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# A Tale of Two Greenways: A Comparative Study of Greenway Projects

## **Cover Page Footnote**

J.D. Candidate, Fordham University School of Law, 2008; B.A., Hamilton College 2004. My thanks to Professor Christian Turner for his helpful comments.

## A TALE OF TWO GREENWAYS: A COMPARATIVE STUDY OF GREENWAY PROJECTS

*Gabrielle Markeson\**

### INTRODUCTION

In a recently developed smart growth<sup>1</sup> community located outside Portland, Oregon, the residents live in tall, narrow sculptured glass buildings, will travel via tram and the light rail system currently under construction, and socialize at restaurants and shops lining the waterfront.<sup>2</sup> Despite the modern impression, the community remains green by preserving open space and creating visual access to the natural surroundings. In addition, the community maintains a 1.2 mile river walk with different habitat regions to support wildlife and utilizes ecoroofs, which filter rain water before returning it to the ground.<sup>3</sup> This high-density community interspersed with green space reflects a recent trend in urban planning and is currently in high demand.<sup>4</sup> Smart growth communities provide a middle ground between the suburbs and a “gritty downtown.”<sup>5</sup>

This smart growth community offers a number of highly desirable amenities including a greenway. The term “greenway” encompasses a broad range of green space including:

1. A linear open space established along either a natural corridor, such as a riverfront, stream valley, or ridgeline, or overland along a railroad right-of-way converted to recreational use, a canal, a scenic road, or other route.
2. Any natural or landscaped course for pedestrian or bicycle passage.
3. An open-space connector linking parks, nature reserves, cultural features, or his-

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1. Smart growth encourages mixed land use, alternative modes of transportation, and incorporating green space in development to combat urban sprawl. See Janice C. Griffith, *The Preservation of Community Green Space: Is Georgia Ready to Combat Sprawl with Smart Growth?*, 35 WAKE FOREST L. REV. 563, 568 (2000).

2. Linda Baker, *A Neighborhood Rises From the Waterfront*, N.Y. TIMES, June 11, 2006, at 12.

3. *Id.*

4. *Id.* (“Prices range from \$169,000 for a 637-square-foot studio . . . to \$4 million for a 5000-square-foot penthouse . . .”).

5. *Id.*

toric sites with each other and with populated areas. 4. Locally, certain strip or linear parks designated as a parkway or greenbelt.<sup>6</sup>

The desire for greenways, however, is not limited to smart growth communities.<sup>7</sup> Despite this increasing interest, many communities have not been successful in building greenways.<sup>8</sup> This Comment identifies aspects of greenway projects that are keys to their success based on a comparative study of two greenway projects, one flourishing and one struggling.

Part One discusses the environmental, economic, and health benefits of greenways. Part Two discusses common challenges when building a greenway, mainly community support and land acquisition. Parts Three and Four respectively outline the processes Chattanooga, Tennessee and Rockford, Illinois used in their greenway projects. Part Five compares the Chattanooga greenway project with the Rockford greenway project to ascertain important differences in Chattanooga's process that generated a thriving greenway.

## I. BENEFITS OF GREENWAYS

Greenways provide environmental, economic, and health benefits to individuals and the community as a whole.

### A. Environmental Benefits of Greenways

There is currently a global trend towards urbanization: the population density at the core of cities is increasing, and at the same time, metropolitan areas expand through outward migration to suburbs.<sup>9</sup> Expanding cities and development cause open space to

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6. CHARLES E. LITTLE, GREENWAYS FOR AMERICA 1 (Johns Hopkins University Press 1990). A greenway is distinguished from a trail because a trail necessarily includes a path while a greenway does not. *See also* RAILS TO TRAILS CONSERVANCY, HEALTH AND WELLNESS BENEFITS, [http://www.railstotrails.org/resources/documents/resource\\_docs/HealthandWellness.pdf](http://www.railstotrails.org/resources/documents/resource_docs/HealthandWellness.pdf) (last visited Mar. 3, 2007) [hereinafter HEALTH AND WELLNESS BENEFITS]. This Comment uses the terms greenway, river walk, and recreational trail interchangeably.

7. *See* Tom Uhlenbrock, *Building a Bike Path Along the Mississippi*, ST. LOUIS POST-DISPATCH, Sept. 27, 1998, at D1 (discussing the recent trend among U.S. cities, including Denver, CO and Chattanooga, TN in building greenways).

8. *See infra* notes 61-63 and accompanying text (discussing the challenges Santa Cruz, CA faced in attempting to build a greenway).

9. *See* Charles P. Lord, Eric Strauss & Aaron Toffler, *Natural Cities: Urban Ecology and the Restoration of Urban Ecosystems*, 21 VA. ENVTL. L.J. 317, 322 (2003).

disappear,<sup>10</sup> but greenways mitigate or prevent environmental harm caused by development.<sup>11</sup>

As development expands, open space is replaced with impervious surfaces, including streets, parking lots, and sidewalks.<sup>12</sup> Impervious surfaces negatively impact the environment because they contaminate source water.<sup>13</sup> Pollutants, such as motor oil, engine coolant, pesticides, and fertilizers, collect on impervious surfaces.<sup>14</sup> Storm water washes these pollutants off roads and into nearby natural water sources.<sup>15</sup> Normally, vegetation and soil filter out pollutants from storm water before it reaches natural water sources.<sup>16</sup> Impervious surfaces, however, prevent this natural filtration;<sup>17</sup> therefore, greenways located between impervious surfaces and source water improve water quality.<sup>18</sup>

Greenways also protect biodiversity by preserving naturally linear habitats, such as riparian habitats.<sup>19</sup> They even preserve habitats for wildlife species that require more space than the greenway itself provides by connecting smaller, fragmented habitat areas.<sup>20</sup> The effective size of conserved land is the total of all linked open

10. *Id.* (“In the period from 1960 to 1990, the physical footprint of cities doubled to nearly 20% of the nation’s land area . . .”).

11. See JONATHAN M. LABAREE, *HOW GREENWAYS WORK: A HANDBOOK ON ECOLOGY*, chs. 1-2 (National Park Service Rivers and Trails Conservation Assistance 1997), <http://www.americantrails.org/resources/greenways/NPSintroGrnwy.html>.

12. See Marc A. Yaggi, *Impervious Surfaces in the New York City Watershed*, 12 *FORDHAM ENVTL. L. REV.* 489, 496 (2001).

13. See generally *id.* Source water includes rivers, lakes, and groundwater.

14. See *id.* at 496-97.

15. See James Murphy, *Vermont’s Act 250 and the Problem of Sprawl*, 9 *ALB. L. ENVTL. OUTLOOK* 205, 207 (2004). See also Yaggi, *supra* note 12, at 500 (“Research indicates that the first flush pollutant loading in urbanized areas is more harmful to water quality than raw sewage.”).

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16. See PAUL M. SHERER, *THE BENEFITS OF CITY PARKS: WHY AMERICA NEEDS MORE CITY PARKS AND OPEN SPACE* 20 (The Trust for Public Land 2006), available at [http://www.tpl.org/content\\_documents/parks\\_for\\_people\\_Jul2005.pdf](http://www.tpl.org/content_documents/parks_for_people_Jul2005.pdf) (last visited Mar. 3, 2007) (“[Tree] leaves, trunks, roots, and associated soil remove polluted particulate matter from the water before it reaches storm sewers. Trees also absorb nutrients created by human activity, such as nitrogen, phosphorus, and potassium, which otherwise pollute streams and lakes.”); NATIONAL PARK SERV., *RIVERS, TRAIL, & CONSERVATION ASSISTANCE PROGRAM, ECONOMIC IMPACTS OF PROTECTING RIVERS, TRAILS, AND GREENWAY CORRIDORS* 8-7 (4th ed. 1995), [http://www.nps.gov/pwro/rtca/econ\\_all.pdf](http://www.nps.gov/pwro/rtca/econ_all.pdf) [hereinafter *ECONOMIC IMPACT*].

17. See Yaggi, *supra* note 12, at 499 (“[S]tream degradation occurs at levels of impervious cover as low as 10%.”).

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18. See *supra* note 16.

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19. See LABAREE, *supra* note 11, ch. 3.

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20. *Id.* (discussing how development fragments open space and the detrimental effect of fragmentation on the ability of wildlife to find food, shelter, and mates).

space.<sup>21</sup> This is a unique benefit of greenways which parks and non-linear open space lack.

