Planning December 2020

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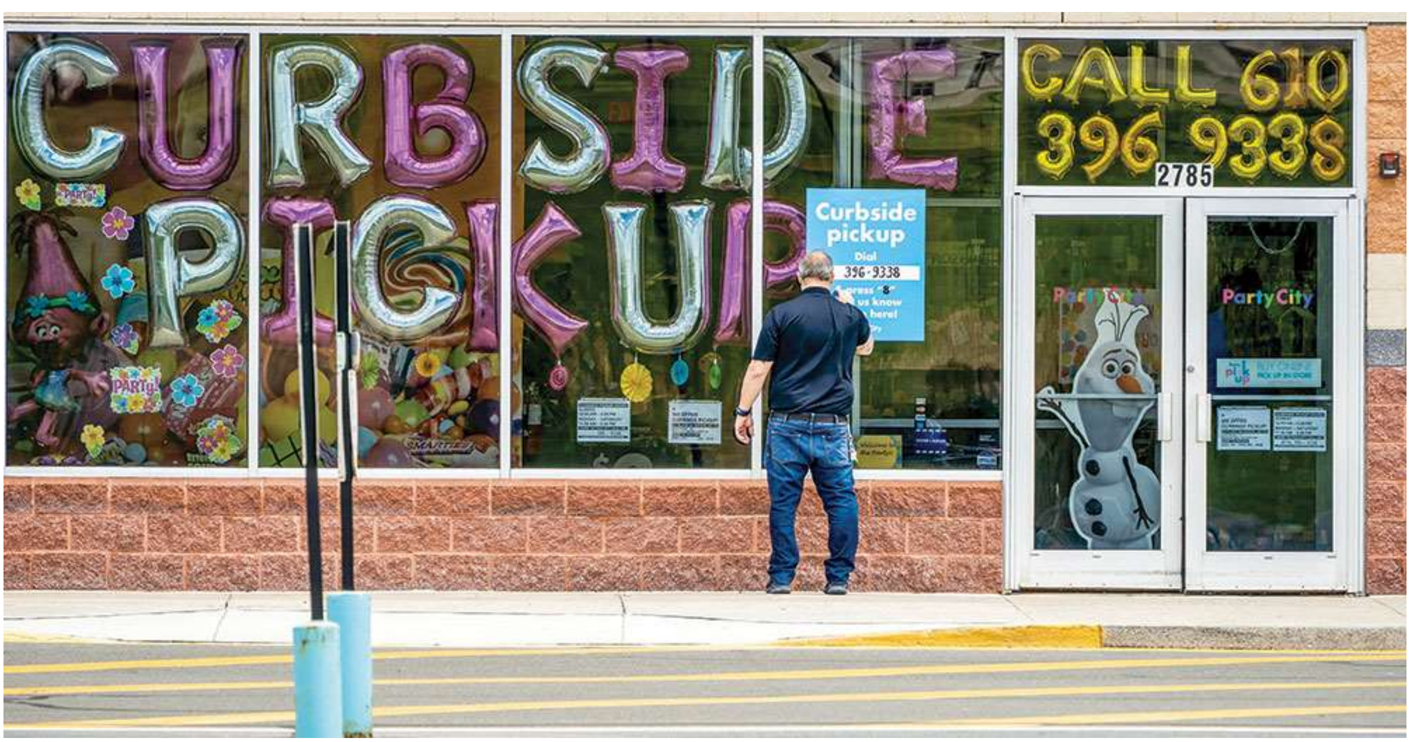
LEGAL LESSONS

How COVID-19 Will Change Land Use

The pandemic could have significant long-term implications.



A focus on customer safety and convenience, as well as a growing online shopping climate, creates opportunity to plan for new retail and residential development patterns. Photo by ARLUTZ73/iStock Editorial/Getty Images Plus.

