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Anthony Sanders 00:06

Hello, and welcome to the Short Circuit. Today we have a special Short Circuit. Instead of your usual host, John Ross, you get me Anthony Sanders, Director of the Center for Judicial Engagement at the Institute for Justice. And instead of talking about what John usually talks about: recent exciting opinions of the Federal Courts of Appeals, we're going to be talking with a special guest. He is Charles, "Chuck", Marohn, founder and president of Strong Towns, Chuck is not a lawyer, I'm very happy to say. One of the few guests we've had on Short Circuit, who can go by that title. Instead, Chuck is a lot of other things. He is, again, the founder and president of Strong Towns, he's the author of a recent book by the same name that you all should go read and that we're going to be talking about today, amongst other things. He's a professional engineer who's licensed in Minnesota, he worked for various municipalities in the past in his capacity as an engineer, which taught him a number of things that he then put to use at his current nonprofit. He has degrees in Civil Engineering, and Urban and Regional Planning from the University of Minnesota. And most importantly, he lives in Brainerd, Minnesota. So, we're going to talk a little bit about the strong towns approach to city planning, what we should be thinking about in this time of crisis, and how it intersects with the law. And we're also going to talk a little bit about licensing later in the podcast. So first, Chuck, tell us a bit about Strong Towns and what the strong towns approach is, to our cities.

Charles Marohn 01:44

Strong towns started with a recognition that I had, that our cities were financially going broke. Even in the places that were experiencing a lot of growth that I was working with, as an engineer and a planner, we were still struggling to do day to day things, we could build million-dollar new projects, but we couldn't keep the streetlights on overnight or keep the firefighters employed or, you know, paint crosswalks, there just was no budget for that. And as part of exploring that, came to the realization that a lot of our growth pattern, a lot of the way we build and assemble our cities, creates what is really a typical cash flow trade off. Cities get new growth. As part of new growth, they bring in a lot of revenue, and a lot of cash that helps them today solve problems, make things look better address shortfalls they have. But in exchange for that cash, they take on enormous long-term liabilities. So, we get that new big box store out on the edge, lots of revenue involved in that. But as part of that, we take on a mile of

new pipe, and half a mile of new frontage road, and drainage systems, and pumps and all this other stuff as public liabilities. And when you contrast that, when you look at the tax base and the wealth that we generate, and you contrast that with a long-term liability, what you see is that these projects are all cashflow negative over the long term. As soon as the maintenance cycle kicks in, city's balance sheets go far into the negative. The way we solve that is by growing faster, we just grow more, we just try to do more projects. And so, in a sense, we're like, you know, the hamster running on the treadmill, faster and faster and faster trying to keep up. And we just see, you know, seventy years into this development pattern, this new kind of experiment we've been on post World War Two, our cities financially are in tatters. They're way over committed, and they're struggling to keep up.

Anthony Sanders 03:47

And so how does that compare? You said the last seventy years. So how does that compare with what used to happen before World War Two,

Charles Marohn 03:56

A lot of people associate it with the automobile because that's the most noticeable shift here in North America. As someone who's traveled a lot and been to different parts of the world, I will attest, other countries have the automobile too, take my word for it. But they don't build the way that we do. We do something very unique here in the United States. When we build, we build things all at once, and we build them to a finished state. If we look at human development prior to the Great Depression, what we see is that cities, human habitats, the place where we live, were always built incrementally over time, on a continuum of improvements. So, things would start small. They would progress incrementally, growing incrementally more intense over time, you would take a little collection of pop-up shacks, and ultimately, over, you know, decades and decades and decades, grow them into Manhattan. That was the pattern of building today. If we were going to build Manhattan, we would go out and we would build Manhattan all at once with skyscrapers and what have you, and then we would walk away and be done. That's the that's the big difference is the way the way we assemble things more than anything else,

Anthony Sanders 05:06

We'd have the Manhattan HOA that you didn't have to join to live, it would be,

Charles Marohn 05:10

It would be a ridiculous mess is what it would be. And if you if you delve into that, and I think the HOA example is a really good one, because what you have before the Great Depression and really for

1000's of years of human history is an ecosystem, a human habitat that by its very nature is designed to adapt and change and respond to stress and opportunity. What we build today, we build with purpose, something that is static, something that is designed to resist change, to not adapt, and the HOA's are a component of that. Zoning is a component of that. The way we finance thing is a component of that. And so, all these systems, we've set up assume that we are essentially building perfection or building something done completed. And everything that comes after is designed to be non-changing, completely static. And static systems are just fragile. They don't they don't work over time.

