
LEGISLATING THE URBAN DESIGN PROCESS

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I. INTRODUCTION

This article introduces the urban design process in code form.¹ The urban design process is that decision-making procedure followed by architects and other professional designers in arranging structures, plant material circulation and similar media on a site to meet perceptual criteria valued by expected users. This proposed Code for Urban Design, discussed hereafter as CUD, might be adopted by a state legislature or local governing body having home rule power, as a substitute for the zoning and subdivision control enabling acts. CUD is equivalent in scope to Articles 3 and 8 of the American Law Institute Model Land Development Code, Tentative Draft No. 1, April 24, 1968.² Urban design regulations based on CUD could act as a plan or might be supplemented by a plan. Alongside CUD a legislature might enact a statute dealing with plan preparation and adoption.

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1. An earlier version of this proposed code was called a Proposed Boston Planning and Land Development Act, and is found in W. Weismantel, *Collision of Urban Renewal with Zoning: The Boston Experience 1950-1967*, 1969 (Unpublished Ph.D. Thesis, Harvard University), [hereinafter cited as *Boston Renewal and Zoning*]. For comments on that Thesis see *Administrative Discretion in Zoning*, 82 HARV. L. REV. 668 (1969). I am indebted to Kevin Lynch and Roger Montgomery for many of the ideas on the design process and user-objectives which this article shapes into an enabling act. Lynch, *City Design and City Appearance*, in *PRINCIPLES AND PRACTICES OF URBAN PLANNING* 247 (W. Goodman ed. 1968); Montgomery, *Improving the Design Process in Urban Renewal*, 31 J. AM. INST. PLAN. 7 (1965). I also am indebted to the reporters of the American Law Institute Model Land Development Code [hereinafter cited as ALIC]. I criticize some articles of ALIC to show the advantages of the code proposed here. Yet I could not have written this article without having read the careful research and drafting published by the ALI reporters.

2. Article 3 deals with Regulation and Development and of Pre-existing Uses and Structures; Article 8 deals with Local Administration.

II. SUMMARY

The main features and advantages of the Code for Urban Designs are outlined below. These ideas are expanded in later pages.

Simple procedure. An applicant for a building or subdivision permit, or for a change in regulations affecting his land, deals initially with a professional architect or planner who represents the public. Other interested parties can participate in their negotiations, out of which comes a proposed change in structures or activity for applicant's land. If any party, including the professional design examiner, doubts whether the examiner has authority to issue a permit to effectuate his decision, the matter goes before a commission. If that body decides to permit development, this automatically changes any inconsistent regulations or general plan provisions.

User values. The CUD, by its vocabulary and procedure, favors interests of users of the city. Values such as *comfort, diversity in shapes of spaces and surface materials, neighborhoods which further personality development of children, etc.* are examples of a vocabulary to promote user values. More satisfying urban development is expected than under conventional zoning or under the proposed American Land Institute Model Land Development Code. Both of these systems are structured to perfect a legendary free market competition for space. The theory of these codes is that the owner can develop his land to maximize his own profit, provided he does not throw an unfair burden on public utilities or neighboring land owners. CUD considers the constitutional rights of property owners as a constraint on user-value decision making. These other systems introduce user values only as a constraint on the land owner's right to exploit space. CUD is, therefore, the most direct and certain way of building a city satisfying to its occupants.

Relevance of User Values. Most of the population are users of land and space, rather than owners of it. Owners of urban space themselves spend much time in spaces owned by others. Per capita wealth is increasing faster than average life span.³ As a consequence, having rich experiences becomes more important than pursuit of personal wealth. The developers of urban land make a business of developing. They build for a succession of owners and users. Owners and users

3. M. CLAWSON AND J. L. KNETSCH, *ECONOMICS OF OUTDOOR RECREATION* 24 (1966).

greatly outnumber developers.⁴ For this reason user values rather than the rights of land owners to develop are the proper basis for regulation. It might properly be otherwise if every user of land was also a land developer.

Use of Professional Designers. CUD gives much authority over urban land development to professional designers (architects and planners) since they are experts at designing structures and activities to satisfy users. There is an expanding literature of environmental design to guide them.

Inherent Safeguards Against Graft. The reasons for CUD procedure and regulations are easily grasped. Taking advantage of the system for personal gain is a more visible wrong than under a system whose procedures and regulations are obscure in purpose. When the purpose of a system is not obvious, the participant is tempted to substitute his own purposes, and such subversion is obscured within the irrationality of the system. Professional designers who have much authority within CUD are, like judges, relatively immune from payoff because they enjoy work-product satisfaction, are motivated by peer approval, and are constrained by peer sanctions.⁵

Precedents for CUD Procedure. The use of professional designers and a case-by-case decision process to amend pre-stated regulations are becoming common. Examples are subdivision control, regulation of historic districts, the design review process within urban renewal projects, the design of public works, campus planning, and the normal decision processes learned by design professionals.

User Participation. By making the decision over a particular development proposal consequential, residents living near the site and special interest organizations can better participate in the decisions. Under CUD the design professionals, representing the public, would invite these residents and groups to participate informally in design sessions. Within the design professions the ability to design for minority life styles is becoming more common. Experience from urban renewal, where citizen participation in planning is required, and greater social awareness within design school curricula are sources of this new ability.

4. Herzog, *Structural Changes in the Housebuilding Industry*, 39 *LAND ECONOMICS* (May 1963); Grebler, *Reflections on the New Scale*, 34 *TOWN PLANNING REVIEW* (April 1963).

5. "World Peace' or 'aid to the starving Chinese' may be just as much a personal goal for a particular individual as another dollar in his pay envelope." H. SIMON, *ADMINISTRATIVE BEHAVIOR III* (1965).

Impact on Prestated Regulation and General Plans. CUD procedure will favor proposals by an applicant against a vague general plan, and against development regulations which are obsolete or not supported by residents and groups. Adoption of CUD would probably stimulate more preparation of plans and regulations at the neighborhood scale. Such a plan can include building, massing and other user values not easily represented in a general plan. Detailed regulations, either specifying the shape and location of permitted development, or specifying design qualities expected of developers, can be prepared at that scale and endorsed by neighborhood and interest groups before adoption. Such neighborhood plans and regulations are likely to be upheld against the inconsistent development proposal.

III. ANATOMY OF DECISION PROCEDURES

The diagrams below compare CUD procedure with SZEASPEA,⁶ and ALIC⁷:

A = applicant seeking a development permit. A development permit includes permission to change a use of space, erect a structure or structures, subdivide land. It also includes the seeking of a change in regulations affecting these matters, to clear a path for a subsequent development permit application. Both kinds of permission might be sought in the same application.

O = a public official involved in regulating development.

1B = the first deliberative body to consider an application for a development permit. A deliberative body might be a local governing body or an administrative board.

2B = second deliberative body to consider a development permit application.

m = ministerial power. This is authority in an O or B to apply an explicit, easily interpreted law (such as a ten foot minimum side yard) to proposed plans.

d = discretionary power. This is authority to apply a qualitative law, one requiring expert interpretation, to proposed plans.

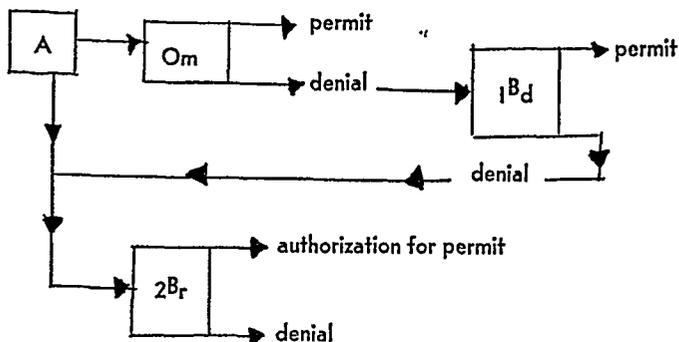
6. SZEASPEA refers to the Standard State Zoning Enabling Act published by the U.S. Department of Commerce in 1922 and 1926. 29 states followed SZEASPEA by 1928, and all or almost all states now have zoning legislation based on SZEASPEA. SPEA refers to that portion of the Standard City Planning Enabling Act dealing with the control of subdivisions. SPEA was published by the U.S. Department of Commerce in 1928, and, like SZEASPEA, has been widely adopted.

