

City of Fayetteville Staff Review Form

2019-0080

Legistar File ID

2/19/2019

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Garner Stoll

1/25/2019

DEVELOPMENT SERVICES (620)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

ADM 18-6256: Administrative Item (Amend UDC 161 and 166): Allow Form-based Development in Conventional Zoning): Submitted by the Planning Commission Long Range Planning Sub-Committee for revisions to UDC Chapter 161 and 166. The proposed code change would modify the conventional zoning districts to allow form-based development.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? NA

Current Budget \$ -

Funds Obligated \$ -

Current Balance \$ -

Does item have a cost? No

Item Cost

Budget Adjustment Attached? NA

Budget Adjustment

Remaining Budget \$ -

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



CITY COUNCIL AGENDA MEMO

MEETING OF FEBRUARY 19, 2019

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff
Garner Stoll, Development Services Director
Andrew Garner, City Planning Director

FROM: Planning Commission Long Range Planning Sub-Committee
Matt Johnson; Matt Hoffman

DATE: January 25, 2019

SUBJECT: **ADM 18-6256: Item (Amend UDC 161 and 166.24: Allow Form-based Development in Conventional Zoning):** Submitted by Long Range Planning Sub-Committee for revisions to UDC Chapter 161 and 166. The proposed code change would modify the conventional zoning districts to allow form-based development.

RECOMMENDATION:

The Planning Commission Long Range Planning Sub-Committee, Planning Commission and staff recommend approval of an ordinance to amend UDC Section 161 and 164.24 as described within this report.

BACKGROUND:

Background: Form-based zoning is a critical piece to seeking the fulfillment of our City Plan 2030 goals. However, current requirements in the Fayetteville Unified Development Code create undue obstacles in encouraging form based development in our conventional zoning districts. Without a wide spread rezoning of conventional zoning to form based, conventional development will continue. The proposed amendments will help implement Goals 1 thru 3 of City Plan 2030:

Goal 1: We will make appropriate infill and revitalization our highest priority.

Goal 2: We will discourage suburban sprawl.

Goal 3: We will make traditional town form the standard.

The Long Range Planning Sub-committee has identified several impediments to building form based development in conventional zoning district under the current ordinances. The primary impediment is due to setback requirements and a lack of a LSIP approval process seen in our form-based zoning.

The specific code changes are generally listed below and shown in the attached strikeout-highlight and clean versions of the code.

Proposed Amendments to UDC Section 161 and 164.24

- Form-based development option for districts R-O, C-1, C-2, and C-3.
- Administrative approval if development complies with urban form design standards, build-to zone placement, and minimum buildable street frontage.
- Two tracts for development: conventional development or urban form development with administrative approval.
- Other administrative changes.

DISCUSSION:

On June 11th 2018, the Planning Commission discussed and tabled the item to address a minor staff recommendation. On June 25th, 2018, a slight revision to the initial proposal was presented to the Planning Commission. The proposal was forwarded to the City Council with a recommendation for approval by a vote of 7-0-0. Commissioners Johnson and Belden were not present at the June 25th, 2018 meeting.

BUDGET/STAFF IMPACT:

None

Attachments:

- Strikeout version of proposed UDC Code Changes
- Clean version of proposed UDC Code Changes

161.20 - District R-O, Residential Office

(A) *Purpose.* The Residential-Office District is designed primarily to provide area for offices without limitation to the nature or size of the office, together with community facilities, restaurants and compatible residential uses. The intent of this district is to allow administrative approval if developed in urban form, in compliance with the build-to zone and minimum buildable street frontage as specified herein.

(E) *Setback Regulations.*

Front	15 feet
Front, if parking is allowed between the right-of-way and the building	50 feet
Front, in the Hillside Overlay District	15 feet
Side	10 feet
Side, when contiguous to a residential district	15 feet
Side, in the Hillside Overlay District	8 feet
Rear, without easement or alley	25 feet
Rear, from center line of public alley	10 feet
Rear, in the Hillside Overlay District	15 feet

Urban Form Setback Regulations.

<u>Front</u>	<u>Side</u>	<u>Side-Zero Lot Line*</u>	<u>Rear</u>	<u>Rear when contiguous to a single- family residential district</u>
<u>A build-to zone that is located between the front property line and a line 25 feet from the front property line.</u>	<u>5 feet</u>	<u>A setback of less than 5 feet (zero lot line) is permitted on one interior side, provided a maintenance agreement is filed**. The remaining side setback(s) shall be 10 feet.</u>	<u>None</u>	<u>15 feet</u>

(F) *Building Height Regulations.*

Building Height Maximum	5 stories
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If a building exceeds the height of two (2) stories, the portion of the building that exceeds two (2) stories shall have an additional setback from any side boundary line of an adjacent single family district. The amount of additional setback for the portion of the building over two (2) stories shall be equal to the difference between the total height of that portion of the building, and two (2) stories.

