Updating Your Zoning & Subdivision Code

New Jersey State League of Municipalities Conference
Atlantic City, NJ, November 17, 2009

Michele R. Donato, Attorney, Lavallette, NJ
Eric Damian Kelly, FAICP, Planner/Attorney and Professor of Urban Planning, Ball State University, Muncie, IN, & Duncan Associates
Stuart Meck, FAICP/PP, Associate Research Professor, E.J. Bloustein School, Rutgers
Order of Presentation

- Meck—Common problems in zoning and subdivision codes
- Kelly—Tips and tricks for revising planning and zoning codes
- Donato—The Residential Site Improvement Standards (RSIS) and issues in interpretation and implementation
New Jersey is different than other states

MLUL contains
- Purposes
- Definitions
- Standards
- Procedures
- Limitations
MLUL—Important Sections

- 40:55D-2—Purpose of Act
- 40:55D-3 to 7—Definitions
- 40:55D-38 to 40—Mandatory and discretionary contents of subdivision and site plan ordinance
- 40:55D-41—Limitations on scope of a site plan ordinance
- 40:55D-65—Contents of zoning ordinance
- 40:55D-40.1 et seq.—RSIS
What signifies a problem?

- Excessively long review periods for routine applications
- Excessive numbers of variances for similar provisions
- Successful lawsuits against municipality
- Angry citizens
- The Post-It Note phenomenon
Common code problems

- Conflict with state or federal law
- Clarity of language/vague language subject to different interpretations
- Uses allowed in certain districts but not others but with no logical reason
- Overly restrictive provisions; regulatory barriers
- Too big
Common Code Problems

- Regulatory definitions
- Inadequate and incomplete definitions
- Awkward and confusing format
- Verbose and redundant language
- Outmoded and inappropriate uses
- Too many use districts
Common Code Problems

- Lack of tables, charts, and graphs
- Excessive reliance on outside references
- Misplaced provisions; inaccurate links
- Vague and irrelevant review criteria
- Discretion can be exercised with no written standards or findings
- Lack of consistency with master plan
- No apparent vision—what is code trying to do?
Examples of bad code language

“The plan for the proposed building or structure is in conformity with good taste and design and in general contributes to the image of the town as a place of beauty, spaciousness, balance, taste, fitness, charm and high quality.”
Examples of bad code language

- “The proposed building or structure is in harmony with the proposed developments on land in the general area, with the comprehensive plan for the town, and with any precise plans adopted pursuant to the comprehensive plan”
Examples of bad code language

“Home Occupation. Any use customarily conducted entirely within a dwelling and carried on by the inhabitants thereof, which use is clearly subordinate to the use of the dwelling for dwelling purposes. A home occupation will not display or advertise any commodity or service for sale on the premises, nor will it involve the employment of more than one person, other than a member of the immediate household.”
Examples of bad code language

“In addition to any and all other requirements set forth in this subchapter for the provision of front, side or rear yards, off-street parking and/or loading, there shall be provided in all multifamily residence districts such additional open space as is set forth herein which shall be used for landscaping and which may not be used for off-street parking or loading purposes.”
Examples of bad code language

“Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shoreline shall be construed as moving with the actual shore line.”
Contact information

- Stuart Meck, FAICP/PP, Associate Research Professor, Edward J. Bloustein School of Planning and Public Policy, Rutgers, New Brunswick, NJ, tel. 732-932-3822, ext. 640, email: stumeck@rci.rutgers.edu
Tips and Tricks

- Practical ideas for the process and substance of updating your ordinance
Start with a Diagnosis

- **Purpose:**
  - To identify strengths and weaknesses of current code
  - To guide updating process

- **Inputs:**
  - Office review of consistency
  - Counter- or enforcement-staff marked up copies
  - User/stakeholder interviews
Diagnosis Contents

- Consistency with Comprehensive Plan
- Consistency with New Jersey Law
  - Community care homes
  - Family day-care homes
  - Other uses with special statutory treatment
- First Amendment Review
  - Signs
  - Sex Businesses
  - Religious Institutions
- Internal Consistency
- Clarity
- Best Practices
**EXISTING CODE**