7. This refers to the American Law Institute Model Land Development Code. Note 1 *supra*.

r = rule making power. This is authority to amend development regulations to accommodate an application for a development permit.

a = advisor to the rule maker.

SZEA PROCEDURE:



O_m is typically a building department clerk, $1B_d$ is the Board of Appeal. $2B_r$ is the governing body. An additional body, the Planning Commission has B_a functions in many SZEA inspired enabling acts.

SUBDIVISION CONTROL UNDER SPEA:



The SZEA was prepared before the SPEA. Because of this historic accident the applicant intending typical suburban development, where a subdivision permit and building permit (indicating zoning compliance) are needed, must go through both of the procedures. Both ALIC and CUD correct this by combining use, building arrangement, and subdivision matters into one code and review procedure.

In the 1920's, when the SZEA was conceived, it was expected that the great majority of building permits sought by property owners would be granted or denied by an official having ministerial power. ($A \rightarrow O_m$). Only a few applicants were expected to ask for a permit which required action by an administrative board or by the governing body. In several cities studied, as many as one-third to one-half of all

mission which the ordinance specifies he may have "as of right," without need for a discretionary decision. ALIC 3-102.

2. $A \rightarrow {}_1B_d$:

This sequence is appropriate when applicant's land has unique characteristics which would cause hardship if developed under the standard regulations. This sequence is appropriate when the applicant proposes to subdivide, or to introduce an activity not permitted "as of right," but "essential for community services," or if applicant proposes an activity not permitted "as of right" for a site which is *smaller* than a stated maximum, which meets other harm-minimizing criteria. ALIC 3-103.

This procedure is to be used when there is a land development plan, and the applicant would subdivide, or has a site *larger* than a stated minimum, or proposes a mixture of types of development not permitted "as of right." ALIC 3-104.

It is appropriate when there is a land development plan and the governing body has adopted precise regulations requiring discretionary administration for the area in question. ALIC 3-106 (5).

This sequence is appropriate when the applicant seeks permission to develop land which has been reserved for public acquisition, ALIC 3-107, or when applicant seeks to develop a structure or site which has been designated of special or historic significance. ALIC 3-109.

3. $A \rightarrow {}_1B_a \rightarrow {}_2B_d$:

This is appropriate when the applicant's proposal meets the criteria of a previously adopted ordinance the administration of which has been reserved to the governing body. ALIC 3-106 (2).

4. $A \rightarrow {}_1B_a \rightarrow {}_2B_r$:

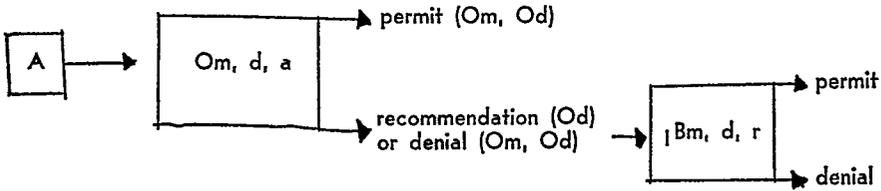
This is appropriate when there is a land development plan, and the applicant's proposal is "substantially in accord" with the plan, and is "generally compatible" with what is permitted by the ordinance for the site in question. ALIC 3-106 (3).

5. $A \rightarrow {}_1B_r$:

The ALIC discourages such amendment by the governing body to apply only to one applicant, except under the circumstances and safeguards of the two previously described sequences. Nevertheless the

$A \rightarrow {}_2B_r$ procedure is available to the applicant at the risk that such an amendment would not survive a court test.

CUD PROCEDURE:



With CUD the applicant always starts the same way ($A \rightarrow O$). The applicant knows that there can be only one of four outcomes.

The official (Design Examiner) can grant or deny him a development permit. If denied a permit by the official, he can appeal to the Urban Design Commission where his application will either be granted or denied. Compared to these four outcomes, ALIC procedure presents the applicant with as many as fourteen! If under ALIC he presents the application first to the official having ministerial discretion, it can be granted or denied there. These two outcomes will be symbolized as Og (1), Od (2), where g means granted, and d means denied. Other possible ALIC outcomes are: ${}_1Bg$ (3), ${}_1Bd$ (4), ${}_1B_2Bg$ (5), ${}_1B_2Bd$ (6), ${}_2Bg$ (7), ${}_2Bd$ (8), O_1Bg (9), O_1Bd (10), O_1B_2Bg (11), O_1B_2Bd (12), O_2Bg (13), O_2Bd (14). ALIC is to be an enabling act. Ordinances written under it could reduce the number of possible outcomes. But it could never be as simple as CUD procedure.

The ALIC procedure is more costly to the applicant because of risk of delay, and it involves more paper work and time investment by the various levels of decision-making. Such a complex procedure can hamper development by distracting participants away from evaluating the actual proposal by the applicant, to procedural niceties of the code itself. When the issue is the benefits and burdens that would be imposed by a particular apartment tower suggested in an area already substantially developed with detached homes, it is unfortunate if decision makers discuss instead whether the proposal is a matter for the Land Development Agency under ALIC 3-104 (1) (c), "a proposed development . . . to contain a mixture of types of development not permitted as of right in the area," or whether it is a decision for the governing body under ALIC 3-106 (3) (a), being "substantially in accord . . . with the Land Development Plan, and . . .

generally compatible with development permitted as of right in the area.”

The simplicity of the CUD procedure frees the applicant and the official to concentrate on how the applicant should build, subdivide or use the site. In the first step of the procedure a public official will begin collaborating with the applicant on these decisions and will consider opinions of other interested parties. During this period the official is not concerned about what kind of power he is exercising: the power to apply ministerial standards; to apply discretion in interpreting qualitative standards; or the power to recommend an amendment to the urban design regulations. At the end of the collaborative design period, if the official judges that he has power to grant a permit, and if no one appeals his decision, he will grant a permit and the matter is finished. If the official or any other interested party wants the matter before the Urban Design Commission, the initial decision of the official becomes a recommendation with reasons for the Commission. The Commission can deny, modify or grant what the applicant wants. If the Commission grants a permit it makes no difference whether the Commission is amending the urban design regulations, or merely interpreting and applying them, since the Commission has the power to do either. The applicant's buildings will neither shrink nor stretch over that question.

The CUD procedure is the same for a large or small proposal. It is the same whether the proposal is innovative or submissive. The system can be flexible or inflexible. If the applicant's proposal is in an area where there are recently prepared regulations, with much detail, and much neighborhood and agency support, the official and the Commission will almost surely hold the applicant to the regulations. In an area where the regulations are obsolete and lack support, it is likely that new regulations will be derived in response to applicant's proposal.

Unevenness in sophistication and timeliness of regulations from one part of the city to another is common today, especially within the large central city. Some neighborhoods have current plans under urban renewal, model cities or other U.S. supported programs. Downtown areas and the more popular historic sites frequently have been given recent planning and comprehensive zoning attention. Yet, typically, zoning for other parts of the same city has been neglected since the post World War II comprehensive rezoning era. CUD procedure fits the unevenly regulated city.

CUD would transform the decision making process of professional urban designers into a public activity, like voting or jury trials. The urban designer begins with a site, and a set of objectives or requirements. He seeks a plan of activities and structures for the site which meet the objectives. During the design process he learns more about the problem he is solving, and discards and adds objectives. Out of this process comes a rough sketch or model which can be evaluated by future users of the site or their representatives. This process is typically a collaborative effort between two or more experts. One knows buildings, another knows circulation, another knows the activities of users, and so on.

The CUD process requires collaboration between a designer who is expert in the objectives furnished him by a client who is sponsoring the development and an expert who knows the objectives of the design regulations for that site (the Design Examiner). Both are trained to design for unstated objectives, besides those furnished by the property owner and the design regulations. If the development permit applicant is not represented by a professional designer the design examiner can supply this expertise. CUD permits other interested parties such as residents of the area, voluntary organizations, and public agencies to furnish objectives and to criticize the product of this collaboration.