(G) *Building Area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot.

(H) Urban Form minimum buildable street frontage: 50% of the lot width

161.21 - District C-1, Neighborhood Commercial

- (A) *Purpose.* The Neighborhood Commercial District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas. The intent of this district is to allow administrative approval if developed in urban form, in compliance with the build-to zone and minimum buildable street frontage as specified herein.

- (E) Setback Regulations.

Front	15 feet
Front, if parking is allowed between the right-of-way and the building	50 feet
Side	None
Side, when contiguous to a residential district	10 feet
Rear	20 feet

Urban Form Setback Regulations.

<u>Front:</u>	<u>A build-to zone that is located between 10 feet and a line 25 feet from the front property line.</u>
<u>Side and rear:</u>	<u>None</u>
<u>Side or rear, when contiguous to a single-family residential district:</u>	<u>15 feet</u>

- (F) *Building Height Regulations .*

Building Height Maximum	5 stories
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If a building exceeds the height of two (2) stories, the portion of the building that exceeds two (2) stories shall have an additional setback from any boundary line of an adjacent residential district. The amount of additional setback for the portion of the building over two (2) stories shall be equal to the difference between the total height of that portion of the building, and two (2) stories.

- (G) *Building Area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

(H) Urban Form minimum buildable street frontage: 50% of the lot width.

161.23 - District C-2, Thoroughfare Commercial

- (A) *Purpose.* The Thoroughfare Commercial District is designed especially to encourage the functional grouping of these commercial enterprises catering primarily to highway travelers. The intent of this district is to allow administrative approval if developed in urban form, in compliance with the build-to zone and minimum buildable street frontage as specified herein.

- (E) *Setback Regulations.*

Front	15 feet
Front, if parking is allowed between the right-of-way and the building	50 feet
Side	None
Side, when contiguous to a residential district	15 feet
Rear	20 feet

Urban Form Setback regulations.

<u>Front:</u>	<u>A build-to zone that is located between 10 feet and a line 25 feet from the front property line.</u>
<u>Side and rear:</u>	<u>None</u>
<u>Side or rear, when contiguous to a single-family residential district:</u>	<u>15 feet</u>

(F) *Building Height Regulations.*

Building Height Maximum	6 stories*
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* If a building exceeds the height of two (2) stories, the portion of the building that exceeds two (2) stories shall have an additional setback from side boundary line of an adjacent residential district. The amount of additional setback for the portion of the building over two (2) stories shall be equal to the difference between the total height of that portion of the building, and two (2) stories.

(G) *Building Area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot.

(H) Urban Form minimum buildable street frontage: 50% of the lot width

161.25 - District C-3, Central Commercial

(A) *Purpose.* The Central Commercial District is designed to accommodate the commercial and related uses commonly found in the central business district, or regional shopping centers which provide a wide range of retail and personal service uses. The intent of this district is to allow administrative approval if developed in urban form, in compliance with the build-to zone and minimum buildable street frontage as specified herein.

(E) *Setback Regulations.*

	Central Business District	Shopping Center
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18-6256 Code Changes in Markup

Front	5 feet	25 feet
Front, if parking is allowed between the right-of-way and the building	50 feet	50 feet
Side	None	None
Side, when contiguous to a residential district	10 feet	25 feet
Rear, without easement or alley	15 feet	25 feet
Rear, from center line of a public alley	10 feet	10 feet

Urban Form Approval Setback Regulations.

<u>Front</u>	<u>A build-to zone that is located between the front property line and a line 25 feet from the front property line.</u>
<u>Side</u>	<u>None</u>
<u>Rear</u>	<u>5 feet</u>
<u>Rear, from center line of an alley</u>	<u>12 feet</u>

(F) *Building Height Regulations.*

Building Height Maximum	5 stories/7 stories*
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* A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of five (5) stories. A building or a portion of a building that is located greater than 15 feet from the master street plan right-of-way line shall have a maximum height of seven (7) stories.

(G) Urban Form Minimum Buildable Street Frontage: 80% of lot width.

166.24 - Nonresidential Design Standards

(A) *Purpose.* It is the intent of these standards to provide the methods and means by which designers and developers may achieve the city's adopted goals to produce quality development and to manage growth within the City of Fayetteville. These regulations complement the city's urban zoning districts and those districts that allow development in urban form, with site and architectural design regulations to produce a visually interesting and high quality development that responds to the needs of pedestrians, cyclists and vehicular traffic.

