra* note 45.

granted], I have to leave. To me the bottom line is if there's not enough parking spaces, I have to go. I don't see the logic of it."⁶⁶

Of course, many residential developers, particularly those hoping to attract high-income tenants, will want to provide on-site parking--whether the zoning code mandates it or not. "College Square," for example, a nineteen-story luxury residence and retail property slated to open in downtown New Haven in 2009, will include 434 on-site parking spaces,⁶⁷ despite the fact that it could fulfill its zoning requirements by leasing spaces in the municipal garage less than a block away.⁶⁸ This does not, however, diminish the argument that residential developments, particularly those located near public transit or meant for low-income tenants, should be subjected to fewer parking *requirements*.

C. Preventing Adaptive Reuse

One of the most maddening externalities associated with parking requirements, at least for any proponent of urbanism or historic preservation, is their effect on the reuse of older buildings. When off-street parking requirements are introduced into a city's zoning ordinance, they generally apply only to new construction or renovation. Although this means that existing uses in older buildings without parking are grandfathered in, problems begin if a new use wants to move in to the old space. Donald Shoup offers the

⁶⁶ March 6, 2007 Board of Zoning Appeals Hearing. Application #07-10-S, 451 George Street.

⁶⁷ Parking for tenants will be underground, and public parking will be available on the third and fourth floors. Lea Yu, *City Welcomes New Residential, Retail Tower*, YALE DAILY NEWS, Nov. 16, 2006, available at <http://www.yaledailynews.com/articles/view/19010>.

⁶⁸ See Sharon Cohen, *Fixing a Hole: Ambitious "College Square" Project To Fill in Middle of Downtown Doughnut*, conntact.com, Mar. 19, 2007, available at http://www.conntact.com/article_page.lasso?id=40798.

example of a furniture store occupying an older urban building. If the furniture store, which has a minimum requirement of 1 space per 1000 feet, shuts its doors and a bike shop wants to move in, the bike shop can only do so if it is able to provide the parking spaces mandated for *its* land use, which in Shoup's example is 3 per 1000 feet. Usually, either because the density of the block is such that it is impossible to carve out additional parking spaces or because doing so would create an economic hardship, or both, the bike shop would not be able to occupy the older building without a zoning variance. Thus, unless a new furniture store moves in (or a zoning variance is granted), the building lies vacant and the vacancy in turn makes the neighborhood less likely to attract new business.⁶⁹ This result, Shoup argues, turns traditional land use doctrine on its head:

The usual interpretation of a parking requirement is that it specifies the number of parking spaces that a new building must provide;...the land-use decision comes first, and the required parking depends on the use....For older buildings, which often cannot provide more on-site parking, the situation is reversed. Here the parking requirements limit the uses a city will allow because the building's use must conform to the available parking....The requirements drive business out of established areas, and—most infuriatingly—they do it for no logical reason.⁷⁰

To further exacerbate matters, tax policies in many cities lead owners to tear down unprofitable or vacant buildings. In Hartford, Connecticut, for example, buildings are taxed three times more than the land on which they sit, which encourages owners to raze buildings rather than attempt to rehabilitate or convert them.⁷¹ Most frequently, when a downtown building is demolished, the land gets used as—you guessed it—a parking lot.⁷²

⁶⁹ See SHOUP, *supra* note 6, at 153-54..

⁷⁰ *Id.*

⁷¹ Tom Condon, *Holes in the Fabric of Hartford: Downtown Expanses of Parking Could Be Put to Better Use*, HARTFORD COURANT, Mar. 12, 2006, at C4.

⁷² See SHOUP, *supra* note 6, at 156.

D. Miscalculations

Even defenders of minimum requirements have begun to question the ways in which they are determined. First, the requirements can make it extremely difficult for a developer to calculate just how many spaces she needs to provide. Sometimes, a single land use will be assigned multiple bases at once, as with New Haven's requirement for colleges in residential districts (1 space per two full-time faculty members, *and* 1 per three employees, *and* 1 per three non-resident students, *and* 1 per each eight seats in gyms or auditoriums, etc). Sometimes the bases will be vague and hard to predict, as with Saint Clair Shores, Michigan's requirement for taxi stands: "1 space for each employee on the largest working shift, plus 1 space per taxi, plus *sufficient spaces to accommodate the largest number of visitors that may be expected at any one time.*"⁷³

More troublingly, current methods almost always make developers provide far more parking than is actually needed. A recent study of Connecticut towns found that shopping areas have more than twice the parking spaces they need, even during the peak holiday season.⁷⁴ Developers in Palo Alto, meanwhile, who are allowed reductions of up to fifty percent of required spaces if they set aside landscaped reserves that can be converted to parking if needed, have not once actually needed to convert any of these reserves,⁷⁵ raising the question why the requirements are not lowered in the first place.

⁷³*Id.* at 608 (emphasis added).

⁷⁴ John M. Moran, *Study: Excessive Parking a Downer for Shoppers; Downtowns Can Be More Lively, Efficient*, HARTFORD COURANT, Nov. 28, 2005, at B1. The article cites a study, "Parking at Mixed-Use Centers in Small Cities" by Wesley E. Marshall and Norman W. Garrick.

⁷⁵ SHOUP, *supra* note 6, at 43.

Part of the problem is that many municipalities set their minimum requirements using other jurisdictions' parking standards as a template.⁷⁶ What this frequently means is that cities are copying their requirements from cities which have themselves taken their figures from *peak* demand at *suburban* sites with *ample free parking* and *no alternatives to driving*.⁷⁷ The result is that urban planners, most of whom, in Shoup's unsparing characterization, set minimum requirements with "no theory, little training, and poor data,"⁷⁸ import inapposite suburban standards and "build the church for Easter Sunday"⁷⁹—that is, require far more parking than is needed 99% of the time.

Critics of the current methodology believe that "the amount of parking needed is primarily a value judgment, rather than a technical exercise."⁸⁰ Solutions lie in taking far greater stock of the *specific context* of the land use—for example, the character of the street, the availability of public transportation, any fees that may be attached to the parking, and the nature of the expected clientele (if it is, for example, comprised mostly of student walk-ins from the neighborhood or developmentally disabled adults who don't drive, then do the "normal" parking requirements make sense?).⁸¹ Even if the parking requirements in a city's zoning ordinance do not in themselves take stock of the context of a land use, context can still come into the equation when the local Board of Zoning Appeals decides whether to grant variances.

⁷⁶ See Tumlin & Millard-Ball, *supra* note 50. Another popular basis is the parking generation rates published by the Institution of Transportation Engineers.

⁷⁷ *See id.*

⁷⁸ SHOUP, *supra* note 6, at 607.

⁷⁹ *Id.* at 138.

⁸⁰ Tumlin & Millard-Ball, *supra* note 50. "Developers and local elected officials must ask, at what point do the benefits of ample parking outweigh the negative consequences? Is there enough roadway capacity to serve an increase in parking? Is it cheaper to do something else instead of providing parking? Does additional parking or greater investment in transit fit better with the values of the community?"

⁸¹ See Wesley E. Marshall & Norman W. Garrick, *Parking at Mixed-Use Centers in Small Cities* 17 (Nov. 15, 2005) (unpublished manuscript, on file with the New Haven City Plan Department).

III. “The Needs and Aspiration of the City”: A Closer Look at the Parking Provisions of New Haven’s Zoning Ordinance

The redrafters of the 1963 New Haven Zoning Ordinance wrote that, “[a] good Zoning Ordinance is a living document. It translates the needs and aspirations of the city into a workable instrument to achieve certain community goals. If it is to succeed in these purposes, the ordinance must be an appropriate one for the city.”⁸² How “appropriate” have the parking provisions of the Zoning Ordinance been for New Haven? Just as importantly, how frequently has the Board of Zoning Appeals granted variances when the mandates of the Ordinance have not been “appropriate” to the specific context of the land use?

A. Section 63: Board of Zoning Appeals

Although the parking requirements enshrined in the zoning ordinances of various cities may be similar, the exact extent to which they undermine urbanism will depend in large part on each individual city’s willingness to grant variances and special exceptions. According to the redrafters’ figures, from 1926 through just before the 1963 rezoning, the Board of Zoning Appeals (BZA) granted variances in 3397 cases, or over seventy-five percent of the appeals it heard.⁸³ Let’s reconsider the adaptive reuse scenario, discussed above in Section II.C, in light of this information. In that example, a bike store that

⁸² REZONING at 2.

⁸³ *Id.* at 6.

wanted to replace a furniture store in an older building was prevented from doing so by the greater parking requirements associated with its land use.

Adaptive reuse of this type is actually not so much of a problem in New Haven for three reasons. The first is that New Haven's land use categories are fairly broad. *All* retail sales and services over 600 square feet are subject to the same parking requirement; a bike shop would thus need no greater (or lesser) amount of parking than the furniture store. Furthermore, if the bike and furniture stores had had under 600 square feet of sales area, they would have been exempted from parking requirements altogether. The second reason is that non-residential uses within New Haven's Central Business District, where adaptive reuse is perhaps most relevant, are completely exempt from off-street parking requirements (*see* further discussion of the city's CBD exemption policy, *infra*, Section III.C). Finally, if past decisions of the Board of Zoning Appeals are any indication, even if the new business had needed to seek a variance in order to occupy the older building, the BZA, which, like the City Plan Commission, seeks to encourage adaptive reuse, would most likely have granted the request.

New Haven's BZA, comprised of five regular members and three alternates, has the discretion to grant variances and special exceptions⁸⁴ when "there is difficulty or unreasonable hardship in the way of carrying out the strict letter of the zoning ordinance... [provided] such variance will be in harmony with the general purpose and

⁸⁴ A note on terminology: although in general zoning terms a *variance* is defined as a "license or official authorization to depart from a zoning law" while a *special exception* is "an allowance in a zoning ordinance for special uses that are considered essential and are not fundamentally incompatible with the original zoning regulations", BLACK'S LAW DICTIONARY 1432, 1588 (8th ed. 2004), the BZA and the City Plan Commission use *special exception* to refer to almost all parking-related requests that depart from any terms of the Zoning Ordinance. Thus a request to provide three parking spaces instead of the six required by the Zoning Code is classified as a special exception, not a variance. *Variances* really only apply in the parking context when an applicant is seeking to provide a space with different dimensions than is specified by the Zoning Code.

intent of the ordinance and...the public health, safety and general welfare will be served and substantial justice done.”⁸⁵ In types of special exception cases which “may have a significant impact on surrounding areas and a substantial relationship to the comprehensive plan of the city”⁸⁶—this category includes convenience stores in residence districts, adjustment of sign requirements, and, most relevantly for present purposes, adjustments for parking requirements—the BZA must refer the case, post-public hearing, to the City Plan Commission. The City Plan Commission (CPC) then submits an advisory report on which the BZA bases its final decision.⁸⁷ In granting special exceptions, the BZA may impose time limits and attach additional conditions and safeguards.⁸⁸

I examined the parking-related decisions of the New Haven BZA over the last fifteen years in order to get a sense of how frequently the BZA granted parking-requirement relief.⁸⁹ The most common type of application by far sought in some way to build less parking than the ordinance mandated. Formal requests to provide fewer spaces than were required by the zoning ordinance made up 57 percent of parking applications (120 out of 211 applications). An additional 14 percent of applications (30 out of 211) sought to provide the requisite amount of parking but do so without adding to the city’s supply. This category included requests for joint use parking, waivers of the maximum

⁸⁵ NEW HAVEN, CONN., ZONING ORDINANCE § 63(c)(1) (2006).

⁸⁶ *Id.* at § 63(d)(6).

⁸⁷ These advisory reports consist of Principal Applicable Regulations from the zoning code, Background (usually including a site visit), Planning Considerations, and, sometimes but not always, an explicit recommendation.

⁸⁸ NEW HAVEN, CONN., ZONING ORDINANCE § 63(d)(4)-(5) (2006).

⁸⁹ The study covered the years 1992-2006 with the exception of 2005, the files for which were unavailable.

walking distance from a land use to its parking, and amendments to parking plans of Planned Development Units.⁹⁰

1. Appeals Seeking To Provide Fewer Parking Spaces than the Zoning Ordinance Requires

The BZA, on the recommendation of the City Plan Commission, granted the vast majority (73% or 87 out of 120) of special exceptions seeking to provide less parking than was required.⁹¹ In 2003, for example, an applicant in an RS-2 district sought a special exception to permit 2 parking spaces where 3 were required to construct a single family residence.⁹² The CPC's advisory's report made note of the fact that creating the last of the three parking spaces would require applicants to regrade a significant natural land feature, move the planned location of the house by ten feet, double the height of the retaining wall, and substantially increase their construction costs.⁹³ The CPC also quite reasonably took into account that, while the zoning code mandated 3 spaces for a four bedroom house in an RS-2 district (1 for the first bedroom and ½ for each additional bedroom, *rounded to the next higher number if a fraction*), the stated intended use of the property would require only two parking spaces. The BZA granted the appeal.