Further, greenways provide vegetation, which controls air and noise pollution. Vegetation removes pollution from the air<sup>22</sup> and mitigates thermal pollution caused by concrete and glass in urban areas.<sup>23</sup> Greenways also act as a buffer between inconsistent land uses and absorb and reflect noise pollution.<sup>24</sup>

**B. Economic Benefits of Greenways**

Greenways provide economic benefits to individual landowners, the local economy, local businesses, and state and local governments. Homeowners and landowners benefit economically because greenways increase the value of nearby property<sup>25</sup> and improve home marketability.<sup>26</sup> Proximity to open space increases home value because it lowers population density and pollution.<sup>27</sup> High traffic greenways, however, may actually decrease the value of adjacent property if the open space is designed poorly and creates user-landowner conflict.<sup>28</sup> Developers may also benefit if reserving land for a greenway fulfills local green space ordinance requirements or qualifies for open space tax benefits.<sup>29</sup>

The community as a whole benefits because greenways create new markets in the community, such as tourism<sup>30</sup> and outdoor rec-

21. *Id.* For the greenway to function as a corridor it must be wide enough for species to travel along; the necessary width depends on the sensitivity of the species to humans, noise, and other intrusions from development. *Id.*

22. *See* SHERER, *supra* note 16, at 19-20 (“In an area with 100 percent tree cover (such as contiguous forest stands within parks), trees can remove from the air as much as 15 percent of the ozone, 14 percent of sulfur dioxide, 13 percent of the particulate matter, 8 percent of the nitrogen dioxide, and 0.05 percent of the carbon monoxide.”); ECONOMIC IMPACT, *supra* note 16, at 8-9.

23. *See* SHERER, *supra* note 16, at 20 (“The evaporation from a single large tree can produce the cooling effect of ten room-size air conditioners operating 24 hours a day.”).

24. *See* ECONOMIC IMPACT, *supra* note 16, at 8-8.

25. *See* Griffith, *supra* note 1, at 590; ECONOMIC IMPACT, *supra* note 16, at 1-3 to -5, 1-7 to -8 (citing qualitative studies and quantitative surveys supporting increased property values of property near open space).

26. ECONOMIC IMPACT, *supra* note 16, at 1-7 to -8.

27. *See* Griffith, *supra* note 1, at 602-03.

28. *See* ECONOMIC IMPACT, *supra* note 16, at 1-5 to -6. An example of a user-landowner conflict is a homeowner whose privacy is compromised because of a high-traffic public trail adjacent to their yard.

29. *Id.* at 1-10.

30. Too much tourism, however, may negatively impact resource protection. *Id.* at 5-16. Therefore, the greenway management policy and design must balance these competing goals. *See id.*

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recreation activities.<sup>31</sup> Increased tourism and outdoor recreation create greater demand for amenities like restaurants, lodging, and recreation equipment, which can have a significant effect on the local economy.<sup>32</sup> The greenway itself generates job opportunities for individuals planning, building, managing, and maintaining the greenway.<sup>33</sup>

In addition to attracting new business, a greenway can improve existing business.<sup>34</sup> Greenways increase the quality of life by providing an attractive place to walk outside<sup>35</sup> and a useful means of public transportation,<sup>36</sup> which lowers business costs for transportation and insurance in part because increased physical activity improves employees' overall health.<sup>37</sup> Greenways support existing businesses by attracting customers. For example, the Katy Trail, a 225-mile bike path which extends across almost the entire state of Missouri, attracts up to 3000 to 4000 people per weekend.<sup>38</sup> Despite a national recession, many stores along the trail reported up to a tripling of sales since the trail opened in 1990.<sup>39</sup>

State and local governments receive indirect economic benefits from greenways through increased tax revenues due to higher

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31. *Id.* at 2-3 to -8 (citing possible new outdoor activities including fishing, kayaking, canoeing, hiking, biking, and cross-country skiing).

32. *Id.* at 3-3. *See also* William Flannery, *Katy Trail a Path to Profits for Some*, ST. LOUIS POST-DISPATCH, Nov. 4, 1990, at 1E (discussing new businesses opening due to the recently opened Katy Trail, including a beer garden and a bike rental shop which also supports the liability insurance industry).

33. *See* ECONOMIC IMPACT, *supra* note 16, at 4-3 to -4. Although some may doubt the magnitude of the impact of creating new open space on a local job market, recent surveys by the United States Conference of Mayors indicate increases in jobs is one of the greatest benefits of restoring brownfields. *See* 3 UNITED STATES CONFERENCE OF MAYORS, RECYCLING AMERICA'S LAND: A NATIONAL REPORT ON BROWNFIELDS REDEVELOPMENT 12-13 (2000), [http://www.usmayors.org/uscm/brownfields/full\\_report\\_rev3.pdf](http://www.usmayors.org/uscm/brownfields/full_report_rev3.pdf).

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34. *See generally* Flannery, *supra* note 32.

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35. *See* ECONOMIC IMPACT, *supra* note 16, at 7-3 to -5 (discussing studies indicating businesses find quality of life increasingly important in deciding where to locate).

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36. *See* David Ackerly, Note, *Exactions for Transportation Corridors After Dolan v. City of Tigard*, 29 LOY. L.A. L. REV. 247, 293 (1995) ("After Chicago installed five Class I [bike] paths, commuter use of bikes rose from an area average of one percent to a local use of almost sixteen percent.").

37. *See* ECONOMIC IMPACT, *supra* note 16, at 7-6 to -7.

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38. *See* Flannery, *supra* note 32.

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39. *Id.* (discussing the increase in sales for a local furniture store even though many customers are on bikes and must return with cars to pick up their purchases); Stephen A. Martin, *Unhappy Trail; Closing of Katy Spurs Closing of Businesses*, ST. LOUIS POST-DISPATCH, Oct. 6, 1993, at 1 (discussing a flood that caused the Katy Trail to close in 1993, which decreased the number of customers so significantly that a bike shop closed, a café's sales decreased, and sales in a winery decreased by nearly fifty percent).

property values.<sup>40</sup> In addition, governments may save money by reserving open space—despite additional property taxes generated by development—because development also requires additional expenditures on public utilities and services, such as roads and schools.<sup>41</sup> Greenways reduce congestion on roads by providing an alternative to driving, and building a greenway is much more cost efficient than building a road to reduce traffic congestion.<sup>42</sup> Finally, governments buy a type of preventative insurance because greenways provide flood control<sup>43</sup> and reduce public health costs by increasing the fitness level of a community.<sup>44</sup>

### C. Physical and Mental Health Benefits of Greenways

The rise of the automobile in American society led to a sedentary lifestyle.<sup>45</sup> As automobiles became more available, roads and communities were designed for cars rather than pedestrians and bicyclers.<sup>46</sup> Within communities, increased distances between home and work and other destinations make walking or biking impractical or impossible.<sup>47</sup> In addition, road designs were less safe and aesthetically displeasing for pedestrians and bikers.<sup>48</sup> These factors contribute to the problem of inactivity<sup>49</sup> which, combined with poor diet, led to what some public health experts call an epi-

40. See Griffith, *supra* note 1, at 590; ECONOMIC IMPACT, *supra* note 16, at 1-8.

41. See ECONOMIC IMPACT, *supra* note 16, at 8-3 to -5 (citing a study in Dutchess County, N.Y. where “[r]esidential lands required \$1.12 to \$1.36 for every tax dollar contributed, while agricultural lands required only \$0.21 to \$0.48 for every [tax] dollar contributed”).

42. See Ackerly, *supra* note 36, at 292-93.

43. See ECONOMIC IMPACT, *supra* note 16, at 8-5 (discussing flood costs governments bear, including property damage and personal injuries).

44. *Id.* at 8-10. Public health officials stress the importance of preventive measures, such as regular physical activity, in reducing the excessive cost of health care. See American Trails, *Health-Based Benefits of Parks, Trails, and Open Space*, <http://www.americantrails.org/resources/benefits/HealthGrnwy.html> (last visited Mar. 3, 2007) [hereinafter *Health-Based Benefits*].

45. See Michael Lewyn, *The Law of Sprawl: A Road Map*, 25 QUINNIPIAC L. REV. 147, 147 (2006).

46. *Id.*

47. See LAWRENCE D. FRANK & PETER ENGELKE, HOW LAND USE AND TRANSPORTATION SYSTEMS IMPACT PUBLIC HEALTH: A LITERATURE REVIEW OF THE RELATIONSHIP BETWEEN PHYSICAL ACTIVITY AND BUILD FORM 12, 14-15, <http://www.cdc.gov/nccdphp/dnpa/pdf/aces-workingpaper1.pdf>.