(B) *Applicability.* These design standards shall apply to all non-residential development located in urban or form-based zoning districts that require a build-to zone, as well as non-residential development in conventional districts when built in an urban form allowing administrative approval, with the exception of those districts located within the Downtown Master Plan boundary. In addition to the city's Commercial Design and Development Standards, the standards apply when either new development occurs or expansion of 25% or more of the existing nonresidential building square footage occurs. All sides of a building that are visible from the public right-of-way shall be subject to design review.

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Urban Form *Setback Regulations.*

Front	Side	Side-Zero Lot Line*	Rear	Rear when contiguous to
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18-6256 Code Changes (Clean Version)

				a single-family residential district
A build-to zone that is located between the front property line and a line 25 feet from the front property line.	5 feet	A setback of less than 5 feet (zero lot line) is permitted on one interior side, provided a maintenance agreement is filed**. The remaining side setback(s) shall be 10 feet.	None	15 feet

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Urban Form *Setback Regulations.*

Front:	A build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Side and rear:	None
Side or rear, when contiguous to a single-family residential district:	15 feet

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18-6256 Code Changes (Clean Version)

Side and rear:	None
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	Central Business District	Shopping Center
Front	5 feet	25 feet
Front, if parking is allowed between the right-of-way and the building	50 feet	50 feet

18-6256 Code Changes (Clean Version)

Side	None	None
Side, when contiguous to a residential district	10 feet	25 feet
Rear, without easement or alley	15 feet	25 feet
Rear, from center line of a public alley	10 feet	10 feet

Urban Form Approval *Setback Regulations.*

Front	A build-to zone that is located between the front property line and a line 25 feet from the front property line.
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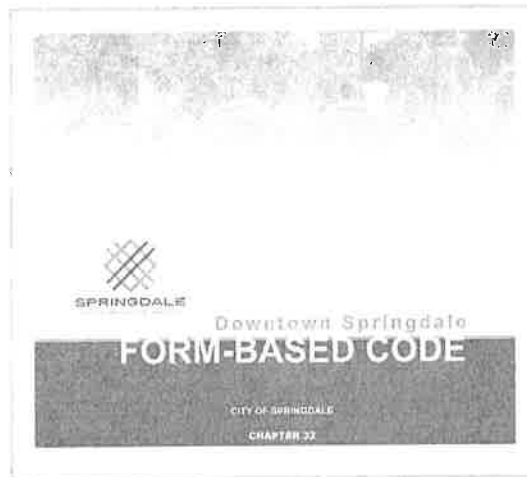
Handed out at the Council meeting 2-19-2019
AOM 18-6256 (Amend UDC 161 and 166)

Mayor's Office

Posted on: March 29, 2017

City Council approves form-based code for Downtown Springdale

The Springdale City Council approved the Downtown Springdale Form-Based Code at their regularly scheduled City Council Meeting on March 28, and with the adoption of an emergency code it will go into effect upon the signing of the ordinance. The Downtown Form-Based Code will be Chapter 32 in the City of Springdale's Code of Ordinances adopted by reference. The code as adopted will be available on the City's website in the Planning Department.



"This is a great step forward for the revitalization of Downtown Springdale," said Mayor Doug Sprouse. "This Downtown Springdale Form-Based Code will help protect Downtown investments, and it will no doubt have a notable and positive impact on future development Downtown."

The form-based code replaces the current zoning code for Downtown Springdale. This includes all properties located between Huntsville and Caudle/Quandt avenues (north and south), and 71B and Highway 265

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- [Springdale Water Utilities](#)

(east and west).

The code is designed to foster a setting for economic growth and re-development in the downtown area in order to achieve the vision set forth in the adopted Downtown Master Plan and to provide a mechanism to implement the goals of the plan.

[Read the form-based code](#)

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[Mayor Sprouse signs contract
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Tournament to Springdale](#)

[Next](#) ⇒

[Planning Commission forwards
form-based code to City Council
with recommendation for approval](#)

Other News in Mayor's Office

[**The Fall 2018 Springdale Newsletter is now available!**](#)

Posted on: October 12, 2018



[**City of Springdale wins 2018 Arkansas Business Trendsetter City Award**](#)

Posted on: September 28, 2018



[**Springdale Fire Department is Awarded International Accredited Status**](#)

Posted on: August 14, 2018



[**Springdale Police Department Receives APCO Agency Training Program Certification**](#)

Posted on: August 30, 2018



[**City of Springdale wins the 2018 All-America City Award**](#)

Posted on: August 23, 2018



[**The Red Bull Pump Track World Championship Final coming to Springdale this fall**](#)

Posted on: June 5, 2018



Property Rights Foundation of America®

from PRFA's Twelfth Annual National Conference on Private Property Rights
October 18, 2008

The Façade of New Urbanism & the Form-Based Code

Lolita Buckner Inniss, J.D., L.L.M.

