

Edward J. Bloustein School of Planning and Public Policy
Center for Government Services

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

Stuart Meck, FAICP/PP
Director, Center for Government Services

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

2

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

Bias: The East Coast Perspective



Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

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

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

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

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey



- 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

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

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.

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

Early Land Use Controls

- By 1913, there were more than 50 buildings in Manhattan of more than 20 stories and 9 above 30 stories

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

The Equitable Building

- 120 Broadway
- Completed in 1915
- 38 stories
- Cast shadow over seven acres—concerned property owners



Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey



NYC
Tenements,
Elizabeth Street,
1912

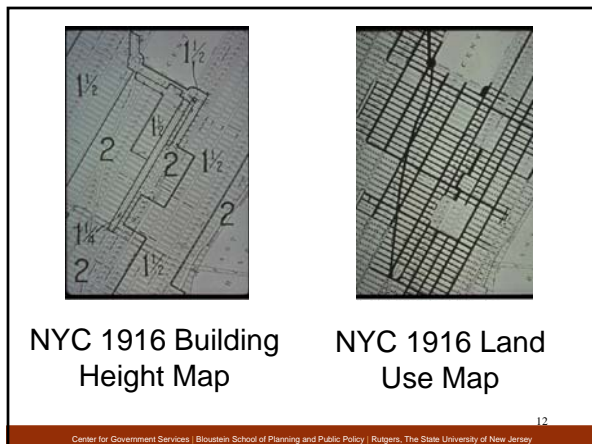
NYC Tenements,
Thompson St.,
1912

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

Early Land Use Controls

- 1916--New York City adopts first comprehensive zoning ordinance
 - Fifth Avenue merchants, garment district
- Three districts
 - Residential
 - Business
 - Unrestricted
- Ordinance remains in effect until 1961

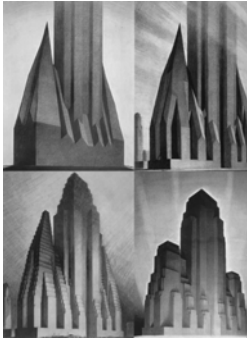
Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey



NYC 1916 Building
Height Map

NYC 1916 Land
Use Map

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey



Hugh Ferriss,
"Study for the
Maximum Mass
Permitted by the
1916 NYC Zoning
Law," 1922



Impacts of NYC building
envelope

The Standard Acts

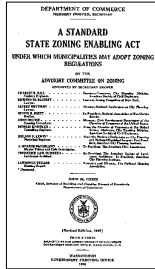
- Commerce Secretary Herbert Hoover creates advisory committee in 1921 to draft model state zoning, planning enabling acts



The Standard Acts



Edward M. Bassett
"Father of Zoning"



16

The Standard Acts



Alfred Bettman



17

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"

18

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

THE VILLAGE OF EUCLID, OHIO, SHOWING LOCATION OF THE AMBLER TRACT


ZONING OF PROPERTIES NEAR THE AMBLER REALTY TRACT

1926—*Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, upholds constitutionality of zoning

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

The Standard Acts— The Transition Begins

- William Doebele—New Mexico study (1960):
 - Enhanced role of comprehensive plan
 - Gave plan more binding power



Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

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

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

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

25

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

The Quiet Revolution in Land Use Control (1971)

- Fred Bosselman



- David Callies



26

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

27

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

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

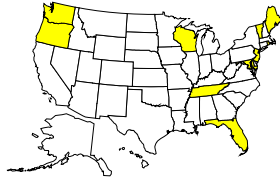
- Some techniques
 - Urban growth areas
 - Priority funding areas
 - Permit allocation systems
 - Adequate public facilities ordinances
 - Impact fees
 - State review of plans, regulations

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

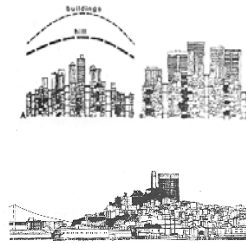
The Growth Management States

- 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

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

Urban and Suburban Form-Based Regulation

1982--Seaside, Florida, New Urbanist Community, Andres Duany & Elizabeth Plater-Zyberk³⁸

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

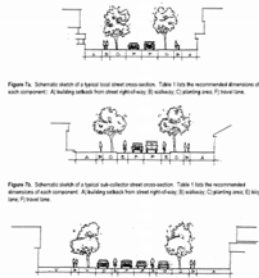
Urban and Suburban Form-Based Regulation

- 1994—The Transect, a system of classification and design, by Andres Duany & Stefanos Polyzoides

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey

Urban and Suburban Form-Based Regulation

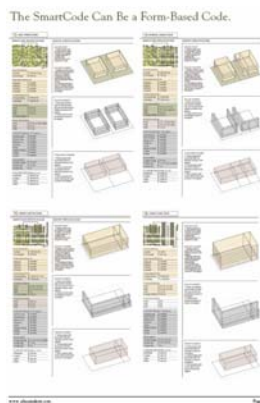
- 2001--Wisconsin Model Traditional Neighborhood Development Ordinance—result of 1998 Smart Growth Act



40

Urban and Suburban Form-Based Regulation

- SmartCode 2003—Model code by Andres Duany



Page 21

Urban and Suburban Form-Based Regulation

- Recent state legislation
 - California—AB 1268 (2004)
 - Connecticut—Village District Act, Conn. Gen. Stat. § 8-2j (1998)
 - Pennsylvania—Traditional Neighborhood Development, Penn. Municipalities Planning Code, Art. VII-A (2000)
- APA *Growing Smart Legislative Guidebook*, Secs. 8-201 and 8-303 (2002), authorizes form-based regulation

42

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

43

Center for Government Services | Bloustein School of Planning and Public Policy | Rutgers, The State University of New Jersey