The designers are to consider the needs of the users of the site, including the owner-applicant. One of applicant's needs is a return on his investment. The applicant may be a frequent visitor or user or occupant of the project, and will be a user in the personal sense. Other major users to consider are subsequent owners, and nearby owners, but especially those people who must occupy or see the development day after day such as tenants, employees and business invitees, neighboring investors, and frequent passers-by.

No urban development is wholly private. New structures, grading, paving and planting paid for by the private developer is connected to major streets, interchanges, open space, utility lines, and community facilities paid for by a public agency or utility. The coordination of these private and public elements to make a unified design is accomplished by this initial collaboration between private and public designers.

IV. USER-OBJECTIVES VS. ANTHROPOMORPHIC COMPETITION

The CUD regulates directly additions and changes in the urban environment, while the other two systems (SZEAL and ALIC) regulate the applicants who seek to add to or change the environment.

The SZEA authors considered the urban development process a struggle among property owners to use and develop space.¹⁰ SZEA ideology treats buildings and uses of space as substitutes for their owners. The following two court opinions are typical of such anthropomorphic reasoning:

“. . . the development of detached house sections is retarded greatly by the coming of apartment houses. . . . In such sections very often the apartment house is a mere parasite, constructed to take advantage of the open spaces and attractive surroundings. . . . The coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes. . . . Apartment houses, which in a different environment would be not only entirely unobjectionable but highly desirable, come very near to being nuisances. . . .¹¹

The right of a person to pure air might be surrendered in part by his election to live in a location that is already occupied by business or industry which fouls the air with smoke, gas, soot or other impurities.”¹²

According to the SZEA mystique a natural urban form will emerge from this competition between property owners. The emergent city will be generally round in plan, with a gradient of intensity (building size in relation to lot area, and level of emissions) increasing with proximity to the center. Buildings and uses of space are considered to be struggling towards the center of intensity.

The government of such a city has the duty of regulating the competitive struggle to prevent participants from over-competing. When a use of space is more than other uses of space located the same distance from the center of the city, it is over-competing.

The proper building size and intensity can be established for each lot in the city by measuring this intensity gradient. Regulations can be drafted preventing over-competitive behavior. These regulations can be quite detailed, and can be enforced by a clerk having ministerial authority.

The ALIC likewise views the development process as a competitive

10. For more on this see Weismantel, *A New Vision in Law: The City as an Artifact*, URBAN LIFE & FORM 29, 45-54 (W. Hirsch ed. 1963); *Boston Renewal and Zoning*, 23-40.

11. *Village of Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926).

12. *Schlotfeldt v. Vinton Farmer's Supply Co.*, 252 Iowa 1102, 1106, 109 N.W.2d 695, 699 (1961).

struggle between property owners.¹³ A natural urban form is expected to emerge from this competition. It is the function of local government through the development plan to anticipate problems which will occur from the emerging urban form. The plan and regulations should be drawn to avoid these problems.

ALIC authors looked at forty years of experience under SZEAs and regulations and concluded that the future urban form cannot be predicted in detail. An ALIC plan would be a general picture of the emerging city, corrected for problems which would occur if there were no plan. The general plan would be updated frequently.¹⁴ Proposals of applicants can be reviewed against this general plan, and against standards written to prevent over-competitive behavior. Article 3

13. The following excerpts from the ALIC show its concept of the Land Development Plan as a projection of the expected urban form, with anticipated problems isolated for solution: "The purposes of . . . a . . . Plan . . . are: (b) to recognize and state major problems and opportunities concerning physical development and the location of activities that use land and the social and economic effects thereof. (c) to set forth the desired sequence, patterns and characteristics of future physical development and the locations of activities that use land and to determine probable economic and social consequences resulting from them." The word *desired* in this clause indicates that the city has much freedom to determine its future form. But the phrase "determine probable and economic and social consequences" again suggests projection. ALIC § 2-101(2). "The [Plan] shall identify the present conditions and the major problems relating to physical development, physical deterioration, and the location of activities that use land and the social and economic effects thereof. The [Plan] shall show the projected nature and rate of change in present conditions for the reasonably foreseeable future in the absence of new governmental action and the probable social and economic consequences which will result from such changes." *Id.* "A [Plan] shall include statements of objectives, policies and standards to the extent reasonable for the community, respecting the major problems in the community enumerated pursuant to Section 2-102 . . ." *Id.* at 2-103.

Both SZEAs and the ALI Code see harmful external effects of the over-competitive land owner as the major market imperfection to be corrected by regulation. According to the ALI Code, it is also a market imperfection if projected proportions of different land uses, such as the balance between apartments and detached homes, is different from proportions established as desirable by the Plan. ALIC commentary 158.

A source for the ALIC ideology is an article by chief reporter for the code. He states: ". . . [T]he plan commission's participation should be limited to securing the maximum external benefit and the minimum external harm from the project; it is not concerned with making the project a place to work or live better than the one proposed by the private developer." Dunham, *A Legal and Economic Basis for City Planning*, 58 COLUM. L. REV. 650, 670 (1958).

14. "[The Code authorizes] very flexible administrative controls for governments which carry on physical development planning and thus are constantly formulating comprehensive and coordinated development policies which provide a framework . . . for exercising such controls . . ." ALIC commentary 178.

of the ALIC dealing with *Regulation of Uses and Structures* discloses the purpose of regulations: "Prevent too much intensity. . . . Provide enough open space . . . screen the visually offensive . . . prevent harmful emissions . . . prevent interference with the enjoyment of adjoining lands . . . avoid what is potentially incompatible . . . minimize adverse impact . . . avoid mixture of types."¹⁵

The developer is to be prevented from harming his neighbors, but may not be forced to benefit his neighbors. A developer may not be required to pay for utilities to serve adjacent property. ALIC 3-104 (6)(a).

A major difference between SZEA and ALIC is in procedure for treating the development permit applicant. Under SZEA a clerk is to measure the applicant's plans against detailed regulations for that lot, derived by careful predictions of the gradient of the emerging city. Under ALIC the emerging city is determined only in its general form, and the determination changes frequently. Most applications for development must be reviewed individually by an official or agency having authority to evaluate whether the applicant is following the plan, and whether the applicant is over-competing.

The urban development process according to the CUD are physical additions or changes in structures or activities which can be evaluated. The CUD evaluation of development is environmental more than social or economic. CUD requires that each new development be comfortable and safe to its users, shaped to contain whatever human functions it was designed for, that it be of adequate size for its expected demand, that it communicate values, and so on.

CUD would shape the city to the needs and desires of its users. This is not the same as accepting an urban form determined by competition between property owners, and regulating this competition to avoid problems.¹⁶ Recent studies show that urban form is greatly influenced by the transportation network, and public policy determines the shape of that network.¹⁷ CUD planning suggests laying out that

15. Article 3 empowers local government to adopt standards against which proposals can be reviewed. The article also suggests what these standards might be.

16. The U.S. Supreme Court has indicated that the equal protection clause of the Constitution serves persons, not areas (and presumably not buildings). "The equal protection clause relates to equality between persons as such, rather than between areas . . . Territorial Uniformity is not a constitutional prerequisite." *McGowan v. Maryland*, 366 U.S. 420, 427 (1961).

17. R. JOSHI AND F. UTEVSKY, *PUGET SOUND REGIONAL TRANSPORTATION STUDY, ALTERNATIVE PATTERNS OF DEVELOPMENT: PUGET SOUND REGION* (1964).

transportation system which will stimulate the desired urban form, that urban form which gives its residents shorter average trip length, or proximity to open space, or other environmental advantages.

An ALIC plan is supposed to be amended frequently to remain relevant to changing times, yet an individual applicant who proposes development contrary to the plan should not be granted a permit, according to ALIC doctrine. This anomaly demonstrates how ALIC is concerned mostly with regulating competition between property owners. To permit one owner to violate the plan would be unconscionable favoritism. "The Code must provide a framework which will permit effective regulation while safeguarding to the extent possible, two central values. One is freedom from arbitrary control. The other is equality of treatment."¹⁸

Under CUD an applicant whose proposal is contrary to the plan can be granted a permit, thus amending the plan. This is good design theory. The plan is a first statement or sketch of what the future city will be like.¹⁹ It is a tentative model for measuring the quality of subsequent proposals. But a subsequent proposal is based on more recent information. Late and early stages of the design process are inter-related and inter-dependent.²⁰ Some first assumptions are expected to be overturned by later investigations. A particular proposal also has the advantage of focusing analysis on one site, while the general plan necessarily diffuses analysis over a large area. The cost of general plan preparation is often a few dollars per acre, while the site planning for a particular proposal can cost thousands per acre. For these reasons the particular proposal is often an improvement over the general plan proposal for the site in question.

