

CNU X Breakout Session

Codes College
June 15, 2002

Making New Urbanist Codes Work **Joel Russell**

The following are practical drafting tips for writing legally effective new urbanist land use regulations (i.e. codes, ordinances, bylaws, local laws). Some of these apply to the drafting of any land use regulation, and some are more specific to issues involving the new urbanism. The emphasis is on the drafting of ordinances designed to promote or require new urbanism throughout a community (as opposed to project-specific codes).

1. State the legal authority for regulations, which is derived from state enabling legislation (zoning, subdivision, home rule, planning, etc.) and make sure that the regulations comply with state (and federal) law.
2. Use terminology in a manner consistent with state law.
3. Make clear the relationship between new code material and the existing body of land use regulation.
4. Make the fewest changes necessary to adequately implement new urbanist objectives. In some cases, strategic interventions in the existing code may be sufficient, and in other cases a rewrite of an entire ordinance may be necessary.
5. Repeal (or phase out) inconsistent, superfluous or confusing code provisions from the existing code. Deletions can be as important as additions.
6. Refer to a master plan (both comprehensive and specific, if possible) that provides the rationale to support the regulations.
7. Do not use “model” provisions without adapting them to ensure that they fit the specific conditions and objectives of the community, have a logical and legally clear place in the existing framework of regulations, and comply with state law.
8. Make regulatory language clear and precise; more conceptual and abstract “design” language is appropriate only in “plan” documents.
9. Define New Urbanist terminology clearly, avoiding where possible the jargon of architecture and planning.
10. Avoid using regulatory language in definitions. Use definitions to define and regulations to regulate.
11. Ensure consistency of terminology and content within each document and among all planning and regulatory documents

12. Explain graphics clearly in captions and text, and specify their regulatory purpose (i.e. to illustrate, explain, mandate, or to offer optional guidelines). Strike the right balance between text and graphics so that they explain each other effectively.
13. Minimize administrative and political obstacles to new urbanism by making approvals non-discretionary where possible. This may require highly detailed and specific regulatory provisions including “regulating plans.” Delegate decisions to staff where practical and consistent with state law.
14. Where there are discretionary approval processes, provide clear standards to guide decision makers.
15. Procedures for relief from decisions must afford due process to both applicants and other aggrieved parties, including a remedy if those who administer the code do not follow it.
16. Keep regulations as simple as possible to communicate clearly and precisely with a variety of readers, especially those who will be using them the most (planning commissioners, planning staff, developers, and the engineers, attorneys, and architects who represent them).
17. Remember that regulations won’t do it all: complement them with other actions needed to make the plan work, such as public street standards, public improvement budgets, and extension policies for public infrastructure (e.g. sewer and water lines, transit, school construction), as well as open space preservation programs.

A note on the use of the transect: The transect is a useful organizing principle and classification system, especially for planning at the regional and community level. It translates into workable regulations best at the urban end of the spectrum (T-4 through T-6) with prescriptions for urbanism that can be incorporated directly into zoning and other regulatory provisions, even in the context of a relatively conventional zoning ordinance. At the more rural end of the spectrum, regulatory application of the transect is more difficult, raising issues of property rights and landowner compensation, as well as the possibility of generating sprawl development in T-3 areas if they are not strictly limited in size and linked to both preserved land (T-1) and more urban (T-4 and up) areas. The T-2 (Rural Reserve) category is in effect a “temporary” zone in the sense that its land will eventually become either preserved (T-1) or more urbanized (T-3 and up). There are legal difficulties inherent in the important process of allocating transect zones within a community, since such allocations are a form of zoning and therefore subject to rezoning as a result of shifting political winds. Yet the proper allocation of transect zones is

essential to good neighborhood structure. Overall, the transect is a useful tool if accompanied by good text and graphics to explain its application.

FOUR TESTS A CODE/ORDINANCE SHOULD PASS

1. Clarity: It should be clear enough to produce predictable results. Well –explained illustrations and graphic materials are helpful.
2. Flexibility: It should be flexible enough to adapt to site-specific conditions and respond to changing times without compromising basic new urbanist principles.
3. Ease of Use: It should be easy to use and clearly understandable to those who will use it most.
4. Legality: It should hold up in court if challenged.

June 7, 2002