Associate Professor of Law, Cleveland-Marshall School of Law,
Cleveland State University, Cleveland, Ohio

Thank you, Carol, for that introduction. It's a pleasure and an honor to be here this morning. I just want to say that I've very much been looking forward to this conference, to hear some ideas about property and land use. Very often, when you're working in academia, you have your head in the books a lot, and we don't come out too often and see real people until we come to conferences like this.

First of all, I want to start with an overview of my talk today. First and foremost, what I'm going to be offering here is a critique of New Urbanism in general and "form-based code" in particular and as a tool of New Urbanism. I also want to talk about the fact that form-based code, while it's often touted as being more flexible than zoning and is a great method to overcome a number of the problems that we see in our cities—urban decay, segregation, economic downturns, what I began to see, however, particularly as I taught the first year on property, is that form-based code is not generally doing what advocates said.

Property is a significant part of my teaching assignment. What we do for a large part of the first semester is to talk about land use and the history of land use. It began to occur to me, as I work with students and work with the materials, that a number of the new tools for zoning, such as form-based code, are really doing the opposite of what a number of their proponents claimed. So I began to look at some of the reasons for that. In short, my argument is that form-based code is nowhere near what it's cracked up to be. First and foremost, it tries to do by design what was ultimately spontaneous. What it comes down to, and I'll talk about this in more detail, is that in the city as we have known it and have come to understand it in the United States, and certainly also in Europe, city growth was spontaneous growth. I think it's problematic from the outset to assume that you can do now by design what it has taken us one hundred years to do in our urban areas. I think you would have to challenge any plan that purports to design something that didn't come about by design. So that's one of the first problems I've had with it.

Next, New Urbanism. As I'll talk about in a few moments, when you talk about form-based code, you're really talking about one of the principal tools of what's called the new urbanism, sort of a way of getting back to the "old urbanism" and the old city. What I'll discuss is the fact that the new

urbanism, like the old urbanism—that's deeply contested. The city that you and I may remember may be very different than the city that somebody else remembered. So again it's problematic when someone purports to put together a plan that's supposed to take us back to the old urbanism. We all remember and lived in different types of cities, and so there's no way that we're going to design something that reflects a vision. There is no single vision. There are multiple visions that could never begin to be incorporated in any one single vision. So that's another problem.

Finally, the *charette* process, as Carol mentioned, relies on the "community" in order to sort of pull together form-based code plans. All too often it doesn't work out as claimed, which is one of the things I talk about in my essay where I discuss the rebuilding of New Orleans that's the basis for this talk. That's a wonderful example of what happens when you claim that the community is going to be represented. All too often, form-based code plans end up representing the elites who put them together, who bring in the experts, who all too often monopolize the talk that's going on. And it's a wonderful way for a very, very small strand of people in the community to have their views represented as "what everybody wants." All too often, that's simply not the case. So that's my third critique.

Let's talk a little bit about what form-based code is. I think it's useful to do this simply because we get a lot of expressions that are thrown around about form-based codes, smart codes, community planning, and there must be at least a half dozen ways to refer to this. When I talk about form-based code plans, that's really the sort of global generic name for things like "smart code." Just as an aside, really quickly, smart code is a type of form-based planning. And smart code, particularly the type that's being commercially prepared and sold to towns (I think it's by the Duany Company, the Duany people, have a package of about fifty pages), is a template and what they try to do in smart codes is implement form-based code ideology, zoning, urban planning, building codes. They wrap it all up in a nice neat template and you can take this out to your town and put it into place. But that is actually a type of form-based code.

What would describe any plan that's form-based code would be one that's first and foremost supposed to be "collaborative"; it's supposed to be something between government and citizens. So if you're looking at a plan and ask if it's a type of form-based code, is there a collaborative piece between government and citizens? Next, it's regulating "design" rather than "use." And so it's *pre*-scriptive rather than *pro*-scriptive or *de*-scriptive, meaning by prescriptive that it tells you exactly what you are supposed to be doing, as opposed to proscriptively telling you what you can't do, and descriptive telling you the sorts of things you want to do.

Now it doesn't really take a whole lot of thought to realize that, "Well, wait a minute, if this is supposed to be collaborative and help the community, why would we prefer a plan that's going to tell me exactly what I ought to be doing, versus something more general?" And that's certainly problematic in and of itself. There is strong attention to details in your typical form-based code plan, very often in a number of such plans they even actually tell you down to detail things like the type of facade, the colors. I mean it's really quite invasive in a number of cases.

