A Brief History of Zoning and Development Regulations in the U.S.

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Form-Based Codes 101: An Introductory Course
Center for Government Services, New Brunswick, NJ
November 1, 2006
Overview of Presentation

• Origins of zoning and land use controls in the U.S.
• The Standard Acts and their impacts
• The Quiet Revolution in Land Use Control
• Growth management
• The next period: suburban and urban form-based regulation
Bias: The East Coast Perspective
Early Land Use Controls

- 1885—San Francisco bans public laundries in most areas—aimed at Chinese
- 1886—U.S. Supreme Court invalidates S.F. ordinance in *Yick Wo v. Hopkins*, 118 U.S. 356
Early Land Use Controls

- S.F. restricts dance halls, livery stables, slaughterhouses, saloons, pool halls
- 1882—Oak Park, Illinois, adopts subdivision control
- 1885—N.Y. state limits the height of tenements to 1 ½ times the street width
• 1898—Massachusetts restricts buildings around Copley Square (above) in Boston to 90 feet
• 1909—U.S. Supreme Court upholds height restrictions in Boston in *Welch v. Swasey*, 214 U.S. 919
• By 1913, 22 cities had height control
Early Land Use Controls

• 1909-1915—Los Angeles divides city into 27 districts, including one large zone restricted to residences
• 1915—*Hadacheck v. Sebastian*, 239 U.S. 394, upholds ban on brickyards in L.A.
Early Land Use Controls

• By 1913, there were more than 50 buildings in Manhattan of more than 20 stories and 9 above 30 stories
The Equitable Building

- 120 Broadway
- Completed in 1915
- 38 stories
- Cast shadow over seven acres—concerned property owners
NYC Tenements, Elizabeth Street, 1912

NYC Tenements, Thompson St., 1912
Early Land Use Controls

• 1916--New York City adopts first comprehensive zoning ordinance
  – Fifth Avenue merchants, garment district
• Four districts
  – Residential
  – Business
  – Unrestricted
  – Undetermined
• Ordinance remains in effect until 1961
NYC 1916 Building Height Map

NYC 1916 Land Use Map
Hugh Ferriss, “Study for the Maximum Mass Permitted by the 1916 NYC Zoning Law,” 1922
Impacts of NYC building envelope
The Standard Acts

• Commerce Secretary Herbert Hoover creates advisory committee in 1921 to draft model state zoning, planning enabling acts
The Standard Acts

Edward M. Bassett
“Father of Zoning”
The Standard Acts

Alfred Bettman
The Standard Acts

• The Standard State Zoning Enabling Act
  – Delegated power to zone
  – Established procedures for amendments, special exceptions, variances
  – Created the board of zoning appeals
  – Enigmatic language “in accordance with a comprehensive plan”
The Standard Acts

• Standard City Planning Enabling Act
  – Established municipal planning commission
  – Authorized preparation of master plan
  – Required review of proposed public improvements by planning commission
  – Authorized subdivision regulation
  – Authorized the preparation of the “official map” showing precise location of proposed improvements
  – Created regional planning commissions
The Standard Acts

• Assumptions
  – Built on nuisance concept
  – Concern about congestion
  – Land use was local issue
The Standard Acts

• Motivations
  – Response to post-WWI growth
  – Protection of value of land as commodity
  – Delegation of authority to avoid invalidation
  – Authority to exclude, backdrop of immigration, racism, especially in the South
  – Zoning Act more popular, adopted in all states
1926—Village of Euclid v. Ambler Realty Co., 272 U.S. 365, upholds constitutionality of zoning
The Standard Acts—
The Transition Begins

• William Doebele—New Mexico study (1960):
  – Enhanced role of comprehensive plan
  – Gave plan more binding power
The Standard Acts—The Transition Begins

- Jacob Beuscher/Orlando Delogu—Wisconsin Study (1965):
  - Critical area protection
  - Special protection of lands near major state infrastructure investments
The Standard Acts—
The Transition Begins

• American Society of Planning Officials—Connecticut Study (1966):
  – Strengthened relationship of zoning to planning
  – Authorized new techniques and structural changes
  – Corrected inconsistencies, ambiguous provisions
The Quiet Revolution in Land Use Control (1971)

- Fred Bosselman
- David Callies
The Quiet Revolution in Land Use Control

- Prepared for U.S. Council on Environmental Quality
- Chronicled emerging state role in land use
- States asserting dormant interests
  - Mainly environmental—e.g., Hackensack Meadowlands, N.J.
  - Some organizational issues
  - Affordable housing (only in Massachusetts)
- Land seen as commodity and resource
The Quiet Revolution in Land Use Control

• Example: Wisconsin Shoreland Protection Program
  – State supervision of local regulation of land use adjoining shoreland resources
  – State model ordinance
The Quiet Revolution in Land Use Control--Transition

• Callies: Assessment 25 years later
  – Environmental regulation continued into 1980s
  – “Precious little permit simplification”
  – Local zoning had not withered away
  – Emergence of growth management
Growth Management

• 1950s—Begun in New York State, movement attempts to affect timing as well as location and characteristics of growth

• *Golden v. Planning Board of Town of Ramapo, 285 N.E.2d 291 (NY-1972)*, upheld development timing system

• *Construction Industry Ass’n v. City of Petaluma, 522 F.2d 897 (CA/Fed 9th Cir.1975)*, upheld building permit allocation system
Growth Management

• Assumptions
  – New development should be supported by adequate public facilities
  – Urban development should be matched by urban services
  – Recognition that public investment affects pace of development

• Not necessarily aimed at “sprawl”
Growth Management

• Some objectives
  – Reduce consumption of land, make development more compact
  – Establish minimum standards of competence for local planning and land use control
  – Vertical and horizontal integration
Growth Management

• Some techniques
  – Urban growth areas
  – Priority funding areas
  – Permit allocation systems
  – Adequate public facilities ordinances
  – Impact fees
  – State review of plans, regulations
Non-growth Management Devices Affecting Design

- Beginning in the 1960s, increased use of discretionary regulatory techniques
  - Planned development
  - Cluster development
  - Conditional uses
  - Overlays
  - Design review guidelines
  - Performance zoning
The Growth Management States

- Florida
- Maine
- Maryland
- New Jersey
- Oregon
- Rhode Island
- Tennessee
- Vermont
- Washington
- Wisconsin
Urban and Suburban Form-Based Regulation

• 1972 San Francisco Urban Design Plan
  – Design principles applied to entire city
  – Zoning regulations based on plan
San Francisco Urban Design Plan
Urban and Suburban Form-Based Regulation

1982--Seaside, Florida, New Urbanist Community, Andres Duany & Elizabeth Plater-Zyberk
Urban and Suburban Form-Based Regulation

- 1994—The Transect, a system of classification and design, by Andres Duany & Stefanos Polyzoides
Urban and Suburban Form-Based Regulation

- 2001—Wisconsin Model Traditional Neighborhood Development Ordinance—result of 1998 Smart Growth Act
Urban and Suburban Form-Based Regulation

- SmartCode 2003—Model code by Andres Duany
Urban and Suburban Form-Based Regulation

• Recent state legislation

• APA Growing Smart Legislative Guidebook, Secs. 8-201 and 8-303 (2002), authorizes form-based regulation
Summary

- Shift in regulatory regimes
- Euclidean codes—represented use segregation and presumed efficiency
- Form-based codes—acknowledges the modern reality of the interaction of uses, emphasis on city structure and patterns, attempt to build community