Anthony Sanders 06:10

And a lot of what you say about how things change over time and how they're not allowed to change over time. Sounds, to my ears, a lot like what we in law school talk about is the common law system where you have a ruling on one point of law, and then another ruling comes along, and it changes that a little bit and over time you have precedent, but that precedent can change. This can be true about you know, contract rights, it can be about property rights, torts. How do you see that the contrast between the two and how do you think maybe a modern understanding of law is different from how the understanding used to be? And if that's parallel in some ways to you know, how we see neighborhoods as pop up developments today, versus they used to be you know, what people lived and changed over time?

Charles Marohn 07:03

That's a, that's a really deep question. Because you look at common law, and one of the things that we see is that common law essentially goes hand in hand with culture. And so over time, there is, you know, rulings, those rulings set precedent, the precedent then shapes the culture and how we respond, and there's a back and forth. The problem, and I can't point to one, I'm sure you could, you know, more quickly than I could, but there gets to be a problem at times when common law in a sense, calcifies or, or, you know, become so entrenched and something new happens. The internet and copyright law as one example, you know, if we looked at common law back to the Gutenberg age, and you know, what it meant to have a copyright protection, what have you, those things would not be able to respond very quickly to the huge changes in, you know, digital communications that we've had. And so, what you see is that we have to go outside that system to try to try to deal with that. I think when we look at zoning, and we look at the way we have established a system, to, in a sense, perpetuate a replication of this development pattern. It has a lot of the same upsides and downsides. The upside of our current development approach is that we can grow very, very quickly with it, we can replicate it, there's a

common culture around it, everyone kind of understands how it works. When you're going to build the strip mall you put in the frontage road, you put in the parking, you put a big sign up front, you know,

Anthony Sanders 08:41

You use eminent domain to get some of that property. Of course,

Charles Marohn 08:44

There's a very standardized way of doing this. What you lose though, is you lose the capacity to adapt. And, you know, common law adapts very slowly, our development pattern adapts very slowly. I think the big difference between the two is that common law literally is something that has evolved, you know, over centuries. When we look at zoning, zoning is something that appeared had like a gestation period. And then was kind of rolled out just as a full-blown experiment all at once. And so, it would be in a sense that you birth common law, maybe had some people sitting in stasis for a couple decades, chatting about it and then just made it universal all at once. That's essentially what we did with the modern development pattern.

Anthony Sanders 09:43

As many as our listeners know, we had IJ run up against zoning restrictions in some of our cases and more and more in recent years. For example, we have a case in Nashville, Tennessee about home business restrictions, where some ones just trying to have a recording studio in Nashville, and in a building in the backyard and

Charles Marohn 10:07

Hard to believe. What an offensive use Yeah,

Anthony Sanders 10:10

No imagine, doing that and recording music in Nashville in a building in their backyard. And we recently had a case where a woman in in rural Washington State was trying to add on to her home an extra bedroom and was told by the city that she would have to pay something like \$40,000 for a lane expansion. And when just to have that extra capacity in her home. Some of these, of course, are outlandish, some aspects of zoning people generally are more accepting of, or they may be sound a bit more rational. Zoning has been with us for a while now, a lot of us don't like it very much, but we think

at least some aspect of it is going to be here for a while longer. What do you see as the more pernicious, you know, parts of zoning that freeze cities into place, and that particularly might be, you know, an object that the court should take a closer look at as an addition to policymakers taking a closer look at.

Charles Marohn 11:20

Right. It's interesting, because I think zoning is a good tool for a very limited problem. The thing is, we've expanded what we expect zoning to do, I used to joke that, you know, planners believe that with the right zoning code, you could you know, cure cancer and solve Mideast peace. And, you know, like there's nothing a good zoning code can't accomplish for you. Of course, as ludicrous if you look at zoning, you know, the Euclid the case that established zoning at the Supreme Court that allowed zoning locally, Euclid v. Ambler was like 1926, or something it was.

