

Applying Form-Based Codes in the Real World

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SIX KEY QUESTIONS IN SELECTING FORM-BASED TOOLS

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In light of the wide array of form-based zoning approaches currently in use, the questions facing many communities is not whether to use them but where to apply them and which tools make the most sense given the desired changes in urban form. As always, the key is matching the zoning tools to the land use and development challenges that need to be addressed. To do this well, communities considering form-based controls should be able to address the following questions.

- 1. Is the community intending to apply form-based controls across the entire municipality or target them to specific areas?**

It is surprising how often this question is not asked at the start of the discussion, often leading to significant miscommunication about what types of controls are needed. In general, city- or countywide systems are much more complex (given the wider variety of buildings, streets, frontages, and contexts that they have to address) and often have to be made more flexible and less prescriptive than those targeted to specific places that have clearly defined or intended urban forms. In general, the smaller the area being targeted, the more detail the standards can include and the more form-based elements can be successfully addressed. To date, very few medium-sized and large communities have adopted city- or countywide form-based codes that include most of the six form-based elements discussed in this report.

- 2. Are the places being targeted Greenfield areas, redevelopment areas, or infill sites? Are they controlled by a single property owner or multiple property owners?**

Raw land development and large single-owner redevelopment areas offer better opportunities to establish new urban forms, while developed areas with multiple owners generally change slowly. Once streets and lots have been designed and buildings and infrastructure have gone in, many aspects of urban form have been established. They can be changed, of course, but that often takes a long time and significant investment investments of (usually public) money. If the major concern is in guiding redevelopment in developed areas with multiple owners, it may not be wise to require those owners to agree on a single regulating plan as part of the form-based control system, and it may not be wise to assume significant revisions to street and utility patterns unless a clear funding source for those changes is available.

- 3. Is the intent to reinforce current land use patterns or to require changes in those patterns?**

Again, failure to ask this question early in the process often leads to significant miscommunication and wasted effort. Many stakeholders who can easily agree to guidelines or incentives for different forms of development will balk at standards that require those outcomes. Often, the answer is a mix of both. For example, form-based controls may be mandatory in downtown and transit-oriented nodes but voluntary or optional in other areas. Building and frontage type controls may be mandatory while public space and block and subdivision standards remain advisory. The answer to this question sometimes changes during the course of a zoning reform effort, however. Some efforts that intend to create mandatory zoning standards later opt

for advisory guidelines, either because the diversity of the area makes regulatory standards too complex or because of opposition to the proposed controls.

4. Which form-based elements are needed?

Six types of form-based controls are sometimes listed as the features that distinguish this approach to zoning:

- Building Form Standards;
- Building Type Standards;
- Building Frontage Standards;
- Civic Space Standards;
- Block and Subdivision Standards; and
- Regulating Plans

However, very few communities that have adopted form-based controls have included all six elements. Many codes include only a few of them. Like all good zoning tools, effective form-based tools are not a pre-packaged set of controls but a set of controls tailored to the specific needs of the community. If it is clear that the community's goals or the nature of the area do not require some of the elements, it may be wise to take them off the table so that attention can be focused on those that are necessary to establish the intended urban form.

5. How will existing developed properties be treated, and what level of reinvestment will be allowed without full compliance with the form-based standards?

While it is tempting to think that all new development and investment in a form-based control area will comply with the new controls, the reality is often different. Most communities believe that some amount of expansion or reinvestment in existing properties that do not conform to the form-based standards should be allowed in order to promote economic stability and to treat the owners of those properties fairly. It is important to think through not only how new buildings will be treated – as in all zoning, they will conform to the code – but to think through the trickier issues of partial investments that will extend the economic viability of properties that do not conform.

6. Is there buy-in from key city agencies?

Traditional zoning often controls only private land and publicly owned building sites but not streets, parks, and infrastructure, because those are under the control of public works or parks departments. Form-based theory insists that this is a mistake and that good urban form requires coordination between building frontages, street designs, and civic space designs. Yet bridging that gap requires significant cooperation among planning, parks, and public works staff. If that cooperation does not exist, then any public space types and controls established as part of the form-based system will probably wind up being advisory rather than mandatory. Public streets, parks, and infrastructure need to meet demanding engineering and operational requirements in addition to planning and design goals, and public works and parks departments almost never agree to implement standards that they were not involved in drafting and that do not meet their requirements.

NEW YORK ZONING LAW AND PRACTICE REPORT

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FORM AND SUBSTANCE: WHAT NEW YORK LAND USE LAWYERS NEED TO KNOW ABOUT FORM-BASED LAND DEVELOPMENT REGULATIONS¹

Robert J. Sitkowski and Joel Russell

INTRODUCTION

Municipalities throughout the country and in New York State are increasingly investigating, and in some instances implementing,² the latest iteration of new urbanist-influenced land development regulations—"form-based codes." The form-based approach to new urbanist land use regulation³ has, up until recently, been primarily applied in private-covenanted regimes—Seaside, Kentlands, and their progeny—a legal atmosphere quite different from the public regulatory arena. As these regulations move along the continuum from private to public, of course, different legal issues attendant to these types of regulations begin to emerge. This article serves as an introduction to form-based land development regulations for land use lawyers and presents three primary legal issues that arise when local governments begin to enact these design-based land use regulatory tools. This article also explores the use of form-based land development regulations in New York State and concludes that New York law does not impose any significant barriers to the use of this promising and important land use tool. As of this writing, the authors are aware that form-based codes have been adopted for portions of the New York cities of Saratoga Springs and Syracuse.

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WHAT IS A FORM-BASED LAND DEVELOPMENT REGULATION?

A form-based code is “a land development regulatory tool that places primary emphasis on the physical form of the built environment with the end goal of producing a specific type of ‘place.’”⁴ Standing in contrast to conventional land development regulations which, it is argued, favor regulating use over form, form-based regulations are designed to place the ultimate form of the development in a superior position to the use to which the property is put. As further explained by the Form-Based Codes Institute on its Web site,⁵ form-based land development regulations are:

A method of regulating development to achieve a specific urban form. Form-based codes create a predictable public realm by controlling physical form primarily, with a lesser focus on land use, through city or county regulations.

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 segregation of land-use types, permissible property uses, and the control of development intensity through simple numerical parameters (e.g., FAR, dwellings per acre, height limits, setbacks, parking ratios). Not to be confused with design guidelines or general statements of policy, form-based codes are regulatory, not advisory.

Form-based codes are drafted to achieve a community vision based on time-tested forms of urbanism. Ultimately, a form-based code is a tool; the quality of development outcomes is dependent on the quality and objectives of the community plan that a code implements.

The Elements of Form-Based Development Regulations⁶

Form-based codes look and act somewhat differently than conventional land development regulations, but perhaps their most unique attribute is the recommended process by which a form-based regulation is initially developed. These regulations are inherently place-specific, so a great deal of planning and public participation (known as a “charrette”) must occur well before the regulations are drafted. It is through this process that the community expresses its desired physical outcome, memorialized by a vision plan; it is from this vision plan that the standards contained in the regulations should be derived.

Although form-based regulations, by their nature, are designed to be place-specific, they have the following readily identifiable set of component parts:

- *The Regulating Plan.* This is a map, akin to but more detailed than a zoning map, organized by street frontage type, transect zone (see discussion of the SmartCode below), or other mechanism, showing the specific locations where the various building form standards apply. As the accompanying Regulating Plan for a neighborhood in Farmers Branch, Texas, based on street frontage type demonstrates, these regulating plans can look different than traditional zoning maps.