⁹⁰ See discussion of Planned Development Units, *infra* Section B. The rest of the parking appeals were made up of requests for Front Yard Parking (21% or 44 out of 211) and miscellaneous requests (8% or 17 out of 211) seeking, among other things, variances to allow on-site pick-up/drop-off spots for a day care, variances seeking to make smaller parking spaces than the mandated dimensions, and special exceptions seeking to provide transition parking (when a Business or Industrial district abuts a Residential one, the business can seek to provide part of its required parking in the Residential district, within 150 feet of it). See NEW HAVEN, CONN., ZONING ORDINANCE § 13(b)(3)(c) (2006).

⁹¹ Of course, if the BZA regularly discourages potential applicants from filing hopeless requests, then these figures reflect a selection bias.

⁹² Application of 160 Huntington Road (2003) (on file with the New Haven City Plan Department). The Zoning code for RS-2 districts calls for one parking space for the first bedroom and ½ a parking space for each additional bedroom, rounded to the next higher number if a fraction. NEW HAVEN, CONN., ZONING ORDINANCE § 12(a)(1)(f) (2006).

⁹³ *Id.*

Another example of an approved appeal involved a restaurant planning to add twelve seats to its bar area.⁹⁴ Because New Haven’s ordinance stipulates that 1 parking space is required for every four seats in an eating establishment,⁹⁵ the café would have had to provide three additional spaces; it sought a special exception to provide zero. The advisory report viewed the primary question before the BZA as whether the added seating would pose an “undue burden of parking on the surrounding neighborhood.” The CPC presented its findings:

Repeated site visits show on street parking is generally at a premium in the area. A 2-hour limit is posted on State Street, but long term parking by both residents and employees seems common. All area side streets are designated Residential Parking Zones....Some added cars can be accommodated in the New Haven Parking Authority State Street lot, some will use the limited on street space if available and others will risk parking on side streets even if a posted Residential Parking Zone, worsening city enforcement burdens and affecting livability of those areas around the clock.⁹⁶

Counterbalancing these concerns, the CPC acknowledged that most of the patronage of the café came from walk-ins from the neighborhood. The BZA granted the appeal.

2. Joint Use Parking

Of the various applications that sought to fulfill parking requirements by means other than constructing new parking, the BZA granted 90% of these (27 out of 30). Applications seeking to permit joint use of parking made up the most common subcategory. Joint usage of parking facilities provides a number of benefits; in addition to reducing the total number of off-street spaces and freeing land for other uses, it also

⁹⁴ Application of 944 State Street (1999) (on file with the New Haven City Plan Department).

⁹⁵ NEW HAVEN, CONN., ZONING ORDINANCE § 45(a)(1)(a) (2006).

⁹⁶ Application of 944 State Street (1999) (on file with the New Haven City Plan Department).

reduces the number of access points to streets which may lead to less traffic congestion.⁹⁷ Although the language of the New Haven Zoning Ordinance states that joint use is not permitted, the Ordinance allows the BZA to grant special exceptions when the users have non-overlapping hours of operation.⁹⁸ Because most applicants seeking to share use of parking spaces do so precisely because they have complementary hours (typical daytime uses include banks, offices, and stores, while nighttime or weekend uses include school auditoriums, churches, theaters, bars, and dance clubs), the BZA frequently (86% of the time or 12 out of 14 instances) granted special exceptions for joint use. Considering the desirability of joint use parking and the BZA's apparent amenability to it, it is surprising that the Zoning Ordinance still declares that "joint use shall *not be permitted unless...*"⁹⁹ rather than that "joint use shall be permitted upon approval by the BZA." Although this minor change in wording would probably not lead to any increase in joint use parking applications or approvals, it would serve an important signaling function as to the benefits of sharing parking spaces wherever possible.

A typical approved application for joint use came from a social club in an RM-2 zone requesting a special exception to permit joint use of 8 parking spaces on its site to be shared with residents of the adjoining apartment complex.¹⁰⁰ The social club's peak usage occurred from 9am to 5pm while the residential demand was primarily between the hours of 5pm to 8:30am. The CPC's advisory opinion noted the ideal nature of this application:

The rear of the club's property abuts the north side of the apartment building and the parking spaces to be jointly used are located to the rear of

⁹⁷ WITHEFORD, *supra* note 43, at 25.

⁹⁸ *Id.* at § 45(a)(6).

⁹⁹ NEW HAVEN, CONN., ZONING ORDINANCE § 29(h) (2006) (emphasis added).

¹⁰⁰ Application of 112 Wooster Street (2003) (on file with the New Haven City Plan Department).

the club's [principal] building [so] the existing traffic patters will not be adversely affected...The proposal will better utilize existing parking spaces, which currently remain vacant during the time period involved in this application.¹⁰¹

The CPC concluded that joint use in this situation would be “in accord with the public convenience and welfare,” and the BZA accordingly granted the relief sought.

3. Front Yard Parking

Finally, it is worth noting a final category of relief sought—comprising 21% of recent parking appeals filed—despite the fact that applicants are not seeking to build less parking but rather to build it within their required front yard. Although the Zoning Ordinance forbids property owners from using any required front yard for parking,¹⁰² special exceptions can be granted if the spaces are

necessary to the use with which they are connected...[and] cannot be practically located elsewhere on the lot, [and] their location within a required front yard will not depreciate property values or cause vehicular or pedestrian traffic hazards or substantially decrease the open aspect of the street, and...such parking spaces are properly screened and otherwise arranged in accordance with the requirements of this ordinance.¹⁰³

The BZA granted 75% (33 of 44) of the front yard parking appeals it considered. A typical application which received approval came from a school in an RM-2 zone seeking to make eight front yard parking spaces.¹⁰⁴ In the applicant's favor, the CPC noted both the needs of the school “to maximize parking on this constricted site, within a development program that requires expanded classroom, staff and support service,

¹⁰¹ *Id.*

¹⁰² In RM-2 Districts, the minimum front yard requirement is 17 feet. NEW HAVEN, CONN., ZONING ORDINANCE §14(1)(f) (2006).

¹⁰³ *Id.* at §29(c).

¹⁰⁴ Application of 130 Bassett Street (1999) (on file with the New Haven City Plan Department).

playspace and on site parking where there previously was no staff parking” as well as the school’s plan to put “spreading junipers at the streetface [to] soften the appearance of the parking lot.”¹⁰⁵

The BZA reached a different decision for an applicant who sought to create a parking space in the front yard of her dwelling in an RM-2 District.¹⁰⁶ The applicant, who often returned home from work around midnight, explained that:

[t]he main reason why I am appealing to you is that as a woman I find it undesirable, if not risky, to park far from the house and walk home alone at such late hours. I anticipate this will happen at the very least during snow and street sweeping days. In addition to that, there are two churches very nearby, and it is quite impossible to park near home on Sundays. While such situation does not pose any threat, it is truly an inconvenience, particularly during winter time.¹⁰⁷

The chairman of the East Rock Community Management Team, a coalition of neighborhood residents and businesses, meanwhile, wrote his own letter to the BZA to voice his opposition to the applicant’s request. He claimed that the house’s lack of off-street parking had not resulted in any hardship. Furthermore,

[a]llowing parking in the front yard will consume the entire front yard, make it the only house in the neighborhood with front yard parking, and diminish the aesthetic quality of the surrounding community. [Applicant] should not be allowed to blight the Lawrence street streetscape by parking in her front yard. There is ample on street parking for her use.¹⁰⁸

The advisory report noted a separate issue: the creation of a front yard space would, somewhat counter-intuitively, lessen the on-street supply because a curb cut would be required to enable the resident to access the street from her yard and vice versa.

¹⁰⁵ *Id.*

¹⁰⁶ Application of 113 Lawrence Street (2003) (on file with the New Haven City Plan Department).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

The CPC advised the BZA to consider whether the front yard parking space sought would be “in accord with the public convenience and welfare” and whether the new curb cut— i.e. a section of the street no longer usable for parking--would excessively burden the neighborhood. The BZA denied the applicant’s request.

4. The Role of the City Plan Department

In addition to its role in advising the BZA as to when to grant special exceptions, the City Plan Department has more informal ways in which it tries to keep parking from overpowering New Haven’s downtown. For example, whenever possible, it encourages developers to lease spots from the New Haven Parking Authority in existing garages rather than to build their own parking.¹⁰⁹ The required parking for residences in the BD-1 District need only be located within a 1000 foot radius of the outside entrance of the dwelling (as opposed to the 300 feet radius normally required), which means that most developers are able to lease space for their residents in one of the large municipal garages. In cases where they are not, the city has readily granted waivers of the walking distance requirement so that developers may avoid building additional parking.¹¹⁰

Paul Wessel, former Deputy Economic Development Director of New Haven, elaborated on the city’s forgiving approach to parking requirements:

Regardless of what the regulatory requirements are on paper, we weren’t requiring construction of off-street parking garages. Typically we’d require [developers] to come up with a five-year commitment in a letter of agreement with the New Haven Parking Authority. Typically, they’d be agreements with the Temple Street Garage and we’d joke that we were

¹⁰⁹ Interview with Michael Piscitelli, Assistant Director of Comprehensive Planning, New Haven City Plan Department, in New Haven, Conn. (Nov. 22, 2006).

¹¹⁰ *See, e.g.*, 227 Church Street, an office building converted into luxury rental apartments in a BD district. The BZA granted a special exception for developer to provide 105 of its required 145 spaces through lease of spaces in New Haven Parking Authority facilities located between 1350 and 1800 feet away, rather than the required 300 feet away.

selling those spots ten times over. I think with a wink and a nod we essentially allowed people to develop without creating any stringent conditions on parking. At the same time...[b]ecause we have a public Parking Authority, we had the ability to develop parking as we sensed demand required.¹¹¹

In the BD District (to which the 300 foot radius does apply), the City Plan Department has even allowed a newly converted apartment building to satisfy part of its minimum requirement by leasing spaces in a garage that does not, as of yet, exist.¹¹² This type of flexibility on the part of the City Plan Department is especially commendable in a city like New Haven, which has a charming and compact downtown, a large student population (many of whom move in to the downtown residential properties without cars in tow), and a strong rail network which makes it possible to get to other regional hubs without driving.

None of this is to say that the City Plan Department is not acutely aware of the importance of having adequate parking. At a typical recent BZA public hearing, representatives of the City Plan Department and the BZA repeatedly questioned applicants about parking, even when it was not the subject of the exception or variance sought.¹¹³ For example, two appeals seeking to make smaller side and rear yards than the Zoning Ordinance required provoked questioning as to whether the variances would result in less potential space for parking on-site. A request for a special exception to permit an outpatient clinic and public health center in a BD zone, meanwhile, precipitated an extended discussion of how much parking would be needed for staff and patients. In

¹¹¹ Telephone Interview with Paul Wessel, former Director of Traffic and Parking, in New Haven, Conn. (Dec. 14, 2006).

¹¹² Interview with Michael Piscitelli, Assistant Director of Comprehensive Planning, New Haven City Plan Department, in New Haven, Conn. (Nov. 22, 2006). The garage referred to is the proposed Mid-Block Garage.

¹¹³ New Haven Board of Zoning Appeals Public Hearing (Mar. 6, 2007).

other words, through first-hand observation and a context-specific approach to enforcing the provisions of the Zoning Ordinance, the CPC and the BZA consistently engage with the question of how best to determine the “needs and aspirations of the city.”

B. Section 65: Planned Development Districts and Overall Parking Plans

The appeals process is not the only source of flexibility in the parking provisions of New Haven’s Zoning Ordinance; of critical importance for larger-scale land uses are the Planned Development District and Overall Parking Plan devices. The Planned Development District (PDD) was an innovation of the 1963 redrafting. A PDD can be created by the Board of Aldermen when a tract of land of two acres or more is developed “as integrated and harmonious units, and where the overall design of such units is so outstanding as to warrant modification of the standards contained elsewhere in this ordinance.”¹¹⁴ A recent examination of the PDD in New Haven found that,

[i]n practice, the device makes large-scale land uses—hospitals, apartment buildings, company offices, schools, a community of beach houses—possible where underlying zoning did not envision them. Because it effectively suspends existing land use regulations, it offers the city an escape where underlying zoning is unable to meet the needs of changing communities, and a way forward that does not require city planners to accurately predict future need.¹¹⁵

By 1970, New Haven’s Zoning Ordinance included a section devoted specifically to the city’s three major institutions (Yale University, Yale-New Haven Hospital, and the Hospital of Saint Raphael) on the premise that “certain types of educational and health institutions are of such size and/or impact that their future development must be guided in

¹¹⁴ NEW HAVEN, CONN., ZONING ORDINANCE §65 (2006).

¹¹⁵ Shruti Ravikumar, *Unplanned Change, Challenging Tradition in Land Use Controls: The Case of New Haven’s Planned Development District 5* (2006) (unpublished J.D. paper, Yale Law School) (on file with author).

order to protect the general welfare of the city of New Haven and its citizens.”¹¹⁶ Unlike the 1963 provision creating the PDD, the “Institutional Development” section included specific instructions as to how parking requirements were to apply to these special zoning districts. Although the Institutional Development section was subsequently struck from the Ordinance on the grounds that it was “illegal and inoperative,”¹¹⁷ its main legacy has been the introduction of the concept of the Overall Parking Plan (OPP)—a critical planning device for New Haven’s three major institutions to this day.