48. See Lewyn, *supra* note 45, at 160-61.

49. Studies indicate less than one-third of Americans meet the federal government “recommendation of at least 30 minutes of moderate physical activity at least five days a week.” See HEALTH AND WELLNESS BENEFITS, *supra* note 6, at 1.

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demic of obesity in the United States.<sup>50</sup> But physical activity can prevent physical health problems as well as psychological health problems.<sup>51</sup>

Local and federal governments facilitate physical activity by providing safe, attractive, and economical places to exercise, like greenways.<sup>52</sup> Greenways provide greater accessibility to more residents than a traditional park because of their length.<sup>53</sup> Public health experts believe that lifestyle changes that include enjoyable and active leisure time provide the most effective means to increase physical activity.<sup>54</sup> Any increase in physical activity, even small amounts, improves health.<sup>55</sup> When greenways are used as an alternative form of transportation, multiple short daily trips can add up to a significant increase in total activity levels.<sup>56</sup>

Greenways improve mental health by providing opportunities for physical activity and visual access to greenery. Physical activity improves psychological health by reducing anxiety and relieving symptoms of depression.<sup>57</sup> In addition, studies link mental well-

50. *Id.* The amount of death and preventable disease caused by obesity is approaching that caused by smoking cigarettes. *Id.* The United States government spent approximately \$117 billion on obesity-related death and disease in 2000. *Id.*

51. See SHERER, *supra* note 16, at 13 (connecting low levels of physical activity with premature death, coronary heart disease, hypertension, colon cancer, and non-insulin-dependent diabetes). Regular physical activity maintains skeletal, muscle, and joint function and “may relieve depression, anxiety, and other mental illnesses.” See FRANK & ENGELKE, *supra* note 47, at 10.

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52. See Jay D. Wexler, *Parks as Gyms? Recreational Paradigms and Public Health in the National Parks*, 30 AM. J.L. & MED. 155, 166-67 (2004) (citing Exec. Order No. 13,265, 67 Fed. Reg. 39,841 (June 6, 2002), Exec. Order No. 13,266, 67 Fed. Reg. 42,467 (June 20, 2002)) (discussing President George W. Bush’s executive orders promoting the use of public lands to increase physical activity as a means to improve public health).

53. See Russ Pulliam, *Paths to Citywide Exercise*, INDIANAPOLIS STAR, Jan. 16, 2000, at 02D (“The greenways provide an unusual means of expanding accessible recreation for more people.”).

54. See generally Gale Norton & Michael Suk, *America’s Public Lands and Waters: The Gateway to Better Health?*, 30 AM. J.L. & MED. 237 (2004) (discussing the connection between poor health and sedentary leisure time activities and the possible solution through physical recreational activities on public lands).

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55. See SHERER, *supra* note 16, at 13; HEALTH AND WELLNESS BENEFITS, *supra* note 6, at 2. See also Patty Hagen, *Simple Key to Fitness Could Be As Easy As Walking*, INDIANAPOLIS STAR, June 1, 2000, at 01G (“We need to incorporate activity into our daily lives . . . [e]very little bit of activity helps . . .”).

56. See HEALTH AND WELLNESS BENEFITS, *supra* note 6, at 2.

57. See U.S. DEPT. HEALTH & HUMAN SERVICES, *Trails for Health: Increasing Opportunities for Physical Activity in the Community*, [http://www.cdc.gov/nccdphp/dnpa/pdf/Trails\\_Increasing\\_Opportunities.pdf](http://www.cdc.gov/nccdphp/dnpa/pdf/Trails_Increasing_Opportunities.pdf) (last visited Mar. 3, 2007).

being with access to greenery.<sup>58</sup> The source of the greenery, whether an untouched natural landscape or an urban park, is immaterial because all greenery provides the same therapeutic effect.<sup>59</sup> Urban greenways provide the additional benefit of an escape from noise and other stressors particular to cities.<sup>60</sup>

## II. CHALLENGES IN BUILDING A GREENWAY

Two major challenges in building greenways are garnering community support, particularly from landowners adjacent to the proposed project, and acquiring land requisite to build the greenway.

### A. Community Support

The failure of the Santa Cruz County greenway in California demonstrates the need for community support from the beginning stages of a greenway project. The Santa Cruz County Board of Supervisors incorporated a greenway plan into their county maps. In reaction, a grassroots movement against the greenway organized a group, Citizens for Responsible Land Use.<sup>61</sup> The Board of Supervisors passed a resolution in response to the community pressure requiring all trail measures to comport with state and federal law and constitutional property rights.<sup>62</sup> After continued pressure from the property rights group, the Board of Supervisors not only abandoned the trail project, but completely removed the plan from the county records.<sup>63</sup>

Moreover, the need for community support and stewardship continues after a greenway is built. While most disputes over a greenway occur before it is built, some groups may continue to object to a recreational trail.<sup>64</sup> For example, after a landowners' association protested the Pumpkinvine Nature Trail in Indiana, approximately seventy people participating in an organized walk encountered individuals on land near the trail firing rifles at pump-

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58. See SHERER, *supra* note 16, at 14 (citing the use of horticulture therapy in geriatrics, special education programs, and prisons to improve mental well-being).

59. See *id.* at 15.

60. See *Health-Based Benefits*, *supra* note 44.

61. See Danaya C. Wright, *Eminent Domain, Exactions, and Railbanking: Can Recreational Trails Survive the Court's Fifth Amendment Takings Jurisprudence?*, 26 COLUM. J. ENVTL. L. 399, 400 (2001).

62. *Id.*

63. *Id.*

64. See generally Martin DeAgostino, *Group Says Trespassers Use Corridor to Get on Private Land*, SOUTH BEND TRIBUNE (South Bend, Ind.), Dec. 18, 1994, at C7.

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kins.<sup>65</sup> One participant said the incident seemed to be “more than a coincidence.”<sup>66</sup>

### B. Sources of Opposition: Individual Landowners and Property Rights Groups

Opposition to greenway projects within the community comes from individual landowners affected by the greenway project and property rights groups. Often, individual landowners oppose greenway projects based on concerns of crime,<sup>67</sup> parking problems,<sup>68</sup> a general loss of privacy,<sup>69</sup> and personal liability for injuries that occur on greenways that cross private property.<sup>70</sup> Well-designed and well-managed greenway systems, however, can avoid most of these problems.<sup>71</sup> In addition, individual landowners normally change their outlook after the greenway is built and recognize the benefits of proximity to a greenway.<sup>72</sup>

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65. *See id.*

66. *Id.*

67. Most landowners are concerned about crimes such as trespass and littering. *See* Nordeka English, *Man Charged with Dumping, Trespassing Near Katy Trail*, ST. LOUIS POST-DISPATCH, Sept. 24, 1992, at 1 (discussing an incident where an individual was charged with a misdemeanor for dumping evergreen branches off the greenway); DeAgostino, *supra* note 64 (discussing how “trespassers used to [trespass] long before the abandoned railroad corridor” was turned into a greenway). *But see* Ron Jennings, *Katy Trail Town, Passers-by Share Sense of Trust; Clifton City Will Celebrate that Spirit in September as it Turns 125 Years Old*, ST. LOUIS POST-DISPATCH, May 31, 1998, at C2 (discussing a landowner along the Katy Trail in Missouri who leaves a refrigerator with refreshments near the greenway and trusts travelers to pay on the honor system).

68. *See* Flannery, *supra* note 32 (discussing local residents’ concerns of parking for a small community flooded with up to 4000 greenway visitors per weekend).

69. *See* Welton W. Harris II, *Critic of Trail Expansion Sells Property to City for \$13,000*, INDIANAPOLIS STAR, July 18, 2000, at 01N (citing the concerns of a landowner whose property is adjacent to the greenway including “loss of privacy and security” because of the “millions of [uninvited] people” brought to his backyard by the greenway).

70. *See* Peggy Bradbury, *Park Ranger Loves Job as Katy Cop; Conservation Policeman Keeps an Eye on Hikers, Bikers on Popular Trail*, ST. LOUIS POST-DISPATCH, June 23, 1994, (St. Charles ed.), at 1 (citing bicycle accidents as the most common form of injury on the Katy Trail greenway).