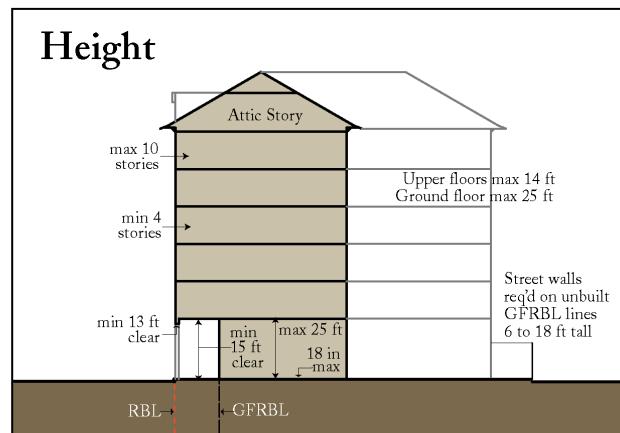
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- “Urban” or “Building Form” Standards. These regulations are commonly presented in a graphic form with supporting text covering bulk, height, coverage,

and “in-building” use standards, and, as the accompanying illustration from the Farmers Branch, Texas, code shows, are generally recognizable as such.

Building Envelope Standards: Shopfront Colonnade Sites



Building Height

1. The height of the principal building is measured in STORIES.
2. Each principal building shall be at least four (4) STORIES in height, but no greater than ten (10) STORIES in height, except as otherwise provided on the REGULATING PLAN.

Parking Structure Height

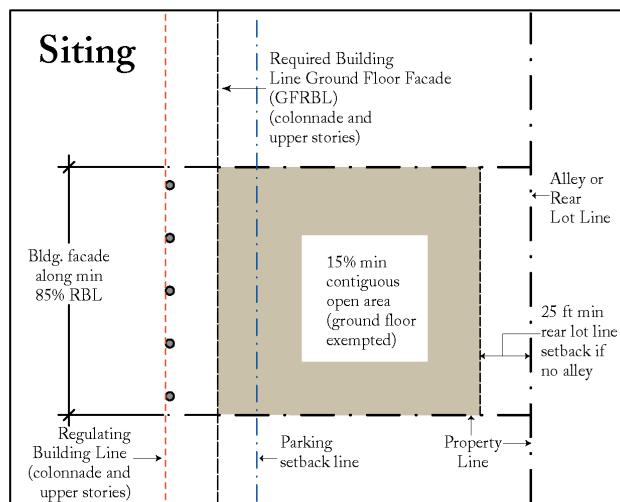
Where a parking structure is within 40 feet of any principal building (built after 2005) that portion of the structure shall not exceed the buildings EAVE or PARAPET HEIGHT.

Ground Story Height:

1. The GROUND STORY finished floor elevation shall be equal to, or greater than, the adjacent exterior sidewalk elevation up to a maximum finished floor elevation of eighteen (18) inches.
2. The GROUND STORY shall have at least fifteen (15) feet of clear interior height (floor to ceiling) contiguous to the GFRBL frontage for at least one-half ($\frac{1}{2}$) of its area.
3. The maximum STORY HEIGHT for the GROUND STORY is twenty-five (25) feet.

Upper Story Height

1. The maximum floor-to-floor STORY HEIGHT for STORIES other than the GROUND is fourteen (14) feet.
2. At least eighty percent (80%) of each upper STORY shall have an interior clear height (floor to ceiling) of



Street Facade

1. On each lot the building FAÇADE shall be built to the RBL for at least eighty-five percent (85%) of its RBL and/or GFRBL length.
2. The building FAÇADE shall be built to the RBL and GFRBL within thirty (30) feet of a BLOCK CORNER.
3. These portions of the building FAÇADE (the required minimum build to) may include jogs of not more than eighteen (18) inches in depth except as otherwise provided to allow BAY WINDOWS (upper STORIES only).
4. GROUND STORY unit frontage widths shall be a

maximum of one hundred twenty (120) feet.

Buildable Area

1. Buildings may occupy any portion of the lot behind the RBL (and RGFBL) exclusive of any setbacks required by this Code
2. A contiguous OPEN AREA equal to at least fifteen percent (15%) of the total BUILDABLE AREA shall be preserved on every lot. Such contiguous OPEN AREA may be located anywhere behind the PARKING SETBACK LINE, either at grade or at the second or third STORY.
3. No part of any building, except overhanging eaves, AWNINGS, or BALCONIES shall occupy the remaining lot area.

Side Lot Setbacks

On a lot where a COMMON LOT LINE is shared with a single-family residential zoning district, the principal building shall be setback at least ten (10) feet from the shared lot line.

Garage and Parking

1. GARAGE ENTRIES or driveways shall be located at least seventy-five (75) feet away from any BLOCK CORNER or another GARAGE ENTRY on the same BLOCK, unless otherwise designated on the REGULATING PLAN.
2. GARAGE ENTRIES shall have a clear height of no greater than sixteen (16) feet nor a clear width exceeding twenty-four (24) feet.

- *Public Space/Street Standards.* These regulations present in a graphic form the width and dimensions of streets, sidewalks, paths, street trees and furniture, and other standards applicable to the public realm. It is an open question whether street and sidewalk standards should be included in the zoning regulations in those jurisdictions that have a bifurcated zoning/subdivision scheme, rather than a unified development ordinance approach. New York statutes provide broad authority and significant flexibility in designing land use regulations (see below under “Authorization”). Form-based regulations that integrate standards for the public realm are most likely permissible, despite the fact that the sources of authority for zoning and subdivision regulation are in separate, but closely related, sections of the Town Law, Village Law, and General City Law.⁷ Such regulations should make clear that the authority for these regulations is based on different sections of enabling legislation, but there is no legal or practical barrier to combining them, other than the customary practice of placing subdivision regulations into separate local laws and chapters of a municipal code.
- *Administration and Definitions.* A glossary is included to ensure the precise use of technical terms and, since one of the goals of form-based codes is to promote predictability in process and, in some cases, streamline the permitting process, a clearly defined application and project review process is included.
- *Architectural Standards.* These necessarily diagrammatic and graphical regulations govern the building styles, details, and materials that are permitted and the ways in which they can be incorporated into specific building elements.

Not every set of form-based land development regulations includes all of these sections, and some localities elect not to include the architectural regulations based on an argument that they are the most objectionable from a political or legal standpoint. This argument will be addressed in a later section of this article.

THE LEGAL ISSUES

Since this article presents a newly evolving type of regulation, it is appropriate to step back and examine the fundamental legal principles that underpin local land development regulations in the context of form-based land development regulations. This article addresses three of these: Authorization, the manner in which these new types of regulations are enabled;

Discretion, the manner in the regulations are written; and Delegation, the manner in which the regulations are administered. This article will focus on legal issues relevant to New York. For a discussion of other jurisdictions, see R. Sitkowski, “*FORM AND SUBSTANCE: What Land Use Lawyers Need to Know About Form-Based Land Development Regulations*,” (*Zoning and Planning Law Report*, Vol. 30, no. 3).

Authorization

It is appropriate to begin an examination of legal considerations with the status of enabling legislation for regulations designed to promote “traditional neighborhood development” in general and form-based regulations in specific. A few states, such as Pennsylvania⁸ and Wisconsin,⁹ explicitly provide that local governments are enabled to promulgate “traditional neighborhood” regulations as part of their zoning powers. Most states, including New York, do not have such explicit enabling provisions. However, New York’s zoning and planning enabling legislation, especially when combined with the general grant of local law powers to local governments under the Municipal Home Rule Law,¹⁰ provides an adequate foundation for these types of regulations.

Many of the enabling statutes around the country, including New York’s, are rooted in the 1926 Standard State Zoning Enabling Act (“SSZEA”) provisions.¹¹ While it may be argued that the SSZEA (and the New York statutes which have evolved from it) are primarily oriented toward *use* rather than *form*, it is worth examining some of their provisions to see which of these may support a form-based approach. Not surprisingly, many provisions likely do.

The “Grant of Power” provisions in the SSZEA and the New York statutes based upon it include the following:

- Height, number of stories, and size;
- Lot coverage;
- Yards, courts, and other open spaces;
- Density; and
- Location and use of structures and land.¹²

This list of the contours of the grant of power to local government explicitly considers form of development, i.e., coverage, setbacks, height, number of stories, density, and location of structures. It also authorizes regulation by use of structures and land and describes use in the broadest terms of commercial, residential, and industrial. The list does not preclude the consideration of form in local land regulation.