Three ways that you see form-based type code plans implemented. The first one is mandatory, where you have to follow the dictates of the plan, and quite expectedly those plans meet with the most difficulty. So there have been up until now relatively few places that were willing to go mandatory, but that's changing. Optional, that's sort of an alternate plan that doesn't replace a zoning ordinance. It's voluntary. There are a number of small towns on the Gulf Coast that have this "floating" zoning code. Floating zoning codes are kind of interesting; they don't replace traditional zoning but they do sort of tell developers what they ought to be doing. But then, ultimately, if you look closely at most floating zone plans, they tend to turn into mandatory plans. And so, if you think about it, floating codes are sort of a surreptitious way of getting to a mandatory type of code plan.

Next, I want to talk a little bit about just the history of traditional zoning, because again there's some understanding, some sort of representations of form-based code that I think are not quite accurate. A number of proponents of form-based codes say, for example, "Well, you know, form-based code is supposed to help us with our land uses in a way that zoning never could." And, again, they talk about the New Urbanist idea and going back to the way we were.

I think it's really important to understand that the way we were, the things that sort of make big cities what they are, the things that make them have specific characters, a lot of those particular attributes and characteristics actually predate traditional zoning. It's really important to acknowledge that before traditional zoning, there were private land use agreements and nuisance laws, there were some common law land use tools that helped people to build the cities to get to be the way they were. The urban owner class basically relied upon servitudes well before there was anything that looked like zoning. That is to say, there were private agreements between homeowners, between neighbors, easements, rights-of-way, real covenants, deed restrictions. There was also nuisance law. If your neighbor was using his land in a way that was bothersome, you could always sue him.

These were the tools in the arsenal of urban owners for many years, long before zoning came into play. These tools are still available to a number of people, notwithstanding zoning or even form-based code type plans. And so it's important to keep in mind that, even if you never had form-based code, even if you never had a traditional zoning plan, there would still be ways to control land use and to develop cities in a way that was to the benefit of most people who lived in them.

What started to happen is that observers noted that there were problems with private land use. First, with private agreements, if you didn't have one in place before you had a problem, then there were really very few options left for you. So let's say that there's a group of homeowners, and they have covenants, deed restrictions about whether or not they were going to make a particular use. If there is one neighbor among many who wants to build a 40-foot fence to put his property behind, that would not necessarily be a problem unless, of course, lots of neighbors objected to it, and, if they did, without a land use agreement in advance there wouldn't be a whole lot you could do about that.

So then you would ask yourselves, "Well, we don't have an agreement between or among neighbors

that we won't do certain things, the only thing I can turn to would be nuisance law." Nuisance law, of course, is useful for a problem that arises even in the absence of an agreement in place. But with nuisance law, you had to be talking about something that was "unreasonable," that is to say that unreasonably interfered with someone's use and enjoyment. And what's unreasonable to you may not be to me; it's very fact-specific. In short, private land use has its limits because if there's no agreement in place in advance, you can't do anything. And even using nuisance law, the facts may simply be against you. These are the biggest issues that tended to move urban elites towards wanting zoning ordinances, and, let me say, prefacing what I'm going to get to next, it was chiefly urban elites who brought zoning to us and who implemented it.

Let's talk about some of the reasons for that. What starts to happen if you look briefly at the history of cities in the United States, is that between 1850 and 1900, that was a period of some of the biggest growth that we have ever experienced. You've got the Industrial Revolution, you've got lots and lots of immigration, you've got big cities growing, pollution, crowding. But then, one of the points that I've highlighted—seismic social change, class mobility. All of a sudden cities are no longer just for rich people. It's really rather interesting, those of you who are history buffs who like to go to places like Philadelphia, New York, even a number of somewhat smaller regional towns, Albany, Cleveland, what you'll find is that there's glorious old architecture, huge mansions, lovely buildings right in the heart of cities. There's a good reason for that. The wealthy lived in city centers, poor people lived on the outskirts of cities. That was the early American city model. That still tends to be true to some extent, even in European cities. I know, for example, several years ago when I lived in Paris for a while as a young student, I lived on the outskirts of Paris because I couldn't afford to live in the City of Paris. That's still where the rich people lived. With few exceptions here, and I'm thinking of some of the finer neighborhoods in Chicago and Manhattan, where still lots of rich people live.