71. Legislators can amend tort laws to ensure private landowners are not liable for injuries occurring on the greenway. Governments can minimize crime on the greenway in the same way the government minimizes crime in town, by employing officers or rangers to patrol the greenway. *See* Bradbury, *supra* note 70 (discussing two rangers who patrol the Katy Trail to deter crime and assist trail users); John Masson, *Powers Behind the Badge; Park Rangers Take on More Enforcement Responsibility*, INDIANAPOLIS STAR, Sept. 13, 1999, at 03B. Greenway planners can create a buffer zone of greenery to ensure privacy and prevent trespassing.

72. *See* Wright, *supra* note 61, at 401 n.7.

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Another source of opposition to greenways comes from the Property Rights Movement (the “Movement”), a group ideologically opposed to government regulation of private land for public benefit.<sup>73</sup> The authority for this argument derives from the Takings Clause in the Fifth Amendment which states, “nor shall private property be taken for public use, without just compensation.”<sup>74</sup> At the extreme, the Movement interprets the Takings Clause to require compensation when regulation causes any decrease in the value of private property.<sup>75</sup> On the moderate side, the Movement concedes the value of land use planning, but argues that individual landowners should not bear the burden of land use restrictions which benefit the public.<sup>76</sup> Another argument against greenways stems from the right to exclude from private property, which the Supreme Court declared is “one of the most essential sticks in the bundle of rights that are commonly characterized as property.”<sup>77</sup> The Movement normally presents its argument from the view of a sympathetic, individual homeowner who experienced a “horror story” taking.<sup>78</sup> “Property rights advocates do not narrate tales in which a regulation diminishes some small part of a giant corporation’s diversified portfolio,”<sup>79</sup> yet the source of funding for these

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73. See William A. Van Vactor, Jr., *Recent Development: The Backlash to Land Use Regulation Continues: An Analysis of Oregon’s Measure 37*, 26 J. LAND RESOURCES & ENVTL. L. 221, 222 (2005).

74. U.S. CONST. amend V. See William Michael Treanor, *Institute of Bill of Rights Law Symposium Defining Takings: Private Property and the Future of Government Regulation: The Armstrong Principle, the Narratives of Takings, and Compensation Statutes*, 38 WM. & MARY L. REV. 1151, 1156 (1997) (arguing for “compensation statutes at the state and national level designed to ensure compensation in . . . cases . . . in which the total net worth of a property owner is dealt a disproportionate blow as a result of a newly instituted government regulation”).

75. See Van Vactor, Jr., *supra* note 73, at 221; Wright, *supra* note 61, at 473. Some land planning advocates argue government regulation often increases the value of private property, yet the government cannot sue to receive compensation. Because of the nature of the “lottery” system, individuals should not receive compensation simply because they lost rather than gained. Wright, *supra* note 61, at 474 n.329.

76. See LEONARD C. GILROY, STATEWIDE REGULATORY TAKINGS REFORM: EXPORTING OREGON’S MEASURE 37 TO OTHER STATES 14 (2006), <http://www.reason.org/ps343.pdf>.

77. *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979) (upholding the exclusion of the general public from a private marina).

78. See Treanor, *supra* note 74, at 1158-61 (describing a homeowner who was not allowed to protect his house from a wildfire by digging a ditch to create a fire break because the Endangered Species Act protected the habitat of the kangaroo rat).

79. *Id.* at 1162.

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groups is often big business.<sup>80</sup> Therefore, the Movement's opposition to greenways should not be equated with individual landowners' opposition despite the Movement's use of individual landowners' stories in its campaigns.

### C. Land Acquisition

Greenways, recreational trails, and linear parks present unique land acquisition problems. Due to the necessarily contiguous nature and the length of a functional trail, the local government must coordinate a large number of landowners during the land acquisition process. A holdout, "a single dissenting landowner" who breaks the trail connection by refusing to sell, can destroy an entire project.<sup>81</sup> For example, the City Council of Carmel, Indiana spent two years negotiating with landowners adjacent to the proposed Monon Trail to purchase their land.<sup>82</sup> After two years of negotiating, the City Council gave the holdouts three weeks to settle on a deal before initiating condemnation proceedings.<sup>83</sup> The final holdout settled just before the City Council's deadline and received more than \$13,000 for his land which was only appraised at \$1280.<sup>84</sup>

#### 1. Compulsory Land Acquisition Measures

In the ideal greenway project, landowners would recognize the importance and benefits of a greenway and donate or willingly sell the portion of their land necessary for the trail. In many trail projects, however, the acquiring entity must use alternative means to compel unwilling landowners to sell their land. Three resources for coerced acquisition of private land for public use include eminent domain,<sup>85</sup> exactions,<sup>86</sup> and impact fees.<sup>87</sup>

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80. See Wright, *supra* note 61, at 473 (listing contributors to the property rights movement, including the National Mining Association, the Chemical Manufacturers Association, and the American Petroleum Institute). **R**

81. *Id.* at 409.

82. See Welton W. Harris II, *City Sets Deadline for Trail Lands: Owners Have Until July 14 to Agree on Sales*, INDIANAPOLIS STAR, June 21, 2000, at 01N.

83. *Id.*

84. See Welton W. Harris II, *Critic of Trail Expansion Sells Property to City for \$13,000*, INDIANAPOLIS STAR, July 18, 2000, at 01N.

85. See Wright, *supra* note 61, at 409. **R**

86. *Id.* at 410.

87. See *infra*, notes 111-13. **R**

a. *Eminent Domain*

The Fifth Amendment states, “nor shall private property be taken for public use, without just compensation.”<sup>88</sup> Therefore, judicial scrutiny of land acquired through eminent domain requires: (1) “public use” of the land; and (2) “just compensation” for the landowner.

Greenways satisfy the “public use” requirement under either a narrow or broad definition of “public use.” Under the narrow definition, “public use” requires either public access or government ownership of the land,<sup>89</sup> and greenways permit public access even if it is limited to daylight hours or weekends. Under a broad definition, “public use” entails some incidental benefit to the public;<sup>90</sup> greenways provide a number of incidental public benefits, for example, flood prevention through storm water mitigation.<sup>91</sup>

While greenways satisfy the “public use” element, the requirement of “just compensation” limits the use of eminent domain for greenways. Voters usually support the creation of green space. Unsurprisingly, however, they are often unwilling to increase tax rates or create a new tax to provide funding for a greenway project.<sup>92</sup> Another possible source of funding includes impact fees.<sup>93</sup> Impact fees, however, might be subject to a high level of judicial scrutiny and will often be struck down as an unconstitutional regulatory taking under heightened judicial scrutiny.<sup>94</sup> Therefore, funding to provide just compensation might be scarce, thus limiting the use of eminent domain as a tool to acquire land for greenways. Even if a local government has sufficient funding to purchase private land, local politicians might be hesitant to use eminent domain because of the controversial nature of coerced takings.<sup>95</sup> While

88. U.S. CONST. amend. V.

89. See Charles E. Cohen, *Eminent Domain After Kelo v. City of New London: An Argument for Banning Economic Development Takings*, 29 HARV. J.L. & PUB. POL’Y 491, 493-94 (2006).

90. *Id.* at 494.

91. See *supra* note 43 and accompanying text.

92. See Griffith, *supra* note 1, at 575 n.79 and accompanying text (attributing Georgia voters’ rejection of a proposed green space fund to the “voters’ reluctance to approve a new real estate transfer tax to pay for the fund”) (internal quotations omitted).

93. See *infra* note 111 and accompanying text.

94. See *infra* notes 105-18, 112-13 and accompanying text.

95. See James Freda, Note, *Does New London Burn Again?: Eminent Domain, Liberty and Populism in the Wake of Kelo*, 15 CORNELL J.L. & PUB. POL’Y 483, 483-85 (2006) (stating the eminent domain case of *Kelo v. City of New London* received the “loudest popular outcry” in the Supreme Court’s 2004-2005 docket, despite other

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judges often receive the protection of life tenure when making controversial decisions, local politicians do not, making the decision to use eminent domain a possible “political suicide.”<sup>96</sup>

Legislatures limit the use of eminent domain by restrictively granting the authority to use eminent domain to certain entities. Non-governmental organizations, such as land trusts and other non-profits, often acquire the land for a greenway.<sup>97</sup> The power of eminent domain, however, is often limited to governmental entities, such as departments of transportation.<sup>98</sup> In addition, some states limit the amount of land attainable through eminent domain, which nullifies the utility of the power to obtain land for a greenway.<sup>99</sup>

While recreational trails satisfy the “public use” element, the use of eminent domain as a land acquisition tool is limited by the funding necessary to compensate the landowner, the controversial nature of eminent domain, land trusts lacking the authority to use eminent domain and limits on the amount of land attainable through eminent domain.