The “Purposes in View” provisions of the SSZEA and New York statutes include the following purposes of zoning regulation:

- “In Accordance with a Comprehensive Plan”;
- Lessen congestion in the streets;
- Secure safety from fire, panic, and other dangers;
- Promote health and general welfare;
- Provide adequate light and air;
- Prevent overcrowding of land;
- Avoid undue concentration of population; and
- Facilitate adequate provision of public requirements.¹³

Again, none of these purposes appear to limit regulation to the use of land. In fact, one additional item in the statutes’ list of purposes puts a finer point on this issue:

Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.¹⁴

This provision seems to strike a balance between the use of land and the form of development, i.e., the character of the district. Contrary to conventional belief, then, the SSZEA and its state law derivatives cannot be considered exclusively use-based; indeed, it does not arguably show a preference for use over form. Accordingly, there should be sufficient support for a form-based approach in New York and other SSZEA-influenced states.¹⁵ Additional support for form-based land development regulations may be found in other sections of New York’s land use regulation enabling legislation, especially the site plan review provision,¹⁶ which explicitly allows regulation of architectural features and the location and dimensions of buildings. The site plan review statute also includes a catch-all provision allowing a municipality to regulate “any additional elements specified by the town board in such zoning ordinance or local law.” Other sources of authority for form-based regulation in New York include the subdivision regulation enabling law¹⁷ and planned unit development (PUD) enabling law.¹⁸

It is worth noting that most of the first generation of form-based codes adopted in the United States were incorporated into specific PUD approvals by local governments. This was a logical extension of their origin in private covenants. Many form-based codes that are initiated by developers are still approved through some type of PUD process, which fits well with their needs because it involves the approval of a site mas-

ter plan, analogous to a regulating plan, along with specific standards for streets and buildings, which are analogous to urban form, architecture, and public space standards.

Contrary to conventional belief, form-based land use development regulations do not “toss out” uses as a means of regulation. By way of example, uses are presented in the SmartCode¹⁹ as “Building Function Standards.” The SmartCode, now in its ninth version, is an extraordinarily comprehensive model form-based code promulgated by Duany Plater-Zyberk & Company that can also be considered a planning document presenting an alternative regulatory framework.²⁰ The SmartCode, based on a physical organizing system described as “The Transect,” a continuum of human habitation from urban core to rural,²¹ is increasingly being proposed in various forms, from gulf coast communities²² to the City of Miami.²³ The Building Function Standards in the SmartCode are presented in a very simple table that is designed to be flexible, letting the market decide what goes on inside the building types. Finally, local form-based land development regulations cannot dispense with uses for another reason—overriding federal statutes such as the Fair Housing Amendments Act, the Telecommunications Act of 1996, and the Religious Land Use and Institutionalized Persons Act—which are explicitly use-based.

Form-based land development regulations, like all land use regulations, must also satisfy the requirements of substantive due process. Since they are exercises of the police power, form-based land development regulations must advance legitimate governmental interests that serve the public health, safety, morals, and general welfare. To the extent that localities wish components of the regulations to be “aesthetic” in nature, New York is one of a majority of jurisdictions in the United States now accepting aesthetic considerations, either alone or in conjunction with other legitimate objectives, as a proper goal in the exercise of the state’s police power, which is critical in those cases where the local government seeks to implement the “Architectural Regulations” portion of a form-based land development regulation.²⁴

Aesthetic regulations generally come in two varieties. “Anti-look-alike” regulations provide that a new building may not be too similar to existing dwellings in the area. Other regulations, on the other hand, provide that new buildings may not be too dissimilar from existing buildings, adopting a “look alike” requirement, a variant of the now-familiar “compatibility” standard. Both types of regulations have increasingly been upheld, with cases relying on the well-known

United States Supreme Court pronouncement in *Berman v. Parker*:

The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.²⁵

Form-based land development regulations, though, create a wrinkle in the established “anti-look alike”/“look-alike” continuum because the primary focus of the regulations is not on individual buildings, but on the “Public Realm,” the *tout ensemble* of the façades of “fabric” and “focus” buildings and the design of all manner of the public spaces in between. The United States Supreme Court’s decision in *The Members of City Council of the City of Los Angeles v. Taxpayers for Vincent*²⁶ cemented the Court’s view that aesthetics are a proper focus of governmental regulation, which could arguably support considerations of the design of the public realm. New York Courts have, since 1963, endorsed aesthetics alone as a legitimate purpose of regulation.²⁷

It is important to note that, although space limitations preclude a detailed discussion, the legal authority for land use regulation in New York goes well beyond the zoning and subdivision enabling statutes. The most important sources of additional authority are:

(1) The Municipal Home Rule Law (MHRL), which allows municipalities to adopt land use regulations which are not part of zoning. The MHRL also allows municipalities to exercise their zoning authority by local law and, under certain circumstances, to supersede, by local law, provisions of the Town Law and Village Law (including the zoning and subdivision enabling statutes).

(2) The General Municipal Law, which provides for various additional types of land use regulation, including historic preservation regulations.²⁸

However, any land use regulations that are enacted pursuant to zoning authority must comply with the zoning enabling statutes, unless there is an explicit supersession of the Town Law or Village Law under the MHLR.

Finally, any land use regulations adopted by a municipality that has an adopted comprehensive plan must be “in accordance” with that plan.²⁹ This so-called “consistency requirement” can be helpful in providing legal support for a form-based code. The comprehensive plan can and should lay the foundation for having form-based codes by describing why the regulation

of land use to create an attractive public realm is beneficial and necessary for the appropriate growth and development of the community. Courts will give considerable deference to zoning provisions enacted to fulfill goals, objectives, and implementation measures enunciated in a comprehensive plan. Mentioning form-based codes in a comprehensive plan can only help support the legality of their usage. However, failure to mention them will not undermine the validity of form-based codes, unless they conflict with the provisions of the comprehensive plan. If a community is considering the use of form-based codes, it is good practice to include a recommendation in the comprehensive plan that such regulations be considered as implementation measures.

The Discretion/Prescription Continuum

Form-based land development regulations must also comport with the principles of procedural due process, i.e., they must contain sufficiently detailed and meaningful standards in order to alert applicants to what is expected of them, while allowing sufficient discretion in the decision-making body to determine the approval of an application. Otherwise, these regulations may fall prey to the void for vagueness doctrine.

Most form-based building form regulations that are prescriptive can likely survive this test since they are essentially bulk controls, but the issue really presents itself in the architectural standards, which may be necessary in many cases to achieve the municipality’s goal. Given the demands of some proponents for design specificity, especially in the architectural regulations, there is another problem. Highly detailed standards are not much of an administrative problem in the early new urbanist “codes,” since they are overwhelmingly privately enforced. However, the same standards, if contained in a duly adopted set of regulations, may be so detailed, in some extreme cases, to rise to the level of a prior restraint on expressive activity, in derogation of the First Amendment to the United States Constitution. One way to avoid such problems may be to focus on the form-based regulation as a tool to shape public space, rather than as a “mere” architectural design regulation. After all, one could argue, government has a duty to promote and maintain a healthy and safe public realm.³⁰

Given this choice between discretion and prescription, many localities have tried to land somewhere in the middle by using “Design Guidelines” regime. While some governments have created sufficiently detailed guidelines for their historic districts, neighborhood conservation districts, or gateway/main streets, many others have tried to address design issues without the

requisite discipline. Design guidelines established in the latter manner often have several problems, which are neatly summed up in the following observation:

Design Guidelines can prove to be a legal minefield. Guidelines are a combination of law and design administered by committee and applied to a property owner seeking development approval. The number of imaginable problems with this scenario is immeasurable.³¹

Problems can arise when the guidelines are vaguely described and there is a delegation of authority to bodies to make decisions on nothing more than the board members' subjective tastes. Also, when design guidelines are advisory only, there is a tendency to not take them seriously, or, at best, to not know how they are to govern a particular proposal. Accordingly, the courts may have a hard time grappling with this middle ground "solution."³² However, if a board makes its decision in a manner that is well-reasoned and grounded in the language of the applicable laws and ordinances, without relying upon the guidelines as legal authority, the guidelines may be useful for informing the decision process. They also provide guidance to applicants who will frequently be willing to follow them, even if they are not legally binding, as long as they do not add significant costs or compromise project goals. If guidelines are used in an advisory fashion, it is important to make this clear, both in the guidelines and in any references to them that may appear in applicable local laws.