The OPP device was conceived to detail the parking needs generated by the institution and the number of spaces in its supply. Once an OPP was approved by the BZA, the maximum walking distance between individual buildings and their parking facilities would be waived.¹¹⁸ Yale University (which currently has 3654 parking spaces in its system),¹¹⁹ Yale-New Haven Hospital (6214 spaces),¹²⁰ and the Hospital of Saint Raphael (1917 spaces)¹²¹ all have OPPs. The OPP device recognizes the need for “flexibility in [zoning] regulations, the reality that employees of large institutions with multiple buildings may work in several locations within a campus, the economic efficiency of having larger parking facilities, and the desirability of having systematic centralized parking resources to prevent a pattern of large buildings surrounded by seas

¹¹⁶ NEW HAVEN, CONN., ZONING ORDINANCE §66 (1975).

¹¹⁷ Yale-New Haven Medical Center Parking History, Attachment 1 to BZA file no. 06-74-S (on file with the New Haven City Plan Department).

¹¹⁸ NEW HAVEN, CONN., ZONING ORDINANCE §66(B)(1)(c) (1975).

¹¹⁹ Letter from Laura A. Cruickshank, University Planner, Yale University, to Karyn Gilvarg, Executive Director, City Plan Department (Dec. 20, 2006) (on file with the New Haven City Plan Department).

¹²⁰ As of the OPP approved in 2002. This OPP technically applies to not only Yale-New Haven (Y-NH) Hospital but the Yale School of Medicine, and the Connecticut Mental Health Clinic. A number of the spaces which count towards Y-NH’s supply, most notably the Air Rights Garage which accounts for 2602 spaces, are public parking owned by the City of New Haven. *Medical Area Overall Parking Plan* (on file with the New Haven City Plan Department).

¹²¹ As of February, 2005. *Hospital of Saint Raphael Strategic Parking Plan March 2005* (on file with the New Haven City Plan Department).

of asphalt.”¹²² OPPs have thus been beneficial to the city’s major institutions, enabling them to take advantage of efficiencies of scale and to concentrate their parking supply in specific locations, rather than provide parking by every building.

OPPs have also proved valuable to the municipality. Karyn Gilvarg, Executive Director of the City Plan Department, says that, “[f]rom the city’s point of view, Overall Parking Plans are a useful thing. We want institutions to build the *minimum* amount of parking spaces *but* we don’t want pushback where they start parking in neighborhoods.”¹²³

Interestingly, although the present zoning ordinance includes no mention of any *initial* filings of Overall Parking Plans, it assumes their existence by including detailed provisions on the *amending* of Overall Parking Plans of PDDs. Under the “Subsequent Performance” subhead of the PDD section, the Ordinance states that, where an OPP covers an area of 150 or more acres, changes involving 100 or more parking spaces must be submitted to the Board of Aldermen for approval, while those less than 100 spaces must be submitted for administrative review by the City Plan Department.¹²⁴

Before 1998, Yale University’s OPP existed more as an abstraction than as a document in the City Plan Department’s files. Essentially, Yale would inform the city that they were doing expansion and declare that their parking supply was sufficient.¹²⁵ After 1998, this informal system changed. In 1997, Yale had sought a special exception to permit use of existing parking within the University parking system for a new dormitory it wanted to construct at 50 Tower Parkway, the site of a former university

¹²² New Haven Medical Area Parking Study, July 2002, Appendix B (on file with the New Haven City Plan Department).

¹²³ Interview with Karyn Gilvarg, Executive Director, New Haven City Plan Department, in New Haven, Conn. (Apr. 11, 2007).

¹²⁴ NEW HAVEN, CONN., ZONING ORDINANCE §65(e)(4) (2006).

¹²⁵ Interview with Karyn Gilvarg, Executive Director, New Haven City Plan Department, in New Haven, Conn. (Apr. 11, 2007).

parking lot, near a busy shopping street.¹²⁶ The CPC advised the BZA to grant the exception with a number of conditions, most notably that Yale begin actually submitting to the City Plan Department its Overall Parking Plan for annual review and approval. The CPC further stipulated that the University submit a report on Yale-City coordination efforts to maximize short term parking availability in the area around the lost lot, and ensure that university-related users did not overwhelm the public lots in the nearby Broadway retail area.¹²⁷

To comply, the university conducted a parking demand and occupancy study. Dismissing the requirements for universities that are actually laid out in the Zoning Ordinance,¹²⁸ Yale pointed out that the New Haven Code's parking standards had been developed more than thirty years ago and that zoning codes are generally "compromise documents influenced by factors such as...a lack of original information and/or research."¹²⁹ It accordingly dismissed the idea that standardized demand guidelines for the parking needs of universities would be of much relevance to Yale:

Data is usually easier to collect in suburban and rural areas and for colleges at self-contained campuses. An urban university like Yale is intertwined with its surroundings unlike most closed campus settings. An urban institution provides many opportunities to reduce parking demand below most parking standards. Students, staff and faculty have greater commuting options such as buses, trains, car/van pools or biking/walking to work. The urban setting also provides alternate parking choices such as

¹²⁶ It also sought a Building Coverage Variance, Floor Area Ratio Variance, and Useable Open Space Variance to build the dormitory. Application of 50 Tower Parkway (1997) (on file with the New Haven City Plan Department).

¹²⁷ These efforts included the end of early bird and monthly rates in lots in the Broadway area on the City's part, and shuttle system reviews and bus and train discounts given to employees who agreed not to drive to work on Yale's part. Additionally, Yale agreed to discourage its students, employees, and faculty from using on-street and short-term parking facilities. Letter from Eduardo E. Perez, Secretary, Board of Zoning Appeals, City of New Haven, to Yale University (July 7, 1997) (on file with the New Haven City Plan Department).

¹²⁸ See *supra* text accompanying note 37.

¹²⁹ Hunnicutt Davis Associates, Overall Parking Plan: Yale University, Central and Science Hill Campuses, Parking Demand and Occupancy (June 26, 1998) (on file with the New Haven City Plan Department).

legal on-street parking and out-of-system alternate private and public parking facilities.¹³⁰

In the spring of 1998, the University determined that its Central and Science Hill campuses included a system of forty-three surface lots and two garages (Pierson-Sage and the Chapel/York Garage) for a total of 3507 spots.¹³¹ Yale noted that, since only 2827 of these spaces were assigned to specific users, its system had a 17% excess capacity.¹³²

Every year since 1998, Yale has submitted to the City Plan Department an updated OPP explaining what has changed in their parking supply (e.g., a former parking lot is being transformed into a biology lab, thus resulting in a loss of parking spaces, or a new garage is being built, thus adding a number of spaces to the supply) and demand (population counts for students, faculty, and staff). Yale can thus assure the city that, whatever changes are occurring, the institution still has an “overload,” i.e., spaces that are not assigned to specific users within the Yale system.

C. Section 45(a)(1): The Central Business District Exemption

Relatively few parking-related requests are filed from applicants located in New Haven’s Central Business District because all non-residential uses in the BD, BD-1, and BD-2 zones are exempted from off-street parking requirements.¹³³ This seems to have been largely a pragmatic decision on the part of the redrafters who noted that, while parking requirements were a

¹³⁰ *Id.*

¹³¹ Hunnicutt Davis Associates, Overall Parking Plan: Yale University, Central and Science Hill Campuses, Facilities and Parking Policies: May 1998 (June 26, 1998) (on file with the New Haven City Plan Department).

¹³² *Id.*

¹³³ See Appendix A.

vital measure to insure more efficient business and industrial facilities and to relieve congestion in the streets, [a]n exception is made in the Central Business District, where experts are agreed that off-street parking cannot effectively be provided on an individual-lot basis but must be provided in a coordinated way by public, commercial and cooperative private facilities.¹³⁴

Whatever the redrafters' motivations, exempting the Central Business District (CBD) from non-residential requirements was a critical move in maintaining the intensity of uses that characterizes any vibrant CBD. As Donald Shoup has explained:

It's not hard to see how a conventional parking lot can undermine a CBD's success; a downtown surface lot often has a very high and very visible opportunity cost.... But even when off-street parking is dressed up or hidden—when it is placed underground, or in a structure that has retail uses at the street level—it is inimical to density. Because land is most expensive in the CBD, off-street parking is also most expensive there, and constructing it uses up capital that could otherwise be invested more productively. More important, if off-street parking is *required*, as it is in many cities, then it becomes rational to locate outside the CBD. A parking requirement applied uniformly across a city implicitly discriminates against development in the CBD, because the burden of complying with the requirement is greater in the CBD than almost anywhere else.¹³⁵

New Haven is not alone in recognizing a special need to protect the density of its CBD from the same parking requirements it imposes on other districts. A survey conducted in 1972 found that, of cities with populations over 100,000 (of which New Haven was—and is—one), 76% either exempted their CBD from parking requirements or mandated less stringent requirements for it.¹³⁶ Not surprisingly, the survey found regional patterns: East Coast cities, which are on average older—and thus denser—than those farther west, were much more likely to grant their downtowns variations or

¹³⁴ REZONING, *supra* note 30, at 49.

¹³⁵ Michael Manville & Donald Shoup, *People, Parking, and Cities*, ACCESS 25, Fall 2004, at 4.

¹³⁶ WITHEFORD, *supra* note 43, at 24.

exemptions.¹³⁷ The survey noted too that cities which exempted their CBDs generally had much more extensive municipal parking programs—as New Haven does—than those that did not. In CBD-exempting cities with 100,000+ populations, there were over twice the amount of municipally-provided spaces than in cities where CBD uses were required to provide their own parking.¹³⁸ New Haven’s Zoning Ordinance acknowledges the complementary nature of the New Haven Parking Authority and its CBD exemptions, which “follow an established policy of providing public, commercial and cooperative private parking...in the intensively developed Central Business District, for those customers, employees and visitors who do not arrive by public transportation.”¹³⁹ It also highlights the special role of the CBD noting that the “intensity of uses is one of the main determinants of the vitality of the Central Business District. It is the purpose of these regulations to encourage such intensity.”¹⁴⁰

And yet: one could be forgiven for not realizing that there are no off-street parking requirements in New Haven’s Central Business District. In the general downtown area, there are twenty municipally owned parking garages and lots as well as thirty-two privately owned public parking facilities with a combined capacity of 13,100 cars (*see* Appendix B).¹⁴¹ Four municipal garages—the 2400-space Air Rights Garage, the 1280-space Temple Street Garage, the 750-space Crown Street Garage, and the Coliseum Garage, which, although it is no longer in use, still¹⁴² towers over the debris of the Coliseum itself—dominate the skyline of the southern half of downtown, much as the

¹³⁷ *Id.* at 25.

¹³⁸ *Id.* at 31.

¹³⁹ NEW HAVEN, CONN., ZONING ORDINANCE §45(a)(1) (2006).

¹⁴⁰ *Id.* at §41.

¹⁴¹ *See* Wilbur Smith Associates, Downtown New Haven Parking Strategic Plan (May 2004) [hereinafter Strategic Plan], *available at* http://www.cityofnewhaven.com/EconomicDevelopment/pdfs/NewHaven_Parking_StrategicPlan.pdf.

¹⁴² At least at this writing in May of 2007.

gothic spires of Yale, the steeples of classic New England churches, and the office towers of government and industry dominate the skyline of its northern half.¹⁴³ These statistics do not even include facilities for private use only, of which there are many.

To some extent, the dominance of parking in much of New Haven's downtown can be explained by the fact that, unless a city has a really great public transportation system (a la New York City), it will need a certain amount of off-street parking to accommodate commuters, visitors, and residents who get around by car. One way to accomplish this is to surround each building in the CBD by a bland, but relatively small, expanse of asphalt. Another way is to take the same *amount* of parking but disperse it differently, that is to say concentrate it in huge municipal structures. In that scenario, which is New Haven's, parking dominates some sections of a downtown but is less consistently present. When people complain about parking in downtown New Haven, Paul Wessel has a ready response: "The downside of the small buildings and how tight they are and how beautiful they are is that parking is tough...Part of what makes New Haven New Haven is how dense it is downtown. We could have parking lots every other block, but it would be awful. We would hate it. It would look like Stamford."¹⁴⁴

D. Parking Restraint Policies or What is not in the New Haven Zoning Ordinance

1. The Parking Lot Problem

Another reason why there is so much parking in downtown New Haven, and a reason that there's so much *non*-municipal parking is that, while non-residential uses are *exempted* from providing parking, they are not *prohibited* from doing so. Parking is a use

¹⁴³ Within the stricter limits of the BD and BD-1 Districts, there are 11,029 off-street spaces open to the public.