A frequently cited reason for upholding a general plan against a particular development proposal which is contrary to the plan is to protect residents of the area from unanticipated change. But this is not a strong reason if residents, in fact, do not object to a particular unanticipated change. Residents are more likely to attend a hearing over a particular development proposal than over adoption of the general plan. The particular development is an imminent threat to

18. ALIC commentary 178.

19. Similarly, an illustrative site plan prepared by an urban renewal agency can aid in the review of designs submitted by a redeveloper, without absolutely controlling that design. URBAN RENEWAL AGENCY, U.S., H.H.F.A., DESIGN OBJECTIVES IN URBAN RENEWAL DOCUMENTS (Technical Guide 16; 1965).

20. There is British research which demonstrates this. THE TAVISTOCK INSTITUTE, INTERDEPENDENCY AND UNCERTAINTY (1966).

the status quo, and its size and shape can be easily comprehended. By comparison, the general plan is a remote, indeterminate challenge to the status quo. Understanding the general plan is no easy matter. Copies are too expensive to be given away, and summaries are very abstract.

Thus public participation by residents of the affected area and by special interests, such as groups dedicated to more open space, or saving landmarks, or allowing outdoor advertising, is furthered by making the particular development proposal decision more consequential—or at least as consequential—as the general plan adoption decision.

Some problems with permitting approval of particular developments to constitute amendments of the general plan can be anticipated, and compensated for. Boston data shows that objections by residents to a particular proposal tend to be less frequent and less influential if the proposal is located in a low income neighborhood.²¹ Objections against an especially expensive project are less influential than against a modest proposal. This suggests that local government might sponsor advocate planners, similar to legal aid, who could strengthen the objections of residents in such situations.

The CUD procedure can evaluate whether users of a particular site and its surroundings would be better off if a proposed development were permitted, or if the general plan were followed for that site. If the development proposal is more promising, it should be permitted, even though doing so makes a land value award to the applicant. CUD is aimed at building a good city, and is indifferent to how unevenly or unpredictably it distributes land values.

Development permission under CUD is considered a public resource to be rationed in exchange for worthwhile additions (or preservations) on the part of the applicants. Other devices such as the general property tax and federal capital gains tax even out land value differences created by the development process.

The major intersection with all four corners developed for business is properly zoned if the object is to treat owners who are equally situated the same. If the point of zoning is to build a useful city, it furthers safety and convenience to concentrate businesses together in a deep shopping district along a major street, and not at the intersection.

The skyscraper district, where each tall building is permitted to block the same amount of light and air, is good zoning if the object

21. Boston Renewal and Zoning 159-160.

is to treat owners, equally situated, the same. If the point of zoning is to build a useful downtown, a pattern of skyscrapers among low buildings and plazas is better.

On a residential street running east and west it is good zoning to require the same minimum front yard of houses on both sides of the street, if the object is to treat owners, equally situated, the same. If the point is a useful street, the houses on the south side of the street might be placed almost on the street line, and the houses on the north side of the street placed almost on the north edge of their lots, with a wall along the north side of the street. This asymmetrical arrangement gives each house an outdoor space with southern exposure and better sunlight in winter.

These questions of permitted intensity of development, configuration which buildings are to take, and whether or not existing buildings are to be retained or replaced are different when evaluated from the perspective of usefulness, rather than fairness to property owners. The usefulness perspective, which is incorporated into the CUD draft, would accomplish the retention of agricultural and other open land uses adjacent to intense urban development. It would locate tall buildings as entrance gate posts to a section of street that visitors to the city look for. It would retain historic row house areas adjacent to a skyscraper district, and retain individual landmark buildings which are cherished by city residents. It would impose a unique architectural style on a neighborhood whose residents value that style highly. This is a case where user's whim prevails over the individual owner's, if he is of a different mind.

V. VOCABULARY

Comfortable, shaped to fit function, giving identity, etc. are *environmental* characteristics of urban development. Concepts such as size of structures, amount of parking, set-back lines are *physical* characteristics.

ALIC relies on a physical vocabulary for regulation, supplemented by environmental words, especially those proscribing forbidden behavior, such as "quality of . . . noise, smoke, odor. . ." 3-102 (10), "visual impact," 3-102 (7). This use of vocabulary fits the ALIC strategy of projecting the shape of free market urban development (described by physical vocabulary), and regulating its market imperfections (described by those negative environmental words).

CUD uses a mixture of environmental and physical vocabulary.²² The intent is to give urban designers (private and public) the vocabulary they need to communicate with one-another and with their critics and clients. The professional vocabulary of urban design is such a mixture.

The environmental vocabulary of CUD is positive, to set desirable objectives for design. The regulation of an undeveloped site might begin with environmental words as objectives. After the applicant has completed the design for the site, physical regulations can be imposed on it to guarantee that it is built and maintained as approved.

If ALIC regulations specify a 15 foot front yard for a lot, this is intended as a minimum, as a limit on the external behavior of the lot developer. The same 15 feet regulation under CUD probably means that for the benefit of indoor and outdoor users, fifteen feet—no more or less—is desired there. To regulate urban development, ALIC and CUD use a social and economic vocabulary, as well as a physical and environmental one.

VI. THE ART AND SCIENCE OF URBAN DESIGN

CUD depends on the design professions in casting its city-design procedure. It relies on the art and science of urban design as an evolving body of knowledge that can inform decisions.

The design professions²³ make an art and science of satisfying needs of users of enclosed and outdoor spaces and movement channels.²⁴ Most architects today forecast human movements and functioning that will occur in a proposed building.²⁵ Their design becomes

22. Gutkind relates the vocabulary of control exerted by Philip II of Spain over his architect Juan de Herrera in building El Escorial, the most famous edifice erected by Philip. "It should be simple in form, severe in appearance, noble without portraying arrogance, and majestic without circumstances," and should be, "a monastery, a temple and a tomb." 3 E. GUTKIND, *URBAN DEVELOPMENT IN SOUTHERN EUROPE: SPAIN AND PORTUGAL* 261 (1967). These are environmental words intended to optimize rather than constrain performance of the designer.

23. For self-governing aspects of professions, *See* Goode, *Community within a Community: The Professions*, 22 *AM. SOC. REV.* 194 (1957).

24. "Design may be defined as the conscious organization of physical forms and space to satisfy a particular series of human purposes (the purposes may well be emotional or aesthetic as well as physical)." N. WILLIAMS, JR., *Deficiencies of Zoning Law and Legal Decisions*, *PLANNING* 1950, at 165, (*American Society of Planning Officials*, 1951).

25. V. SCULLY, JR., *MODERN ARCHITECTURE, THE ARCHITECTURE OF DEMOCRACY* (1961); R. BANHAM, *GUIDE TO MODERN ARCHITECTURE* (1961).

the counter-form of human activity. Circulation systems are designed to minimize trip lengths,²⁶ to help users find their way, for safety, and for sequential perceptual experience.²⁷ Landscape architects apply ecology in creating niches for users of their sites.²⁸ Urban planners specialize in the determination and ranking of the needs of large populations.²⁹

Research-based texts on housing design,³⁰ the city man's perceptual needs,³¹ the coordinated design of land uses and transportation facilities, urban renewal,³² rehabilitation,³³ historic preservation,³⁴ urban landscape,³⁵ urban design,³⁶ home associations,³⁷ recreation facilities,³⁸ and other user elements of the environment published in the last fifteen years show the rapid advance in this field.

Large scale new towns,³⁹ redevelopment projects,⁴⁰ shopping centers,⁴¹ recreation facilities,⁴² and institutions,⁴³ show the capability of

26. A. M. VORHEES, *et al*, *Traffic Patterns and Land Use Alternatives*, TRIP CHARACTERISTICS AND TRAFFIC ASSIGNMENT (Bulletin 347, Highway Research Board, 1962).