While prescriptive architectural standards in a form-based regulation are not without their problems in built areas,³³ such standards may be necessary from a legal standpoint given the void for vagueness doctrine. The resistance to prescriptive design regulations, however, might be considered less legal than practical and political.

Delegation

The final fundamental legal principle is delegation. Consideration must be given to the administrative body tasked with evaluating specific proposals made under the land development regulations given that, in virtually all circumstances, a form-based regulation will not have been seen, let alone administered, by local government staff. It is naïve to argue that if the regulations are extraordinarily prescriptive, they are self-implementing in the local government context. Somebody in local government still needs to administer and interpret the regulations.

Given the design orientation of form-based regulations, the most familiar body logically best equipped

to review and make substantive decisions in applications would be an architectural design review board. These bodies, however, have sometimes been assailed as mere "pretty committees," may have their own problems with delegation and enabling, and raise the specter of abuses of discretion given the subjectivity inherent in administering any type of design-based regulation. Also, architectural review boards in New York receive their legal authority from section 10 of the Municipal Home Rule Law, not the Town Law, Village Law, or General City Law. They are therefore cumbersome to use if the goal is to have a streamlined review process before one board.

One way this issue has been addressed is to create a "Consolidated Review Committee," composed of representatives of various departments that review development proposals in the municipality. This committee would serve to streamline review processes by bringing all the necessary expertise to bear in a consolidated review. One concern, however, as with any such body, would be for its authority to be properly delegated in its role in final decision-making, if that were its intended role.

Another way that administrative review has been handled is through the creation of a position known as "Town Architect." This local government employee, be it in-house or hired as an outside consultant, serves a gate-keeping function as a person familiar with new urbanist design and form-based regulations who reviews applications and makes reports to the decision-making bodies. The legal issue arising with this position, as above, is the degree of decision-making authority that can be delegated to this person. The Town Architect, while critical to the application review process, cannot be so powerful as to amount to a proxy for the decision-making body.

The issue of the legal authority for either a Consolidated Review Committee or a Town Architect may be problematic under New York law if not handled appropriately. All approvals that are granted through a zoning regime must comply with one of the designated approval pathways in the statutes, such as site plan review, special use permits, rezoning, and/or subdivision approval. Since site plan review is the least discretionary form of review, and may be conducted without a public hearing, it is the most suitable path for administering a form-based code, as long as no subdivision approval is required. Site plan review must be administered by an "administrative body," a term which is not defined in the statute.³⁴ Elsewhere in the same section of the statute, however, the approving authority for site plans and special permits is referred to as an "authorized board." This raises a

question as to whether or not site plan review authority may be delegated to an administrative official or committee. Some city charters explicitly permit such delegation. In towns and villages, this problem can be solved through an explicit supersession of the sections of Town Law and Village Law that authorize site plan review. Delegation to a Planning Department, Consolidated Review Committee, or Town Architect is the most efficient and effective way to administer a form-based code.

If a form-based code is sufficiently prescriptive, it may be able to be administered by a building inspector or zoning administrator, without the need for a separate site plan review. If this approach is taken, there must be little or no discretion allowed in administering the code. It would be important, under such an approach, to have a building inspector who is sufficiently qualified to apply and interpret a form-based code, i.e., this official must be the functional equivalent of a Town Architect.

It is also worth noting that a code administered as-of-right (i.e., in a nondiscretionary fashion) by a building inspector would not trigger review under the State Environmental Quality Review Act (SEQR), while a code requiring site plan review would. Of course, the initial adoption of a form-based code would itself, as a significant rezoning action, require an in-depth SEQR review and possibly an environmental impact statement, especially if all subsequent decisions under the code are nondiscretionary and therefore exempt from SEQR.

CONCLUSION

Form-based land development regulations present the most recent evolution of new urbanist codes. They are a useful tool available to local governments in New York State to use in implementing new urbanism objectives. While this article describes three principal legal issues associated with form-based land development regulations that must be considered, there are also three practical implementation issues. First, the fact that these regulations have their root in private-covenanted regimes may create friction as legal constraints are raised that were not experienced before. Second, the application of form-based land development regulations to the built condition raises issues of nonconformities and vested rights, especially in the context of architectural regulations. Finally, there is a need to strike an appropriate balance between the degree of prescription required to create the desired physical result and the amount of discretion and flexibility necessary to solve problems that could not be anticipated when the regulations were drafted.

EXAMPLES OF FORM-BASED LAND DEVELOPMENT REGULATIONS

- Fayetteville, AR
- Development Code (citywide), City of Azusa, CA
- Pleasant Hill BART Station Area, Contra Costa County, CA
- Land Use Code (citywide), City of Cotati, CA
- Central Hercules Specific Plan, CA
- North Montclair Specific Plan, City of Montclair, CA
- Downtown Newhall Specific Plan, City of Santa Clarita, CA
- Development Code (citywide), City of Sonoma, CA
- Ventura Downtown Specific Plan, Ventura, CA
- South Main, Buena Vista, CO
- Downtown Kendall, Dade County, FL
- Fort Myers Beach redevelopment areas, Fort Myers Beach, FL
- North St. Lucie County, St. Lucie County, FL
- Hometown District, South Miami, FL
- Winter Springs town center, Winter Springs, FL
- The Peninsula Neighborhood, Iowa City, IA
- Downtown District, Lemont, IL
- Midway Station, Midway, KY
- Woodford County, KY
- City of Saratoga Springs, New York (selected areas)
- City of Syracuse, New York (lake waterfront area)
- Farmers Branch DART Station Area, Farmers Branch, TX
- Columbia Pike, Arlington, VA

EXAMPLES OF "SMARTCODE" FORM-BASED LAND DEVELOPMENT REGULATIONS

- Elmore, AL
- Montgomery, AL
- Pike Road, AL
- Central Petaluma Specific Plan, Petaluma, CA
- Fort Myers (downtown), Fort Myers, FL
- Sarasota (downtown), Sarasota, FL
- Flowood, MS
- Moss Point, MS
- Leander, TX