Anthony Sanders 12:04

That's right, it was.

Charles Marohn 12:05

Yeah, it was in that, you know, city beautiful movement, kind of let's fix cities and make them better places. Let's get the rendering plant away from the apartment complex, you know, so, you know, it was dealing with a lot of nuisance law. What you had, though, and I think this is the historic anomaly is after Euclid. Three years later, you've got the stock market crash, you've got the Great Depression, you've got World War Two. And essentially, the planning departments of the United States, for half a generation went into hibernation mode. And what do you do when you're in hibernation mode, you're not issuing permits, you're not growing, you're not, you know, working on the next iteration of your community, what you're doing is you're sitting there basically percolating over regulation, so what you had is like a 15, 20 years of just untested zoning theory, becoming entrenched in local governments. And then when we got to the end of World War Two, we just rolled it out in mass, like, here's how we're going to recreate this brand-new version of America, we're going to standardize it, we're going to, you know, roll it out across the entire country all at once. We're going to, you know, centralize all these different systems of building and zoning became like a very useful tool for doing everything we wanted to do from building, you know, new GI Bill subsidized housing, to keeping minorities out of our neighborhoods. I mean, I'm not suggesting that. But if you look at like every goal people had at the time, and they're like, well, we can read a zoning code to do that. These were things that, you know, I think we can look back now to today and say, obviously, you know, in many ways, like disgusting, they

make us feel very queasy as to how these things were done. Yet, it's a little bit like the one ring in Tolkien's trilogy, you know, oh, but they were using this device for bad will use it for good and get something good out of it. And I think it in a way, the zoning overreach or the idea that we can accomplish really any means we want with a good zoning code is like the central hubris of the planning profession. And it's, it's just wrong. It's just not correct. We have to allow our neighborhoods if we want them to be strong, resilient, prosperous places, we have to allow them a great degree of adaptation. And zoning code should limit themselves to only the things that in a sense will kill us, will destroy our neighborhoods. The idea that you would regulate like paint color and siding materials, and you know the some of the more frivolous things but even things like setbacks and you know that the idea that we would become obsessed with what type of use you have in your building? Oh, no, you can be a painter in this building, but not a plumber in this building, that type of thing has reached, like a level of absurdity, where I think it calls in the question the entire system.

Anthony Sanders 15:19

Right. And I mean, I've always been struck by, in reviewing zoning codes at IJ that, you know, sometimes the zoning code is so big, it is on a different section of the city's website, because it's not like a normal ordinance. It's this massive extra ordinance that that they have somewhere else, and that they only review every few years, because it's just such an undertaking to look into all those details you were just talking about.

Charles Marohn 15:45

I will throw some shade on the lawyers here. Because doing,

Anthony Sanders 15:50

Go for it.

Charles Marohn 15:45

Okay. And I it's funny, because doing land use work, I ran into a lot of attorneys. And it's very interesting, because you could always tell right away the ones where land use law was the core of what they did. And the ones where land use law was like part, you know, they also did maybe family practice or, you know, bankruptcy or what have you and land use was part of it. Because the ones where land use was just a part of what they do, they would come in, and they would actually try to argue the law. They would actually say like, here's what your code says, here's what the rule says, here's what you know, the practice that this court approved or this and that. The ones where land use law was like what

they did, they would never argue the law, they would always argue some bigger moral, right, or some, you know, emotional thing. Because at the end of the day, the people who are practicing land use law are not judges. They're not. It's not a regular. It's a local planning board. It's like a local city council. And the things they respond to are very much more human than what a law actually is. So yeah, these zoning codes tend to be these monstrous things. And the way they're applied is not anything like what a law actually is.

