Implementing Form-Based

Zoning in Your Municipality

— by Carla M. Moynihan —

Form-based zoning is a relatively new zoning concept that is being proposed and adopted — in whole or in part — by cities and towns throughout the United States.[1] This article compares form-based zoning to the more familiar Euclidean[2] or use-based zoning, and discusses why and how to implement form-based zoning in your municipality.

Form-Based Zoning Defined

Conventional zoning, often referred to as Euclidean zoning or use zoning, emphasizes regulation of the location of different land uses. Conventional zoning codes separate land uses into geographic districts and restrict the development that may occur on the lots within each district. The first zoning ordinance was enacted in 1919 in New York City, and within a year, more than twenty additional municipalities had proposed or enacted zoning laws.[3] Today, most cities and towns have adopted traditional use-based zoning codes that divide all of the land under their jurisdiction into a number of different districts or zones (e.g., residential, commercial, and industrial); define the land uses permissible in each zone; and specify the density restrictions for each zone in the form of maximum building heights and floor area ratios, allowable lot coverage, required setbacks, and yard and lot dimensions.

In contrast, form-based zoning emphasizes regulation of the streetscape and the public realm. Rather than regulating the location of land uses, it is concerned with regulating building types, building dimensions, parking locations, and façade features.[4] Unlike a traditional zoning code, "a form-based code takes the position that the design of buildings is much more important and long-lasting for the community quality of life than…[the uses] allowed in the building."[5]

Components of Form-Based Zoning Codes

Certain components are characteristically present in a form-based zoning code:[6]

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A regulating plan. The regulating plan establishes the vision for development in a particular area. The plan shows where form-based codes apply, and it guides property owners in how to comply with those codes by providing easy-to-follow illustrations of build-to lines, projected building footprints, and the building types allowed on each site.

Building envelope standards. The building envelope standards ensure that new development is consistent with the character of the zone by prescribing building heights, placement, and orientation. Each building's placement is governed by a build-to line that specifies the position and location of the building's front.

Street standards. The street standards define a community's streetscape and public space by prescribing street network and block patterns, as well as hardscape and landscape materials such as tree species and the types of lampposts and pavement.

Architectural standards. Although they are not necessarily part of a form-based zoning code, architectural standards help to create a community's desired appearance by providing details on acceptable building styles, architectural elements, and construction materials.

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Advantages of Form-Based Zoning Codes

The advantages of form-based zoning codes (over traditional use-based zoning codes) are numerous,[7] as has been emphasized by Peter Katz, president of the Form Based Codes Institute:[8]

The desired outcome is more likely to be achieved. Form-based codes lead to a more predictable physical result, due in part to the fact that they set forth exactly what a community wants, rather than what it does not want.

Public participation is encouraged. Form-based codes tend to encourage public participation because citizens can more easily understand the zoning requirements and can actually visualize the appearance of a proposed development. This increased understanding gives the public a higher comfort level in discussing the various aspects of a project with prospective developers and local land use officials. Moreover, because form-based codes do not embed development criteria in complex text, local land use officials drafting new zoning codes are able to spend less time on complicated "word-smithing" and more time creating easy-to-understand graphics that illustrate the regulations.

A wider range of property owners can participate in development. Form-based codes promote independent development by multiple property owners because these codes can regulate development at the scale of an individual building or lot, obviating the need for large land assemblies and the mega-developments that are frequently proposed for such parcels.

More diverse development tends to result. Developments built pursuant to form-based codes often lead to the pleasing diversity of architecture, materials, uses, and ownership that can come only from the actions of many players operating within an agreed-upon community vision and legal framework.

A community's visual character is more easily maintained. Form-based codes work especially well in established communities where they effectively define and codify a neighborhood's existing "DNA," allowing desirable building types to be easily replicated, and promoting infill that is compatible with surrounding structures.

The code is simpler for non-experts to follow. Because form-based zoning codes are more concise and are organized for visual access and readability, they are much more easily used by people with little or no experience in real estate development. In contrast, traditional codes typically have zoning regulations in several different sections, which may not be apparent to the inexperienced user.

Adoption of a Form-Based Zoning Code

Should your municipality adopt some type of form-based zoning?[9] Clearly, key stakeholders should be involved in the decision (e.g., property owners, developers, other municipal officials and staff members, land use commissioners or board members, and interested community groups). These stakeholders should begin by acquiring a thorough understanding of the form-based zoning concept and its components, how form-based zoning differs from traditional zoning, and what advantages it offers.