NOTES

1. Earlier versions of this article appeared at *Introduction to Form-Based Codes*, proceedings of ALI-ABA Land Use Institute Course of Study (2006) and at *Form-Based Land Development Regulations* (co-authored with Brian W. Ohm), 38 URB. LAW. 163 (Winter 2006). This article has been adapted from an article by Robert J. Sitkowski entitled "FORM AND SUBSTANCE: What Land Use Lawyers Need to Know About Form-Based Land Development Regulations," (*Zoning and Planning Law Report*, Vol. 30, no. 3).
2. A list of adopted regulations appears at the end of the article.
3. Discussions of form-based land development regulations are beginning to regularly appear in the planning law and law literature. See, e.g., Elizabeth A. Garvin, *Understanding Form-Based Regulations*, Paper for INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION (September 18, 2006); Carla M. Moynihan, *Implementing Form-Based Zoning in Your Municipality*, 47 MUN. LAW. 14 (July/August 2006); Kaizer Rangwala, *Form-Based Code: The Farmers Branch Experience*, PRACTICING PLANNER (Fall 2005); Scot Siegal, *Form-Based Codes: Where Do We Go From Here?*, PRACTICING PLANNER (Fall 2005); Bob Sperber, *Function Follows Form*, PROF. BUILDER (Sept. 2005); Carla Jerry Weitz, *Form-Based Codes: A Supportive But Critical Perspective*, PRACTICING PLANNER (Fall 2005); American Planning Association, Planning Advisory Service, THE ESSENTIAL PAS INFO PACKET—FORM-BASED ZONING (APRIL 2004); American Planning Association, Planning Advisory Service and The Congress for the New Urbanism, CODIFYING NEW URBANISM: HOW TO REFORM MUNICIPAL LAND DEVELOPMENT REGULATIONS, PAS Report No. 526 (2004); Brian W. Ohm & Robert Sitkowski, *The Influence of New Urbanism on Local Ordinances: The Twilight of Zoning?*, 35 URB. LAW 783 (2003).
4. City of Farmers Branch Website, <http://www.farmersbranch.info/Planning/codes7FAQs.html>.
5. <http://www.formbasedcodes.org/definition.html>.
6. This list of elements was derived from Form-based Codes Institute, *Definition of a Form-Based Code* (June 27, 2006), at <http://www.formbasedcodes.org/definition.html>; Peter Katz, *Form First*, PLANNING (November 2004) at 17; and Jeremy E. Sharp, AN EXAMINATION OF THE FORM-BASED CODE AND ITS APPLICATION TO THE TOWN OF BLACKSBURG (November 4, 2004), paper at <http://scholar.lib.vt.edu/theses/available/etd-12172004-140622/unrestricted/SharpFINALmajorpaper.pdf>. (last visited Jan. 31, 2007)
7. The description of New York's enabling statutes is complicated by the fact that they appear as parallel and nearly identical provisions contained in three different statutes—the General City Law, the Town Law, and the Village Law. For the purposes of this article, citations will be made to the Town Law only.
8. 53 Pa. Cons. Stat. Ann. § 10701-A.
9. Wis. Stat. Ann. § 66.1027.
10. Municipal Home Rule Law section 10.
11. ADVISORY COMM. ON ZONING, U.S. DEPT OF COMMERCE, A STANDARD STATE ZONING ENABLING ACT (1926), <http://www.planning.org/growingsmart/pdf/SZEnablingAct1926.pdf>, at 4 (last visited Jan. 31, 2007).
12. Town Law section 261.
13. Town Law section 263.
14. Town Law section 263.
15. It should be noted, however, that the "Uniformity Clause" of the SSZEA (found in Town Law section 262) may pose an implementation issue depending on how the Regulating Plan is designed. See, e.g., Brian W. Blaesser, DISCRETIONARY LAND USE CONTROLS: AVOIDING INVITATIONS TO ABUSE OF DISCRETION § 8:44 (2006).
16. Town Law section 274-a.
17. See especially section 278 of the Town Law with reference to cluster development.
18. Town Law section 261-c.
19. Duany Plater-Zyberk & Company, SMARTCODE & MANUAL (Version 9.0), available at <http://www.smart-codecentral.com>.
20. See Chad D. Emerson, Making Main Street Legal Again: The SmartCode Solution to Sprawl, 71 MO. L. REV. 637 (2006).
21. See Andres Duany and Emily Talen, *Making the Good Easy: The Smart Code Alternative*, 29 FORDHAM URB. L. J. 1445 (2002); Andres Duany and Emily Talen, *Transcet Planning*, 68 J.AM. PLAN. ASS'N. 245 (Summer 2002). See also J. URB. DESIGN (SPECIAL ISSUE), OCT. 2002 (containing seven papers examining applications of the Transect).
22. For a list of currently pending SmartCode implementation projects, see <http://www.placemakers.com/info/in-focusclear.html>.
23. See <http://www.miami21.org>.
24. For a thorough discussion of this issue in New York, see Salkin, *New York Zoning Law and Practice*, 4th Edition, Sections 6:04 through 6:16. See also e.g., Paul Weinberg, *Zoning for Aesthetics—Who Decides What Your House Will Look Like?* 28 ZONING & PLAN. L. REP. NO. 9 (Oct. 2005); American Planning Association, Planning Advisory Service and Lane Kendig, *TOO BIG, BORING OR UGLY: PLANNING AND DESIGN TOOLS TO COMBAT MONOTONY, THE TOO-BIG HOUSE, AND TEARDOWNS*, (PAS Report 528, 2004); Elizabeth A. Garvin and Glen S. Leroy, *Design Guidelines: The Law of Aesthetic Controls*, 55 LAND USE L. & ZONING DIG., 3 (April 2003); Julie A. Tappendorf, *Architectural Design Regulations: What Can a Municipality Do to Protect Against Unattractive, Inappropriate, and Just Plain Ugly Structures?*, 34 URB. LAW. 961 (2002); Lee R. Epstein, *Where the Yards are Wide: Have Land Use Planning and Law Gone Astray?* 21 WM. & MARY ENVTL & POLY REV. 345 (1997); Douglas C. French, *Cities Without Soul: Standards for Architectural Controls with Growth Management Objectives*, 71 U. DET. MERCY L. REV. 267 (1994); Shawn G. Rice, *Zoning Law: Architectural Appearance Ordinances and the First Amendment*, 76 MARQ. L. REV. 439 (1993); James P. Karp, *The Evolving Meaning of Aesthetics in Land Use Regulation*, 15 COLUM. J. ENVTL. L. 307 (1990); Kenneth Regan, *You Can't Build That Here: the Constitutionality of Aesthetic Zoning and Architectural Review*, 58 FORDHAM L. REV. 1013 (1990); Samuel C. Poole and Ilene Katz Kobert, *Architectural Appearance Review Regulations and the First Amendment: The Constitutionally Infirm 'Excessive Difference' Test*, 12 ZONING & PLAN. L. REPORT NO. 1. (Jan. 1989).
25. Berman, 348 U.S. 26, 33 (1954).

26. Members of City Council of City of Los Angeles, 466 U.S. 789 (1984).
27. People v. Stover, 12 N.Y.2d 462, 240 N.Y.S.2d 734, 191 N.E.2d 272 (1963). See also Salkin, *New York Zoning Law and Practice*, 4th Edition sections 6:04 through 6:16.
28. General Municipal Law sections 96-a and 119-dd.
29. Town Law section 272-a(11).
30. Blaesser, *supra* note 15, § 8:50 (examines issues related in determining the areas to which the public realm might apply).
31. Garvin & LeRoy, *supra* note 26, at 6.
32. See Anderson v. City of Issaquah, 70 Wash. App. 64, 851 P.2d 744 (Div. 1 1993) (vague design standards unconstitutional); But see Novi v. City of Pacifica, 169 Cal. App. 3d 678, 215 Cal. Rptr. 439, 441 (1st Dist. 1985) (some vagueness inherent and acceptable in design standards).
33. See Blaesser, *supra* note 15, §§ 8:48, 8:49. See also Jonathan Barnett & Brian Blaesser, DEFENSIBLE DESIGN REVIEW: DESIGNING NEW AND RESHAPING EXISTING PATTERNS OF DEVELOPMENT (AICP Training CD-ROM, 2003).
34. N.Y. Town Law § 274-a.

FROM THE FEDERAL COURTS

Second Circuit finds revocation of special-use permit may have violated substantive due process, possible racial animus

The Henrietta (NY) Town Board approved a special-use permit to plaintiff, Cine SK8, Inc., operating as Fun Quest, to allow it to convert a former Caldor retail building into a family roller sports and recreation center that included a teen dance club, indoor skate park, roller skating rink, snack bar, and gymnastics room. Following permit approval, Fun Quest invested \$2.3 million in demolition and improvement costs, and they opened for business in January 2002. The facility proved popular, attracting 600 teenagers per night. On one night, there were 2,000-3,000 people trying to enter the facility when the fire marshal ordered the facility to be evacuated and closed for the evening. Following this event, the Town Supervisor sent a letter to Fun Quest asking that they immediately discontinue teen dances due to public safety concerns. In a follow-up meeting, the Supervisor allegedly made racist statements with respect to Fun Quest's clientele. Following a public hearing, the Town Board voted unanimously to amend the special-use permit. The plaintiff filed a challenge alleging, among other things, denial of substantive due process.

To state a valid claim to a substantive due process violation in the Second Circuit, the plaintiff must demonstrate: 1) a protectable property right in the special-use permit; and 2) that the property right

was infringed in an arbitrary or unreasonable manner. The Court found that a property right existed since the plaintiffs obtained a valid permit and then spent \$2.3 million to improve the property. Further, the plaintiff's allegation that the permit amendment rendered their property valueless, forcing them into bankruptcy, was enough evidence so that unless countered, they established under New York Law that they had a vested property right in the special-use permit. As to the second prong, the Court concluded that there was enough evidence of both racial animus and fundamental procedural irregularity (either one of which could taint the proceeding) to at least present a genuine issue of fact as to whether the Town Board acted in an arbitrary or unreasonable manner.