¹⁴⁴ Mary E. O'Leary, *No Parking Zone*, NEW HAVEN REGISTER, Sept. 26, 2004.

by right in downtown New Haven; any office, restaurant, store, or other establishment can provide parking for its customers or employees if it so chooses.

The parking lot has wrought particular damage on the life and landscape of American cities. Parking lots destroy the continuity of street fronts, damage the vitality of city blocks, and discourage pedestrian activity by creating the perception (and often the reality) of an unsafe street. Parking lots are also ugly—with owners having no incentive to beautify them since aesthetics are not what attract parking customers—and, worse still, they are boring. They replace a “historical accumulation of intricate, complex, and often random infrastructure, [a] built environment largely unpredictable and thus exciting to the eye and mind”¹⁴⁵ with a “simple landscape.”¹⁴⁶

The physical properties of lots also make them harmful to the environment. Large swaths of pavement can degrade water quality by causing stormwater to collect pollutants and flow into local waterways;¹⁴⁷ they can also increase the severity of flooding and raise summer air temperatures.¹⁴⁸ In urban areas specifically, “high temperatures of unshaded parking lots cause evaporation of gasoline from cracked hoses and other parts of cars’ fuel systems[,]...contribute to urban heat islands and thus the formation of smog,...[and] the materials used for paving can contribute to air pollution.”¹⁴⁹ Expanses of asphalt also alter precipitation regimes and increase wind speed.¹⁵⁰

Another problem with parking lots is what they replace. Whereas in rural areas, developers may “pave paradise and put up a parking lot,” in urban downtowns, more

¹⁴⁵ JAKLE & SCULLE, *supra* note 11, at 8.

¹⁴⁶ *Id.* at 96.

¹⁴⁷ See Kera Abraham, *Green Heart: Design is Critical for Urban Environment*, EUGENE WEEKLY, (May 19, 2005), <http://www.eugeneweekly.com/2005/05/19/coverstory.html>.

¹⁴⁸ CHILDS, *supra* note 18, at 185.

¹⁴⁹ *Id.* at 193.

¹⁵⁰ JAKLE & SCULLE, *supra* note 11, at 97.

often than not, they *raze* paradise to put up a parking lot.¹⁵¹ In other words, older—often historic—buildings are demolished and the land on which they sat gets used for parking. Michael Piscitelli, Assistant Director of Comprehensive Planning in New Haven’s City Plan Department, characterizes as a “major problem” the fact that “if people want to build parking, we can’t stop them.”¹⁵² As examples, he points to a parcel bordered by Grove, Audubon, Orange, and State Streets which was turned by its purchasers into an enormous parking lot as well as a “beautiful” building on State Street which a pizza restaurant tore down in order to provide adjacent customer parking.¹⁵³ A recent report noted the ironic damage that teardowns do in New Haven: the new parking lots exist to “ease access to the city” but their very existence destroys a good part of what people want to access in the first place, i.e., “the urban character of the ‘street wall’ that defines the city.”¹⁵⁴

Cities facing a similar problem are currently experimenting with the best ways to combat teardowns. In Tulsa, Oklahoma, which ranks second in the nation for the most surface parking as a percentage of its total downtown space,¹⁵⁵ the Tulsa Preservation Committee is fighting to get the city to withhold incentives for developments which include demolition of buildings for surface parking in its CBD, and to change surface parking from a use by right to a special exception in the CBD.¹⁵⁶

Cities should enact stronger preservation laws or specific amendments to the zoning ordinance to protect historic buildings from being torn down in favor of parking

¹⁵¹ JONI MITCHELL, *Big Yellow Taxi*, on LADIES OF THE CANYON (Warner Brothers Records 1970).

¹⁵² Interview with Michael Piscitelli, Assistant Director of Comprehensive Planning, New Haven City Plan Department, in New Haven, Conn. (Nov. 22, 2006).

¹⁵³ *Id.*

¹⁵⁴ Strategic Plan, *supra* note 141, at 4.

¹⁵⁵ TulsaNow, Tulsa Needs “CORE” Strength, Aug. 21, 2006, <http://www.tulsanow.org/2006/08/tulsa-needs-core-strength.asp>.

¹⁵⁶ *Id.*

lots. It is harder, however, to know how best to approach urban parking lots that don't rise from the ashes of historic buildings. A city completely devoid of parking lots would hardly be a feasible—or even necessarily a desirable—prospect. First, parking lots offer some advantages to drivers. It can be easier to gauge the availability of empty spaces in a lot than in an enclosed garage. Some lots, especially those between a business and a public road, may also provide an increased sense of safety to drivers since they are visible from the street.¹⁵⁷ Second, if a developer or business owner desires—or is required--to provide parking, it is far cheaper and simpler to pave a swath of land than to hire an architect and contractor to build a garage.

Finally, parking lots often serve as critical interim uses for urban landowners. For example, a landowner taking proposals from condominium developers might use the land as a parking lot in order to generate some income while waiting for a more permanent use to take shape. New Haven razed the old Shartenberg Department Store as part of urban renewal in the 1960s, used the land as an “interim” parking lot (for more than forty years!) until, in 2006, it began taking proposals for fancy developments—from boutique hotels to luxury apartment buildings to occupy the spot.¹⁵⁸

Parking lots can also serve as a useful tool for land assembly purposes. When land is assembled in central cities, parking lots are often used to force out holdouts or to pay taxes while waiting for all necessary parcels to come into the same hands. Thus, there is an argument to be made that completely prohibiting parking lots as an interim use

¹⁵⁷ California's state court has gone so far as to hold that public commercial parking garages are “inherently dangerous” and that crime in them is foreseeable. See Shannon D. Sweeney, Note, *“Inherently Dangerous” Premises: Sharon P. v. Arman, Ltd. Dictates That Criminal Acts of Third Parties Are Foreseeable in California Commercial Parking Structures*, 33 U.S.F. L. REV. 521, 521 (1999).

¹⁵⁸ See Paul Bass, *New Haven's New Skyline, Envisioned*, NEW HAVEN INDEPENDENT, Sept. 13, 2006, http://www.newhavenindependent.org/archives/2006/09/new_havens_new.php.

would actually do damage to cities by making some private development prohibitively expensive. The answer might lie in some sort of sunset clause whereby parking lots are permitted for a set period of time (perhaps a few years) before they begin to be taxed at a very high rate.

2. The Maximums Solution?

Other cities have attempted to control the spread of parking in their downtowns not so much by regulating teardowns and the presence of parking lots as by writing parking *maximums* into their zoning codes. New York City, San Francisco, Seattle, Portland, and Boston are among the large cities that cap the amount of parking that is allowed in their CBDs. Downtown Boston, for example, has been subject to a freeze on public off-street parking since 1973.¹⁵⁹ Smaller cities such as Eugene, Oregon, Gainesville, Florida, and Cambridge, Massachusetts have also started adopting upper limits on parking.

Maximum parking standards have been enacted for a number of different but complementary reasons. Portland, Oregon's maximums, for example, were initiated by the state Department of Environmental Quality to help meet air quality standards for ozone and to boost its mass transit system.¹⁶⁰ Beaverton, Oregon, viewed its parking standards primarily as a way to combat sprawl and create more walkable neighborhoods while Eugene was concerned with reducing surface runoff and improving water

¹⁵⁹ Access Boston 2000-2010, *Parking in Boston* 19 (2001) available at <http://www.cityofboston.gov/transportation/accessboston/pdfs/parking.pdf>. This freeze does not actually differentiate Boston from New Haven as much as it may seem since it applies only to *public* spaces. Off-street parking built exclusively for employees, guests, or clients of a particularly building may still be granted exemption. *See id.* at 21.

¹⁶⁰ Millard-Ball, *supra* note 45.

quality.¹⁶¹ When San Francisco replaced its minimum requirements with maximum standards allowing no more than 0.75 parking spaces per downtown dwelling unit in June of 2006, it was motivated in part by concerns over housing affordability.¹⁶² “The city’s reasoning,” wrote Adam Millard-Ball, a Senior Associate in the consulting firm that helped San Francisco develop its new policies, “is that, with less than one space per unit, developers won’t automatically add a parking space to the cost of an apartment, but will choose to unbundle instead.”¹⁶³ Amit Ghosh, San Francisco’s Chief of Comprehensive Planning, explained that the city is trying “to get away from the situation where people are forced to pay for parking, regardless of whether they have a car. The true costs of car ownership need to be made visible to owners and renters.”¹⁶⁴

The policies themselves vary. In 2007, Seattle lowered minimum requirements in some areas to reflect “Seattle-specific demand data, transit accessibility and City transit and walking goals;” in “urban center” and light rail station areas, they were eliminated completely.¹⁶⁵ The city also capped the amount of space that could be devoted to parking, mandating a one-acre surface parking maximum, with the partial aim of reducing new impervious surfaces.¹⁶⁶ Beaverton similarly set maximums on the amount of land that developers could use for parking; because the maximums do not specify an

¹⁶¹ *Id.* This would be achieved by reducing the amount of land paved over for parking. See discussion of environmental harms of parking lots, *supra* Part III.D.1.

¹⁶² Baker, *supra* note 58.

¹⁶³ Millard-Ball, *supra* note 45.

¹⁶⁴ *Id.*

¹⁶⁵ Commercial Code 2006 Amendments: Neighborhood Business District Strategy: Summary of Changes, 13 (Jan. 20, 2007), available at www.seattle.gov/dpd/stellent/groups/pan/@pan/@plan/@proj/documents/web_informational/dpdp_019067.pdf.

¹⁶⁶ *Id.*

upper limit of *spaces*, developers are free to build garages if they wish to provide more parking than they could do on a surface lot.¹⁶⁷

Cambridge, meanwhile, has taken an even more daring approach, implementing what could be thought of as a “maximum plus” restriction. Like Boston, the city to which it is adjacent, it has had general parking maximums (framed in terms of a number of spaces rather than a maximum area) for more than twenty years. More recently, it implemented a stringent transportation demand management (TDM) program.¹⁶⁸ Developers must submit a TDM plan demonstrating how they will reduce car use to ten percent below the 1990 average for that census tract. Under Cambridge's regulations, developers must pledge “measures such as appropriate parking supply, subsidized transit passes, and parking charges....Developers who don't meet the targets for car use can be fined. In a worst-case scenario, their parking facilities can be shut down by the city.”¹⁶⁹

The worry, of course, is that these restraint policies will deter development. A survey conducted to determine whether parking caps affect the economic vitality of urban centers, however, found no clear evidence that maximums or other “parking restraint policies” had led to any decrease in retail or wider economic vitality.¹⁷⁰ Furthermore, Cambridge's Parking and TDM Officer claims that these “maximum plus” requirements have had no negative impact on development because “Cambridge is a uniquely attractive place to do business.”¹⁷¹ The chief planner of Gainesville, Florida, which itself recently implemented maximums, expressed a similar sentiment: “We're saying to developers that

¹⁶⁷ Millard-Ball, *supra* note 45.

¹⁶⁸ See The Department of Cambridge Community Development, <http://www.cambridgema.gov/cdd/et/tdm/index.html> (last visited May 6, 2007).

¹⁶⁹ Millard-Ball, *supra* note 45.

¹⁷⁰ SHOUP, *supra* note 6, at 92-93. The survey was conducted by Ben Still and David Simmonds.

¹⁷¹ *Id.*

we want to provide a walkable, human-scale community, and if you don't want to go along with that, we're not going to kill ourselves trying to keep you here.”¹⁷²

New Haven, however, rightly or wrongly, is not viewed by most developers as a “uniquely attractive place to do business.” Although the city’s downtown has seen encouraging revitalization in the last few years,¹⁷³ it has long battled the perception that it is an economically-depressed and crime-ridden city, inhospitable to most development. In other words, New Haven is used to being in the subsidy business, not in the business of making demands on its developers.¹⁷⁴ Michael Piscitelli explained that “we [i.e. New Haven] need them [i.e. developers] more than they need us;”¹⁷⁵ as long as this is true, it is unlikely that the city would be in a position to introduce parking maximums.

IV. Other Means for the City To Manage its Parking Supply

It makes little sense to discuss the parking provisions of a zoning code in isolation from the other types of parking over which a city can exert control: 1) off-street municipal garages and lots, and 2) on-street spaces. In New Haven, the relationship among the three forms of parking is particularly intertwined; as Part III noted, the availability of public parking regularly influences the decisions of the BZA to grant

¹⁷² *Id.*

¹⁷³ See Kim Martineau, *Temple Street Makes Comeback; New Haven Mayor Celebrates its Rebirth*, HARTFORD COURANT, Apr. 2, 2006, at B5.

¹⁷⁴ Interview with Michael Piscitelli, Assistant Director of Comprehensive Planning, New Haven City Plan Department, in New Haven, Conn. (Nov. 22, 2006).

¹⁷⁵ *Id.*

special exceptions to the parking requirements of the city's Zoning Ordinance.¹⁷⁶ This Part will discuss the creation of the Parking Authority as a solution to the city's parking woes, and then turn to the issue of how best to allocate on-street spaces.

