Introduction

- What is a code?
- What role does a code play in the development process?
- What are the legal issues?
- What are the options?
Retail sf/capita

- ↑ 38% over 18 years
  - 1986 – 14.74 sf
  - 2004 - 20.32 sf

Uncivic Design

New Home Construction

<table>
<thead>
<tr>
<th></th>
<th>1976</th>
<th>2002</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average building sf</td>
<td>1,700</td>
<td>2,320</td>
<td>36%</td>
</tr>
<tr>
<td>Average lot size (sf)</td>
<td>10,125</td>
<td>16,454</td>
<td>63%</td>
</tr>
</tbody>
</table>

What is a Code?

- Law
- Substantive rules
- Procedural rules
- Mediation
- Dictionary
- Bridge
- Enabler
"Form-based codes address the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks."

The regulations and standards in Form-based codes, presented in both diagrams and words, are keyed to a regulating plan that designates the appropriate form and scale (and therefore, character) of development rather than only distinctions in land-use types.

This is in contrast to conventional zoning’s focus on the micro-management and segregation of land uses, and the control of development intensity through abstract and uncoordinated parameters (e.g., FAR, dwellings per acre, setbacks, parking ratios, traffic LOS) to the neglect of an integrated built form. Not to be confused with design guidelines or general statements of policy, Form-based codes are regulatory, not advisory.

Source:
Form Based Codes Institute, at http://www.formbasedcodes.org/definition.html
Form-Based Code Ingredients

Building + Lot + Infrastructure = Form

Zoning

Subdivision

Form-Based Code Elements

- **Regulating Plan**: A plan or map of the regulated area designating the locations where different building form standards apply, based on clear community intentions regarding the physical character of the area being code.

- **Public Space Standards**: Specifications for the elements within the public realm (e.g., sidewalks, travel lanes, on-street parking, street trees, street furniture, etc.).

- **Building Form Standards**: Regulations controlling the configuration, features, and functions of buildings that define and shape the public realm.

- **Administration Definitions**: A clearly defined application and project review process.

- **Definitions**: A glossary to ensure the precise use of technical terms.

Source: Form Based Codes Institute, at http://www.formbasedcodes.org/definition.html

Form-Based Code Models

- **Models**
  - SmartCode™
  - Arlington Pike Form-Based Code
  - Wisconsin Model Code
  - CNU Codes project

- **Characteristics**
  - Stand-alone codes
  - No integration with conventional zoning
  - Transect-based zoning
  - Alternatives vs. No alternatives
  - Uses NU jargon
  - Requires powerful constituency
Top 10 New Urbanist Jargon Words and Phrases

10. Centroidal
9. Enfront
8. Regulating Plan
7. Essence of Propinquity
6. Human Scale
5. Building Disposition
4. Pedestrian Shed
3. Charrette
2. Immersive Environment
1. Transect

Source: Duany Plater-Zyberk & Co.

<table>
<thead>
<tr>
<th>Standard</th>
<th>Zoning</th>
<th>Subdivision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building design / proportions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum height</td>
<td>□</td>
<td></td>
</tr>
<tr>
<td>Minimum / max. stories</td>
<td>□</td>
<td></td>
</tr>
<tr>
<td>Fenestration</td>
<td>□</td>
<td></td>
</tr>
<tr>
<td>Lot disposition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Max. front setback</td>
<td>■</td>
<td></td>
</tr>
<tr>
<td>Max. side setback</td>
<td>■</td>
<td></td>
</tr>
<tr>
<td>Min. frontage buildout</td>
<td>■</td>
<td></td>
</tr>
<tr>
<td>Parking - location</td>
<td>■</td>
<td></td>
</tr>
<tr>
<td>Parking - ratios</td>
<td>●</td>
<td></td>
</tr>
<tr>
<td>Infrastructure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Streetscoping</td>
<td>■</td>
<td>■</td>
</tr>
<tr>
<td>Street typologies</td>
<td>■</td>
<td>■</td>
</tr>
</tbody>
</table>

White & Smith, LLC
New Urbanist / Form Based v. Transit Oriented Development Codes