**Part I / Enactment and Definitions**
- Sec. I / Short title
- Sec. II / Definitions
- Sec. III / Establishment of districts and boundaries
- Sec. IV / Rules for the interpretation of district boundaries
- Sec. V / Compliance with the regulations

**Part II / District Regulations**
- Sec. VI through Sec. XIII-A / Zoning Districts
- Sec. XIV / Special permit
- Sec. XV / Height and area regulations
- Sec. XVI / Parking and loading regulations
- Sec. XVI-A / Sign regulations
- Sec. XVII / Exceptions and variations of the use, height and area regulations
- Sec. XVIII / Community unit plan
- Sec. XIX / Nonconforming uses

**Part III / Administrative Provisions**
- Sec. XX / Official zoning map
- Sec. XXI / Enforcement and application
- Sec. XXII / Board of adjustment
- Sec. XXIII / Occupancy permits
- Sec. XXIV / Changes and amendments
- Sec. XXV / Violation and penalty
- Sec. XXVI / Validity
- Sec. XXVII / Interpretation, purpose and conflict
- Sec. XXVIII / Repeal of conflicting ordinances
- Sec. XXIX / Date of effect

**Subdivision Ordinance (#895)**
- Art. I / General
- Art. II / Definitions
- Art. III / Classification of Subdivisions
- Art. IV / Items to be Shown on Plats
- Art. V / Procedure
- Art. VI / Design Requirements and Standards
- Art. VII / Administration, Permits, Enforcement, Appeals, Amendments

**PROPOSED CODE**

1. **General Provisions**
2. **Development Review Procedures and Bodies**
   - A. General
   - B. Review Procedures
   - C. Review Bodies
3. **Zoning Districts**
   - A. Purpose Statements
   - B. Use Regulations
   - C. Dimensional Standards
4. **Subdivision Design and Improvements**
5. **General Development Standards**
   - A. Parking and Loading
   - B. Signs
6. **Nonconformities**
7. **Enforcement and Penalties**
8. **Definitions**
### 5.1.2. Use Table

<table>
<thead>
<tr>
<th>USE CATEGORY</th>
<th>SPECIFIC USE</th>
<th>OPEN USE</th>
<th>RESIDENTIAL</th>
<th>COMMERCIAL AND INDUSTRIAL</th>
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<tbody>
<tr>
<td>Agriculture</td>
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<td>L L L L L</td>
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<tr>
<td></td>
<td>Animal boarding</td>
<td>USE USE USE USE</td>
<td>USE USE USE</td>
<td>USE USE USE</td>
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<td></td>
<td>Animal shelter</td>
<td>SE SE SE</td>
<td>SE SE SE</td>
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<td></td>
<td>Aviary</td>
<td>L L L L</td>
<td>L L L L</td>
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<tr>
<td></td>
<td>Keeping of horses or burros</td>
<td>L L L L</td>
<td>L L L L</td>
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<tr>
<td></td>
<td>Livestock auction, feeding pen, milk processing, packing house, stockyard</td>
<td>L L L L</td>
<td>L L L L</td>
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<td></td>
<td>Plant nursery</td>
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<td>L L L L</td>
<td>L L L L</td>
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<td></td>
<td>Plant nursery with landscape supply</td>
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<tr>
<td></td>
<td>Retail or wholesale sales of agriculturally-related supplies and equipment</td>
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<td>SE SE SE</td>
<td>SE SE SE</td>
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<td>Resource Extraction</td>
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<td></td>
<td>Borrow pit</td>
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<tr>
<td>RESIDENTIAL USES</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Household Living</td>
<td>Single-family detached</td>
<td>P L P P P P P</td>
<td>L L L L L</td>
<td>L L L L L</td>
</tr>
<tr>
<td></td>
<td>Lot line, traditional, pane, villa or atrium house</td>
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<td>L L L L</td>
<td>L L L L</td>
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<tr>
<td></td>
<td>Two-family house</td>
<td>P</td>
<td>L L L L</td>
<td>L L L L</td>
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<tr>
<td></td>
<td>Townhouse (semi-detached, roof-deck, stacked)</td>
<td>L P</td>
<td>L L L L</td>
<td>L L L L</td>
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<tr>
<td></td>
<td>Multifamily (multiplex, apartment)</td>
<td>P</td>
<td>L L L L</td>
<td>L L L L</td>
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<td></td>
<td>Manufactured home</td>
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<td>L L L L</td>
<td>L L L L</td>
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<td>Manufactured home park/subdivision</td>
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<td></td>
<td>Accessory dwelling unit</td>
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<td>L L L L</td>
<td>L L L L</td>
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<tr>
<td></td>
<td>Guest house</td>
<td>L L L L</td>
<td>L L L L</td>
<td>L L L L</td>
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<tr>
<td></td>
<td>Short-term rental</td>
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<td>L L L L</td>
<td>L L L L</td>
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<tr>
<td></td>
<td>Live/work unit</td>
<td>L L L L</td>
<td>L L L L</td>
<td>L L L L</td>
</tr>
</tbody>
</table>