Anthony Sanders 17:11

What and that leads to a point that we had Short Circuit see a lot and in reviewing all the Federal Courts of Appeals, and the ones that are reported on our newsletter and talked about on the podcast are over and over again, the federal courts will say, we are not your local zoning board, if you have something that affects you that has to do with zoning, please don't come to us because all these people, these property owners will have some insane requirement placed upon them, you know, like the ones we were just talking about. Say you can't you have to have, you know, no more than 25% of your house devoted to your at home business or something that just doesn't make any sense. They're damaged by that, they go to federal court and federal court says, "Look, it's not my problem. That's not why we have a federal constitution, go to your local planning board." But I'm guessing when they go to a local planning board, the incentives are visualized, you said are very different. And there's not a lot of talk about the Constitution. There's talk or even state statutes, right? There's talk about, well, I know this guy, and he did that and work for him.

Charles Marohn 18:17

There's a lot of that. And there's a lot of you know, we quite literally, I like you, I don't like you, kind of decision making. And you know, in some ways, and let me just say this in defense of zoning boards, I think in some ways that that's kind of beautiful. I mean, there's a lot of I think there's I'm a huge proponent of the bottom-up kind of building of a city. I think what we've done though, is we have created a system of tremendous with tremendous imbalance. In other words, let me flesh that out a little bit. When you're developers coming to the City Council, and they want permission to build something, a lot of times and especially as we get into bigger and bigger cities, but even in small towns, you're talking about people who are financed through centralized mechanisms. So, they're getting their money from some, you know, insurance trust that poured money into a real estate investment trust that is out putting money into properties. They are qualifying for federal loans, and through you know, federal systems of development designed to encourage growth. They're responding to federal infrastructure incentives that have built frontage roads and interchanges and collector streets and all this stuff to

facilitate this level of growth. And so, in a sense, the developer is there as like the representation and the embodiment of this kinetic growth machine that cities suffer under, A. B, neighborhoods tend to not like you know, especially once you're there you develop that not in my backyard, that NIMBY attitude, because like

Anthony Sanders 20:00

I was okay to play in my neighborhood, but not the one over there. That's a farm right now.

Charles Marohn 20:04

Exactly like, I'm good with this, but like no more of it. So, it creates this, like diminishing returns, the more you grow, the worse your city becomes to live in, you know, you have all of these kind of systems, and the developer embodies all that negativity. And so, it's, it's this whole system, kind of, you know, versus the little guy who's represented by the planning board. And I think it's the disproportion of, of real power at the end of the day, that makes the, you know, the David in the David Goliath thing, act like a lunatic sometimes, I mean, like really do like loopy, zany, non-defensible kind of things. I think a more localized development system, one that was more incremental, one with greater feedback loops, one that was more driven by opportunities on the ground, as opposed to, you know, a federal system of growth. That type of thing, I think would change how local zoning boards and local officials reacted to growth. So, I'm, I'm not defending them, because I think generally zoning boards do a terrible job. But I think understanding why, is an important part of fixing that.

Anthony Sanders 21:26

I said at the outset, that Chuck has written a book that came out last year, *Strong Towns*, where it goes into detail on a lot of the stuff. And I really recommend all of you check it out. I was struck by something, I think it was in the last chapter, when you were talking about your philosophy of layers of government, that I wanted to bring up and maybe poke you a little bit about it. But I think a lot of listeners would enjoy it. So, if I'm paraphrasing here, but you say that at the federal level, you're basically a libertarian, that you don't think there should be that big of a federal government and they should stick to stuff that's more national. At the state level, you might be called a conservative, where good fiscally responsible government that that looks after the whole state is where you're at, at the municipal level, you're more of a liberal, you're okay with the government doing more stuff. And then at the neighborhood level, you're, I think you said you're essentially a socialist. And so, let's try to plan things very locally that you're okay with. And I think, you know, most of us, especially folks at IJ, are at least glad you're not the inverse of that, you know, socialism at the national level and do what you

wanted to at the local level. But I'm on and so if you're going to have one, one or the other it sounds like that's that subsidiary, the, it's often called is a good idea. But I want to ask you about that, about the neighborhood level. Because you know, you brought up nimbyism, and we've written a lot about nimbyism at IJ. And how your neighbors can prevent you from doing something on your property because, you know, they don't want more people in the neighborhood or they you know, they don't want you to rent out your downstairs because that would mean that more poor folk would live around there, whatever the reason is, but what do you have to say about it planning on a very local level that that would just bring out these NIMBY tendencies more than just leaving it to property owners to be able to, you know, plan for the plan for their own property, incremental development, and in doing that, and that they're, you know, if their disputes arise through nuisance or whatever, then that can be dealt with, but otherwise, to let people plan on their own individual level.