<table>
<thead>
<tr>
<th>Standard</th>
<th>NU/FBZ</th>
<th>TOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use restrictions</td>
<td>Diminished</td>
<td>Critical</td>
</tr>
<tr>
<td>Scale</td>
<td>Building</td>
<td>envelope</td>
</tr>
<tr>
<td>Street standards</td>
<td>Pedestrians</td>
<td>Pedestrian &amp; transit</td>
</tr>
<tr>
<td>Civic spaces</td>
<td>Neighborhood scaled</td>
<td>Urban scaled</td>
</tr>
<tr>
<td>Parking</td>
<td>Hidden</td>
<td>Capped</td>
</tr>
</tbody>
</table>

Myths & facts

- **Myth:** Developers do not produce good communities because zoning makes them illegal.
- **Reality:**
  - Nearly all zoning ordinances allow PUD.
  - Most NU communities were built under PUD, NOT a New Urbanist Code.
  - BUT, PUD creates obstacles: (1) discretionary (2) not address ancillary standards that can destroy good urbanism (streets, parking, buffers, SWM).
  - Same obstacles exist for multiple use "pod" PUD.
  - Form-based codes make better community design a by right option.

Paranoia
Uncertainty
Delay

White & Smith, LLC
Myths & facts

- Form Based Codes regulate architectural style

Myths & facts

- Form Based Codes do not regulate use
a. Podium Building.
   i. Description. A Podium building has one or more floors which
meet the minimum setback requirement as determined by Form
Based Zones, with upper floors stepping back to reduce impact
on street.
   ii. Access. The primary entry to each individual unit on the
ground street façade shall have direct access to the street.
Access to upper floor offices, residential and commercial units
shall be via a ground floor lobby with direct access to the street.
Parking, loading and trash disposal shall be accessed from an
alley or shared side drive.

iii. Parking. Parking shall be located the rear portion of the lot or
under the principal building and exterior parking areas may be
located along the back.

iv. Frontage. Ground level Frontage Types along the street
shall be Store Fronts, Offices, Cafés, and/or Lobbies and may also
include Portals, Forecourts, Courts, and/or Patios.

v. Massing. Upper floors may step back. Where the zone permits
more than three stories, the fourth story and above shall be setback at least 8 feet from the
front building plane.

B. Building Envelope Standards: Shopfront Colonnade Sites

<table>
<thead>
<tr>
<th>Use</th>
<th>Ground Story</th>
<th>Upper Stories</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Village (Dallas)</td>
<td>Residential</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Retail</td>
<td></td>
</tr>
</tbody>
</table>

The primary story shall house retail use. See height specifications above for the specific requirements.

Farmer’s Branch Station Area Form Based Code

White & Smith, LLC
Alternatives to traditional zoning have arisen over the years, such as "form based zoning" or "mixed use zoning." S. Mark White, Classifying and Defining Uses and Building Forms: Land-Use Coding for Zoning Regulations, American Planning Association Zoning Practice, Sept. 2005, at 2-3; Sonia Hirt, The Devil is in the Definitions, 73 Journal of the American Planning Association, at 436 (Autumn 2007). "[F]orm-based zoning" is the latest trend in the planning profession." White, supra, at 3. It is "based on the theory that design controls can resolve inconsistencies between land uses. Design controls for [form-based zoning] ordinances include building envelope standards, building frontage requirements, fenestration (window and entryway), facade coverage, and traditional facade modulation techniques." Id. at 2. In contrast, "mixed use zoning" mixes a number of different uses in respective zones rather than limiting mixed uses. Hirt, supra, at 436. Many urbanists believe that mixed use districts are the key to restoring vibrancy to American cities. Id. However, traditional "use districting remains the mainstay of most zoning ordinances" and "this is expected to continue for the foreseeable future." White, supra, at 3.

Myths & facts

Myth: “Codes should tell applicants what they can do, not what they cannot do”
Myths & facts

**Myth: the plan will make this all happen**

**Reality:**
- Plans are not legally binding
- Codes are legally binding
- Codes are based on the plan
- Infrastructure is important too

**Solution:** develop a strong mandatory or incentive-based code

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Myths & facts

**Myth:** “Developers will produce better communities if the Codes will only show them how to do it”

**Reality:**
- Perception: consumers want privacy and security
- Auto-centric transportation systems beget sprawl, not bad codes

**Solutions:**
- Developers need strong incentives (or mandates)
- Community needs multi-modal transportation systems

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White & Smith, LLC
Myths & facts

- **Myth:** “A shorter ordinance is easier to understand”
- **Reality:**
  - Definitions and concepts need some text
  - Easier conceptually does not mean easier to implement
  - Short ordinances tend to create undue discretion
  - Legal issues
  - Discourages use
- **Solution:**
  - Establish only those standards that are necessary