27. D. APPELYARD, K. LYNCH & J. R. MEYER, *THE VIEW FROM THE ROAD* (1964).

28. P. LEWIS, *Ecological Architecture: Planning the Organic Environment*, PROGRESSIVE ARCHITECTURE, May 1966 120; I. MCHARG, *MAN AND HIS ENVIRONMENT*, THE URBAN CONDITION (L. Duhl ed. 1963).

29. F. CHAPIN, JR., *URBAN LAND USE PLANNING* (2d ed. 1965).

30. R. KATZ, *DESIGN OF THE HOUSING SITE* (1966); URBAN LAND INSTITUTE, *NEW APPROACHES TO RESIDENTIAL LAND DEVELOPMENT*, Technical Bulletin No. 40 (1961).

31. K. LYNCH, *THE IMAGE OF THE CITY* (1960).

32. MONTGOMERY, *Improving the Design Process in Urban Renewal*, 31 J. AM. INST. OF PLANNERS 7 (1965).

33. W. NASH & M. COLEMAN, *RESIDENTIAL REHABILITATION: PRIVATE PROFITS AND PUBLIC PURPOSES* (1959).

34. U.S. Dep't. of HUD, *PRESERVING HISTORIC AMERICA* (1966).

35. G. CULLEN, *TOWNSCAPE* (1961).

36. P. SPREIREGEN, *URBAN DESIGN: THE ARCHITECTURE OF TOWNS AND CITIES* (1965).

37. U.S. FHA, *Planned Unit Development with a Homes Association* (Land Planning Bulletin No. 6, 1963); Urban Land Institute, *The Homes Association Handbook: A Guide To The Development and Preservation of Residential Neighborhoods* (Technical Bulletin No. 50, 1964).

38. U.S., ORRRC, *Outdoor Recreation for America* (1957).

39. C. STEIN, *TOWARDS NEW TOWNS FOR AMERICA* (1957).

40. Urban Land Institute, *Baltimore's Charles Center, A Case Study of Downtown Renewal* (Technical Bulletin No. 51, 1967).

41. V. GRUEN and L. SMITH, *SHOPPING TOWNS USA: THE PLANNING OF SHOPPING CENTERS* (1960).

42. Harland Bartholomew and Associates, *Master Plan for Balboa Park, San Diego* (1960).

43. R. DOBER, *CAMPUS PLANNING* (1965).

environmental designers to satisfy complex user needs. More professional planning schools have been established,⁴⁴ and the new profession of urban design has emerged.⁴⁵

VII. COST OF CUD ADMINISTRATION

Is the CUD proposal that a design examiner (a professional architect or planner) review each application for a development permit, a luxury that few cities can afford? No. This is an economical use of personnel.

The design examiner who has adequate authority can prevent most applications from going before a board or commission. The development examiner thus does the work of an entire board. He will have processed any application that does reach the board, thus saving their time. Under any regulation system local government employees must examine each set of proposed building plans. A city adopting CUD must pay the salary of professionals to review plans, but that city no longer has to pay clerks to do this job.

For two recent sample years in Boston (1960 population 697,000) about 2,000 building permits were issued annually (not counting about 6400 "short form" applications averaging \$500 each in construction value added).⁴⁶ These 2000 building permits average out to about 10 permits each working day. This case load could be processed by two or three development examiners.⁴⁷ As a rule of thumb about 10-15% of a city's professional planners would be involved in reviewing plans of applicants.⁴⁸

44. One or more new Master's degree programs in city planning is formed each year. AM. INST. OF PLANNERS, Recognition of Planning School for AIP Membership Purposes (May 1965).

45. P. Neubauer and R. Mann, *Urban Design: A Basic Reappraisal*, CONNECTION, (April 1965). For a summary of recent urban design definitions and ideas see H. Fagin and C. Tarr, *Urban Design and Urban Development*, URBAN RESEARCH AND POLICY PLANNING 413 (L. Schnore and J. Fagin, ed. 1967).

46. Boston Renewal and Zoning, 198.

47. As evidence of how many professional decisions a man can make in one day, consider municipal judges. A judge in Albuquerque makes 9,000 decisions of contested charges each year. (A particular defendant might be charged with several offenses.) This is as many as 50 decisions on charges per day. Data based on interview of clerk of Albuquerque Municipal Court. The clerk suggested that another judge was needed.

48. A sample of 17 cities of one half to one million population had about 3.5 professional city planners on their payrolls for each 100,000 population. At this rate the City of Boston should have 24 professional city planners employed by its

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Boston data⁴⁹ also shows that the largest two per cent of building permit applications by estimated cost per permit account were from 50-70% of annual building construction. This suggests that a city might have one highly paid urban designer to review that two per cent of all applications which bulk so large, and hire recent graduates to look after the rest.

VIII. RELATION OF CUD TO PLANNING

The relation of the CUD to a Plan is as follows:

1. The CUD might serve as a plan. Call it an Urban Design Plan. A plan usually states the objectives which development should serve, while regulations implementing a plan specify mechanically what is permitted and what is forbidden.⁵⁰ But expressed objectives are part of urban design regulations, so in that sense the regulations contain the Plan. Any amendments to the regulations made by the Commission would be an amendment to the Plan.
2. There might be an Urban Design Plan, adopted by the Commission, separate from the regulations. With the Commission responsible for both documents, the Plan and the regulations, an amendment of the regulations could constitute amendment to the Plan. As explained in the summary, CUD would stimulate plans prepared and politically supported at the neighborhood scale.
3. There might be a plan adopted by the governing body rather than by the Urban Design Commission. The governing body should then have power to review and overrule any amendments of design regulations made by the Commission which violate the Plan. I would not recommend giving parties a right to appeal to the governing body from every Commission decision over regulations, nor should the governing body act as general overseer of Commission decisions. To give the governing body such power would drag out the decision process and distract the governing body from policy matters.

IX. A CODE FOR THE URBAN DESIGN PROCESS

Index to sections of: A PROPOSED ACT AUTHORIZING MUNICIPALITIES AND COUNTIES TO ESTABLISH OBJECTIVES,

government. 2-3 planners for CUD Administration would be 10-15% of its professional staff. American Society of Planning Officials, Expenditures, Staff and Salaries of Planning Agencies Table 1, (Report 232, March 1968).

49. Boston Renewal and Zoning 199.

50. T. J. KENT, JR., THE URBAN GENERAL PLAN 18-22 (1964).

REGULATIONS AND PROCEDURES TO GUIDE DECISIONS
OVER USE, SIZE, LOCATION AND APPEARANCE OF BUILD-
INGS, AND THE USE AND SUBDIVISION OF LAND.

1. The Urban Design Commission
2. Definition of Subdivision
3. Objectives and Permitted Forms of Urban Design Regulations
4. Design Examiners: Qualifications, Duties, Appointment
5. Areas, Lots and Buildings Controlled by this Act
6. Public Service Corporation Exemption Procedure
7. Urban Design Maps
8. Effect of this Act on Construction, Demolition, Use and Sub-
division
9. Application by Property Owner for Permit or Amendment
10. Participation in Decision Making by Interested Parties
11. Provisional Decision of the Design Examiner
12. Authorization of Permit by the Design Examiner
13. Hearing on the Application by the Urban Design Commission
14. Final Decision by the Urban Design Commission
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16. Appeal to Superior Court
17. Jurisdiction of Superior Court
18. Amendments to the Urban Design Code
19. How Amended
20. Automatic Permit after Delay
21. Fees
22. No Board of Appeal Jurisdiction
23. Regulation of Non-conforming Use
24. Effect of Amendment on an Existing Permit
25. When this Act shall take Effect

1. THE URBAN DESIGN COMMISSION

(This section should establish qualifications for Commission members and how they are to be chosen. An existing zoning or planning commission or board of appeal might, by this section, become the Urban Design Commission. The governing body in a small city might be given these. In a larger city there might be several Urban Design Commissions for various parts of the city. Distinctive areas such as historic districts, the central business district, a district occupied by persons of common life style might each have its own Urban Design

Commission. The city might be divided into neighborhoods or boroughs, each with its own Urban Design Commission.