#### b. Exactions

The second coercive means for attaining land for a greenway is through an exaction. An exaction is a concession in which a municipality requires a dedication—either in-kind or monetary—in exchange for a development permit.<sup>100</sup> Exactions compel developers to internalize the costs of development,<sup>101</sup> additional roads and utility lines for example, which advances efficient use of land. Eventually, municipalities realized development creates costs outside of the development site, such as schools and parks, and began imposing exactions in the form of fees.<sup>102</sup>

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cases covering issues of “medical marijuana, religion in the public square, [and] the juvenile death penalty”).

96. Wright, *supra* note 61, at 410 (“Exercising [eminent domain] power can be political suicide when local elections are often won and lost on single issue campaigns.”).

97. See Griffith, *supra* note 1, at 583.

98. See Wright, *supra* note 61, at 410.

99. *Id.* at 424 (“Connecticut . . . limit[s] the total allowable land obtainable through eminent domain to 200 feet in width.”).

100. See Mark Fenster, *Takings Formalism and Regulatory Formulas: Exactions and the Consequences of Clarity*, 92 CAL. L. REV. 609, 611 (2004).

101. *Id.* at 624.

102. See Michael T. Kersten, Comment, *Exactions, Severability and Takings: When Courts Should Sever Unconstitutional Conditions from Development Permits*, 27 B.C. ENVTL. AFF. L. REV. 279, 286 (2000).

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While a dedication of land does not necessarily guarantee public access, exactions are flexible and allow the parties to negotiate public access for a greenway dedication. Scholars and land planning advocates praise the flexibility of exactions because they create compromises;<sup>103</sup> others, however, criticize the flexibility of exactions because they allow municipalities to extort developers.<sup>104</sup>

Heightened judicial scrutiny of exactions limits the use of exactions as a means to acquire land for a greenway. In *Nollan v. California Coastal Commission*, the Supreme Court mandated an “essential nexus” between the harm caused by the development and the exaction requirement.<sup>105</sup> In *Dolan v. City of Tigard*, the Court required “‘rough proportionality’ . . . both in nature and extent to the impact of the proposed development” and the condition in the exaction.<sup>106</sup> The Court also placed the burden of proving the “essential nexus” and “rough proportionality” on the government.<sup>107</sup> Based on the facts of *Dolan*, an exaction that requires a single landowner to build a greenway in exchange for a building permit constitutes a regulatory taking under the Nollan/Dolan standard.<sup>108</sup> These and other recent Supreme Court cases, however, leave open questions as to whether the heightened Nollan/Dolan standard applies to impact fees<sup>109</sup> and legislative decisions.<sup>110</sup>

### c. Impact Fees

An impact fee is a one-time charge imposed on a developer to subsidize public services required by a new development.<sup>111</sup> An impact fee does not directly acquire land, but it raises revenue for government to purchase land through eminent domain. Some ar-

103. See Fenster, *supra* note 100, at 622-23.

104. See Kersten, *supra* note 102, at 288-89.

105. 483 U.S. 825, 837 (1987).

106. 512 U.S. 374, 391 (1994).

107. *Id.* at 386, 391.

108. See *id.* at 378-80, 396.

109. See Fenster, *supra* note 100, at 635-37. In 1993, the Court remanded *Ehrlich v. City of Culver City*, 512 U.S. 1231 (1994), for the California Supreme Court to review an impact fee in light of *Dolan*. See Fenster, *supra* note 100, at 637. Dicta in *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999), indicates, however, that heightened judicial review applies only to exactions requiring land dedications. See Fenster, *supra* note 100, at 637.

110. See Fenster, *supra* note 100, at 637-39 (citing a circuit split over whether to apply heightened Nollan/Dolan review to legislatively enacted exactions).

111. Nicole M. Lugo, Case Note, *Dolan v. City of Tigard: Paving New Bicycle Paths Through the Thickets of the Fifth Amendment's Takings Clause*, 48 ARK. L. REV. 823, 833 (1995).

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gue that the Constitution protects individuals from government invasion into real property but not an individual's purse;<sup>112</sup> while others focus on the function of the exaction rather than the form.<sup>113</sup> Until the Supreme Court directly addresses the issue, an impact fee provides an option in some states to raise funds to purchase land for greenways while circumventing the heightened judicial scrutiny of Nollan/Dolan.

## 2. *Voluntary Land Acquisition Measures*

Local governments or nonprofit entities can acquire land through conservation easements when a landowner is willing to donate their land. Local governments can also preserve land for a future greenway through zoning.

### a. *Conservation Easements*

If the government cannot coerce an individual to sell or give land through eminent domain or an exaction, municipalities must rely on the willingness of individual landowners to donate their land for a public greenway. In a conservation easement, the landowner agrees to limit development on their land and the agreement runs with the land in perpetuity.<sup>114</sup> Municipalities often work with land trusts to acquire and negotiate conservation land for greenways.<sup>115</sup> Conservation easements are most useful when the landowner is interested in conserving her land as open space. Conservation easements receive favorable tax treatment, which increases the incentive to donate land.<sup>116</sup> Although a conservation easement does not necessarily allow public access, the contracting parties can negotiate to include public access if some property interest remains with the landowner.<sup>117</sup>

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112. See Jane C. Needleman, Note, *Exactions: Exploring Exactly When Nollan and Dolan Should Be Triggered*, 28 *CARDOZO L. REV.* 1563, 1573 (2006).

113. See *id.* at 1581-85.

114. See Francesca Ortiz, *Biodiversity, The City, and Sprawl*, 82 *B.U. L. REV.* 145, 173 (2002).

115. See Griffith, *supra* note 1, at 583 ("Many private property holders prefer that a locally based [land trust] rather than a government entity become the holder of their property interests donated for open space preservation. Land trusts frequently can negotiate and finance these gifts more quickly than governmental bodies.").

116. *Id.* at 584 ("For such treatment, the Internal Revenue Service requires that the landowner's agreement with a qualified easement holder convey certain property rights to protect a resource. A landowner's agreement must be voluntary, legally binding, and permanent . . .").

117. *Id.* at 583-84.

*b. Zoning*

If a local government lacks funding to build a greenway, it can still preserve land through overlay zoning, which places additional limitations or requirements on a particular area.<sup>118</sup> Zoning provides minimal protection, however, because zoning ordinances are easily repealed if local politics change.<sup>119</sup>

**III. CHATTANOOGA RIVERPARK CASE STUDY**

Despite all the challenges in attaining a greenway, many communities plan, build, and maintain successful greenways.<sup>120</sup> The Chattanooga Riverpark in Chattanooga, Tennessee provides an example of a thriving local greenway project.

**A. History of Chattanooga, Tennessee**

From the 1930s through the 1960s, Chattanooga experienced economic growth because of a strong manufacturing economy.<sup>121</sup> In 1969, however, Chattanooga received a “wakeup call” when Walter Cronkite announced on national television that the federal government deemed Chattanooga the city with the worst air quality in the nation.<sup>122</sup> The extraordinary level of air pollution stained white shirts and caused motorists to drive with their headlights during the day.<sup>123</sup> Chattanoogaans responded quickly and vastly improved the air quality within five years by regulating the manufacturing industry.<sup>124</sup> The increased environmental regulations, however, negatively impacted the economy and caused a recession during the 1970s and 1980s.<sup>125</sup> In addition to the recession and air and water

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118. See NATIONAL PARK SERV., RIVERS, TRAILS & CONSERVATION ASSISTANCE PROGRAM, PROTECTING OPEN SPACE: TOOLS AND TECHNIQUES FOR TEXAS 10-11 (2004), <http://www.nps.gov/nrcr/programs/rtca/helpfultools/openspace.pdf> [hereinafter PROTECTING OPEN SPACE].

119. *Id.*

120. “Success” is defined subjectively by a community’s individual goals for their greenway project.

121. See JOHN PARR, *Chattanooga: The Sustainable City*, in BOUNDARY CROSSERS: CASE STUDIES OF HOW TEN OF AMERICA’S METROPOLITAN REGIONS WORK (Academy of Leadership 1998), available at <http://www.academy.umd.edu/publications/Boundary/CaseStudies/bcscontent.htm>.