By Brian Connolly

As COVID-19's first calendar year comes to a close, its potential long-term effects on real estate and land-use law and policy are becoming clearer. Land-use law and local zoning decisions are shaped and informed by these types of long-term trends, making it important for planners to consider them. In this column, we take stock of three major shifts in land use to keep an eye on as the U.S. continues to grapple with the pandemic and eventually turns to recovery.

Retail apocalypse

As 2020 began, the retail sector was already marked with uncertainty due in part to the impact of tariffs on costs and supply chain reliability. Economists were lowering their expectations for GDP growth, and the country was bracing for a slowdown and potentially a recession. Brick-and-mortar retailers had been struggling, with 81 major retail bankruptcies occurring since 2015. Nationally, retail consultants characterized 2019 as a "time of transition," with some stability in the very top-tier retailers. To successfully compete in 2020, consultants were advising lower-tier retailers to invest in technology and focus on customer convenience. Such advice turned out to be particularly prescient once the virus hit.

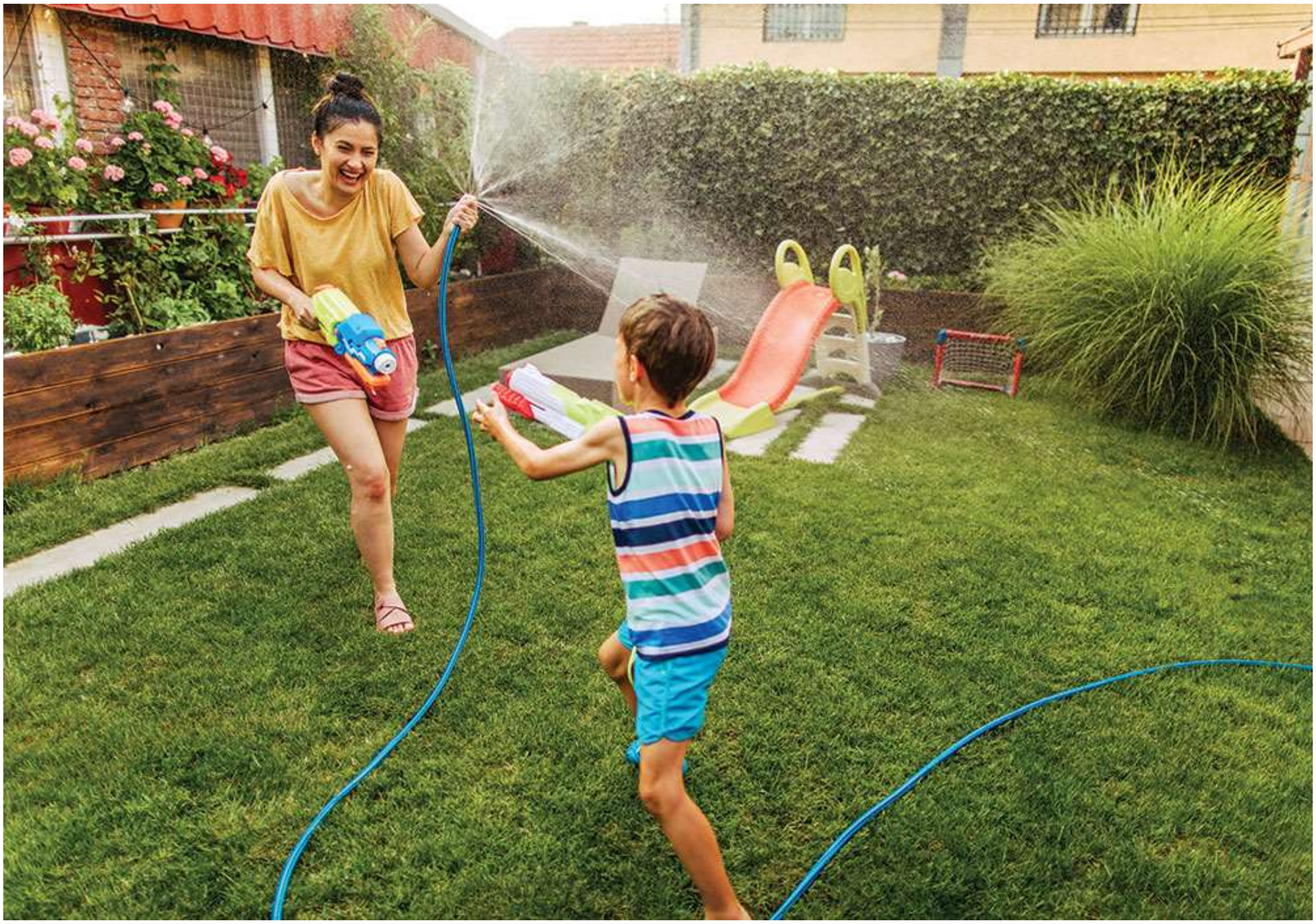
Retail sales are critical to the U.S. economy. Core retail sales (excluding auto and gasoline sales) make up one-half of personal consumption, which in turn, comprises 70 percent of GDP. When already-struggling brick-and-mortar retailers close in response to the coronavirus, it's a triple-whammy: Additional pressure is placed on those businesses because of lack of sales, on GDP growth directly due to a lack of spending, and on future spending due to job losses and to the uncertain duration of store closures.