**Zoning Regulations**

Sarasota County, Florida

10/27/03
3 + 2 = 1
Illustrate
Updating Sign Ordinance

- For a major update of a sign ordinance, conduct a separate process

- Constituencies for signs and zoning are different

- Opponents of provisions in one update may oppose entire project

- Technical updates to sign ordinance can be incorporated in general update
Some Substantive Tips

- Following slides contain substantive tips learned from 35 years of experience in 36 states
Avoid Unintentional Nonconformities

Zoning in this area requires 25-foot front yards; right-of-way extends past sidewalk. Most dwellings in this stable neighborhood are nonconforming.
Consider Enforcement

- Adopt only what you can enforce
- Failure to enforce part of ordinance hurts credibility of entire ordinance AND of local government
Enforcement Challenges

- “Temporary signs may be displayed for consecutive periods of 15 days two times per year”
- “Deliveries allowed only between 8 a.m. and 5 p.m. weekdays”
- “Establishments within 500 feet of a residential use shall be closed between 10 p.m. and 8 a.m.”
Consider Innovative Code Techniques

Form-Based

Performance-Based
Reconsider Parking

- Reduce parking ratios where possible
- Consider MAXIMUM parking ratios
- Include shared parking factors
- Consider allowing peak parking on grass
Consider Alternative Energy
Consider Public Safety

Consider Community Protection through Environmental Design (CPTED) Standards
Be Sure It Works

- Check for substantive consistency
- Prepare some sample plats and site plans to see how regulations fit together
Top 10 Signs that It’s Time to Update your code

- Code enforcement officers seem to age prematurely
- Cooperages and candleworks are permitted uses
- An Internet café downtown requires an ordinance amendment
- Living in the old apartments above downtown stores is now illegal
- Most new developments are planned unit developments
- Town clerk receives regular requests for copies of your zoning ordinance from professors who teach planning history
- Ordinance has more amendments than the Internal Revenue Code
- Local real estate litigators love the current ordinance
- It is in the foreign language section of library
- Your ordinance has been used for a Saturday Night Live skit
Contact information

- Eric Damian Kelly, Ph.D., FAICP, Duncan Associates and Ball State University, Muncie, IN, telephone: 765-289-5380; email: ekelly@bsu.edu; eric@duncanassociates.com
Residential Site Improvement Standards

- Appear at NJSA 40:55D-40.1 to 40.5

- Purposes
  - Avoid unnecessary costs
  - Ensure predictability
  - Promote streamlining
Residential Site Improvement Standards

- **Scope**
  - Streets
  - Parking
  - Water Supply
  - Sanitary Sewer
  - Stormwater Management
Residential Site Improvement Standards

- Legal challenge
Residential Site Improvement Standards

- Evolving nature
- Last amendments—June 15, 2009
- DCA Advisory Opinions
Residential Site Improvement Standards

- Applicability
  - Applies to subdivision and site plans
  - Applies to variances only when associated with subdivisions and site plans
- Agency must find compliance of plans and plats with RSIS
Residential Site Improvement Standards

- Incorporation of RSIS by reference in local codes desirable
- Parking
- Municipal special treatment areas
- De minimus exceptions authorized
- Developer agreements to exceed RSIS
- Petition for waivers
Contact information

Michele R. Donato, Esq., 106 Grand Central Avenue, P.O. Box 145, Lavallette, New Jersey 08735, tel. 732-830-0777, email: mdonato@MicheleDonatoEsq.com