Charles Marohn 24:04

It's a difficult thing. And I think, you know, for me, the answer is, I would like to see a tapestry of approaches that construct of, you know, libertarian to socialist as we go further, you know, as we go closer to the neighborhood level, was really my response to this idea that, you know, people were trying to put Strong Towns and our movement into a box, are you a left of center? Are you right of center? You know, do you want big government? Do you want small government? What, who are you? And the reality is, is we're very about trying different things from a bottom-up standpoint. You know, communes tend to not work and communal living tends to not work. That doesn't mean it never works. I mean, we can go to Israel today and see people living you know, the Caboose lifestyle, which is very communal, and people are dedicated to that and have lived that for a long time. There's many examples throughout history of this. And so, I get less offended by people in cooperation working together at the local level to do things. And in a sense compromising their own if we want to just say, innate, you know, it was an innate American or innate constitutional right out of agreement with each other, as opposed to, you know, having it be enforced by some larger body. If I want to give up my right to associate with a woman across the street, because I've voluntarily entered into an agreement with my wife to not do that. You know, that's an okay social construct. If the government comes in and says, you can't do that, I mean, that's a that's a very different thing. And so, what I have seen is, you know, as we've centralized, more and more policy, and I use the chicken, the backyard chicken example, in the book as one to kind of illustrate this. What I've seen is more and more things that should be decided by neighbors, is now being referred to City Council's Regional Planning boards, state Commission's and sometimes even federal courts and federal government. Can I have backyard chickens? Well, the only people that that will affect is, you know, at worst, my immediate neighbors,

Anthony Sanders 26:27

Right.

Charles Marohn 26:28

And so, the idea that some regional body or even some city council would decide that is not only doing a disservice to I think everyone who should be having this conversation, but it also robs me and my neighbors of our own agency in making those kind of decisions. And so, my advice for city councils is, if in the true spirit of subsidiarity, if this is a decision that can be made, at the block level, it must be made at the block level. And at the very least, you know, at the very most what you should be doing as a city council, or as a city, is offering assistance to help people reach that decision. But if two neighbors don't get along, like if they're not getting along, and they can't decide this, too bad, you've got to decide like, it's your responsibility as a neighbor, and people in a neighborhood to figure this out. I've been going to council meetings for a long, long time, where I would sit there, and someone would come in and complain about their neighbor. And they would demand that the city council do something about something their neighbor was doing. And the city would be like, "Oh my gosh, we better do that." And they would jump up and be like, oh, let's figure this out. And the question was never raised. And if it ever was the answer is always the same. Have you spoken to your neighbor? No, no, no, that would be uncomfortable. Like I wouldn't want to do that. And, and, you know, to me, part of living as a as a human, part of life is that we actually have to work these things out. Because when we give it to someone else to work out for us, we're ultimately going to be disappointed with the world that is created on our behalf.

Anthony Sanders 28:07

With freedom comes responsibility.

Charles Marohn 28:10

Amen. Amen. And, you know, I think we look back and we can look at human civilizations of the past, who, it wasn't freedom, it was survival requires us to work together. I think we have the luxury today of opinion that around freedom and the way we've constructed our government. But historically, human civilizations came together out of the need to create a stable place where we can all survive and prosper from. You know, I hope with the way our economy is tanking that we don't wind up having that same construct again. But you know, we're going to get closer to it, then the make believe that we've been living through.

Anthony Sanders 28:51

That's right. In our remaining moments, like to shift gears and we'll talk a little bit about your background as an engineer. Some of our listeners know that we've had a couple of cases in recent years, including ongoing one about engineer licensing, particularly where people who aren't licensed professional engineers are nevertheless doing things that any normal person would call engineering. And then they receive a cease and desist letter from the from the Board of Engineering saying that they have to stop speaking. We had this great client, I think you've read about in Oregon, who now, years later they are extending the time of yellow lights because he figured out that yellow lights aren't yellow for long enough. But in the meantime, he got a cease and desist letter from the state licensing board. You are actually licensed and yet even you have had a run in with the licensing board, if you'd like to talk a little bit about that and what it's taught you about occupational licensing in general.