Just as significantly, lack of sales tax revenue profoundly affects the ability of local governments in many states to provide services. Sales tax revenue drives municipal budgets. For example, in Denver the finance department budgeted almost $800 million in sales tax revenue for 2020, about half of the city's overall budget. Any significant decrease in retail taxes goes straight to the bottom line.

Because of the outsized impact of retail sales on municipal budgets, many municipalities have historically favored retail over residential development. Residential development was viewed as not paying its own way and a net drain on municipal coffers. But municipalities that comfortably rely on retail sales to generate dependable sales tax revenue might be inclined to approve residential developments that alleviate affordability concerns. Local governments' ability to tax online retail provides such reliability, as risk is spread geographically. And although the current crisis is unlikely to spawn a wholesale change in municipal revenue structure, municipalities may need to consider whether changes in retail necessitate a reconsideration of the primacy of sales tax revenue in their budgets. (For more on fiscal structuring, see "The Call for a New Fiscal Infrastructure (/planning/2020/nov/the-call-for-a-new-fiscal-architecture/)," November 2020.)

With social distancing measures in place across the country, many families have fully embraced online retail. Those who have not previously used online shopping, even for groceries, are flocking to them now. The coronavirus has greatly accelerated and expanded the transition to more online shopping, and it seems unlikely that online shopping habits formed during this pandemic will quickly revert to preexisting routines.

The present crisis presents an opportunity to consider and plan for the impacts a majority-online shopping climate will have on retail, and all commercial and residential development patterns, as well as infrastructure use and design. As local government planning departments slow down, the current crisis presents an opportunity to consider and implement changes to zoning codes and budget strategies that will encourage thoughtful and forward-thinking retail development.



If behavior changes formed during the pandemic persist in years to come, buyers and renters may place a greater emphasis on meaningful outdoor space while home shopping. Photo by Aleksandarnakic/iStock Editorial/Getty Images Plus.

Social distancing ≠ new urban sprawl

Given that large cities got the earliest cases of COVID, many land-use professionals wondered if people will be wary of living in densely populated areas over the next five, 10, or even 20 years. Will there be a migration of people out of cities to suburbs and rural communities?

On one hand, even the most devout supporters of urbanism will agree that one major shortcoming of density is its susceptibility to disease. This idea is not new. Zoning came about, in large part, to reduce the spread of disease over 100 years ago (see "Maximum Occupancy (/planning/2020/jun/tools-legal-lessons/)," June 2020). On the other hand, while rural areas allow for social distancing, it's common for viruses to trickle into rural communities after an initial wave through big cities. We've seen that pattern reflected in recent months. Unfortunately, once viruses make it to rural areas, the impacts can actually be worse, largely because of lack of healthcare access and other treatment options.