With respect to the issue of racial animus, the Court engages in a helpful discussion, drawing distinctions between the view of the Second Circuit and the Eleventh Circuit with respect to a required showing. In the Eleventh Circuit, the plaintiff must show that a majority of the public body acted with racial animus in order to hold the municipality liable for constitutional violations. In the Second Circuit, for the municipality to prevail, they must prove that, despite the unconstitutional actions of a minority of the board, a majority based their actions on legitimate grounds. The Court explained that it is possible that the unconstitutional intentions of a minority could taint the ultimate outcome. The Court particularly noted comments by board members that were "potentially problematic." One comment referred to "city kids," which the Court felt could be taken to mean the African American kids in the neighboring City of Rochester, as opposed to the predominantly white population of the Town. Another comment related to a radio ad that Fun Quest used to target teens who live within the city limits to come to Henrietta for a good time—and after reviewing a photo of the incident at the club, one board member allegedly stated, "Look at these pictures. There's not a white face among them. I don't want these people in my town." Another Board member noted that the public schools in the Town sponsored teen dances for their students, so there was no need for another facility, perhaps implying that facilities should be only for teens who lived in town. A fourth board member said he thought that the radio ads resulted in a preponderance of kids from the City because the Town is 10% minority and the photos from the evening in question showed 99% minority. The Court concluded, "a jury could draw a reasonable inference that the Town Board amended its special use permit in part because of a majority of its members' race-based hostility to Fun Quest's clientele..."

Even in the absence of racial animus, the Circuit Court determined that it appeared as though the Town failed to follow proper procedures under the

Town's own zoning regulations, which allow for revocation and suspension of a special-use permit, but no specific authorization exists to amend a permit as occurred in this case. Furthermore, even if the Board's authority to suspend or revoke included the power to amend, the Board still failed to follow proper procedures in these instances since they failed to allow Fun Quest the procedural due process they were entitled (they were not given an opportunity to cross-examine any audience members who made comments adverse to their interests, nor were they given the opportunity to respond to any charges at the close of the public hearing). These actions provided at least a genuine issue as to whether the process was tainted with fundamental procedural irregularity. The Circuit Court concluded that the District Court erred in granting summary judgment on the section 1983 cause of action. *Cine SK8, Inc. v. Town of Henrietta*, 2007 WL 3286903 (2d Cir. 2007).

FROM THE STATE COURTS

New York Court of Appeals upholds open space restriction on subdivision plat against subsequent purchasers

Following a certified question to the State Court of Appeals from the Federal Second Circuit Court of Appeals, the Court of Appeals held that an open space restriction placed on a final subdivision plat pursuant to N.Y. Town Law § 276 (which regulates subdivision review), when filed in the Office of the County Clerk (pursuant to N.Y. Real Prop. Law § 334), is enforceable against a subsequent purchaser. The Court also noted that the N.Y. Town Law grants to towns the authority to regulate land within their borders (see N.Y. Town Law § 261), that this grant of authority includes the right to impose reasonable conditions on subdivision approvals, and that "The ability to impose such conditions on the use of land through the zoning process is meaningless without the ability to enforce those conditions..." including against subsequent purchasers.

The case arose from a 1963 final subdivision plat approval that was conditioned upon the designation of two of the seven parcels as open space. Such designation was contained in the filed minutes of the planning board meeting and handwritten on the final plats that were filed with the County Clerk's Office. These parcels had remained undeveloped for nearly 40 years, when

they were purchased by the O'Maras in an in rem tax sale. The O'Maras intended to construct single family houses on the property. It seems as though the professionals that the O'Maras hired to do background work on the property failed miserably. The title report (and insurance) that they purchased prior to closing did not make any reference to the open space restriction. A licensed land surveyor who was hired to prepare the survey for the two purchased parcels did see the open space restriction on the filed 1963 plat but he ignored it and never included reference to it on the survey submitted to the Town Building Department. The Town staff issues a building permit, a temporary certificate of occupancy and approval for the interim survey for the construction of a single family house on one of the parcels. Following the commencement of construction, the son of the original subdivision developer from 1963 approached the Town to express concern that the new construction violated the conditions placed on the 1963 plat, which led the then newly appointed building inspector to issue a stop work order based on the 1963 plat notations. The O'Maras attempted to resolve the issue with the Town, arguing that they were not aware of any open space restriction until three years after they purchased the property. Although the Town Attorney made a written settlement proposal to the O'Maras in which the Town offered to grant a certificate of occupancy for the house in exchange for a dedication of the rest of that parcel and the other designated open space parcel to the Town, the O'Maras filed an action in federal court, ultimately leading to the question certified before the Court of Appeals in this proceeding.

The Southern District of New York dismissed the O'Maras's fraud and negligence claims, but determined that the open space restriction was unenforceable against them since they were bona fide purchasers without notice. The Second Circuit, however, reversed in part, dismissing the O'Maras's section 1983 claim, but asked the New York Court of Appeals to determine whether under state law, an open space restriction noted on a subdivision plat is enforceable against a subsequent purchaser and under what circumstances.

The lessons from the holding in this case: the imposition of conditions on subdivision plat approvals that are properly filed provide sufficient notice to subsequent purchasers, and such conditions should be easily found in the chain of title by professionals who conduct title searches and land surveys. *O'Mara v. Town of Wappinger*, 2007 WL 3375579 (N.Y. 2007).

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Plan On It

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Converting Conventional Zoning to Form-Based Codes

By John Clarke, Development and Design Coordinator

Community-wide zoning has been around in America for almost 100 years, starting with the 1916 New York City regulations that began setting maximum structure heights and separating incompatible uses. Initially sparked by the desire of high-priced department stores to keep garment factories and workers away from fashionable Fifth Avenue, the essential promise of zoning was to protect overall property values by limiting the locations of perceived nuisances. In 1926 the Supreme Court upheld the local zoning practice of separating uses, ruling that the intrusion of industry or even apartments into single-family residential zones was the equivalent of a public nuisance, “like a pig in the parlor instead of the barnyard.”

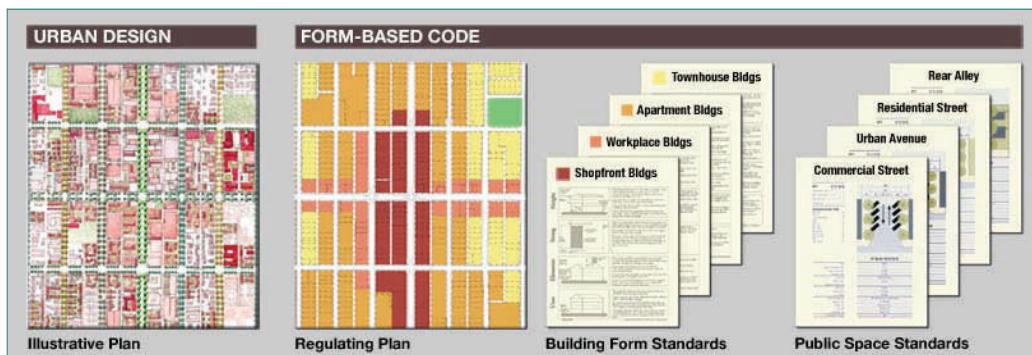
Zoning laws have become far more complex over time, creating more specialized districts and compiling new rules to counter every land use problem that comes along. Despite the widespread adoption of zoning laws and the protections they provide neighborhoods against the worst land use abuses, several major complaints remain about conventional zoning codes:

- They are complicated, relying on legal text that is difficult for many people to easily interpret;
- They mostly focus on negative restrictions, stressing what you cannot do rather than providing positive examples of what the community would like to see;
- They overemphasize separation, leading to an unjustifiable segregation of income groups and building types. Especially in the automobile age, the prevalence of segregated zoning districts has too often fragmented communities into spread-out pockets of similar uses, all dependent on cars to make connections.

What is a Form-Based Code?