A. Public Off-Street Parking

1. Birth of the New Haven Parking Authority

When Richard Lee gave his 1951 speech about New Haven's parking problem, he had a specific solution in mind, a "splendid means" of aiding the revitalization he felt the city so sorely needed. That solution was based not on forcing private developers to provide parking adjacent to their land use but rather on getting the municipality itself to create centrally located parking structures via the establishment of a parking authority. Although municipal involvement in off-street parking does not have to involve a parking authority (many cities simply converted land they owned into public parking and entrusted its operation to an existing branch of local government), the authority form has many advantages.¹⁷⁷ A parking authority combines benefits (e.g., the power of eminent domain) and responsibilities (fair pricing and a general duty to serve the public interest) unique to governmental bodies with private sector efficiency and initiative.¹⁷⁸ Although authorities are formed by government action, they operate largely outside of the

¹⁷⁶ See, e.g., the rejected application for front yard parking at 113 Lawrence Street (*see supra* text accompanying notes 106-08) and the accepted application for a waiver of the maximum walking distance for 227 Church Street (*see supra* note 110).

¹⁷⁷ Of cities responding to a survey on the organizational control of their municipal lots in 1953, for example, 45% fell under the operation of the local police department, 31% under the public works department, and only 3% under a Parking Authority. THE DIVISION OF RESEARCH BUREAU OF PUBLIC ROADS, PARKING GUIDE FOR CITIES 43 (1956).

¹⁷⁸ See EDWARD G. MOGREN, PARKING AUTHORITIES 14 (1953).

traditional governmental structure.¹⁷⁹ Authorities are self-sustaining, independent entities and, as such, they are shielded from annual budget considerations or partisan shifts.¹⁸⁰

As was the case in other cities with parking problems in the middle of the twentieth century, the most urgent proponents of municipal involvement were New Haven’s merchants.¹⁸¹ It was urban retailers, after all, who had the most to lose from the parking crisis; car-oriented shoppers were deserting congested urban downtowns in droves for suburban malls offering plentiful free parking. “The existence of great stores,” one commentator wrote in 1938, “is...threatened by [lack of downtown parking, which] daily becomes more acute and depressing. On its solution depends the shape—and perhaps the fate—of the city of the future.”¹⁸²

The Retail Board of Governors of the New Haven Chamber of Commerce had long taken an active interest in parking issues and the effect they had on business. As early as 1930, the Board had voted in favor of a voluntary arrangement whereby merchants and their employees agreed not to park in the center of the city so as to free up spaces for customers.¹⁸³ Over the next few decades, Board members discussed everything from the introduction of parking meters (the consensus was that they were a “definite innovation”)¹⁸⁴ to the possibility of a garage-cum-bomb shelter being built under the Green¹⁸⁵ to the tickets customers occasionally received—and complained to merchants about—for double parking while they shopped (the Retail Board agreed to take this “overzealous enforcement of parking regulations by the New Haven Police

¹⁷⁹ *See id.*

¹⁸⁰ *See id.* at 17-18

¹⁸¹ *See* JAKLE & SCULLE, *supra* note 11, at 91.

¹⁸² *Id.* at 41.

¹⁸³ Minutes of a New Haven Chamber of Commerce Retail Board of Governors Meeting, Dec. 9, 1930 (on file with the New Haven Museum & Historical Society).

¹⁸⁴ *Id.*, Meeting of July 31, 1939.

¹⁸⁵ *Id.* Meeting of June 30, 1950.

Department” straight to the Mayor.)¹⁸⁶ The biggest parking, issue, however, was that there simply wasn’t enough of it.

The bill creating the New Haven Parking Authority was essentially drafted by the Retail Board.¹⁸⁷ The Act stipulated that the New Haven Parking Authority (NHPA) would consist of five members and be invested with the power “to create, establish and operate parking facilities.”¹⁸⁸ The land for such facilities could be acquired via “purchase, gift, devise, lease, exchange or other contract or exercise of the power of eminent domain” but would be subject to the approval of the Board of Aldermen and a report of the City Plan Commission on the “suitability for parking use of any proposed real property.”¹⁸⁹

Although the Connecticut General Assembly passed the Bill in July of 1951, the NHPA’s existence was not yet guaranteed; the Act was to take effect only “upon the approval of a majority of the electors voting thereon at a special election to be held the tenth day of September 1951.”¹⁹⁰

This clause was a last-ditch effort by Mayor William Celentano to table the creation of the NHPA. Handwritten notes found among his official papers indicate his views, at least circa 1950, of the Retail Board’s pet project:

tremendous pressure on my office to support some sort of bill...this will add to our tax exempt list which is the largest in the state...such P[arking] A[uthorities] do not exist in most cities of the country...we have enough debt at present...This is only a group in the Retail Div[ision] doing all this and [they] do not represent [the] C[hamber] of C[ommerce]...Retail

¹⁸⁶ *Id.* Meeting of Nov. 28, 1956.

¹⁸⁷ Flyer, New Haven Chamber of Commerce, Vote Yourself a Place To Park (Aug. 15, 1951) (on file with the New Haven Museum & Historical Society).

¹⁸⁸ Senate Bill No. 796 (Conn. 1951). The NHPA’s bailiwick was, as is typical, *off-street* parking alone; all on-street issues, including ticket enforcement, remained in the hands of the city government.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

Division is just a bunch of phanatics [sic]...this is a great misrepresentation to the public by the retail division.¹⁹¹

The day before the referendum was to be held, Mayor Celentano expressed his feelings in a manner more suited for public dissemination, reminding the people of New Haven via a press release that a Parking Authority would not simply produce “an unlimited number of free parking spaces.”¹⁹² Celentano also underlined that the Parking Authority would have the power to condemn private property and that the Bill would most likely involve the expenditure of large sums of municipal funds and a possible hike in municipal tax rates.¹⁹³ But, of course, he was careful to stress, he was not telling anyone how to vote.

The Retail Board of Governors, meanwhile, was busy telling people precisely how to vote. In June of 1951, they had convened a meeting to acquaint all downtown merchants with the importance and seriousness of the referendum and to arrange for the financing of promotional efforts.¹⁹⁴ Central to their efforts were “Vote ‘YES’ for More Parking” flyers. The larger version of these flyers noted the “progressive communities” such as Baltimore, Indianapolis, Pittsburgh, Detroit, and San Francisco which had already established Parking Authorities.¹⁹⁵ They also stressed that eminent domain would be employed “*only* upon the recommendation of the City Planning Commission and with the specific authorization and approval of the Board of Aldermen,” that the land would be

¹⁹¹ Handwritten notes by William Celentano (undated but from 1950 folder) (on file with the New Haven Museum & Historical Society).

¹⁹² Press release, Mayor William Celentano (Sept. 9, 1951) (on file with the New Haven Museum & Historical Society).

¹⁹³ *Id.*

¹⁹⁴ Minutes of a New Haven Chamber of Commerce Retail Board of Governors Meeting, June 8, 1951 (on file with the New Haven Museum & Historical Society).

¹⁹⁵ Flyer, New Haven Chamber of Commerce, Vote Yourself a Place To Park (Aug. 15, 1951) (on file with the New Haven Museum & Historical Society).

compensated at fair value, and that condemnation proceedings had “rarely, if ever” been employed by Parking Authorities in other cities.¹⁹⁶ Smaller flyers simply stated the Retail Board’s take-home message: “More parking means greater shopping convenience—less time lost—better business--more jobs” while “No parking means bankruptcy.”¹⁹⁷

Richard Lee was also busy marshalling support for the bill. He announced that “[t]he Parking Authority is a necessity if we are to revitalize our mercantile, our central professional and general business channels”¹⁹⁸ and enlisted the Democratic Party machine in his efforts to make the “necessity” into a reality. As referendum day approached, Lee threw more than 600 ward workers and more than \$2000 of the local Democratic Party’s coffers into “frontline action” to—in modern parlance--get out the vote.¹⁹⁹

The work of Lee and the Retail Division paid off; the referendum passed and, Celentano dutifully appointed the first board of the Parking Authority.

2. A “Legitimate Public Purpose”?: Justifying Municipal Involvement in Off-Street Parking

Municipal involvement in off-street parking can be justified on a number of conceptual grounds. Every municipality already controls a big percentage of the existing parking supply through its control of the streets; it makes a kind of intuitive sense that it should be involved in non-curb parking as well. Another way to defend municipal

¹⁹⁶ *Id.*

¹⁹⁷ Flyer, New Haven Chamber of Commerce, Vote “YES” for More Parking (Aug. 15, 1951) (on file with the New Haven Museum & Historical Society).

¹⁹⁸ Richard Lee, Remarks at the Democratic Town Committee Meeting (Aug. 16, 1951) (transcript available in the Yale University Library).

¹⁹⁹ Press Release (Sept. 5, 1951) (on file with Yale University). The money was used to transport people to and from the polls and to compensate workers who had to take time off from their jobs to vote. *See id.*

involvement is to think of off-street parking facilities as an extension of the road system. Under this approach, parking is as much a part of getting from point A to point B as actually moving in a car so the provision of sufficient parking facilities would be merely part of the public maintenance of streets and highways.²⁰⁰ Off-street parking can also be seen as a means to manage the flow of traffic on congested downtown streets—an area squarely within municipal control.²⁰¹

Public sector involvement in parking can be justified on a practical level as well. By the middle of the twentieth century, the parking deficit in urban downtowns was affecting the health not only of individual retailers but of entire municipalities, which lost sales tax revenue as their merchants lost sales, and property tax revenue as downtown assessments plummeted.²⁰² In 1944, New Haven’s Central Business District paid 20% of the total city property tax on only 1.5% of the tax-paying area of the city; it is no wonder the city government was interested in its continued vitality.²⁰³

Municipalities thus had “a vested interest, if not an obligation” to get involved in the parking business.²⁰⁴ They were also far better suited than private interests to supply the kind of parking most urgently needed.²⁰⁵ Private entrepreneurs simply could not provide off-street facilities as capacious and centrally located (because they lacked the power of eminent domain) nor as reasonably priced (because parking authorities could

²⁰⁰ *But see, e.g.,* Robert W. Poole, *Transport at the Millennium: Privatization: A New Transportation Paradigm*, 553 ANNALS 94 (1997) (arguing for privatization of highways).

²⁰¹ *See* MOGREN, *supra* note 178, at 13.

²⁰² *See, e.g.,* LECRAW. & SMITH, *supra* note 7, at 4.

²⁰³ *Id.*

²⁰⁴ JAKLE & SCULLE, *supra* note 11, at 73.

²⁰⁵ Briefing by the New Haven Dept. of Traffic and Parking on Parking System to the Public/Private Transportation Task Force, New Haven Downtown Council (Sept. 1985) (on file with the New Haven Museum & Historical Society).

operate at a loss and were tax exempt) nor as economically viable (because the city could borrow money at lower rates of interest) as could a municipal government.

When municipalities first began to venture into off-street parking, legal challenges predictably followed not far behind. New Haven's suit came in the form of *Barnes v. City of New Haven*, in which the taxpayer plaintiff sought a declaratory judgment as to the legality of the NHPA.²⁰⁶ The question at the heart of the suit was whether the NHPA was a "legitimate public purpose" or whether, because the NHPA's facilities would primarily benefit the "merchants in the shopping center of the city," it was in violation of the Connecticut Constitution's provision that "no man, or set of men are entitled to exclusive public emoluments or privileges from the community."²⁰⁷

The *Barnes* Court first declared that if the NHPA did promote the public welfare, then the fact that it might provide financial benefit to specific segments of the population would not deprive it of its legitimate public purpose. The court then determined that the NHPA did indeed promote the public welfare, noting that the primary purpose of the Act was:

to promote the larger and more general good of the community by freeing the streets of the impediments and perils arising from dangerous and often intolerable conditions of traffic congestion. And since the Act is concerned with the regulation of the transportation of persons and property along the highways of the municipality, and since the evils it seeks to remedy vitally affect conditions for the transaction of business, the prevention of accidents, the effective operations of fire and police forces, and, in general, the enjoyment of many phases of city life and activities, its justification stems directly from the exercise of the police power, which is the supreme power of government.²⁰⁸

²⁰⁶ 140 Conn. 8 (1953).

²⁰⁷ *Id.* at 13-14.

²⁰⁸ *Id.* at 16 (quoting *McSorley v. Fitzgerald*, 359 Pa. 264 (1948)).

The court also cited economic grounds as justification for municipal involvement, noting that the “effect of traffic strangulation has been reflected in slumping values of business real estate and a proportionate decline in local income tax. As we view it, there is involved the safety and well-being of all the residents of a community so affected.”²⁰⁹

3. The Temple Street Garage: New Haven’s “Monumental Form for Modern Transportation”²¹⁰

The Temple Street Garage (TSG) is the most famous of New Haven’s garages, which is not as faint praise as it may seem. The TSG was the first major structure which the NHPA was responsible for building and, when the 1280-car capacity behemoth opened to the public in 1962, it was hailed as the embodiment of downtown’s bright, modern future. While many people--particularly locals--have reviled the TSG for its bulk and “unclean” appearance,²¹¹ architecture buffs have praised its “subtly rounded surfaces, broken lines, and matte shadows,”²¹² its “powerful horizontal design,”²¹³ and the “suppleness and rhythm that fit it to the city street.”²¹⁴ Its hulking form has been likened to a “classic sailing ship,”²¹⁵ an “aircraft carrier ploughed into the heart of the city in some exhilarating disaster,”²¹⁶ and “something from a Flintstones episode.”²¹⁷

²⁰⁹ *Id.* at 17 (quoting *Poole v. Kankakee*, 406 Ill. 521 (1950)).