Myths and Facts

- “Graphics undermine the legality of the code”
- **Facts:**
  - The law does not require long documents
  - The law does not require obtuse language

Myths and Facts

- Form based code = Graphics
- Graphics = Form Based Code

Cautionary note:

Consider the software application carefully!
Myths and Facts

- "Graphics can replace acres and acres of text!"
- Facts:
  - Graphics require a written explanation
  - Many code provisions are textual (e.g., procedures)
  - BUT graphics can clarify vague or confusing language
Objectives

- Use the code
- Produce outcomes we expect
- Balance
- Quality
- Predictability
- Fairness
- Advance notice of what is coming
- Durability
- Sustainability
Form Based Codes | Planning, Zoning & Eminent Domain

November 18, 2009

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**Steps to Code Reform**

1. **Plan**
   - Start with a good plan

2. **Scope**
   - Select a project manager
   - Identify your budget
   - Select a code writer or consultant
   - Write a clear scope

3. **Public Process**
   - Talk to people
   - Listen to people
   - Facilitate

4. **Diagnose**
   - Diagnose your code
   - Decide what kind of code you want

5. **Write**
   - Buy the 21st Century LDC
   - Write the standards
   - Vet the standards

6. **Adopt**
   - Train the staff
   - Train the applicants

7. **Train**
   - Talk to people
   - Listen to people

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**Hierarchy**

- **General**
  - Federal (e.g., ISTEA, Hope VI)
  - State (enabling legislation)
  - Regional Planning Commissions

- **Specific**
  - Municipal / County Codes
  - Project Regulatory Codes

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**Procedures**

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White & Smith, LLC
Form Based Codes | Planning, Zoning & Eminent Domain

Eastside Village
(Plano)

Traditional Neighborhood Development (TND)

Center + 
Neighborhoods + 
Parks & Open Space 
Traditional street 
design 
Connectivity index = 2.0 
Short blocks (< 400' average)

Legal Requirements

- Authorized
  - Delegation
  - Preemption

- Constitutional
  - Due process
  - Takings
  - Equal Protection

- Enforceable
  - Aesthetics
  - Uniformity
  - Vagueness
  - Spot zoning

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Local Authority

Preemption

Home Rule

Dillon’s Rule

- General Police Powers
- Grants of Authority

Standard Zoning Enabling Act

SECTION 1. GRANT OF POWER—For the purpose of promoting health, safety, morals, or the general welfare of the community, the legislative body ... [may]

come and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces; the density of population and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

SEC. 2. DISTRICTS. ... within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.
Standard Planning Enabling Act
- Public improvements
- Official mapping
- Planning Commission approves public facilities
- Rarely litigated

Statutory Authority
- California
- Connecticut
- Florida
- New Hampshire
- Oregon
- Pennsylvania
- Wisconsin

Code of Virginia (§ 15.2-2280)
“...regulate, restrict, permit, prohibit, and determine the following:
1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;
2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;
3. The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures...”
**Restigouche v. Jupiter (11th Cir. 1995)**
- Road Corridor study implemented by prohibiting automobile campus
- “Goal of creating an identifiable, traditional downtown” legitimate public purpose
- Encouraging retail uses and prohibiting car dealerships furthers public purpose:
  - auto purchase not an everyday need
  - large auto lot breaks up pedestrian flow
  - dealerships disrupt planned residential character

**Marshall v. Salt Lake City (Utah 1943)**
- Residential “C” district created small “utility zones” for neighborhood conveniences
- Spot zoning challenge rejected:
  - “Here the general zoning plan of the city set within a reasonable walking distance of all homes in residential ‘A’ districts the possibilities of such homes securing daily family conveniences and necessities, such as groceries, drugs, and gasoline for the family car, with free air for the tires and water for the radiator, so the wife and mother can maintain in harmonious order the family home, without calling Dad from his work to run errands.”