Form-based codes address these concerns and promote more traditional neighborhoods, where walking between a variety of nearby uses is still possible. This is how we used to build great places, and form-based codes are helping us to break out of the conventional zoning box and rediscover the valuable art of quality placemaking. Instead of relying on just text and tables, these new kinds of codes incorporate lots of graphics to illustrate basic concepts and present positive images about preferred characteristics for the area. Rather than concentrating on restrictions to prevent bad development, they provide directions to encourage good development. Most importantly, they de-emphasize separation of uses and focus more on physical design — how buildings fit in with the surrounding context to build attractive public streetscapes and successful mixed-use neighborhoods. In less than a decade of adopting form-based amendments for several downtown districts, Saratoga Springs experienced \$200 million of investment in 15 major projects that help reinforce the city center.

Conventional Zoning	Form-Based Code
Text, Tables and Maps	Adds Design Illustrations
Mostly Negative Restrictions	Provides Positive Examples
Focus on Numbers, Single Parcels, and Parking Lots	Emphasis on Urban Form and Streetscape Context
Separated Use Districts	Mixed-Use Neighborhoods
Unpredictable Results	Cohesive Sense of Place



[click image for larger view] Image Credit: Illustration created by Steve Price, from Wikipedia.

As shown in the above graphic, form-based codes generally begin with a comprehensive plan or visioning process that culminates in a fairly detailed Illustrative Plan for desirable future growth in an area. This public design process helps create a community consensus and a Regulating Plan with much more specific objectives than the typical zoning map. These plan maps can then be supplemented with illustrated Building Form Standards and Public Space Standards. Conventional zoning laws do not usually address streets and public space. This more explicit and place-based process generates more predictable outcomes designed to reflect community character, while the mixed-use nature of the districts allows a greater degree of market flexibility. The up-front design guidance and drawings offer clarity for both applicants and local planning boards, resulting in a less confrontational and often more streamlined review process.

Local Examples

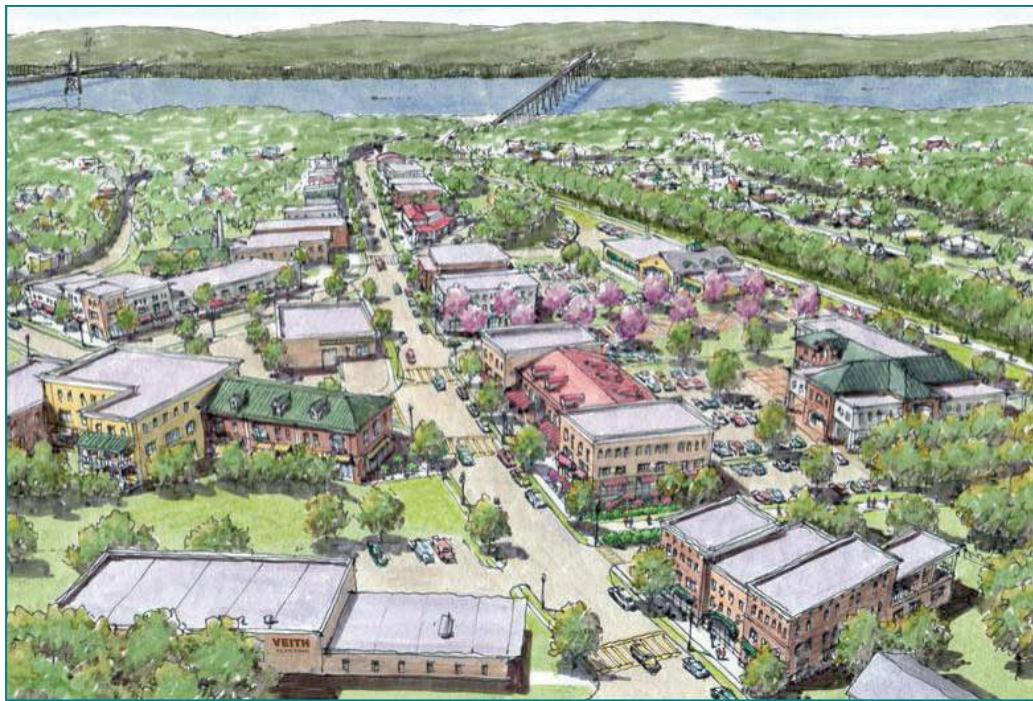
In Dutchess County, three municipalities have adopted versions of form-based codes: the Town of Red Hook, City of Beacon, and City of Poughkeepsie.

Red Hook

The Town of Red Hook, as part of an intermunicipal Centers and Greenspaces Plan, included form-based provisions in its 2011 [Traditional Neighborhood Development district](#) immediately south of the Village of Red Hook. Intended to retrofit an auto-oriented strip into a mixed-use, walkable extension of the existing Village, it emulated lot sizes, setback details, building forms, and streetscape features of the historic center.

City of Poughkeepsie

The City of Poughkeepsie recently adopted a new [Walkway-Gateway district](#) for the area around the approach to the Walkway Over the Hudson, encouraging a expanded mixture of new retail, restaurant, residential, and other uses in what is now a mostly industrial zone.



The City of Poughkeepsie Walkway-Gateway Illustrative Plan in the form of an aerial sketch, giving general guidance for future neighborhood character, mixture of uses and building sizes, and placement of buildings in relation to the streets and rail trail. This view is of Parker Avenue looking west toward the Hudson River and Walkway Over the Hudson State Park.

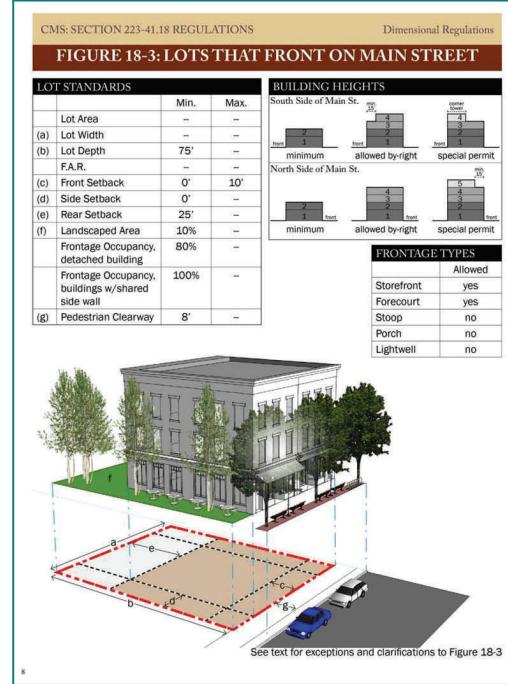
City of Beacon

As perhaps the most complete case study in the County, the City of Beacon adopted form-based amendments for two new districts in early 2013. The City's 2007 Comprehensive Plan identified specific areas as prime redevelopment opportunities that needed new zoning as an incentive to rebuilding. To begin to implement that infill strategy, the City hired Joel Russell Associates to prepare form-based codes for a new Central Main Street district between the East End and West End historic districts, and a Linkage district connecting Main Street to the Train Station.

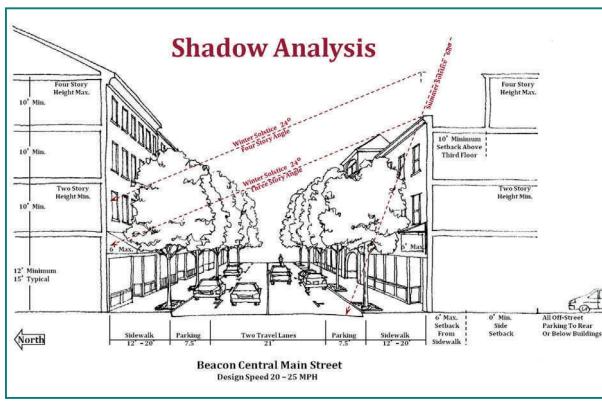


Centers and Greenspaces Map from Beacon's 2007 Comprehensive Plan identifies prime areas for future infill redevelopment. [click image for larger view]

The [Central Main Street district](#) used as examples building types and streetscape standards from the adjacent historic areas. The committee considered taller building heights for the new central district to encourage more economically viable redevelopment and a stronger residential base to support the surrounding Main Street businesses. Working with the consultant, Dutchess County Planning and Development prepared various streetscape studies to determine if taller buildings might substantially interfere with mountain views, and to show summer and winter street shadows. As a result, the approved code allows four-story buildings along the south side of Main Street and up to five-stories with special permit conditions along the north side, but requires the top floors to be set back from the front building line by 15 feet to allow in more sunlight and to give a three- and four-story appearance from the street.