As municipal officials start down the path toward adopting a form-based code, it is crucial to continue to involve these key stakeholders, and the public at large, whenever possible — and to give them the opportunity to discuss their concerns in public forums. As the process continues, regular communication with all stakeholders will help ensure continued buy-in; it will significantly reduce conflict and misunderstandings and will expedite the implementation process.

Municipalities have taken various approaches to the adoption of form-based zoning. A few have adopted comprehensive form-based zoning codes all at once, as wholesale replacements of their existing zoning codes.[10] Although this is the most thorough and effective way to adopt form-based zoning, it is also the most costly and time-consuming. Most communities have begun the process by making form-based zoning an option that is appended to the existing zoning code, or by adopting an overlay zone that uses form-based zoning for particular areas that have been targeted for development.[11] How a particular municipality chooses to adopt form-based zoning will depend, in large part, on the information gathered in response to the implementation strategies discussed in this section.

Do your homework. Municipal attorneys, planners, and other staff members should first compile current versions of all regulatory, planning, and policy documents concerning the municipality, including comprehensive plans, master plans, regional plans, zoning regulations, wetlands regulations, subdivision regulations, design guidelines, and road specifications.[12] In addition, local officials should gather information pertaining to the availability of infrastructure to support new developments, population growth statistics, environmental resources, and economic development opportunities.

Determine existing shortcomings. The next step should be to conduct an analysis of the existing planning and zoning regulatory system, focusing on applications for development projects in which the current regulatory system did not work well — whether because of the time-intensive nature of the review process, the failure of the existing regulations to adequately address design elements, or some other problem.[13] This analysis should help inform subsequent discussions with stakeholders about improvements that should be made to the system and their feasibility.

Identify existing development conditions and patterns. Municipalities should also develop an inventory of all existing conditions and patterns of development in the community in order to understand the particular needs of their community. In particular, the inventory should identify all existing street, block, and building types in order to elicit the appropriate form and massing of buildings to be proposed therein. The inventory should also identify locations with high levels of development activity, major sites that will be available for development in the near future, and areas in need of infill.[14]

Collaborate with the public. Municipal officials should share with the

public the background information gathered, the analysis performed on the current regulatory system, the inventory of existing conditions, and the identification of areas in need of development. Input from the community at large should be obtained through a public visioning process such as a charette: a "collaborative planning process that brings together residents and design professionals in an intensive multi-day process that typically includes focus group meetings, workshops, presentations, and public engagement exercises to develop a feasible plan for future revitalization and development."[15] For years, charettes have been employed successfully by private developers in planning large-scale projects, and their use now appears to be gaining significant momentum on the public side, due in part to efforts to adopt form-based zoning.

Determine the new plan's spatial basis. Before starting to draft a form-based zoning regulation, your municipality must determine how the form-based code will be defined and regulated — in short, how it will be organized. Paul Crawford, one of the nation's experts on form-based codes, describes four basic alternatives: (a) neighborhoods, districts, corridors; (b) transect; (c) a street-based regulating plan; and (d) special purpose zones.[16] This step involves the identification of those sections in the community that are appropriate for different types of development. For example, if a community uses the transect approach, the regulatory plan might identify those areas that are suburban, general urban, urban center, urban core, and special districts such as schools, civic centers, or industry.[17]

Draft the form-based code. In general, the drafting principles for form-based zoning codes are similar to those for conventional use-based zoning. An excellent outline of zoning code drafting principles is set forth in the American Planning Association's Planning Advisory Service Report No. 526, which includes the following recommendations:[18]

- Cite the legal authority for municipal regulations (typically a provision of the state enabling statute).

- Use terminology consistent with existing statutes and local regulations.
- Revise model provisions so that they fit into the rest of your regulatory framework.
- Explain graphics clearly in captions and text, and specify their regulatory purpose (whether it be to illustrate, explain, mandate, or offer guidance).
- For discretionary approval processes, provide clear standards to guide decision makers.

Other code-drafting principles are particularly important for drafting a form-based zoning code:[19]

Establish clear and concise standards. For example, urban standards will be needed concerning streets, blocks, building placement, building height, and land uses. These standards must be defined for all of the different parts of the community, necessitating diagrams for each zone that clearly establish standards for the key elements of an urban place, including street and sidewalk widths, building placement, building height, and the location of any on-site parking.[20]

Define standards with user-friendly graphics. Standards should be presented in a graphic format that is well-illustrated, jargon-free, and easy to read and understand. The graphics should include all information and regulation relevant to a particular district (street type, neighborhood, etc.) in one concise illustration to ensure there is no confusion resulting from overlooked cross-references.[21]

Maintain neutrality concerning architectural style. The form-based code should be drafted in a manner that is "style-neutral."[22] In other words, keep the regulation as permissive as possible by not referring to any particular style

of architecture. However, the code might be drafted to include general design requirements — such as that a building façade must have a base, a middle, and a top, or that a particular type of door and window fenestration is required at the street level.