**Purser v. Mecklenburg County (NC.App. 1997)**
- Generalized Land Plan and General Development Policies District Plan (GDP)
- GDP provision for Mixed-Use & Commercial Centers & Neighborhood Mixed-Use Centers
- Plan amendment process
- Spot zoning challenge rejected: “philosophy of NCC ‘was to allow those who live nearby to walk or travel very short distances for goods to meet their daily needs.”
J.D. Construction v. BOA (N.J. Super. 1972)

- "In single family residential zones any parking facilities with a capacity of more than four (4) vehicles shall be permitted only in a side or rear yard.”
- H: (1) no reasonable relationship to zoning purposes (N.J. anti-aesthetic rule); (2) vague

Responding to J.D. Construction

- No constitutional obligation to zone sufficient space for off-street parking (State v. Rush (Me. 1974))
- Landscaping requirements for parking lots not a taking (Parking Association v. Atlanta (Ga. 1994))
- Updated planning legislation
- New Jersey

Retail Retrofit
Dallen v. KC (Mo.App. 1992)

- Special Main Street Corridor Review District
- Enabling ordinances prohibited modifications of use restrictions in underlying district
- H: Ten (10) foot maximum setback invalid as applied to gas station
- What in the !@$# constitutes “rural, rustic or non-urban characteristics”?!!

Responding to Dallen

- Findings
  - Need for restrictions relating to zoning purposes
    - property values
    - traffic congestion
    - pedestrian safety
  - Careful drafting
Dallen v. Kansas City
Gas Backwards

City of North Miami v. Newsome (Fla.App. 1987)

- “All main buildings or structures must have a minimum floor area of two thousand, five hundred (2,500) square feet”
- “All facades or false fronts of or to buildings shall be at least fifteen (15) feet in height”
- Not tied to lot size
- Held:
  - No authority
  - Arbitrary, unreasonable and has no relation to public health, safety, or welfare

Responding to Minimum Height Cases

- Findings
- Graphics
- Updated state planning legislation (“innovative land use controls”) (F.S. § 163.3202)
- Voluntary restrictions (e.g., development agreements, conservation easements)
Due Process - Vagueness

- Legal Concerns
  - Graphics / “postcard” ordinances
  - Compatibility
  - Urban Design
- Policy Concerns
  - Vague ordinances discourage use
  - Vague ordinances invite abuse
  - Vague ordinances do not always produce right outcome

Vagueness Principles

- Applicability
  - Ordinance forbids/requires an act
  - Persons of common intelligence must guess at meaning and will differ as to application
- Concerns
  - Due process / notice
  - Arbitrary enforcement
  - Ambiguities favor landowners

Vagueness Principles

- Technical words
- Criminal v. non-criminal statutes
- Administrative v. legislative decisions
- Well-settled common law meaning
- Impossible standards of specificity
- Procedural safeguards
Anderson v. Issaquah (Wash.App. 1993)

- “Buildings shall be made compatible with adjacent buildings…”
- “Evaluation ... based on quality of its design and relationship to the natural setting…”
- “Building components ... shall have appropriate proportions and relationship to each other…”
- “Colors shall be harmonious…”
- “Monotony of design ... shall be avoided…”
- “Efforts shall be made to create an interesting project…”

Building design (Aesthetic v. Function)

Copyright issues

- Veeck v. Southern Building Code Congress, 293 F.3d 791 (5th Cir. 2002)
  - Municipal law versus
  - Private codes
Resources

- Freilich & White, 21st Century Land Development Code (APA, forthcoming)
- E. Garvin, Understanding Form Based Regulations (International Municipal Lawyers Association, Portland, Oregon – September 18, 2006)


- Definitions
- Submittal
- Bibliography

Family Of Five Found Alive In Suburbs

Rescue divers have the family that was lost in the Chicago suburbs. The family was found after they were declared dead in a house fire.

The family was found alive after they were declared dead in a house fire.

White & Smith, LLC
Conclusions

Issues with Form Based Codes

- Not complete codes
- Procedures
- LUU Industrial uses
- Supplemental uses
- Non-NII development (e.g., Campus, Conventional Subdivision)
- Mapping
- Overlay issues (floodplains, environmental, airports)
- Vested rights / nonconformities
- Appeals
- Agencies

Concurrency

- 30-60% reduction in trips for using Community Design options
Use Patterns

1. Design templates for multiple-use developments
2. Optional
3. Parts of UDC not applicable (e.g., buffers for commercial retrofit, tree preservation for conservation)
4. Early in ordinance

Design templates that can be permitted by special use permit (or as of right) in designated zoning districts or areas

Tying it Together

St. Petersburg, FL

"St. Petersburg has diverse neighborhoods, each with its own unique character and identity."
Lessons Learned

- Plan basis
- Public participation
  - General planning policies
  - Build constituency
  - Neutralize opponents
- Establish by-right options
- Be realistic
- Compromise
- First step
- Code is a partial solution