This section might name organizations, each of which may nominate a member of the Urban Design Commission. The Boston Zoning Commission is an example. Massachusetts, Acts of 1956, c. 665.)

2. DEFINITION OF SUBDIVISION

A subdivision is the dividing of land into two or more parts for immediate or future sale, or the dedication or reservation of land for access, recreation or other common public use. All subdividing within every city (county) shall be regulated by this Act and the Urban Design Code after the effective date of this Act, except those exempted by Section 5. Subdividing shall be regulated as part of other forms of the Urban Design Regulation in order to improve coordination between building construction, uses of space, access, sizes and arrangement of lots, grading and landscape treatment. Further objectives and means of regulating subdivision are set out in Section 3.

3. OBJECTIVES AND PERMITTED FORMS OF URBAN DESIGN REGULATIONS

The Urban Design Commission shall adopt regulations known as the Urban Design Code, (called herein the Code) controlling the dimensions and arrangement of buildings, the uses of space (indoor and outdoor), and the subdivision of land. Urban Design Regulations shall be written to accomplish the objectives of this section. A particular regulation may further several objectives and a particular objective may require several forms of regulation for accomplishment. A particular parcel or class of buildings, use of space or subdivision of land may be subject to one or several forms of regulation, to accomplish one or several objectives. Forms of regulation are listed under objectives as convenient means of classification. Any form of regulation listed in this section may be imposed to accomplish any of the objectives. An objective may be used as an urban design regulation, leaving the method of accomplishing the objective to the discretion of the land developer or the Design Examiner empowered by this Act. *Objectives* below are expressed by CAPITAL WORDS; *permitted forms of regulation* by words in small letters following each group of objectives.

(A) *Physical Conditions for Well Being.*

OBJECTIVES:

**HEALTH, SAFETY AND CONVENIENCE OF THE PUBLIC AND
USERS OF BUILDINGS AND LAND.**

ADEQUATE LIGHT AND FRESH AIR.
ENVIRONMENTS WHICH ARE WITHIN THE RANGE OF
HUMAN COMFORT.

Permitted forms of regulation:

Standards for atmospheric characteristics, such as levels of sound,
quantities of daylight, minimum or maximum temperatures.
Height, number of stories and size of buildings and structures.
Ratio of floor area to lot area.
Per cent of lot that may be occupied.
Size of yards, courts, and open spaces.

(B) Environmental Needs of Personality.

OBJECTIVES:

DIVERSITY OF SENSATIONS AND ENVIRONMENTS.
ENVIRONMENTS WHICH ENCOURAGE THE INTELLEC-
TUAL, EMOTIONAL AND PHYSICAL DEVELOPMENT OF
THE INDIVIDUAL.
OPPORTUNITIES FOR PERSONS REGARDLESS OF RACE,
ETHNICITY, SOCIAL CLASS, OR INCOME TO RESIDE IN
AND USE STRUCTURES IN ALL PARTS OF THE CITY.

Permitted forms of regulation:

The kind, color and texture of building materials, planting and sur-
face materials.
Control over signs, advertising, lighting and other objects having
symbolic or communication functions.
Regulate land grading, surface materials, and planting in new sub-
divisions.
Control over the size and dimensions of lots.
Requirements that housing developments contain a wide range of lot
sizes or rental accommodations for occupancy by a mixture of in-
come classes.

(C) Adequate Facilities for Urban Life.

OBJECTIVES:

A VARIETY OF SOUND AND LIVABLE HOUSING.
SITES FOR EMPLOYMENT AND ECONOMIC PRODUCTION.
VIGOROUS NEIGHBORHOOD AND COMMUNITY INSTITU-
TIONS.
EFFECTIVE CONSUMER SERVICES AND RETAIL OUTLETS.

Permitted forms of regulation:

Location of buildings, structures and land for residences, commerce, manufacturing and other purposes.

Extent and intensity (minimum or maximum) of various uses of space, such as number or density of dwelling units, occupants, employees, volume of trade or production.

Division of space or territory by public, semi-public and private uses.

Minimum common facilities which must be included in large developments, such as convenience shops, meeting rooms and outdoor recreation facilities.

(D) Circulation.

OBJECTIVES:

MINIMIZE LENGTH OF TRIPS.

PROVIDE SAFE AND CONVENIENT ROUTES OF TRAVEL FOR VARIOUS FORMS OF TRANSPORTATION.

MAKE ALL PARTS OF THE CITY ACCESSIBLE BY PUBLIC TRANSPORTATION.

EXTEND OPPORTUNITIES FOR PEDESTRIAN ACTIVITY.

Permitted forms of regulation:

Location, arrangement and capacity of channels of movement and access such as walks and streets.

Control over the opening of streets and common ways.

Minimum standards for construction of streets and parking areas in subdivisions.

Maximum permitted intensities of flow.

Location and treatment of parking spaces for motor vehicles.

Location and treatment of off-street loading spaces.

(E) Coordination of Parts of the City to Produce a Community.

OBJECTIVES:

ACCENTUATE THE CHARACTER OF DIFFERENT PARTS OF THE CITY TO AID ORIENTATION AND IDENTITY.

CONGRUENCE OF STRUCTURE, SPACE OR MOVEMENT CHANNEL TO THE HUMAN ACTIVITY WHICH WILL OCCUPY IT.

Permitted forms of regulation:

A regulation may apply to a class of uses, subdivisions, or building construction described in the regulations, or specified in location by corresponding symbols on the urban design maps.

Regulations for a lot or building may be unique, and not used elsewhere in the city.

A sequence of experiences or perceptions to be sensed by a person moving through an environment.

Adoption of plans for neighborhood, project area or functional parts of the city.

A requirement that a proposed development have a functional relationship to adjacent development.

A requirement that applicants for development of adjacent or nearby sites collaborate on their designs.

(F) Public Facilities and Objectives.

OBJECTIVES:

PROTECT THE PUBLIC INVESTMENT IN TRANSPORTATION, UTILITIES, SCHOOLS, LIBRARIES AND OTHER CIVIC BUILDINGS, STRUCTURES, FACILITIES AND LAND. TO FACILITATE THE PROVISION OF NEW TRANSPORTATION, UTILITIES, SCHOOLS, LIBRARIES AND OTHER CIVIC BUILDINGS, STRUCTURES, FACILITIES AND LAND. TO FURTHER THE GOALS OF THE GENERAL PLAN, URBAN RENEWAL PLANS, AND OTHER PLANS, POLICIES AND PROGRAMS OF THE CITY.

Permitted forms of regulation:

Require improvements in subdivision such as utilities and recreation space primarily for the need and benefit of residents or users of the proposed subdivision.

Require a bond in lieu of improvements as a condition for approval of a final subdivision plan.

Prohibit or limit for a period of three years the subdivision or private development of a site designated in an approved plan for a public facility or other public use.

Adopt regulations that are necessary and proper to carry out a public objective.

(G) Maintain a Balance Between Preservation and Innovation.

OBJECTIVES:

PRESERVE BUILDINGS OR AREAS OF HISTORICAL ARCHITECTURAL VALUE.

ENCOURAGE THE REHABILITATION OR CLEARANCE OF OBSOLESCENT FACILITIES.

ASSEMBLY OF SMALL PARCELS INTO TRACTS OF MORE USABLE SIZE.

ENJOY THE BENEFITS OF INNOVATION, RESEARCH AND EXPERIMENTS IN THE USE OF SPACE AND CONSTRUCTION OF BUILDINGS.

Permitted forms of regulation:

Prohibition against razing a building or structure, or changing its facade or exterior.

Prescribe the form and content of proposed subdivision plats.

Establish which classes of subdivision are to be accomplished by recorded plat, which by metes and bounds description.

Text, numbers, diagrams, plans, elevations, sketches, photographs, three-dimensional models, or other media effective to communicate environmental objectives may be incorporated into the Code.

Wide participation by the public in the review of new development proposals.

(H) Enjoy the Products of the Environmental Design Professions.