²¹⁰ Herbert Muschamp, *Paul Rudolph Is Dead at 78; Modern Architect of the 60’s*, N.Y. TIMES, Aug. 9, 1997, § 1, at 50.

²¹¹ After the Coliseum was demolished in January 2007, one blogger wrote, “Now, if only New Haven would tear down...the Temple Street garage, we’d all be able to sleep a lot easier!”²¹¹ Wired New York Forum, <http://www.wirednewyork.com/forum/archive/index.php/t-11433.html> (last visited Apr. 27, 2007).

²¹² ELIZABETH MILLS BROWN, *NEW HAVEN: A GUIDE TO ARCHITECTURE AND URBAN DESIGN* 109 (1976).

²¹³ Muschamp, *supra* note 210.

²¹⁴ BROWN, *supra* note 212, at 109.

²¹⁵ Temple Street Garage, *Concrete Monthly*, Dec. 2004, available at <http://www.concretemonthly.com/monthly/art.php?1191>.

²¹⁶ PATRICK L. PINNELL, *YALE UNIVERSITY* 175 (1999).

The TSG is famous for a much darker reason as well. On July 16, 1973—in “broad daylight” as newspaper accounts invariably put it—Concetta “Penney” Serra, a twenty-one year-old dental hygienist, was murdered in a stairwell of the Temple Street Garage. The brutal crime in downtown’s monument to urban progress was “like a knife through the heart of the city;”²¹⁸ it crystallized the fears of many in the middle class and, throughout the nearly thirty years that the murder remained unsolved, became a metaphor for the larger problems consuming New Haven.²¹⁹

The murder was especially devastating for downtown since the TSG had been built largely to service (female) shoppers (“the floors will spiral upwards around and around like a giant screw...[and] the pitch will be so slight that even women drivers can park their own cars,” the NHPA had written.)²²⁰ Mayor Lee’s efforts to remake his city depended on new businesses moving into the swaths of empty space he had razed slums to create; his ideal tenant was a brand-name department store. Other cities might have been able to force new retailers to provide their own parking but Lee knew that beleaguered New Haven was in no position to make any such demands. Rather, the city would have to provide parking *for* the department store and provide it *adjacent* to the store. In doing so, the city was following the thinking of the time:

Downtown parking does not pre-empt prime land from major alternate uses. On the contrary, it is frequently the highest and best use for a particular location. Parking is also an important complementary land use

²¹⁷ DeadMalls.com, *Chapel Square Mall: New Haven, CT*, http://deadmalls.com/malls/chapel_square_mall.html (last visited Apr. 10, 2007).

²¹⁸ Janice D’Arcy, *Murder Victim’s Image Is Trapped in Time; With a New Suspect on Trial, New Haven Is again Haunted by the Penney Serra Case*, HARTFORD COURANT, May 23, 2002, at A1.

²¹⁹ Christopher Keating, *Trying to Grasp Penney Serra’s Last Day; Court Visits Scene of July 1973 Killing*, HARTFORD COURANT, May 17, 2002, at A1. In 2002, mechanic Edward Grant was finally convicted of Serra’s murder. See Josh Kovner, *Sentencing Ends 1973 Serra Case*, HARTFORD COURANT, Sept. 28, 2002, at A1.

²²⁰ New Haven Parking Authority Report May 27, 1952 (on file with the New Haven Museum & Historical Society).

which reinforces the vitality of other major activities; often it serves as a catalyst or incentive to downtown investment decisions. As such, it provides an important economic service; for without adequate parking many downtown investments would be unfeasible.²²¹

Certainly, the TSG was intended to benefit not just one store but New Haven's retail community as a whole. In 1960, Lee asked Traffic and Parking Director William McGrath for an estimate of how much the new garage could be expected to increase downtown retail sales. McGrath responded with the following heady figures: "[A] general rule of thumb has been established that new retail area parking spaces account for \$10,000 per year in retail sales per space. Using this factor we can estimate that our 1500²²² car garage will result in additional retail sales in central New Haven of \$15,000,000 annually."²²³ Given the prospect of these figures, it is not surprising that the Chamber of Commerce greeted the new kid on the (Temple Street) block with open arms. The Retail Board ran a half page "Welcome, Garage" ad in local newspapers, prepared matching banners for their stores, and offered customers certificates for "sample free parking."²²⁴

The bottom line, however, was that the TSG was created with the intent of enticing a brand-name department store to locate in New Haven. When Macy's finally agreed to open its first urban branch outside of New York City, it was a crucial victory for Lee--and the TSG was a crucial component of that victory. A report from 1965 declared that "Macy's...is penetrating a new market in New Haven; here, the amount of

²²¹ Wilbur Smith and Associates, *Parking in the City Center 25* (1965) [hereinafter *City Center*].

²²² As it was projected to be at the time.

²²³ Memorandum from William McGrath, Director of Traffic and Parking, City of New Haven to Richard Lee, Mayor (Feb. 5, 1960) (on file with Yale University).

²²⁴ Minutes of a New Haven Chamber of Commerce Retail Board of Governors Meeting, Sept. 26, 1962 (on file with the New Haven Museum & Historical Society).

parking was stipulated *before* the decision to locate was reached....Without [the Temple Street Garage], it is unlikely—all other factors being constant—that the store would have located there.”²²⁵ Writing in the *New York Times* in 1986, Irvin D. Zeindenberg, then-chairman of the NHPA, was less equivocal: “the Temple Street Garage was built to serve the Chapel Square-Macy’s-Malley’s retail complex in the early 60’s. Without it, Macy’s would not have located in New Haven.”²²⁶

The TSG was not merely *built* to serve the needs of a department store, it was also *run* to serve them. The NHPA worked regularly with Macy’s on security coordination and special parking for sale events, and even kept the TSG open on Sundays for nearly a year, at a loss, when Macy’s was the only downtown store open.²²⁷

One bone of contention between Macy’s and the NHPA, however, was setting the rates parkers would pay per hour. At the time of the store’s opening, the Vice President of Macy’s Planning and Development wrote to Mayor Lee: “[i]n situations where we control the parking we lean toward relatively low short term rates, increasing to a point that makes all-day parking undesirable. I will review this with you....”²²⁸

By the 1980s, the stakes in the pricing debate had become much greater. Racial tensions and crime were running high, many of the ambitious plans of redevelopment remained unfinished or abandoned, and the TSG had not, to put it mildly, generated

²²⁵ City Center, *supra* note 221, at 26.

²²⁶ Irvin D. Zeindenberg, *Connecticut Opinion; Keep City Parking in Municipal Hands*, N.Y. TIMES, Nov. 9, 1986, § 11CN, at 36. The article further noted that: “The 750-space Crown Street Garage was built in 1970 to serve projected developments in the College-Crown Street area. It was already in place when the renovations of the Taft Apartments, Shubert and Palace Theaters and other projects were undertaken. The construction of the 840-space Orchard-George and 2,400-space Air Rights Garages helped the multimillion-dollar expansion programs of St. Raphael’s and the Yale-New Haven Medical Center on land previously used wholly or in part for surface parking.”

²²⁷ Letter from Frank B. DeLaurentis, Chairman of the NHPA, to Henry Chauncey Jr., New Haven Downtown Council, (Nov. 13, 1981) (on file with the New Haven Museum & Historical Society).

²²⁸ Letter from Charles A. Cronheim, Vice President for Planning and Development of Macy’s to Richard Lee, Mayor (Nov. 26, 1962) (on file with the New Haven Museum & Historical Society).

anything near \$15,000,000 in additional annual retail sales. To make matters even worse, the physical structure of the TSG had aged poorly and was in sore need of renovation.²²⁹

It was against this backdrop that a senior Macy's officer wrote to New Haven's Development Administrator in 1984 to protest a proposed rate increase at the TSG: "I find [the proposed increase] outrageous at a time when we are trying to maintain the downtown posture, in the continuing face of suburban threats, and are trying desperately to attract more retailing to the downtown...."²³⁰

It was also against this backdrop, however, that the NHPA came to a different conclusion on the desirability of parking rate increases:

If we are unable to generate sufficient revenues to cover operating expenses from the ratepayers, many of whom live in suburban communities, then we must seek these revenues from the taxpayers of New Haven. Since many of our taxpayers do not even own a car, many others are economically disadvantaged, others are elderly and living on fixed incomes, we do not view this source of revenue as equitable....Falling short of revenue objectives, our only alternatives are to cease physical improvement programs at one or more facilities, reduce electricity consumption for lighting, reduce the number of security personnel at the facilities, and/or eliminate Sunday parking at the downtown garages. We view these alternatives as unacceptable.²³¹

²²⁹ According to a 1983 Wilbur Smith Associates report, "[t]he use of unfinished concrete in older garages gives rise to an unclean appearance, an unattractive parking environment and maintenance problems. The older facilities—[such as] the Temple Street Garage...—appear dark and unattractive." Wilbur Smith Associates, Summary Report: Downtown New Haven Traffic and Parking Study 17 (June 1983) (on file with the New Haven Museum & Historical Society). From 2001-2003, the city spent over \$12 million (including a \$9 million grant from the State of Connecticut) to refurbish the TSG. Marc Wiznia, *City Looks To Address Lack of Parking*, YALE DAILY NEWS, Sept. 5, 2002.

²³⁰ Letter from Ray L. Treiger, Senior Vice President of Macy's Properties to William W. Ginsberg, Development Administrator, City of New Haven (March 4, 1984) (on file with the New Haven Museum & Historical Society).

²³¹ Letter from Frank B. DeLaurentis, Chairman of the NHPA, to Aldrich Edwards, Chairman of the New Haven Downtown Council (Sept. 25, 1981) (on file with the New Haven Museum & Historical Society).

These debates over how to set TSG prices so as to attract shoppers without sacrificing services or burdening local taxpayers were soon to become a thing of the past. Malley's Department Store, also adjacent to the TSG, closed in 1982. Macy's itself closed in 1993, after years of being subsidized (“[fed] intravenously,” as former Mayor Frank Logue once put it) by both the city of New Haven and the state of Connecticut.²³² For much of the last three decades, the TSG seemed to resemble less a “monumental form for modern transportation” than a memorial to the viability of downtown retail stores across the country. But, although it may have outlived the specific purpose for which it was originally built, the TSG remains vital to the city of New Haven. Replacing the smaller retail stores that occupied the garage's ground floor are a bevy of hip new restaurants.²³³ Perhaps more importantly, as noted in Subsection III.A.4, the City Plan Department's flexibility enables new developments and adaptive reuses to fulfill their parking requirements by leasing spaces in NHPA facilities, most frequently in the TSG. Ironically, the gargantuan parking structure emblematic of the mid-century destruction of fine-grain, organic city blocks may be one of their best hopes for rebirth.

B. Public Street Parking

A city can increase its *off*-street parking supply by building more garages and lots or by adjusting the requirements in its zoning code. Its *on*-street supply, however, is decidedly more fixed. But while a city cannot simply create more streets, it can create more *availability* on its streets by 1) using signs and permit systems to exclude drivers

²³² Mark Zaretsky, *Mayors Past and Present Reflect on Store's Demise*, NEW HAVEN REGISTER, Mar. 7, 1993, at F1.

²³³ See Martineau, *supra* note 173.

who do not meet certain criteria and 2) adjusting meter prices such that many drivers will choose to park off-street or to use alternate forms of transportation.

1. Permit Systems: Creating Availability via Explicit Exclusion

City streets are held in trust for the public use.²³⁴ No one owns an on-street space in fee in the same way that a lot, garage, or personal space can be owned. At the same time, city streets are subject to various private interests and entitlements. There are, of course, the basic usufructory rights available to everyone equally. If a driver pulls her car along the curb and no sign or other symbol (e.g. a fire hydrant, a garage door, etc) indicates any interdiction or limitation on parking there, that parcel of land is “hers” for as long as she leaves her car there.

Additionally, because local governments have either encouraged or tolerated certain practices, people have developed various senses of ownership over public spaces. There are the quasi-private property rights that a handicapped person might have in a designated stretch of street in front of her home²³⁵ or that someone who has “created” a spot by shoveling away snow might feel entitled to, at least until the snow melts.²³⁶ And then there is what might be called a “priority right”--something which a resident of a particular neighborhood might get in all, but not necessarily any, of the curb spaces within a few block radius of her house. It is this last right and its consequences on other aspects of parking supply which will be the focus of the following Subsection.