What started to happen is that poorer people started coming to the cities. That was really what started a movement for zoning in this country. Rich people realized that they would not, for example, be able to rely upon private land use agreements, which is what they had done previously. When they had like-minded neighbors with them, they could all agree on what they would do. And if there was some neighbor who wasn't like-minded, and they did something, there was always the possibility of a nuisance suit. But then you had poor people coming in as tenants in some neighborhoods that were declining, and you had poor people that even frequented rich people's neighborhoods. Remember that private land use agreements and nuisance laws are only about dealing with landowners and ownership. People who were simply in your neighborhood, frequented your neighborhood, worked in your neighborhood, there wasn't much you could do in terms of private land use laws about those people.

So what you start to see is a number of the wealthy, mostly Eastern wealthy of the elite, they go to Europe and they notice that there are movements afoot there. First and foremost, the Garden City movement. There was a man named Ebenezer Howard, and he's really at the root of our current zoning plans. He decided that the best way to improve the lives of Londoners, as I said, of some of those poorer people who were starting to crop up on the edges of London, was to move those people

out, out to model cities. And there was going to be segregation of uses, and permanent green spaces, and it was going to be lovely.

But again, when you closely query what was going on there, what you find is that this would vacate a number of the urban spaces that would allow the wealthy to sort of retake them, number one. Number two, there's a piece of the Howard Garden City movement that's very little talked about. That is that his plan eliminated private property ownership. That is sort of conveniently glossed over when people talk about the history of zoning and how wonderful it is for us. So what you have, then, is a number of the wealthy look at what's going on in Europe, and say, here's a way to sort of mediate our class conflicts.

You see the City Beautiful movement, that's sort of the earliest form of zoning you see promoted here. It's the wealthy who decide, "Let's have a segregation of uses, we'll put industry over there, businesses over there, residences over there, segregation of uses." What you can see, from Ebenezer Howard to the City Beautiful, ultimately led to zoning, enshrining zoning. So we get to 1926: *Euclid v. Ambler Realty*. A lot of you probably know about that case; that's the case where the U.S. Supreme Court ultimately said that zoning is not a taking and that it's entirely permissible. Even by 1926, a lot of people had forgotten about the ideological roots of the zoning movement. By then it was sold as a way to preserve our urban way of life. What it actually amounted to was a way to preserve the way of life of the wealthy, if you look very closely.

Working and living in Cleveland now and being a history buff, I very much enjoy thinking about this case. I don't want to spend time on the *Euclid* case, but just to sort of give you an overview. Around the time that *Euclid* was first being litigated in the lower courts, and even by the time it got up to the Supreme Court in 1926, Cleveland, Ohio, I believe, had the highest per capita income in the United States. Now think about what that means. I believe it's now the poorest or second poorest town. Cleveland, Ohio, was a place where a number of the nation's wealthy had created their wealth and where they continued to live and to add to their wealth. Consider, for example, the fact that the Rockefeller wealth started in Cleveland, and that's just one example of many. What Cleveland did, very quietly, was to put into effect its own type of zoning ordinance. Why? To keep out the sorts of uses, industries, businesses, and the sort of people that they really didn't want marring the beauty and the wealth of Cleveland.

What that meant was that nearby towns like Euclid got fearful. If you're familiar with the geography of Cleveland, Euclid is sort of contiguous on one of the borders there. They said, "Wait a minute. If Cleveland is going to keep out industry and certain types of retail and, effectively, poor people, because very often if you build a factory they will come, meaning your workers have to pretty much live nearby. If Cleveland is going to sort of start walling those people out with their own zoning code, those people are going to come to our town. We can't let wealthy Cleveland push the sorts of uses that they don't want over onto us." So the City of Euclid put into effect a zoning code, really a sort of defense against what Cleveland's wealthy were doing.

Well, the Ambler Realty Company, they happened to get caught in the crossfire. They were land developers and they owned many acres in Euclid. At the point where they first owned it, they could have done anything they wanted with it, obviously. There weren't any zoning codes in place. But it was pretty much vacant land. With the implementation of the zoning code there, however, they suddenly had land that was now part residential, part retail, part industrial. The value of their holdings went down dramatically because their uses were now limited, and they sued and ultimately they lost.

But think about that history of *Euclid v. Ambler Realty*. We in law school, we law professors, we are supposed to come marching into class, we teach this and talk about what a wonderful thing it is that we have *Euclid* and that we have zoning. We talk about how the Supreme Court reached its decision. And I do that. But one of the things I do, I encourage students, "Well, wait a minute, let's think about how did all this come to be. You're really talking about something that ultimately was to the benefit of the wealthiest people in our city and in our region. Who gets caught in the cross hairs are really relatively small actors like Ambler Realty." One of the things we do in my class and that's maybe why my class is different from other first year property classes, I sort of ask what happened.