OBJECTIVES:

TO FURTHER THE BUILDING AND MAINTENANCE OF OUTSTANDING ARCHITECTURE, LANDSCAPE ARCHITECTURE AND URBAN DESIGN.

Permitted forms of regulation:

Common means of specifying quality and characteristics of man-made environments used in architecture, landscape architecture and urban design may be employed.

Regulations may specify quantities or qualities which are not capable of exact measurement, in order to accomplish illusive but worthwhile objectives.

Delegation to design professionals appointed as Design Examiners of power to interpret qualitative regulations.

Buildings may be regulated to form spaces and masses which function as a totality, rather than as an assortment of individual realms.

A large building may be specified on one lot and a small building on an adjacent lot, as is done in contemporary large scale architecture, landscape architecture and urban design practice.

4. DESIGN EXAMINERS: QUALIFICATIONS, DUTIES, APPOINTMENT

The Urban Design Commission shall be assisted in the administration of this Act by Design Examiners who are on the staff of the Building Commissioner. A Design Examiner (Examiner) may exercise discretion in interpreting qualitative and other zoning regulations; may receive, interpret and apply to his decisions communications from interested parties regarding an application for a permit for building construction, use of space or subdivision of land; authorize the building commissioner to issue a permit according to the terms of this Act and the Code; may recommend to the Commission amendments to the regulations relating to a permit application before him. An Examiner shall have a college or university degree in architecture, city planning, landscape architecture or urban design. He shall be nominated by the Building Commissioner and approved by the Commission before taking office. An Examiner may be removed from that office by a vote of [a stated number of] members of the Commission, but such a person may be transferred to another post in the building, development or other department of city government, and may subsequently be reappointed as an Examiner.

5. AREAS, LOTS AND BUILDINGS CONTROLLED BY THIS ACT

Urban Design regulations under this Act shall apply to all land and buildings within the city except the following:

(Developments controlled by other laws might be exempted from this Code. Exemption should depend on whether the other development law insures that new proposals are measured against a general plan, and against relevant regulations of this Code, and whether design professionals and interested parties have an opportunity to participate in the decision process. This exemption might apply to public works, certain forms of urban renewal, historic districts, the institution which does its own campus planning.)

6. PUBLIC SERVICE CORPORATION EXEMPTION PROCEDURE

A building structure or land used or to be used by a public service corporation may be exempted from the operation of a development regulation or amendment if upon petition of the corporation, the state department of public utilities shall, after public notice and hearing, decide that the present or proposed situation of the building structure or land in question is reasonably necessary for the convenience or welfare of the public.

LEGISLATING THE URBAN DESIGN PROCESS

7. URBAN DESIGN MAPS

As part of the Urban Design Code there shall be a set of maps showing parcels of land within those parts of the city controlled by Urban Design Regulations. On each lot or adjacent lots of land on such maps there shall be letters, numbers, or other symbols designating development regulations applicable to such lot or lots. Within the Urban Design Code there shall be detailed regulations in any of the forms set out in Section 3 of this Act corresponding to the letters, numbers or other symbols of the Urban Design Maps.

8. EFFECT OF THIS ACT ON CONSTRUCTION, DEMOLITION, USE AND SUBDIVISION

No structure or part thereof shall be erected, altered, extended, demolished or reconstructed; no structure or lot shall be used or occupied; and no land shall be subdivided except in conformity with the Urban Design Code adopted according to this Act, and except according to a building, use or subdivision permit issued by the Building Commissioner. No building, use or subdivision permit (herein called permit) shall be issued by the Building Commissioner for a particular construction, use or subdivision until such permit has been authorized by a Design Examiner or the Urban Design Commission under the terms of this Act and the Urban Design Code. The signing by the Building Commissioner of a proposed final plat or a proposed deed creating a subdivision, when he has been so authorized by an Examiner or the Commission, can constitute a subdivision permit. State and municipal officers shall refuse to issue any permit or license for a building, use or subdivision which would be in violation of this Act or the Urban Design Code. The Recorder of Deeds shall not record a subdivision controlled by this Act unless a subdivision permit has been issued or the proposed subdivision plat or proposed deed creating the subdivision has been signed by the Building Commissioner. The Secretary of the Urban Design Commission shall transmit general changes in the Urban Design Code affecting this procedure to the Recorder of Deeds. Any sale of a lot or parcel of land created by a subdivision which violates this Act or the Urban Design Code shall be void. The buyer of such lot or parcel of land may recover the purchase price, legal or other expenses incurred in the sale or recovery of the purchase price, and in addition punitive damages which may be awarded by the Circuit Court, not to exceed the amount of the purchase price.

9. APPLICATION BY PROPERTY OWNER FOR PERMIT OR AMENDMENT

A person seeking a permit according to this Act and the Urban Design Code or seeking a change in the design regulations as they affect his property, shall present to a Design Examiner such application, plans and descriptive material the Examiner may require. The Examiner may require alternate plans, cost benefit analysis, market analysis or other studies to determine the effect of the proposed development. The application which proposes building dimensions, use or subdivision not then permitted on that lot by the Urban Design Code shall be considered an application for amendment to the Urban Design Code which shall reach the Urban Design Commission by the procedure of Sections 9, 10, 11, 13 and 14. A party owning an interest, including an option, in a building or parcel of land may join with other owners or with a neighborhood organization of residents or businessmen seeking adoption of regulations to carry out a development plan for a street, block, neighborhood, or section of the city. Such an application shall follow the procedures of Sections 9-11, 13 and 14 of this Act.

10. PARTICIPATION IN DECISION MAKING BY INTERESTED PARTIES

Upon receipt of an application for a permit or a change in the Design Code or Maps, a Design Examiner will file notice in a neighborhood or general circulation newspaper giving a brief description of the proposal with its location, inviting interested parties to communicate with the Design Examiner by phone, mail or in person their preference regarding the proposal. The Design Examiner shall send a similar notice to owners of property adjacent to a proposed permit or change in the Design Map, as such owners names appear on the most recent local tax list. The Examiner shall record and consider all communications received within seven days from the date of publication, and may record and consider late communications. Interested parties include persons owning or frequently using land or buildings within view of the premises in question; neighborhood organizations of residents or businessmen; non-profit organizations with environmental objectives such as conservation, open-housing, historic preservation; professional organizations of environmental experts such as architects or realtors; any public agency including the Design Commission and the city council.

11. PROVISIONAL DECISION OF THE DESIGN EXAMINER

The Design Examiner will make a provisional decision as to the building dimensions, use or subdivision he will approve or recommend that the Design Commission approve. The decision of the Design Examiner may take any of the forms described in Section 3. In making his decision the Examiner can include some features sought by the applicant, in exchange for the applicant's making concessions in use or dimensions which are in the public interest. The Examiner may make a decision which the applicant does not concur in and may decide that no permit should be issued or no design regulations changed. The Examiner may refuse to issue a permit for a proposed development even though the proposal meets the requirements of the Urban Design Regulations for that site. If such a refusal by the Examiner is appealed to the Commission, that body shall consider the Examiner's refusal as a recommended amendment to the Design Code.

In making his provisional decision the Examiner shall consider the objectives presented by the plans of the applicant, preferences of interested persons, other plans and policies of the city, other objectives of Section 3 of this Act, and objectives discovered during the review procedure of Sections 9, 10 and 11, including objectives not anticipated or intended by the Urban Design Code for the lot in question at the time of application. If the provisional decision proposes building dimensions, use or a subdivision not permitted on that lot by the Design Code, the decision shall be a recommendation to the Design Commission for amendment to the Design Code.

12. AUTHORIZATION OF PERMIT BY THE DESIGN EXAMINER

(1.) This section applies when an applicant following the procedure of Section 9 seeks a permit and not simply a change in the Design Code. The Design Examiner shall after he has made the provisional decision described in Section 11, give notice of his decision in writing to those interested parties who have made specific written request for such notice.

(2.) An interested party may within seven days after notice of decision appeal such provisional decision to the Design Commission.

(3.) If no timely appeal has been filed, and if the Design Examiner certifies that his provisional decision is within the authority granted him by the Design Code for the land or building in question, the Design Examiner shall authorize the Building Commissioner to issue

a permit or sign a proposed final subdivision plat or sign a proposed deed creating a subdivision.