²³⁴ See, e.g., *State by Commissioner of Transp. v. South Hackensack*, 65 N.J. 377 (1974).

²³⁵ For a discussion of issues relating to handicapped parking permits, see Geoffrey P. Miller & Lori S. Singer, *Handicapped Parking*, 29 HOFSTRA L. REV. 81, 102 (2000).

²³⁶ See Richard A. Epstein, *The Allocation of the Commons: Parking on Public Roads*, 31 J. LEGAL STUD. 515 (2002).

i. Residential Parking Districts

Does someone whose house is on a particular street have any more of right to park on that public street than someone who lives elsewhere? Theoretically, the answer should be no. People who live close to a public playground have no more or less of a right to its use than those who live farther away; why should the same not be true for a section of the public street? As a technical matter of law, the answer should also be no. Courts have declared that, other than an easement of access, light, and air, adjacent property owners have no more rights in public streets than the public generally.²³⁷ Cities in which curb spaces are not so much at a premium (Rochester, Minnesota to name one of many examples) and those in which it would simply not be reasonable for residents packed in high rise apartment buildings to expect to find street parking in front of their building (New York City, to name the most obvious example), have adopted this attitude. During street cleaning hours, *no one* can park on that street. The rest of the time, anyone—whether resident, commuter, tourist, etc.--can park there. In many other cities, however, residents have agitated for—and local governments have granted—Residential Parking Districts (RPDs), which allow only residents of a specified neighborhood to park on the public streets found therein.

Courts initially treated these designations with skepticism. In 1970, for example, an Ohio court held that an ordinance granting parking priority first to residents of abutting property and second to residents of the municipality violated the equal protection

²³⁷See, e.g., *Bailey Service & Supply Corp. v. State By and Through Road Commission*, 533 P.2d 882 (Utah 1975).

clauses of the federal and state constitutions (“[o]rdinances...which make an act penal if done by one person and not so if committed by another cannot be sustained”).²³⁸ The court found that no valid justification for the classification between abutters, residents, and non-residents existed since, “[a]lthough an owner of premises abutting on a street possesses the right of ingress and egress, he has no right superior to that of any other member of the public at large to park automobiles in front of his premises.”²³⁹

Seven years after *Whisman*, however, the Supreme Court set a new precedent with *County Board of Arlington v. Richards*.²⁴⁰ In that case, commuters sued to enjoin the enforcement of an RPD. The state supreme court had found that the ordinance's discrimination between residents and nonresidents bore no reasonable relation to the regulation's stated objectives²⁴¹ and was thus in violation of the Equal Protection Clause. The United States Supreme Court reversed, holding that,

[t]he Constitution does not...presume distinction between residents and nonresidents of a local neighborhood to be invidious. The Equal Protection Clause requires only that the distinction drawn by an ordinance like Arlington's rationally promote the regulation's objectives. On its face, the Arlington ordinance meets this test.²⁴²

Since then, residential parking districts have proliferated in cities around the country, although not without a lot of sturm und drang along the way. Take, for example, the process for establishing an RPD in Chicago, which Richard Epstein has outlined.²⁴³ At least 65% of residents of a given area (at least one contiguous city block located in an

²³⁸ *State v. Whisman*, 24 Ohio Misc. 59, 66 (1970).

²³⁹ *Id.* at 64.

²⁴⁰ 434 U.S. 5 (1977).

²⁴¹ These included reducing hazardous traffic conditions; protecting residential districts from excess pollution, noise, and odors; protecting the residents of those districts from unreasonable burdens in gaining access to their residences; and preserving property values.

²⁴² Citation omitted.

²⁴³ Epstein, *supra* note 236.

eligible low-density residential district) must present the local alderman with a petition requesting permit status. If the alderman decides to continue the process, the application goes to the city council, which initiates a parking study to determine whether various conditions (e.g. that the designated spaces are 85% or more utilized during the hours for which permits are requested and that more than 45% of spaces are occupied by cars registered outside the zone) for the creation of a permit zone are met. The results of the study are then referred to the City Council Committee on Traffic and Safety. If that committee approves of the zone, the matter is then taken to the full city council for final approval. Epstein notes that “[t]he elaborate nature of the procedure offers strong testimony for the importance of the issue.”²⁴⁴

New Haven currently has fourteen residential parking zones.²⁴⁵ Its process of approval is less complex than Chicago’s but frequently no less contentious. In 2006, for example, after a “polarizing fight” between residents (who, of course, wanted an RPD) and local businesses (which wanted more street spaces available for their non-resident customers to use), the Board of Aldermen finally ceded to residents’ demands and designated streets around Wooster Square as an RPD.²⁴⁶ The actual regulations which the Department of Traffic and Parking drew up attempted to balance the different factions’ needs to as great an extent as possible. Paul Wessel, former director of Traffic and Parking for the city, came up with what he termed “the least bad solution” and noted

²⁴⁴ *Id.*

²⁴⁵ New Haven Residential Parking Zones, http://www.cityofnewhaven.com/TrafficParking/pdfs/parkingmap_final.pdf. *Infra* Appendix C.

²⁴⁶ William Kaempffer, *City Alters Parking Laws in Wooster Sq.*, NEW HAVEN REGISTER, Feb. 17, 2006.

at the time that “everyone is equally unhappy with this plan, so I think it’s the way to go.”²⁴⁷

Permits are issued to anyone who lives in a designated region and submits the requisite paperwork. The permits are not attached to particular spots and provide no guarantee that the resident will be able to find a spot within her district. They do, however, greatly increase the odds she will be able to do so. Because RPDs most frequently occur in non-metered areas and because RPDs arise in the first place from residents’ belief in their “right” to park their cars near their homes, cities have a hard time charging more than a nominal fee for the permits. Of seven major cities that allow neighborhoods to request RPD status, the cost to residents of these permits ranged from nothing to \$35 per year.²⁴⁸ New Havenites who live in qualifying districts pay \$5 a year for residential parking permits. Asked about raising this price, Paul Wessel sighed, “[t]hat was not a political fight I wanted to engage in.”²⁴⁹

Wessel readily admits that residential parking zones are “not my favorite. [They tend] to be overused and there tends to be a certain amount of NIMBYism.”²⁵⁰ There is an even more fundamental problem with RPDs. The externalities that the districts can produce—Epstein noted that several RPD blocks in a Chicago neighborhood were less than half full during daytime business hours while nearby commercial blocks were “chock-full of cars, some of which were illegally parked and blocking traffic” and also

²⁴⁷ *Id.*

²⁴⁸ Allison L.C. de Cerreno, *The Dynamics of On-Street Parking in Large Central Cities*, Rudin Center for Transportation Policy & Management 1 (2002), available at <http://www.nyu.edu/wagner/transportation/files/street.pdf>. The seven cities mentioned are Boston, Chicago, Dallas, Los Angeles, Phoenix, San Francisco, and Washington, D.C.

²⁴⁹ Telephone Interview with Paul Wessel, former Director of Traffic and Parking, in New Haven, Conn. (Dec. 14, 2006).

²⁵⁰ Wessel acknowledges that there are areas—for example, around Yale-New Haven Hospital or upper State Street, which is characterized by residential streets with triple-decker houses mixed in with bars and restaurant—where the zones do make sense.

that nearby merchants were losing customers who could have parked in the vacant spots a block away from their businesses—are not “captured in a petition process that only takes into account the preferences on the block slated for permitting.”²⁵¹

New Haven provides its own example of the questionable wisdom of RPDs. Let’s return to the rejected application for front yard parking, discussed above in Subsection III.A.3. Although RPDs were not raised explicitly in any of the materials connected with the appeal, their existence loomed large over the application. The applicant had mentioned the presence of two churches near her home and the resultant difficulties she had in finding convenient parking on Sundays. First, it is worth noting that although the applicant attempted to address her parking problem by seeking permission to build a space on her own property, her problem could also have been “solved” by the designation of her street as an RPD, since this would prevent visiting congregants from parking there. It is also worth noting, however, that applicant’s street is actually adjacent to two existing RPDs,²⁵² each of which undoubtedly does its part to exacerbate her situation. For, while those RPDs may make it easier for their respective residents to find parking, it is only because they are making it more difficult for non-residents, or residents, like the above applicant, just outside the designated RPD, to find it.

Donald Shoup has compared off-street parking requirements to lead therapy, a method used by physicians for centuries to treat all sorts of ailments. As Shoup explains it, lead therapy could produce a local antiseptic benefit but at high cost to the whole

²⁵¹ Epstein, *supra*, note 236.

²⁵² One runs from Eagle north to Mitchell and the other from Edwards south to Bradley. City of New Haven Residential Parking Zone 3, *available at* <http://www.cityofnewhaven.com/TrafficParking/pdfs/zone3.pdf> and City of New Haven Residential Parking Zone 9, *available at* <http://www.cityofnewhaven.com/TrafficParking/pdfs/zone9.pdf>. *Infra* Appendix C.

person, just as off-street parking requirements “produce a local benefit—ample free parking—while harming the whole city.”²⁵³ The analogy applies just as well to RPDs, which make parking easier for some drivers *only because* they make it more difficult for others. Even if RPDs are not going to disappear (Epstein notes that, in some parts of Chicago, every single residential block eligible for RPD status has at some time applied for it),²⁵⁴ cities should rethink the at-best-minimal charges that are associated with RPD permits. Curb parking is a valuable public good and allowing residents to exclude others and pay almost nothing for the privilege of so doing could even be construed as an impermissible gift of public assets.²⁵⁵

2. The Role of the Parking Meter: Creating Availability via Pricing Incentives

The parking meter made its debut in Oklahoma City in 1935. Meters were the culmination of a trend towards increasing government regulation of curb spots. When automobiles first arrived on city streets, they were treated something like bigger versions of horses which could be left pretty much anywhere by the sides of the road. Along a single block, some cars might be parallel parked, others double parked, and others left at varying angles to the curb, resulting in an altogether “bewildering assortment of parking configurations.”²⁵⁶ By 1930, municipalities, realizing order needed to be imposed, began to paint lines along their streets to indicate where and how cars should be parked.²⁵⁷ In

²⁵³ SHOUP, *supra* note 6, at 10.

²⁵⁴ Epstein, *supra*, note 236.

²⁵⁵ On gifts of public assets more generally, see, for example, Phyllis E. Bernard, *Privatization of Rural Public Hospitals: Implications for Access and Indigent Care*, 47 MERCER L. REV. 991, 1003 (1996).

²⁵⁶ JAKLE & SCULLE, *supra* note 11, at 31.

²⁵⁷ *Id.*

addition, they forbade cars from parking in front of fire hydrants or the entrances to buildings, and at intersections, transit stops, and delivery zones.²⁵⁸

The introduction of the meter meant that people were now being asked to pay for something they had been accustomed to getting for free; a predictable degree of hue and cry followed. Two days after the Oklahoma City meters were installed, plaintiffs alleging that the meters impaired their right to free use of the streets as provided by state statute had brought suit and the district court had temporarily enjoined their operation.²⁵⁹ The court eventually dissolved the injunction on the grounds that parking, which could be prohibited altogether to ensure travel, could also be regulated via fees, and meters began their conquest of American cities.²⁶⁰

Cities liked meters because they generated revenue. Abutting retail establishments liked them because they resulted in turnover and thus increased business.²⁶¹ Abutting *residents*, however, were less convinced. In 1937, a resident of Birmingham, Alabama, in front of whose building a parking meter had been installed, brought suit, claiming that the meter's physical presence constituted a nuisance and that being forced to pay to park his car alongside his property amounted to a taking in violation of the Due Process Clause.²⁶²

The Alabama Supreme Court agreed with both claims, noting that the definition of a nuisance encompassed “any obstruction in a highway or street, materially tending to the annoyance of persons living near it, or which renders the right of passage on or along

²⁵⁸ *Id.*

²⁵⁹ *Id.* at 39.

²⁶⁰ *See id.*

²⁶¹ *Id.* at 39-40.

²⁶² *Birmingham v. Hood-McPherson Realty*, 233 Ala 352 (1937).

such highway or street more difficult, hazardous, or less commodious”²⁶³ and that a property owner had the right not to have his property “defaced by superimposed obstructions, barriers, or parking meters placed alongside.”²⁶⁴ The court also found that a building owner “has the right to have his family, guests, or customers come and go within reasonable limitations and without the exaction of a fee or compensation. The right of egress and ingress is necessarily burdened with the right, within reasonable limitations, of parking a vehicle or car.”²⁶⁵

Most decisions, however, upheld municipalities’ rights to charge for street parking on the grounds that parking was a privilege, not a right.²⁶⁶ As a commentator noted in 1953, a “municipality has the right to impose parking regulations and the correlative right to enforce them in any reasonable manner. Whether it chooses to enforce them by the use of traffic policemen or by ‘mechanical policemen’ in the form of parking meters should make little difference.”²⁶⁷

i. How Much Should Curb Spots Cost?

In any downtown with shops and services, short-term parkers—i.e. shoppers, restaurant-goers, and errand-runners, as opposed to employees or residents—are a city’s preferred users of on street spaces. These short-term parkers not only generate more revenue from their use of a spot, but they might potentially be dissuaded from patronizing

²⁶³ *Id.* at 359.