Some people trace the decline of places like Cleveland to *Euclid v. Ambler Realty*. Because think about what has to happen when certain property values are falling because of these types of divisions of uses, and think about who that ultimately benefits. Smaller people, smaller users, business owners, the people who might have created wealth, created jobs, they can't do that as broadly as they could have. So again, remember that this is our model for sort of creating plans that are going to help us in terms of making our cities better. You might argue, as I often do, that this was sort of the beginning of the end of our big cities.

Post-zoning challenges. Fast forward. We've had traditional zoning in place, and it's been tried since 1926. And now we're noticing, gee, depopulation of older cities, decay, Rust Belt phenomena, aging baby boomers! One interesting line that people rarely draw is, think about *Euclid v. Ambler Realty*. At the point where you can no longer put up your light industry in or near a big city, there go the jobs, there go the people. It's really very straightforward, it makes perfect sense.

And I'm thinking again about another place, another Rust Belt, Trenton, New Jersey. I worked and lived near Trenton for many years. And if you're familiar with Trenton, New Jersey, you know that there are a number of parts of town where there are lovely old brownstones surrounding what used to be small and medium sized factories. People lived there, people worked there in those neighborhoods. Now those neighborhoods are completely decayed. The factories are gone or closed. As a result of existing zoning ordinances, it would probably be impossible to bring in new ones, or at least any that would significantly employ anybody. And so, what that ultimately means is that a lot of those housing units could never and would never be used again, unless you're going to infuse a lot of money to build them up, and to what purpose? The people who live in them have no place to work. So you've got depopulation, decay, aging baby boomers.

At the same time you've got Sunbelt cities that are growing. And it's sort of interesting, again it's a

side note. People say, “Oh, look at all those wonderful, beautiful places out West. What makes them attractive is because they’ve got form-based codes, smart codes.” I beg to differ. A lot of the growth that started out there was before they got the smart codes. It was because there were large tracts of unzoned, unincorporated land where people could build and pretty much do what they wanted. The smart codes and the form-based codes came later, when somebody decided it would be a good idea. Workplaces and retail got farther and farther from where people lived, and there was more economic and racial segregation.

Here’s a moment to pause and think about some of the other work that I do. As Carol mentioned, a lot of my work is in racism, comparative racism. I’ve gone to conferences where people say, “How can you suggest that it would be a bad idea to have form-based code? It’s a wonderful way to help the disadvantaged or the poor and minorities.” And I say, “No, no, actually no. It would be completely the opposite.” I’ll talk a little bit more about that. The people who are disenfranchised by form-based code processes are ultimately everybody and anybody who doesn’t happen to be part of a pretty elite economic group, and so that would be most middle class people. Even lots of upper middle class people. And certainly most poor people. Form-based code processes, by their very nature, don’t work for most of us, even though they purport to represent most of us.

This is where a lot of my work on race and racism fits in; this makes perfect sense for me in terms of the other type of work I do. Because, again, I invite people: “Don’t just accept conventional wisdom about what’s good for you and what’s good for poor people, you really have to query ultimately what you or anybody else is getting out of it.”

Problems. So to summarize quickly, what’s wrong with form-based code, if it’s supposed to be sort of the re-do on zoning and it’s supposed to help us out? First, again, it tries to do by design what was spontaneous, it’s based on this idea of urbanism, which was said to be at the root of New Urbanism, and then the faulty charette process. In this charette process, in which the community is supposed to participate, most people are ultimately left out. Again, reminder, economic impetus of city formation. Most cities were not built as social or political communities. It is, in summary, about the money. That’s why cities formed. Think about where the largest cities in the United States are. They’re around ports, they’re around cities of commerce, the places of commerce. The wealthiest people lived in center cities. They were big businessmen, they had shipping concerns, they had industrial concerns. The poorer of us lived wherever we could. That is to say, on the edges and outside of cities, and it was really nice sometimes when we could get a job or a factory started right near the urban core, because that was the only thing that would have allowed poor people to get near the cities. Urbanization at its core was about privatism, it was about the accretion of individual wealth. I’m not suggesting that this is a good thing or a bad thing. It’s just a neutral thing. If cities were about money, then I think it would not make sense for us to forget that when we try to recall or create the city of the past. It was not ideological in the sense that it was about a certain social view or political view. It was neutrally speaking about the money.

What else? Urbanism — this whole idea of New Urbanism. First, it forgets that it was economic

impetus that started the cities. Next, urbanism is a mix of competing cultures, that is to say, your city, my city and the next guy's city can be very different. As Carol mentioned, Manhattan, "The City" in broad terms, there was the Lower East Side, there's the Upper East Side, there's the West Side, and that's just one small example of competing cultures or views of urbanism. Nonetheless, people say, "Let's go back, let's have New Urbanism to go back to the old urbanism." Well, there isn't any single one.