122. *Id.* (citing dangerous levels of ozone, nitrous oxide, and particulate matter which contaminated the air).

123. See Laurie Perry Vaughn, *Take Me to the River: The Story of the Tennessee Riverpark*, PARKS & RECREATION, Jan. 2000, at 62-63.

124. See PARR, *supra* note 121.

125. *Id.*

pollution issues, Chattanooga struggled with tension created by racial<sup>126</sup> and socioeconomic divides.<sup>127</sup>

**B. Community Revitalization and the “Chattanooga Process”**

The City of Chattanooga authorized the Moccasin Bend Task Force<sup>128</sup> (the “Task Force”) in 1982 to brainstorm ways to revitalize the city.<sup>129</sup> The Task Force searched for other cities with similar troubles in order to learn from previous experiences in attempting to solve these problems.<sup>130</sup> The group chose Indianapolis, Indiana and, after visiting the city, used the Indianapolis method of wide-range community involvement and consensus for city planning.<sup>131</sup> A group of private sector leaders in Indianapolis created the Greater Indianapolis Progress Committee (the “GIPC”) to spur community involvement; Chattanooga modeled Chattanooga Ventures after the GIPC.<sup>132</sup>

Chattanooga Ventures was a “locally based or community building intermediary” created to conduct the community visioning process.<sup>133</sup> The Lyndhurst Foundation, established by one of the three original bottlers of Coca-Cola,<sup>134</sup> provided significant funding for the visioning process.<sup>135</sup> Another driving force came from the leadership of Rick Montague, the President of the Lyndhurst Foundation at the time.<sup>136</sup> Rather than simply donating funding, he

126. Chattanooga experienced controversy and violence during school desegregation and the school-busing campaign. *Id.*

127. In addition to a racially diverse citizenship, Chattanooga is also socio-economically diverse including underprivileged Appalachian families and descendants of wealthy “Yankees who came to Chattanooga after the Civil War to make their fortunes.” *Id.*

128. Chattanooga citizens composed the Moccasin Bend Task Force, including Sally Robinson, Jack McDonald, Rick Montague, George Mahoney, and Bob Mayville. The Task Force also worked with Jim Bowen. *See* Mickey Robbins, *Many Faceted Effort Finally Boosts Status of Moccasin Bend*, CHATTANOOGA TIMES FREE PRESS, Aug. 20, 2006, at F2.

129. *See* PARR, *supra* note 121. *See also* NATIONAL PARK SERV. PHILA. SUPPORT OFFICE, RIVERS, TRAILS & CONSERVATION ASSISTANCE PROGRAM, GREENWAY STEWARDSHIP STUDY, <http://www.nps.gov/phso/rtca/grnmgmt3.htm> (last visited Mar. 3, 2007) [hereinafter GREENWAY STEWARDSHIP STUDY].

130. *See* PARR, *supra* note 121.

131. *Id.*

132. *Id.*

133. *Id.*

134. *See* Pierre Filion, et al., *The Successful Few: Healthy Downtowns of Small Metropolitan Regions*, 70 J. AM. PLANNING ASS’N., June 22, 2004, no.3, at 328.

135. *See* PARR, *supra* note 121.

136. *Id.*

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took an active part in the visioning process.<sup>137</sup> Montague stressed the importance of really listening to every suggestion, which leads to credibility and eventually community support which is “very powerful in getting things done.”<sup>138</sup>

Parr views the process of community collaboration employed by Chattanooga Ventures as so revolutionary it should be termed the “Chattanooga Process.”<sup>139</sup> The “Chattanooga Process” is unique because it actively involves residents at every stage.<sup>140</sup> Rather than bringing a plan to the community to vote on, the Chattanooga Process encourages input from the beginning by going to the community to solicit ideas. The goal is to determine community preference and consensus through surveys and meetings.<sup>141</sup> Next, planning leaders create a long-term comprehensive plan based on the ideas created and supported by the community.<sup>142</sup> This process minimizes otherwise contentious disputes regarding local government land use regulation and zoning laws because these laws are modified based on community input and consensus.<sup>143</sup>

### C. Outcome: Tennessee Riverpark Master Plan

Citizens of Chattanooga worked with the Moccasin Bend Task Force, the Trust for Public Land (the “TPL”)<sup>144</sup> and Carr, Lynch and Associates<sup>145</sup> for three years to create the Tennessee Riverpark

137. See Bob Paynter, *Chattanooga Back on the Fast Track ‘Visioning’ Helped Citizens See a New Way to Remake a Tired Old City*, PLAIN DEALER (Cleveland, Oh.), Dec. 16, 2001, at A1 (“[Rick Montague] sought input from all backgrounds and classes of Chattanoogaans, showing up at public housing projects and ladies’ garden clubs alike in search of participants and ideas.”).

138. *Id.*

139. See PARR, *supra* note 121.

140. *Id.*

141. See *id.* “The great thing is that everybody gets to be heard. Not everybody is excited about every ingredient, but they feel like they had say-so . . . .” Cindy Brandt, *Rebuilding Your City: The Chattanooga Way*, ROCKFORD REGISTER STAR (Rockford, Ill.), Dec. 9, 2002, at 1B (quoting Jim Bowen, a former Chattanooga City employee).

142. See PARR, *supra* note 121.

143. *Id.* (“[The Regional Planning Agency] rewrite[s] zoning and other regulations to help guide future development so it is consistent with the original preferences expressed by a broad cross-section of residents from the Chattanooga region. This is a step that will take a number of years to execute, but the sense is that with broad community support this normally confrontational process will be accomplished with a minimal amount of acrimony.”).

144. The Trust for Public Land is a national non-profit that coordinates land acquisition for preservation projects. See The Trust for Public Land Homepage, <http://tpl.org> (follow “About TPL” hyperlink) (last visited Oct. 15, 2007).

145. Carr, Lynch and Associates is “a nationally recognized land-use design firm” from Cambridge, Massachusetts. See Vaughn, *supra* note 123, at 66-67.

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Master Plan (the “Master Plan”).<sup>146</sup> The citizens of Chattanooga expressed their ideas and desires through hundreds of meetings which thousands attended to produce the Master Plan in 1985.<sup>147</sup> The Master Plan summarized the greenway goals, which included preserving the river and history of the area, creating amenities to benefit local citizens, and revitalizing the local economy by attracting private development and tourism.<sup>148</sup> The Master Plan also specified “design guidelines” to assure uniformity in the final greenway.<sup>149</sup>

In addition to general goals, the Master Plan included detailed suggestions on land acquisition tools and funding sources. The Master Plan recommended using overlay zoning<sup>150</sup> to regulate greenway land.<sup>151</sup> The proposed means of land acquisition included donated easements combined with tax benefits to create the incentive for landowner donations.<sup>152</sup> The Master Plan declared a twenty-year timetable with development occurring in three phases based on location.<sup>153</sup> Proposed sources of funding included “private capital, contributions, local bonds, federal programs, land leasing and revenues from parking or similar use.”<sup>154</sup> Although the Master Plan generated by the task force encompasses a handful of jurisdictions, not a single local governing body formally adopted the Master Plan.<sup>155</sup>

**D. Implementation Through Public-Private Partnership**

In order to implement the Plan a new public-private partnership, the RiverCity Company (“RiverCity”), was created.<sup>156</sup> RiverCity was responsible for planning, designing, building, and financing the greenway.<sup>157</sup> RiverCity implemented about twenty miles of the greenway plan within the City of Chattanooga, while the TPL coor-

146. See RiverCity Company, Tennessee Riverpark, [http://www.rivercitycompany.com/pdfs/media/tn\\_riverpark.pdf](http://www.rivercitycompany.com/pdfs/media/tn_riverpark.pdf) (last visited Oct. 15, 2007).

147. See Vaughn, *supra* note 123, at 67 (indicating Chattanooga City, Hamilton County, and the Lyndhurst Foundation as the source of funding for the Master Plan).

148. See RiverCity Company, *supra* note 146.

149. See *id.*

150. See PROTECTING OPEN SPACE, *supra* note 118.

151. See RiverCity Company, *supra* note 146.

152. See *id.*

153. *Id.*

154. *Id.*

155. See GREENWAY STEWARDSHIP STUDY, *supra* note 129.

156. The RiverCity Company board of directors included members from both public and private sectors. See Brandt, *supra* note 141.