Assuming most humans seek at least some form of social interaction, coping with quarantined life may be more manageable from an urban, or at least semiurban, area than a rural one. Neighbors can have across-the-alley or over-the-fence conversations with other neighbors. There are myriad examples of people finding creative ways to socialize. Most of these occur in dense, urban environments, such as the front-porch accordion concert in Brooklyn, a handful of front-porch photography sessions, neighborhood Zumba, and, of course, groups of people singing from their balconies in Italy.

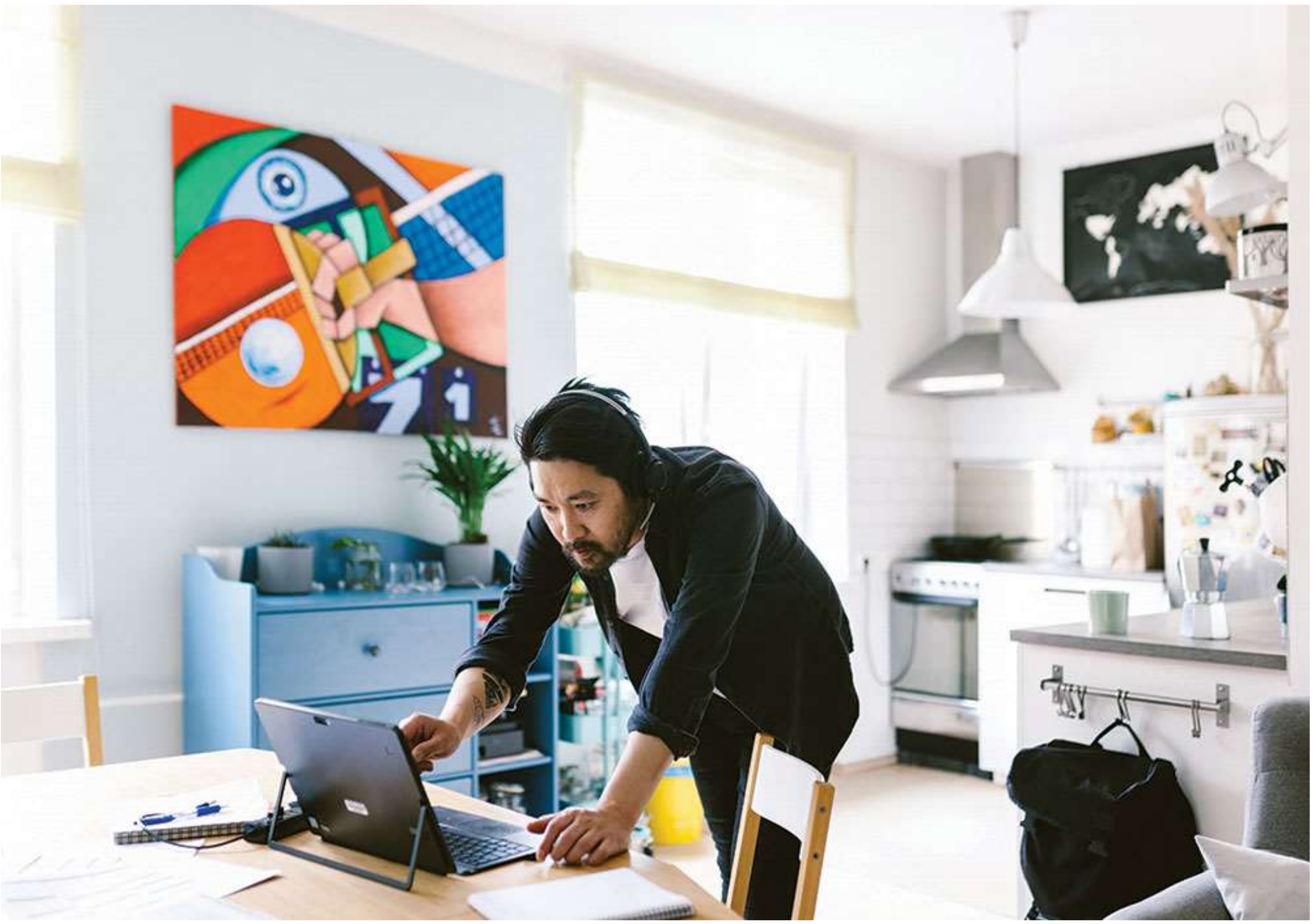
Of course, the current pandemic does not change several big-picture considerations. Costs of infrastructure delivery remain high, transportation costs are higher for suburban dwellers, and job markets are unlikely to flock to the suburbs. Despite popular media reports of high sales prices and low home inventory in some resort markets, metropolitan areas continue to have significant supply-demand mismatches in their housing markets, particularly at more affordable price points. A prolonged slowdown would likely exacerbate that problem if housing construction slows.