And with this "New Urbanism," and even urbanism itself, we're trying to build something on a micro scale. Some look at macro development, some are ecologically focused, some look at the exurbs, inner ring suburbs, suburbs, there's no one single strand. How can we possibly promote something that has so many interpretations? And again, this sort of accidental urbanism, just as a reminder, whatever it is we have that we think is good about urbanism and hence New Urbanism—walkability, clusters of people. Happenstance. Accident. Keep in mind that even traditional zoning did not come into play significantly until after 1926, when it is upheld in *Euclid v. Ambler Realty*. So anything that we have in mind about urbanism and hence the New Urbanism is very much contested.

Something else we don't think about, who says we want to live this way? All too often, there's a certain kind of urbanist, they say, "People like to walk and they want to see each other. And they want to be in centers and they want to..." There is no single view that we could honestly, if we're being intellectually honest, honestly put forward as the way that anybody wants to live. And so, again, it's going to be problematic.

SPRINGBALL

Also consider that people say, "Let's have a city like we used to have." Well, for those people who are social justice activists, and I am, I say, "Wait a minute. Traditional cities, that's where the rich people live. They didn't want anybody who wasn't very wealthy to live there, and zoning was a way of helping to wall out some of their neighborhoods. How could we say that this form-based code in general is a social justice tool when what it's based on was something that by its very nature was exclusionary?"

And then finally, the charrette, replicating existing power dynamics. The hallmark of form-based code is collaboration, and that's supposed to be where a bunch of people get together and we all talk, and we all talk about what it is that "we" want. First of all, the "we" is never too well or fully formulated, and as Carol mentioned, you might get to go to one of those meetings if you hear about it. You might even get to talk at one of those meetings. But all too often, there are organized and very much pre-determined ideas about what's going to happen. And you might even be at one of those meetings and think you're hearing what the opposition is, but when you get the packaged summary, "Huh? I didn't think that was the sense of that discussion." The charrette, all too often, and I heard this at a conference I attended back in Houston with Randal, someone in the audience said, "The charrette? Where I live we call it the 'charade'!" And that's all too often the case. And yet, this is supposed to be the hallmark of what goes on with form-based code plans.

Finally, form-based code and the charrette are what I call "responsibilitization." That's actually a word,

I wasn't the first to use it, but I think it's useful in my work. It's an example where the government says, "You guys don't have any power to decide what your neighborhood's like in fine detail. We're gonna let you do that, we're going to give you autonomy. It's not us, it's you making the decisions. It's not us." But the government doesn't actually abdicate control over it. So "responsibilitization," in short, would be those situations where the government claims, "We're deregulating and you get to do what you want to do." But they're not really privatizing. And we're really not going to a free market model. They're still in control. Which ultimately means, if it comes out well, then they did it. And if it comes out badly, then you did it. That's sort of how I would describe "responsibilitization" in a nutshell. And I think it's all too often a farce that's perpetrated on the poor and the less well off.

So, in conclusion, form-based code is not "un-planning" or "un-zoning," as a lot of people would have you believe, that this is going to fix the problems of zoning. Next, it's an alternate planning and zoning by people who may not be accountable and who may not represent all members of the community. Finally, models to address the design of today's city are probably somewhere between private use agreements and traditional zoning schemes where they're so dependent on where you're talking about. One of the problems inherent with form-based codes and types of form-based codes, like smart planning or smart codes, is that they sort of package up something and say, "Here you go, here's your template. Just fill that in, have your architects, city planners and lawyers fill it in for you and then serve it up to the public." All too often, that's not going to work for a lot of people. You need something that takes into account the interests, needs of a particular community. And then, finally, the key here is to honestly assess the goals for any particular neighborhood from the ground up, and to accept the ad hoc nature of this entire process, and not just the zoning and planning process but city formation.

Then, my final closing note would be, particularly given the economic downturn we find ourselves in, I would say, and I've said it before, that all too often what we see now is the chickens coming home to roost in a lot of these smart code communities. There are a number of places where you have just sort of street after street of lovely, model planned, community homes that have all cropped up, of a certain design to meet certain standards or certain ideologies, and those are going to be empty. Why? Because you can't do that without the sort of spontaneous growth generators like jobs that need to be there. You can't sort of design lovely streets and homes and say, "Go there, if you build it they will come." No, no, no. If, for example, you put a workplace there, then a neighborhood probably would have cropped up that could have been sustained. But in a number of the newer communities, they are among the first to fail in this crisis. So I'm going to end there.

Again, thank you very much.

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