157. See RiverCity Company, *supra* note 146.

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minated the land acquisition and broader regional project, about fifty-five miles connecting seven greenway corridors.<sup>158</sup>

The Master Plan envisioned two phases for implementation. The first phase encompassed a fifty-acre park and was completed in 1989, just five years after the Master Plan was unveiled.<sup>159</sup> This phase included three miles of the Riverwalk, “fishing piers, picnic and trail shelters, a large playground, [and] an indoor pavilion . . . .”<sup>160</sup> Even though this initial three miles crossed nine different properties, land acquisition proved less challenging because the riparian nature of the land meant it could not be developed due to the need for riverbank stabilization.<sup>161</sup> By 1992, integral parts of phase two were completed,<sup>162</sup> including Ross’s Landing Plaza and the Tennessee Aquarium.<sup>163</sup> The Millennium Project is a five mile segment which connects a gap in the previous segments creating ten miles of continuous bike and pedestrian paths.<sup>164</sup>

Approximately \$33 million in private capital financed the greenway within the City of Chattanooga and that portion of the greenway is now complete.<sup>165</sup> Private foundations, including the Lyndhurst Foundation,<sup>166</sup> provided eighty three percent of the funding for the Tennessee Riverpark, the federal government contributed six percent, while the city and county provided five and three percent respectively.<sup>167</sup> Hamilton County and the City of Chattanooga split the continuing costs of maintenance, security, and programming.<sup>168</sup>

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158. See GREENWAY STEWARDSHIP STUDY, *supra* note 129.

159. See Vaughen, *supra* note 123, at 67.

160. *Id.*

161. *Id.* at 73. “Two years later the Tennessee Valley Authority extended the Riverwalk to the base of Chickamauga Dam.” *Id.* at 67.

162. *Id.*

163. The Tennessee Aquarium is a freshwater aquarium in Ross’s Landing that cost \$45 million to build but “attracts more than 1.1 million visitors annually and produced over \$133 million for the community during its first year of operation.” *Id.* at 69.

164. *Id.* at 72. The Millennium Riverwalk segment opened in 2005 and the newest section links the University of Tennessee to the Martin Luther King Neighborhood. See The Trust for Public Land, *New Section of TN Riverpark Now Open*, (June 2005), [http://www.tpl.org/tier3\\_cd.cfm?content\\_item\\_id=19720&folder\\_id=670](http://www.tpl.org/tier3_cd.cfm?content_item_id=19720&folder_id=670).

165. See GREENWAY STEWARDSHIP STUDY, *supra* note 129.

166. See Fillion, *supra* note 134.

167. See Vaughen, *supra* note 123, at 69. These numbers are representative of the entire Tennessee Riverpark project, so the government may pay for a pavilion while a private party funds a structure.

168. *Id.*

**E. Impact and Continued Community Support**

The Tennessee Riverpark significantly impacted the Chattanooga community. In addition to an improved economy, property values increased in neighborhoods near the downtown riverfront district.<sup>169</sup> The Riverpark received numerous awards,<sup>170</sup> and in 2000, delegations from over 150 cities studied or visited Chattanooga to understand and duplicate its success.<sup>171</sup> In addition to the annual reports and many awards, some measure the success of the greenway simply by visiting the greenway and witnessing the volume and diversity of its users.<sup>172</sup>

Continuous planning and community involvement are vital to the success of the Chattanooga project. In 1984, the Lyndhurst Foundation funded another community planning and goal setting process called Vision 2000.<sup>173</sup> After twenty weeks of meetings and considering a plethora of ideas, the community agreed on forty new goals.<sup>174</sup> Ten years later, when eighty-five percent of the Vision 2000 goals were complete, the community met again to set more community planning goals in a process called Re-Vision 2000.<sup>175</sup>

**IV. ROCKFORD RIVER WALK CASE STUDY**

Rockford is a small city in Illinois, located approximately ninety miles east of Chicago. Rockford is similar in “population, per-capita income, and median home price” to Chattanooga.<sup>176</sup> In addition, the cities have struggled with similar problems: recession from a decreasing manufacturing economy and a rundown downtown area.<sup>177</sup> Now, however, through a series of walkways and parks, the Tennessee Riverpark connects Chattanooga’s downtown district with the river. The amenities within the Riverpark gener-

169. *Id.* at 70 (citing a 141% increase in property values between 1988 and 1999 and a 26.5% increase between 1995 and 1999).

170. *Id.* at 63-65 (listing honors the Riverpark received including the Honor Award for Urban Design from the American Institute of Architects, *Walking Magazine* named Chattanooga “one of the country’s most walkable communities,” and the City Livability Award from the U.S. Conference of Mayors).

171. *Id.* at 70.

172. *Id.* at 65-66. Despite the success and much positive media, the City of Chattanooga recognizes the need for additional improvement, such as revitalizing the broader regional economy. *See* Brandt, *supra* note 141.

173. *See* Vaughn, *supra* note 123, at 67.

174. *Id.*

175. *Id.*

176. Brandt, *supra* note 141.

177. *Id.*

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ated over \$133 million in revenues during their first year of operation<sup>178</sup> while the Rockford community still strives to revitalize its downtown.

In 2002, a group from the Rockford Area Chamber of Commerce traveled to Chattanooga.<sup>179</sup> From their visit to Chattanooga, the Rockford city councilmen gathered that a single project can drive community revitalization;<sup>180</sup> this was their interpretation of the Chattanooga fresh water aquarium located in the Tennessee Riverpark.

In 2004, Rockford Mayor Doug Scott began work on a project to spur economic development and community revitalization by building a convention center.<sup>181</sup> A negative assessment of the plan by the Brookings Institute stirred up controversy over the convention center shortly before Scott's run for re-election.<sup>182</sup> Larry Morrissey defeated Doug Scott by a landslide in the 2005 election.<sup>183</sup> The focus on downtown revitalization shifted from a convention center to the river walk championed by Mayor Morrissey and his vision of an inviting and livable downtown.<sup>184</sup> Morrissey ran on a platform of "roads, rails, and river walk,"<sup>185</sup> so voters anticipated progress on the promised river walk.<sup>186</sup>

Morrissey faced a number of challenges assembling funds for the river walk project. Only a few months after Morrissey's election,

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178. *Id.* at 69.

179. *Id.*; Anna Voelker, *Tacoma Might Hold Lessons for Region*, ROCKFORD REGISTER STAR (Rockford, Ill.), May 13, 2003, at 1B.

180. *See* Opinion, *Our View*, ROCKFORD REGISTER STAR (Rockford, Ill.), Feb. 15, 2005, at 9A.

181. *See* Brian Peters, *Mayor Scott's First Three Years*, ROCKFORD REGISTER STAR (Rockford, Ill.), Apr. 18, 2004, at 1H (discussing how Mayor Scott pushed the convention center plan just before his campaign for reelection).

182. *See* Bob Shaper, *Study Advises Against Venue*, ROCKFORD REGISTER STAR (Rockford, Ill.), Feb. 13, 2005, at 1AC.

[A] new report from a respected Washington think tank [called] into question the overall health of the convention center business. The study, published by the Brookings Institute, concludes that the convention marketplace "is declining in a manner that suggests that a recovery or turnaround is unlikely to yield much increased business for any given community."

*Id.*

183. *See* *New Mayor Must Deliver Change Voters Demanded*, ROCKFORD REGISTER STAR (Rockford, Ill.), Apr. 6, 2005, at 5.

184. *See* *Mayoral Race Downtown*, ROCKFORD REGISTER STAR (Rockford, Ill.), Mar. 13, 2005, at 4F (quoting Morrissey: "Downtown has got to be a contributor to the Rockford economy each and every day. Downtown must not be simply a novelty economy . . . . It's got to be a place that people find relevant to their everyday lives.").

185. *Id.*

186. *See* *New Mayor Must Deliver Change Voters Demanded*, *supra* note 183.



the Rockford Alderman cut funding for engineering studies for the river walk from the capital improvement plan budget.<sup>187</sup> Despite much excitement and strong support for the proposed river walk, voters rejected a one percent increase in sales tax to fund it.<sup>188</sup> The river park project, however, received a \$1.76 million grant from the Illinois Department of Transportation.<sup>189</sup> Morrissey plans to use this money to spur private investment in the river walk.<sup>190</sup> Funding is crucial for land acquisition, and development rights run up to the river bank in Rockford<sup>191</sup> making land acquisition more complicated and likely more expensive.