Even if seismic changes do not come to pass, people may start to prioritize different features of homes they choose. For example, home buyers and prospective renters may place a greater emphasis on meaningful outdoor space. More importance may be placed on access to public open spaces too.

Similarly, with technology allowing for remote work, homes may incorporate some functioning home office space. And families may choose to have homes with integrated or detached accessory dwelling units, to allow for parents and grandparents to live nearby.

Work from home wave

Large and small businesses alike have adopted formal or informal telecommuting policies, allowing workers to work a set number of days away from the office each week or month, or more infrequently, altogether. An abundance of technological advances and practices keep colleagues connected and productive, including email, online chatting and document sharing, advanced teleconference software, and video conferencing (if anyone reading this article was not aware of Zoom prior to March, you surely are now!). In the 15 years before the pandemic, the number of telecommuters working from home at least half time grew by 159 percent. In 2019, more than 4.7 million people in the U.S., approximately 3.4 percent of the workforce, worked from home. Yet until 2020, employees working full time and even half time from home has never been the norm.



More employees are working from home than ever due to COVID-19. A continuation of this trend post-pandemic could affect real estate markets and land-use patterns. Photo by VisualSpace/iStock Editorial/Getty Images Plus.

In the period between March and May 2020, more than 316 million people in 42 states, the District of Columbia, and Puerto Rico were under mandatory stay-home orders. Since then, most communities have at least partially opened back up, but many who can are still working remotely.

Based on the present experiment, employees and companies have found that telecommuting is feasible. Employers may draw from a more geographically diverse pool of employees, reduce overhead expenses, and may even have better employee retention than companies that do not allow employees to telecommute at least some of the time. Employees who work remotely may analogize telecommuting to other benefits offered by their employer and see it as a "perk" of the job. Telecommuting may quite possibly increase following the COVID-19 pandemic, as will all of its attendant disruptions and oddities, which will affect the real estate market and land-use patterns.

Most companies do not operate fully remotely without a dedicated office space. Although some allow most workers to work remotely most of the time, demand for office space is sure to continue. Even in cities with a strong presence of retail, restaurant, travel, and leisure companies renting space within the city, these companies are taking a hit during this period of mandatory closures, with inevitable impacts on commercial landlords. But places with diverse business bases, such as places with technology companies, may be impacted less.

While there certainly may be ripple effects from COVID-19, such as an increase in employee telecommuting, the current pandemic will not likely lead to an all-out elimination of office spaces.

Brian Connolly, Vincent Forcinito, Jim Johnson, and Cory Rutz all contributed to the authorship of this article. This article is adapted from a series of alerts published by the land-use and real estate lawyers of Otten Johnson Robinson Neff + Ragonetti, P.C. The original alerts (https://www.ottenjohnson.com/news-events-resources) are available at Otten Johnson.