(4.) When a proposed subdivision plat includes streets, parks or other common land which is to be dedicated to public use and maintained by the city or some other public agency, the Building Commissioner shall not sign the subdivision plat until such street, park or other common land has been accepted for dedication and maintenance by the appropriate public agency or board. This requirement applies to plats offered to the Building Commissioner under Section 12 as well as Section 15.

13. HEARING ON THE APPLICATION BY THE URBAN DESIGN COMMISSION

Except those applications for which the Design Examiner can authorize the Building Commissioner to issue a permit, as set out in Section 12, the Examiner shall deliver the application for a permit or change in the Design Code or Maps, with plans and other material submitted, a record of communications from interested parties, and his provisional decision with reasons, to the Commission. Upon receipt of such material the Commission shall file notice in a neighborhood or general circulation newspaper, and will notify by mail those interested parties who were notified by mail of the Design Examiner's decision, according to Section 12. The notice will include the location and a brief description of the provisional decision; it will invite interested persons to communicate their preferences regarding the proposal in writing or by attending a public hearing at the time and place indicated.

14. FINAL DECISION BY THE URBAN DESIGN COMMISSION

After a public hearing on an application which comes before the Commission according to the procedure of Section 13, the Commission shall make a final decision. The decision may take any of the forms described in Section 3.

The Commission may accept or modify the provisional decision of the Design Examiner; may include some features sought by the applicant, in exchange for the applicant's making concessions in use or dimensions which are in the public interest; may make a decision the applicant does not concur in; may decide that no permit should be issued, or no regulations changed. The Commission may decide that regulations which permit the development proposed by an applicant should be amended to prohibit such proposal, and that applicant's

proposal must either be revised or rejected. Such a decision by the Commission constitutes an amendment to the Code.

In making its decision the Commission shall consider the objectives presented by the plans of the applicant, preferences of interested parties, other plans and policies of the city, other objectives of Section 3 of this Act, and objectives discovered during the review procedures of Sections 9-14, including objectives not anticipated or intended by the Urban Design Code for that lot at the time of application.

If the Commission decides on building dimensions, space use or a subdivision not permitted on that lot by the Code, the decision constitutes an amendment to the Code. The decision of the Commission shall take effect immediately upon its written certification by the Secretary of the Commission.

15. AUTHORIZATION OF PERMIT BY THE URBAN DESIGN COMMISSION

Immediately after the decision of the Commission, the Building Commissioner may issue a permit according to such decision, or sign a proposed subdivision plat or sign a proposed deed creating a subdivision.

16. APPEAL TO CIRCUIT COURT

Within fifteen days after the decision of the Commission, the applicant or an interested party aggrieved by the decision of the Commission, whether or not previously a party to the proceeding, may appeal to the Circuit Court. The Circuit Court may suspend such permit, pending the outcome of the appeal.

Every person so appealing shall file a bond with sufficient surety to be approved by the court, for such a sum as shall be fixed by the court, to indemnify and save harmless the person or persons in whose favor the decision was rendered from all damages and costs which he or they may sustain in case the decision of the Commission is affirmed. Upon an appeal under this section, the court shall hear all pertinent evidence and determine the facts, and upon the facts as so determined, annul such decision if found to exceed the authority of the Commission, or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases.

Costs shall not be allowed against said Commission unless it shall appear to the court that the Commission, in making the decision appealed from acted with gross negligence, in bad faith or with malice; and costs shall not be allowed against the party appealing from the

decision of the Commission unless it shall appear to the court that said party acted in bad faith or with malice in appealing to the court.

All issues in any proceeding under this section shall have precedence over all other civil actions and proceedings.

17. JURISDICTION OF CIRCUIT COURT

The Circuit Court shall have jurisdiction to enforce the provisions of this act, and any regulation or amendment thereof adopted under this act, and may restrain by injunction violation thereof.

18. AMENDMENTS TO THE URBAN DESIGN CODE

The following types of amendments may be made to the Code and Maps:

1. A Code amendment which applies to a class of buildings, uses of space or subdivision of land.
2. A Code amendment affecting procedure.
3. An amendment to the Maps which extends the area or number of lots to which a set of development regulations apply.
4. Code or Map amendments applying to a particular building or contiguous group of buildings, use of space, or lots, and not intended as a general set of regulations to be applied to other locations.

19. HOW AMENDED

(1.) A party owning an interest, including an option, in a building or parcel of land may apply for a permit or for any of the types of amendment described in Section 18 by following the procedures of Sections 9-14.

(2.) An interested party to an application for a permit of amendment made according to Section 9 may appeal for amendment or decision affecting such application by following the procedures of Sections 12-14.

(3.) The Commission by its own initiative may amend the Code in any of the four methods described in Section 18, after notice and public hearing. Such notice shall be published at least fourteen days prior to such hearing in a neighborhood or general circulation newspaper, and shall give the time and place of the hearing, either state the express terms of the proposed amendment or state the general subject and the times when and the place where a copy of the express terms may be obtained.

No person or agency may apply directly to the Commission for an amendment to the Code, or for a permit, but it is proper for public

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agencies having responsibility for planning, development or redevelopment within the city to inform the Commission of Code amendments which would further some public objective or plan so that the Commission can initiate appropriate Code amendments.

20. AUTOMATIC PERMIT AFTER DELAY

The Building Commissioner shall forthwith grant the permit sought by a party owning an interest, including an option, in a building or parcel of land if such person has applied for such permit according to the procedures of Sections 9-14 and has not received within sixty days from the date of application either:

- (a.) a provisional decision of the Examiner, as described in Section 11, from which no timely appeal has been made to the Commissioner, or
- (b.) a final decision by the Commission, as described in Section 14, unless the applicant has agreed in writing with an Examiner or the Secretary of the Commission to defer his rights under this Section for some stated period.

21. FEES

Fees to be paid by applicants or interested persons for the various applications and appeals of Sections 9-15 and 19 may be established by the Commission. Such fees to the permit applicant may vary with the magnitude of the cost, use, lot or construction involved.

22. NO BOARD OF APPEAL JURISDICTION

The Board of Appeal provided for [cite the law] shall have no jurisdiction or powers under this Act or the Code.

[This section is useful if the CUD is intended to take away all design permit jurisdiction from a Board of Appeal, but would not abolish the Board. There may be a Board of Appeal having zoning and building code jurisdiction before adoption of the CUD, which is intended to have only building jurisdiction after adoption of the CUD.]

23. REGULATION OF NON-CONFORMING USE

A regulation or any amendment thereof shall apply to any change in the use of a building or structure or of land, and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change, and to any alteration of a building or structure to provide for its use for a purpose or in a manner substan-

tially different from the use to which it was put before alteration, or for its use for the same purpose to a substantially greater extent, or any new subdivision of land. However, no regulation nor any amendment thereof shall apply to existing buildings or structures, nor to the existing use of any building or structure, or of land to the extent to which it is used at the time of the adoption of such regulation or amendment or any existing division of land, except that any such regulation or amendment may regulate non-use of a non-conforming use so as not to unduly prolong the life thereof.

24. EFFECT OF AMENDMENT OF AN EXISTING PERMIT

No regulation or amendment thereof shall affect any permit issued or any building or structure lawfully begun before notice of hearing before the Commission has first been given; provided, that construction work under such a permit is commenced within six months after its issue, and the work, whether under such permit or otherwise lawfully begun, proceeds in good faith continuously to completion so far as is reasonably practicable under the circumstances. The issuance of a permit or the beginning of work upon a building or structure, or a change of use, after such notice has been given, shall not justify the violation of a regulation or an amendment thereof subsequently adopted as the outcome of such hearing and in substantial accord with such notice; provided the subsequent steps required for the adoption of such regulation or amendment thereof are taken in their usual sequence without unnecessary or unreasonable delay.

25. WHEN THIS ACT SHALL TAKE EFFECT

[This section deals with the transition from another regulation system such as zoning and subdivision control to this Code for Urban Design. This section might specify how the first Urban Design Code and Maps should be prepared and adopted, and the first Urban Design Commission chosen; and state that the Code would take effect after those steps.]