Charles Marohn 30:01

It is crazy, the case in Oregon is nuts. And I'm really thankful that you all have intervened and helped with that. Because here you have an earnest person who's trying to make things better. And it essentially comes down to the engineers being embarrassed to be shown up by someone who did the math that they should have been doing. I think the most egregious one, I've seen people serving on a bike committee, a committee established by the city to look at biking in a neighborhood. And they would make recommendations to the city on what should be done. And the engineers would come back through their licensing and say, you can't have an opinion on this and comment on it. Because you're not licensed to talk about transportation the way we are, this is absurd. So let me give you my case, which is equally absurd, but in a slightly different vein. So as part of the engineering license in the state of Minnesota, and this is a very common language, I am required to not do anything that would bring discredit upon the profession. So, I am not to conduct myself in any way that would make the profession look bad. And often this is interpreted as I can't be a drunk, I can't be, you know, showing up and spouting my opinions on whatever and basically being like a Loughton, an embarrassment to the profession. What it's often been actually interpreted as, and this is what I ran into, I had a claim made against me or a complaint against my license, that my license should be taken away. Because I was speaking out against some of the practices that were standard within the profession, saying, we need to reconsider this practice, this is a bad practice, this is a bad idea. We need to do this differently. And I was pointing out, and by the way, I'm a Minnesotan. That means that I'm kind of not really a flame thrower, you know, I'm not like, I've got some New York friends who are, you know, loud and brash, and they got a lot to say. In Minnesota, you know, you roll your eyes, and that's like a capital offense, you

know, nothing I was doing was like, really horrible. beyond the pale. I certainly didn't call anyone out personally, or, you know, threaten them in any way. I was just saying, like, "Hey, we shouldn't be building frontage roads, because of this, hey, we shouldn't be building. You know, there's a lot of people who benefit from this system." And I think we should look at it a little bit differently. I had my license, questioned by a fellow engineer, who asked the board to investigate me, because I was, you know, causing disrepute on the profession. And that they should suspend my license or take my license away, and they did an investigation. Thankfully, the board found, and they notified me in writing, you know, we found that there was nothing today that would justify taking away your license, but we're going to keep an eye on things and potentially in the future, we might come back and, and have a conversation with you. So yeah, this exists in the profession. This is very common. And I've heard from other engineers and other states that have undergone similar innocence threats. You better not speak up because we can take away your license. And fortunately for me, I don't practice engineering in the sense that I'm working for a city I'm signing plans I'm doing. So, you know, if my license were threatened, if I lost my license, it wouldn't destroy my livelihood. But this is a huge chilling effect on people within the profession, who support reform and support change. But don't feel like they can speak up because they're there, their entire livelihood is threatened if they do.

Anthony Sanders 33:59

Absolutely. You spoke out against the guild and the guild thought, you know, it should use its powers to protect itself.

Charles Marohn 34:07

It is very, it made me feel sad, actually. Because, you know, you go into engineering for a couple of reasons. But I think there's a couple that are universal. You become a civil engineer, a municipal like city engineer, out building things because first of all, you're a problem solver. That means you want to identify problems and work through them and fix them and make them better, like you're not, you don't tolerate poor performance or, you know, bad outcomes. You're a problem solver. And then the second part of it is, you generally want to do good for society. I think civil engineers look at themselves as people who improve society. So, the idea that our own organizations, our own boards, our own licensing, would essentially work against both of those what I think are foundational inspirations for the average engineer. It made me very sad. And it made me you know, really question on a deep level, the whole value of licensure actually.

Anthony Sanders 35:10

Well, it sounds like we might have someone who has been a bit radicalized. And on that radical note, I think, I think we'll call it a day. Thank you so much, Chuck, for joining us on Short Circuit. Again, Chuck's book is *Strong Towns*, please check it out. Please also check out his website where he's saying all kinds of interesting things about the end of everything right now that I'm sure everyone has time for. And we'll be back next week with another edition of Short Circuit about the Federal Courts of Appeals. We'll have more specials on the way in the future. And in the meantime, please stay safe and please keep listening.