Contamination of the Rock River created another hurdle in this greenway project. The Environmental Protection Agency listed the Rock River as a “polluted river” due to high levels of fecal bacteria.<sup>192</sup> This pollution gives the river a negative image and does not encourage the community to celebrate the river or make the downtown an important part of their everyday lives.<sup>193</sup>

Morrissey was consistently ambiguous about the details of the river walk project during his campaign.<sup>194</sup> Because the plan for the river park remains vague, landowners on the river front resist improving their property. Landowners would rather have federal tax dollars pay for improvements because improvements would be a waste if soon destroyed by the river walk project.<sup>195</sup> In June 2005, the city hired the Hitchcock Design Group to create a general plan

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187. See Chris Green, *Committee Restores \$1 Million For Road, Alley Improvements*, ROCKFORD REGISTER STAR (Rockford, Ill.), Dec. 29, 2005, at 9.

188. See Chuck Sweeney, *What's Next?*, ROCKFORD REGISTER STAR (Rockford, Ill.), Mar. 22, 2006, at 1B.

189. See Aaron Chambers, *City's River Walk Dream Get \$1.76M From IDOT*, ROCKFORD REGISTER STAR (Rockford, Ill.), June 3, 2006, at 7. Although the grant provides optimism for the future of the river walk, Rockford applied for a five million dollar grant but only received 1.75 million dollars and some estimate the total cost of the project between fifty and one hundred million dollars. *Id.*

190. See Judy Emerson, *Rockford is a Gem in the Midwest*, ROCKFORD REGISTER STAR (Rockford, Ill.), June 26, 2006, at 1C.

191. See Chuck Sweeny, *Morrissey Ends Dem's Hold on Office*, ROCKFORD REGISTER STAR (Rockford, Ill.), Apr. 7, 2005, at 8.

192. See Isaac Guerrero, *Rock's Image a 'Black Eye' to Community*, ROCKFORD REGISTER STAR (Rockford, Ill.), Jan. 8, 2006, at 1.

193. See *id.*

194. See *New Mayor Must Deliver Change Voters Demanded*, *supra* note 183.

195. See Judy Emerson, *Riverfront Plaza Still Closed Off, Awaiting Funding*, ROCKFORD REGISTER STAR (Rockford, Ill.), June, 2, 2006, at 1C (discussing a landowner who waited nearly two years to fix a closed riverfront plaza because the landowner did not know whether the river walk plan involved improvements to his property).

for the river walk.<sup>196</sup> Rockford solicited engineers in August of 2006 to finalize the Hitchcock Plan.<sup>197</sup> During his election campaign, Morrissey predicted the river walk would be finished by 2009,<sup>198</sup> but more recently the Mayor predicted that the ground-breaking for the project would take place in 2008.<sup>199</sup> The Rockford community expressed general frustration due to the slow progress on the river walk and lack of communication with the community about the project.<sup>200</sup>

## V. COMPARING THE CHATTANOOGA RIVERPARK AND THE ROCKFORD RIVER WALK

Many individuals and cities have studied Chattanooga to understand and emulate its success. The four factors imperative to Chattanooga's success are (1) a "wakeup call," (2) a "mover and a shaker," in the community, (3) community participation and stewardship, and (4) partnerships at every stage of the greenway project.

### A. Wakeup Call

Chattanooga received a wakeup call after being deemed the dirtiest city in America. Chattanooga assembled to improve their environment by regulating industry and cleaned up their city within a few years. This experience demonstrated to the residents of Chattanooga that they were capable of ameliorating conditions in their city through cooperation, and that they possessed the resolve and skills to tackle other problems.

While most cities have problems, they hardly ever reach a precipitous extreme and the residents are rarely startled by a wakeup call in the form of a national news broadcast. Even though pollution plagued the river in Rockford, bacterial pollution probably did not create the sense of urgent need for change like the air pollution in Chattanooga, which stained shirts and forced people to drive with headlights on during the day. The severe pollution problems in Chattanooga drove its citizens to make changes; the relative

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196. See Bob Schaper, *Rockford to Solicit River Walk Engineering Plans*, ROCKFORD REGISTER STAR (Rockford, Ill.), Aug. 26, 2006, at 2D.

197. *Id.*

198. See *Mayoral Race Downtown*, *supra* note 184.

199. See Schaper, *supra* note 196.

200. See Judy Emerson, *New Way To View River-Walk Pace: Not Quite As Slow*, ROCKFORD REGISTER STAR (Rockford, Ill.), Sept. 22, 2006, at 1.

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mildness of Rockford's problems, however, have not created a similar drive in its citizens to unite and improve their city.

### **B. Mover & Shaker**

The Lyndhurst Foundation generously provided funding and leadership throughout the entire process of community participation, planning, and implementation. The Lyndhurst Foundation was created by one of the original three bottlers of Coca-Cola, who also happened to be a resident of Chattanooga. Chattanooga was fortunate to have a philanthropic leader in its community, and the community was doubly fortunate because the Lyndhurst Foundation also had a vision for its investment. The Lyndhurst Foundation wanted to holistically improve Chattanooga, not simply one building, and the Foundation focused on sustainable development. While most cities do not have the equal to a Lyndhurst Foundation, every community can learn from the Foundation's calculated investment in projects to continuously improve the city as a whole.

### **C. Community Visioning Process and Community Stewardship**

The process of creating the Tennessee Riverpark Master Plan was extensive, involving thousands of people over hundreds of meetings. By the end of this process, the community took ownership of the plan and eventually the Riverpark. While Rockland citizens initially supported the idea of the river walk, the community took no part in the planning. Rockland citizens felt no ownership of the "nebulous" plan.<sup>201</sup>

Complete community support gave local politicians in Chattanooga the courage to take risks and complete the project. Although the Rockland Mayor received much support during his campaign for the river walk, the community refused a tax increase to fund the river walk. The Rockland community was not involved in the river walk project, it did not see the vision the Mayor and the design company had created, so it refused to give its tax dollars to the project. Chattanooga's experience confirms that meaningful community participation helps foster the community support vital to a greenway project.

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201. See *River Walk Money Good: Big Picture Would be Better*, ROCKFORD REGISTER STAR (Rockford, Ill.), June 7, 2006 at 5.

#### **D. Partnerships at Every Phase of the Project**

The City of Chattanooga realized that it needed help in order to get the Riverpark project started. At the beginning, the City appointed the Moccasin Bend Task Force to determine the best use of the City's prized resource, the Tennessee River. Next, the City created Chattanooga Ventures which supervised community outreach to solicit ideas and facilitate the community visioning process. In addition, the RiverCity Company planned, sought funding, and eventually implemented the Master Plan. The City also contracted with the Trust for Public Land, a private non-profit agency, to coordinate the greenway project for the larger region. The local government in Chattanooga mostly provided political support, while local businesses supplied leadership and donations, and individual citizens gave their ideas.

Chattanooga found or created partnership organizations that brought individuals with expertise and focus to each stage of the process. While the Mayor of Rockland hired a private company to create a master plan, beginning the process of cooperation and partnership, the Mayor's office continues to independently search for funding sources. In Chattanooga, not only did the individuals working on the project bring expertise, but many groups working on the Riverwalk were focused solely on completing that greenway, like the RiverCity Company. Other groups, such as the Trust for Public Land and Carr, Lynch and Associates, were accustomed to balancing various projects and ensuring their completion. Although the Rockland Mayor is concerned about the greenway project, the Mayor must also improve education, reduce crime, and fix roads among other pressing objectives, which may cause the Mayor to sweep the river walk project under the carpet. Partnerships are important because they ensure that the best-trained professionals are focused on each component of the project.

#### **CONCLUSION**

Four factors were key to the success of Chattanooga's greenway project. Although all cities may not have a Walker Cronkite wakeup call or a Lyndhurst Foundation, most cities can emulate the effect those factors had on Chattanooga. An exposé on national television is not necessary to raise awareness about issues in a community—leaders invested in the holistic improvement of a community can stir up ideas and motivation. More significantly, every city can utilize the community visioning process, which leads

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to stewardship of the greenway, and partnerships, which ensure the best expertise and focus at all stages of the greenway process. The community visioning process in Chattanooga gave every citizen the opportunity to voice his or her ideas and ensured those ideas were considered. This process secured community support and a driving momentum to complete the Riverpark which created a vibrant, flourishing community.