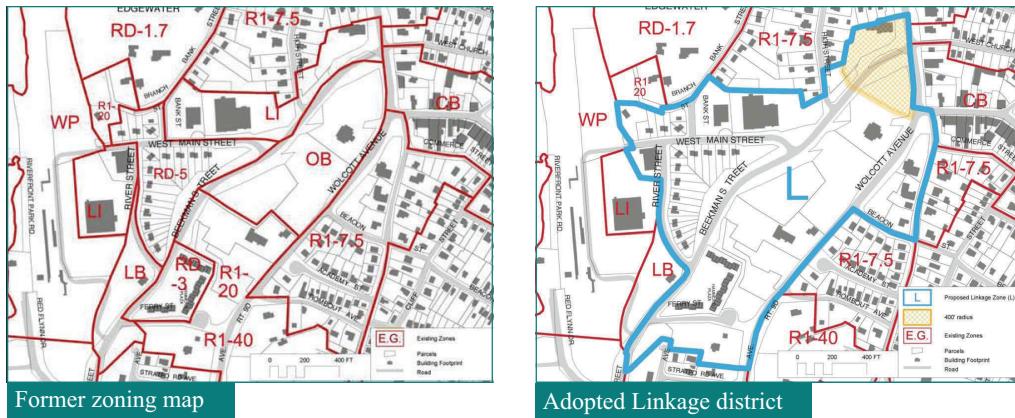
A sample page from the code, showing graphic representations of the basic building standards. [click image for larger view]



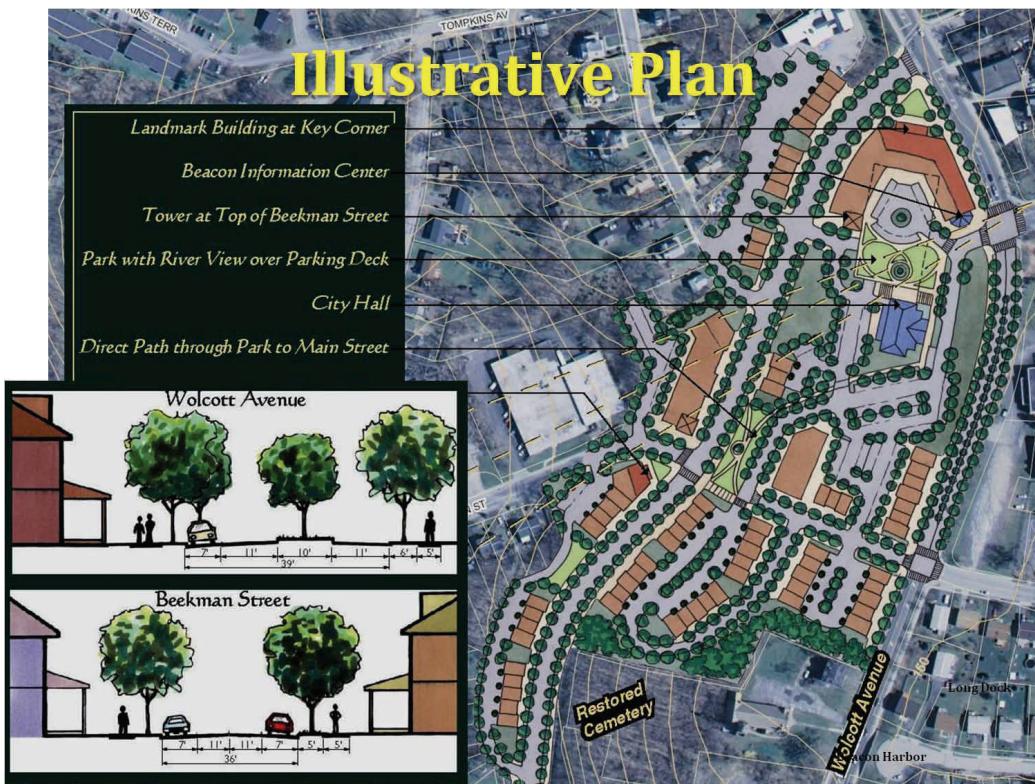
The more detailed streetscape, height, and other regulations in a form-based code, tailored to the specific neighborhood, often require additional analytic studies, in this case exact street measurements, shadow drawings, and block-by-block view simulations. [click images for larger view]

The [Linkage district](#) leading up the hill from the Train Station had been demolished during the Urban Renewal era and only partially rebuilt over the last 35 years, a clear indication that the current zoning was not working effectively. The existing zoning in the Linkage area had been divided up over time into seven separate zones, further complicating the rebuilding of a cohesive neighborhood. The new Linkage district creates a single flexible mixed-use area, designed to encourage new development with active, safe, and pedestrian-friendly street frontages. Parking standards were

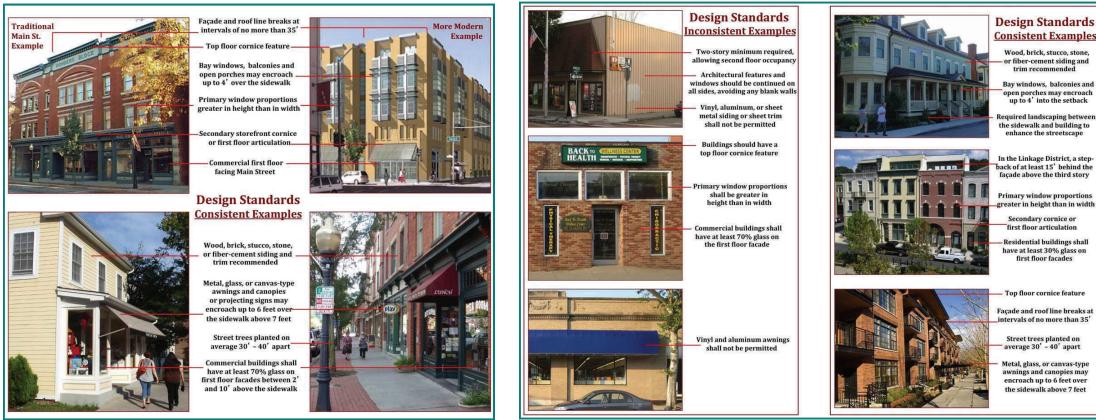
substantially reduced because of the walkable proximity to the Train Station and Main Street, with all parking lots and garages to be placed out-of-sight toward the rear of the parcels. Intended as primarily a residential area to support and not compete with Main Street businesses, commercial uses were confined to certain street frontages.



The Linkage district amendment replaced a maze of seven separate zones with one mixed-use district in order to simplify the code and create a more interconnected neighborhood. [click images for larger view]



Sketch plan and street sections from the Comprehensive Plan were included in the Linkage amendment not as a blueprint for development, but as an illustration of planning principles. [click image for larger view]



Detailed architectural standards are not necessary in form-based codes, but Beacon provided general building design standards, using photos primarily from local examples. [click images for larger view]

A Form-Based Code for Your Community?

Municipalities interested in updating their zoning with new form-based codes can compare these local examples or national models from the [Form-Based Code Institute](#). They are often targeted at places with special community character concerns, such as central business areas or historic districts, rather than starting from scratch with entire new zoning laws. However, the core lessons of form-based codes are relevant anywhere:

- Add illustrations to help make community intentions clear;
- Provide positive examples to promote good development;
- Pay attention to how private development improves the public realm; and
- Concentrate on creating close-knit, walkable neighborhoods, rather than strictly separated zones with driving as the only option.

More Information

[Form-Based Codes Institute](#)

City of Beacon:

- [Central Main Street district](#)
- [Linkage district](#)

City of Poughkeepsie [Walkway-Gateway district](#)

Town of Red Hook [Traditional Neighborhood Development district](#)

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