²⁶⁴ *Id.* at 362.

²⁶⁵ *Id.*

²⁶⁶ *See, e.g.*, *City of Decatur v. Robinson*, 251 Ala. 99 (1948); *City of Newark v. Local Gov’t Bd. of N.J.*, 133 N.J.L. 513 (1945).

²⁶⁷ Note, *Some Legal Questions Arising out of the Use of Parking Meters* 6 VAND. L. REV. 907, 911(1953).

downtown if convenient and visible curb spots are not available. A page on the City of New Haven's website entitled "Downtown Saturday Parking: Still free, but..." reflects this position:

[S]ome folks think it's OK to park in one [on-street] spot all day, so things can get pretty dicey if you just want to drop off your dry cleaning or pick up a newspaper. Fact is, even though parking all day might seem convenient and cheap, spending too many hours at the same meter isn't helping Downtown merchants do good business. Studies have shown that stores and restaurants are losing \$45,000-\$90,000 per metered space each year due to so-called "shopper stoppers."

So, what's the answer?...New Haven's Parking Enforcement Officers will be hitting the street to better enforce the existing Saturday parking ordinances...[This] means that you can come into New Haven on a Saturday and park for free on the street for as long as signage indicates (up to 2 hours depending on the location). It means that there's a better chance of getting that great spot in front of your favorite coffee shop the next time you are in a hurry. It means local merchants won't lose business because potential customers couldn't find a parking spot. So in the end, everyone wins!

By the way, if you're planning on spending a whole day in Downtown, why not park in an off-street garage or lot instead of at a metered space? It's safe, easy and inexpensive!²⁶⁸

Despite its insistently upbeat finale ("everyone wins!"), the city seems to know, in its heart of hearts, that offering free metered parking on Saturdays is *precisely* the wrong way to discourage long-term parkers from hogging all the curb spots, no matter how much pleading is done on official websites. The way to attract more short-term parkers is, perhaps counter-intuitively, to *raise* meter prices.

Meters encourage short-term use first of all by specifying maximum time periods for which it is permissible to park in a particular spot. But, while it may only be possible to put an hour's worth of coins in a meter at once, it is also usually possible to stay in a spot for longer by simply "feeding" the meter at regular intervals. A more effective way

²⁶⁸ *Downtown Saturday Parking: Still Free, but...*, <http://www.cityofnewhaven.com/TrafficParking/SaturdayParking.asp> (last visited Apr. 25, 2007).

of encouraging turnover in street spaces is by charging prices high enough to reflect the special desirability of curb spaces and to encourage long-term users to park off-street instead.

There are three main parties with a stake in the pricing of curb parking: retailers, municipalities, and, of course, parkers. Retailers know they are competing with suburban shopping malls offering free parking and many worry that increased meter rates will hurt business.²⁶⁹ At the same time, they wish to attract the maximum number of customers possible; an effective way to do that is to encourage turnover (which is accomplished by raising meter prices) at the street spaces in front of their stores.

Municipalities usually favor higher rates as a way to generate increased revenue. On an economic level, however, the municipality might only want high meter rates if demand for on-street parking spaces is inelastic--that is, if the demand for them will remain relatively constant regardless of the price. If meters are priced too high, people may be deterred from driving (which could be a desirable outcome) or they may be deterred from driving only into *that particular city or neighborhood* (which would be a bad thing for the municipality) and the city's net revenue could decrease. On a political level, while municipalities want increased revenue, the people who actually approve rate hikes are elected officials—city councilmen or board of aldermen—and raising parking fees is never a very popular move among one's constituents.²⁷⁰

As for the parkers, they can be split into two sub-categories. Local residents or commuting employees who park at metered spots because they are cheaper and/or more convenient than parking in a garage would probably still want to see prices stay as low as

²⁶⁹ See, e.g., Andy Bromage, *Meters Could Soften Tax Increase: Raising Hourly Parking Rates May Net Extra \$3.4M for City*, NEW HAVEN REGISTER, Apr. 7, 2006.

²⁷⁰ See SHOUP, *supra* note 6, at 304.

possible. But a driver who wants to be able to park her car for five minutes while she runs an errand might actually want prices higher because it is worth more to her that a street space be available for her to park in—even at a relatively high price—than that there be no spaces because the rates are set too low.²⁷¹

The notion that underpricing curb parking is fiscally and environmentally damaging and that low meter rates *hurt* rather than help local businesses²⁷² is one of Shoup’s most important insights and is starting to be reflected in local policy. In 2006, for example, Paul Wessel began working to increase New Haven’s meter rates. Since 1992, an hour at a downtown meter had cost 75 cents, a lower rate than comparable Connecticut cities like Hartford, Stamford, and Bridgeport.²⁷³ Wessel’s primary goal in raising meter rates was to enable New Haven to “properly manage [its] metered spaces”—i.e. provide the right incentives for residents and workers to park off-street and to free up curb spaces for short term parkers. Wessel had an additional motivation—he was looking for a rationale for buying new meters²⁷⁴—and he knew that a rate hike would dovetail nicely with the interests of the city, which was looking for increased revenue, and the merchant community, which was looking for increased turnover.²⁷⁵

The heart of Wessel’s persuasive techniques was a memo explaining why raising meter rates would benefit everyone in the city. Quoting Shoup, Wessel explained how underpricing curb parking operates to hurt downtown businesses:

A low price for curb parking may sound good for business, but it is not...What underpriced curb parking *does* do is create a parking shortage

²⁷¹ See *id.* at 398.

²⁷² *Id.*

²⁷³ Paul Wessel, *The Parking Solution* (Apr. 26, 2006) [hereinafter Wessel, *Solution*] (unpublished governmental memorandum, City of New Haven) (on file with author).

²⁷⁴ Parcxmart-compatible meters, which have been installed. See <http://www.parcxmart.com>.

²⁷⁵ Telephone Interview with Paul Wessel, former Director of Traffic and Parking, in New Haven, Conn. (Dec. 14, 2006).

that keeps potential customers away...Because short term parkers are less sensitive to the price of parking than to the time it takes to find a space, charging enough to create a few curb vacancies can attract customers who would rather pay for parking than not be able to find it.²⁷⁶

Wessel then compared the cost of curb parking to the cost of parking in a New Haven lot or garage. The average price per hour off-street was \$2.16, or 288% of the .75 cent price of a spot on the curb.²⁷⁷ This was a dramatic departure from 1980, when meters in New Haven were .50 cents an hour while garages and lots averaged .35 cents, making off-street parking only 57% of the curb price.²⁷⁸ Wessel highlighted the perverse effect of this pricing system: “We designate the on street spaces for short term parkers...but then price the spaces to encourage long term users—notably employees and downtown residents—to park on the street. Clearly, our meter pricing is at odds with our goals.”²⁷⁹

Wessel was “stunned at how little opposition there was” to his proposal; the meter increase was approved in May of 2006 and went into effect over the summer in tandem with installation of the new meters he had wanted.²⁸⁰ The new rate of \$1.25 an hour, however, is still less than the \$2.16 average for parking off-street, so, while the increase may help in better allocating parking spaces, it does not exactly reverse the incentives. Wessel himself conceded in a newspaper report about the meter increases that, “If you go too high, you drive people away from downtown. But how high is too high?”²⁸¹ As of this writing, there are no statistics on whether the increase has actually led to greater

²⁷⁶ Wessel, Solution, *supra* note 273 (citing SHOUP, 313, 366, 398).

²⁷⁷ Paul Wessel, Parking Meter Rate Changes Documentation (Apr. 11, 2006) (unpublished governmental memorandum, City of New Haven) (on file with author).

²⁷⁸ *See id.*

²⁷⁹ Wessel, Solution, *supra* note 273, at 4.

²⁸⁰ Telephone Interview with Paul Wessel, former Director of Traffic and Parking, in New Haven, Conn. (Dec. 14, 2006).

²⁸¹ Bromage, *supra* note 269.

turnover and availability of curb spaces or whether it has merely served to generate more revenue for the city.

Traffic engineers have declared that the ideal vacancy rate for curb spaces is fifteen percent; having one of every seven spaces free eliminates most of the congestion, pollution, and wasted time associated with “cruising” for parking since there should be an available spot within a given distance of every destination.²⁸² If this is the case, the task for any city like New Haven is not just to find the right *price* for curb parking but to find the right *prices*. In other words, there is more demand for a curb spot in the Central Business District at noon than at 6pm and there is similarly more demand for a spot on a street of restaurants during lunch and dinner times than during morning and late afternoon, when fewer people are eating meals out. To maintain a stable vacancy rate, then, a city’s meters would have to charge different prices throughout the day for the same spot. The 2600 new single-space meters²⁸³ which Wessel installed in New Haven have the capacity to accommodate up to four different rate periods per day, with a different schedule for every day of the week and up to twenty-five different special event or holiday schedules.²⁸⁴ It’s now up to the city to take advantage of the technology it possesses to implement variable rates.

V. Conclusion

Donald Shoup has pointed out that some of the most striking differences between Los Angeles, a city notorious for its sprawl, and San Francisco, which is noted for its

²⁸² See SHOUP, *supra* note 6, at 297.

²⁸³ E-mail from Mark E. Connolly, Vice President of Operations, Parcsmart Technologies, Inc., to author (May 2, 2007, 11:43:46, EST) (on file with author).

²⁸⁴ E-mail from Bobra Wilbanks, Technical Sales Manager, POM Inc., to author (May 3, 2007, 12:29:26, EST) (on file with author).

vibrant street life, can be attributed to their parking requirements.²⁸⁵ For a downtown concert hall, for example, Los Angeles requires developers to build fifty times more parking than San Francisco allows as its *maximum*.²⁸⁶ Thus the San Francisco Symphony built its performance space in 1980 without a parking garage while the home of the Los Angeles Philharmonic didn't open until seven years after its 2188-space parking garage was completed.²⁸⁷ What this means is not only a vast amount of land and money devoted to a garage rather than something else but also that the “full experience of an iconic LA building begins and ends in its parking garage, not in the city itself.”²⁸⁸

Parking is an issue everywhere but it is a particularly poignant issue in urban downtowns. Cities need to provide (or ensure that private developers within their borders provide) parking in order to remain viable in America's overwhelmingly car-centered culture. At the same time, too much parking, or parking policies implemented without sufficient regard for context, ends up destroying many of the things—density, vibrant street life, the “historical accumulation of intricate, complex, and often random infrastructure”²⁸⁹--that make people want to live in or visit cities in the first place.

There is hope, though, that the city may yet be able to claw itself out of the grip of the car. City Plan Departments like New Haven's are implementing the parking provisions of their zoning codes in context-sensitive ways that aim to curb the unfettered spread of parking facilities, while cities like Cambridge and Portland have amended their zoning codes to include parking restraint policies.

²⁸⁵ Manville & Shoup, *supra* note 135.

²⁸⁶ *Id.* at 5.

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 6.

²⁸⁹ JAKLE & SCULLE, *supra* note 11, at 8.

Private developers and entrepreneurs have also been thinking of innovative solutions to parking problems. Condominium developments without parking have long been the norm in Manhattan but they are starting to spread to other cities around the country.²⁹⁰ New York City recently unveiled its first automated garage, which, by omitting ramps and walkways, can fit twice as many cars as a traditional garage.²⁹¹ Car-sharing services, which reduce the need for parking spaces, have also been making significant headway in large cities and on college campuses.²⁹² Perhaps most encouragingly, Donald Shoup's ideas have become incredibly influential within the field of urban planning and his work is starting to get significant mainstream attention as well.²⁹³

Let me end on a personal note. I have never owned a car and have always lived in cities where I did not need one. Before starting this paper, I had never cared to give much thought to cars, much less where to put them. I preferred to spend my time exploring the cities in which I lived: the buildings from different eras packed shoulder to shoulder, the mixture of uses and affordability along single blocks, the streets teeming with activity. But the things I love about cities are impossible to create or preserve without the right kind of parking requirements--or restraints, as the case may be. To care about cities is to care about their parking policies.

²⁹⁰ See Baker, *supra* note 58.

²⁹¹ Phil Patton, *When the Parking Space Becomes the Destination*, N.Y. TIMES, Feb. 25, 2007, § 12, at 1.

²⁹² See, e.g., Laura Novak, *Sharing To Avoid all the Hassles*, N.Y. TIMES, Oct. 25, 2006, at G24.

²⁹³ See, e.g., Donald Shoup, *Gone Parkin'*, N.Y. TIMES, Mar. 29, 2007, at A25; Steven E. Landsburg, *No Parking Anytime*, SLATE, Apr. 19, 2007, <http://www.slate.com/id/2164257/> (reviewing THE HIGH COST OF FREE PARKING).

Appendix A: Downtown New Haven Zoning Map

Appendix B: Public Parking Facilities in Downtown New Haven

Appendix C: New Haven's Residential Parking Zones

Appendix D: A Positive Externality of Parking