Streamline the permitting process. The most important aspect of implementing a form-based code is to facilitate a streamlined permitting process.[23] As most communities that handle a significant number of development project applications recognize, "developers are much more willing to abide by design guidelines if they know that compliance will assure a permit."[24] Accordingly, detailed and carefully drafted form-based codes create greater predictability for both developers and the public. If an expedited permit process can be offered to applicants who follow the form-based code, a municipality might encourage developers to spend more money on elements such as the building façade, rather than on a prolonged public process and its associated costs.

Conclusion

It is an exciting and interesting time to be involved in form-based zoning at the municipal level. Although most communities will not immediately replace conventional zoning entirely with form-based codes, it is clear that more and more localities are considering the adoption of form-based zoning in some respect.[25] The overview offered in the foregoing discussion should be used by all those involved in regulating land use at the municipal level to make implementation of form-based zoning as efficient and rewarding as possible for the community.

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Notes

1. Form-based zoning codes are extensive, and a more complete list is available from the author, but selected examples include (all URLs last visited June 22, 2006): **Arlington County, Va.**, adopted the Columbia Pike Special Revitalization District Form Based Code as Section 20 of Arlington County Zoning Ordinance in Feb. 2003, *see* www.arlingtonva.us/Departments/CPHD/Forums/columbia/current/CPHDForumsColumbiaCurrentCurrentStatus.aspx; **Austin, Tex.**, adopted the Traditional Neighborhood District Article of the Land Development Code in 1997, *see* www.ci.austin.tx.us/development/ldc1.htm; **Belmont, NC**, adopted a Traditional Neighborhood District Ordinance as part of the Regulating Ordinance in Aug. 1995, *see* www.ci.belmont.nc.us; **Burnsville, Minn.**, adopted the Heart of the City District as Chapter 22B of the Zoning Ordinance in 1999, *see* www.ci.burnsville.mn.us; **Cape Coral, Fla.**, adopted three form-based zoning districts downtown (Core, Gateway, and Edge) as part of the Land Use and Development Regulations in Nov. 2005, *see* www.spikowski.com/CapeCoralOrd91-05.pdf; **Chesapeake City, Md.**, adopted the Traditional Neighborhood District and Design Guidelines as Sections 109 and 165 of the Zoning Ordinance in June 1999, *see* www.chesapeakecity-md.gov/pdfPZO0506.pdf; **Columbus, Ohio**, adopted the Traditional Neighborhood Development Article of the Zoning Code in May 2001, *see* www.ordlink.com/codes/columbus/index.htm; **Fort Collins, Colo.**, adopted the Land Use Code in 2001, *see* www.colocode.com/ftcollins/landuse/begin.htm; **Gainesville, Fla.**, adopted a Traditional Neighborhood Development District and a Traditional City Overlay District as Article VII, Division V and Appendix A, Section 4, respectively of the Land Development Code, in Nov. 1999, *see* municode.com/resources/gateway.asp?pid=10819&sid=9; **Gresham, Or.**, adopted Land Use Districts and Plan Districts as part of its Community Development Code in May 2001, *see* www.ci.gresham.or.us/departments/cedd/dp/code.asp; **Louisville, Ky.**, adopted Form Districts as Chapter 5 of the Land Development Code in Aug. 2002, *see* http://www.louisvilleky.gov/PlanningDesign/ldc/ldc2004.htm; **Miami-Dade County, Fla.**, adopted a form-based code for downtown Kendall as Article XXXIII (I) of the Zoning Code in 2000, *see* www.municode.com/resources/gateway.asp?pid=10620&sid=9; **Petaluma, Cal.**, adopted a form-based code for Central Petaluma known as the Smart Code in June 2003, *see* cityofpetaluma.net/cdd/plan-zoning.html#zoningord; **San Antonio, Tex.**, adopted the Unified Development Code (Chapter 35) in May 2001, *see* www.sanantonio.gov/dsd/udc; **Sonoma, Cal.**, adopted the Development Code in 2001, *see* www.sonomacity.org/Forms/Codebook.pdf; and **Syracuse-Onondaga County, N.Y.**, adopted the Traditional Neighborhood Development Code and the Traditional Neighborhood Development Guidelines in 2001, *see* www.syracusethenandnow.net/SettlementPlan/TNDCodeFinal.pdf and www.syracusethenandnow.net/SettlementPlan/TNDGuidelines.pdf.

2. Referring to the Village of Euclid, Ohio, appellant in the landmark Supreme Court case upholding the authority of governments to enforce zoning regulations. Vill. of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365 (1926).

3. Charles M. Harr & Michael Allan Wolf, Land-use Planning: a Casebook on the Use, Misuse, and Re-use of Urban Land § III (Little Brown & Co. Law & Business, 4th ed. 1989).

4. Local Government Commission, Form-based Codes: Implementing Smart Growth, www.lgc.org/freepub/PDF/Land_Use/fact_sheets/form_based_codes.pdf (last visited June 22, 2006).

5. Dom Nozzi, Walkable Streets, Model Urban Design Regulations, www.walkablestreets.com/model.htm (last visited June 22, 2006). *See also*, City of Farmers Branch, Tx, Codes Project: Frequently Asked Questions, www.ci.farmers-branch.tx.us/Planning/codes7FAQs.html (last visited June 22, 2006) (stating that the form-based code places "primary emphasis on the physical form of the built environment with the end goal of producing a specific type of 'place'").

6. Franz Heitzer, Form-Based Zoning, Am. Planning Ass'n PAS Quicknotes No. 1, at www.planning.org/pas/member/pdf/QN1text.pdf (last visited June 22, 2006). *See also*, National Sea Grant Office, Focus: Form-Based Codes, CCD Bulletin #6 (May 27, 2005) at 1, at http://www.seagrant.noaa.gov/themesnpa/ccd_bulletin/ccd_bulletin_6.pdf.

7. Peter Katz, *Form First: The New Urbanist Alternative to Conventional Zoning*, Planning, Nov. 1, 2004, at 16.

8. The URL for the Form-Based Codes Institute is www.formbasedcodes.org (last visited June 22, 2006).

9. The discussion on implementation of form-based codes that follows assumes that municipalities will first establish that form-based zoning in their jurisdiction, if enacted, would not be subject to legal challenge as an *ultra vires* exercise of authority. Some communities have questioned whether such codes are a legal means of regulating land use; *see* Robert J. Sitkowski & Brian W. Ohm, *Form-Based Land Development Regulations*, 38 Urb. Law. 163 (2006) (discussing legal authorization issues); *see also*, Steve Langworthy, *Form Based Codes and Michigan Zoning Enabling Acts*, Mich. St. U. Extension Land Use Series (April 24, 2006) at http://web1.msue.msu.edu/wexford/pamphlet/pamphletFormBasedCodeLangworthy.pdf (discussing the legality of form-based codes under Michigan's zoning enabling statutes). In 2004, California adopted Assembly Bill 1268, which explicitly authorizes form-based codes; Cal. Gov't Code § 65302.4 (2005). In particular, the California statute authorizes the text and illustrations in a regulatory plan's land-use element that address the location and extent of uses, and the zoning ordinances that implement these provisions.

10. Congress for the New Urbanism, Codifying New Urbanism: How to Reform Municipal Land Development Regulations (*Pas* #526) (APA Planning Advisory Service, 2004) at 33 (referencing the fact that three smaller communities in North Carolina — Cornelius, Davidson, and Huntersville — all developed complete new ordinances).

11. *See supra* note 4 (referencing the fact that Petaluma, Calif., adopted a form-based code for 400 acres of underutilized land near its historic downtown).

12. *See supra* note 10 at 26.

13. *Id.*

14. *Id.*

15. *See supra* note 4.

16. *Id.*

17. *Id.*

18. *See supra* note 10 at 29.

19. *See supra* note 4.

20. Dom Nozzi, Walkable Streets, Model Urban Design Regulations, www.walkablestreets.com/model.htm (last visited June 22, 2006).

21. *See supra* note 4.

22. *Id.*

23. *Id.*

24. *Id.*

25. Irvine, Calif., is considering the adoption of a form-based code known as the Mixed Use Residential Overlay Zoning Code. The draft zoning code for the Residential Mixed Use Overlay District was released for public review in October 2005 and is expected to be considered at a City Council meeting in July 2006. *See* www.cityofirvine.org/depts/cd/planningactivities/ibc_graphics.asp. Miami, Fla., is considering the adoption of a form-based code known as Miami 21, which entails a holistic approach to land use and urban planning. The City Council is expected to consider passage in fall 2006. *See* asoft12.securesites.net/secure/miami21/index.php?src=gendocs&link=miami21draftlanding. **ML**