

Zoning Issues and Discussion



**LaPlata County Commissioners
Durango, CO
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C L A R I O N

- 1. What kinds of zoning are available?**
- 2. What are the pros and cons of different kinds of zoning?**
- 3. How do you sequence planning, zoning and infrastructure?**
- 4. Lessons learned.**

. . . . Answering your questions along the way

Why have zoning – what does it get property owners and the County?
Should all real properties be treated equally?
How should zoning differ for greenfield development and redevelopment?
How do you balance the need to respect market forces with the desire for good planning?
How do you balance the need for predictability and flexibility in zoning?
Once a property is zoned, can a property owner just pull a building permit?
How do different kinds of zoning affect the time needed for application processing?
How do 1041 powers fit into this discussion?
What needs to be in place before adopting zoning?

A very wide variety

- No two counties or cities do it the same way

But you can categorize zoning tools into 4 types

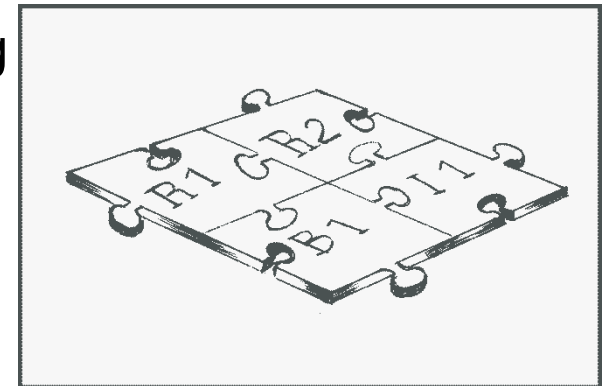
- Standard (Euclidean)
- Performance
- Negotiated (PUDs)
- Form-based

All 4 were created to balance predictability and flexibility in different ways

Many communities use more than one type of tool – pure forms are rare

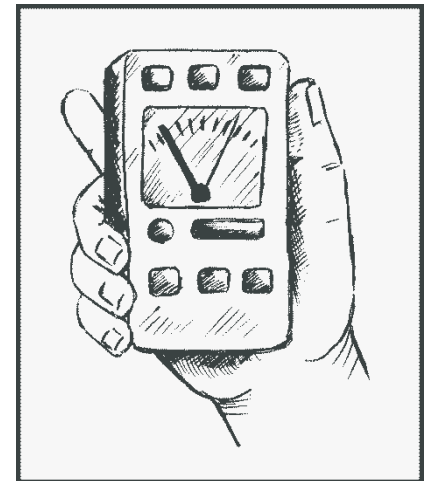
Standard

- A minimum lot size (and sometimes width)
- Building setbacks from lot lines
- A maximum height (normal, but not always)
- A list of uses allowed to take place on the site
 - And usually some that are allowed after county review
 - Mixes of uses are OK
- Quality standards (signs, parking, landscaping)
- **A different set for each “zone”**
- **A map applying zones to the land**



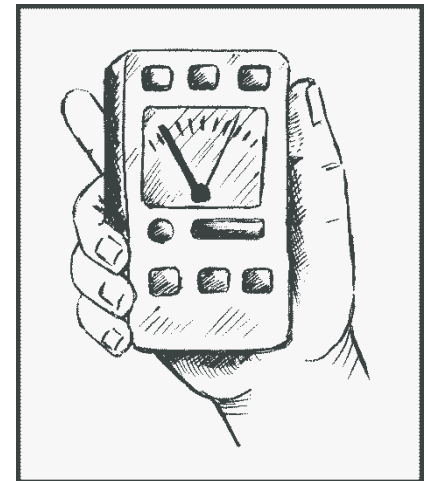
Performance

- Still defines zones and applies them to the land
- But uses fewer physical standards like setbacks
- Includes more measures of impacts on neighbors and the public
 - No overloading of roads
 - No detectable vibrations at the property line
 - No glare on adjacent properties
 - Compatible -- Appropriate
- Requires the government to exercise more judgment – since it is often not clear whether the proposal meets the performance



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Negotiated (PUDs)

- Design a new district specifically for the proposed development
- Intended as an option to standard and performance zoning – not as the only zoning tool
- Intended to allow applicants to gain flexibility and counties to require innovative design or extra amenities in return for that flexibility
- PUDs are part zoning-part contract – they cannot be changed by the county alone, but they can't bind the county forever



Form-Based

- Still defines zones and applies them to the land
- But the zones are based more on the shape and form of the buildings (so that they are sure to fit in with those around them) and less on the uses allowed in those buildings
 - More flexibility in use
 - Less flexibility in design
- Really not intended, or well suited, for rural zoning – more an urban tool.

6.2 LIVE/WORK BUILDING: GROUP A FRONTAGE TYPES

Allowed Group A Frontage Types

Building Setbacks

Dimension	Setback	T6	T5	T4	T3	CS
A	Front Setback	0' max.		0' max.		
D	Side Setback	Street-Facing	0' max.	10' max.	5' min.	N/A
		Non Street-Facing	0' max.	10' max.	5' min.	
C	Rear Setback	Corner Lots	5' max.	5' max. or 16' min.	5' min.	N/A
		Interior Lots	5' max. or 16' min.	5' min.		
	Gallery or Arcade Setback	with Rear Alley	5' max. or 16' min.	5' min.		
		without Rear Alley	5' min.			
E	Gallery or Arcade Setback	3' max. from curb to column/corner				

Applicable Notes:

1. At least 80% of the building facade shall be located at the front setback line.
2. For buildings located on corner lots, at least the best 30' of the building facade, as measured from the front building corner, shall be located at the setback line.

Building Height

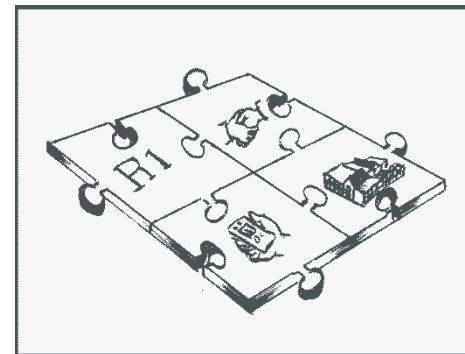
Dimension		T6	T5	T4	T3	CS
D	Minimum Building Height (stories)	2	2	3	3	N/A
	Maximum Building Height (stories)	10	4	3	2 1/2	

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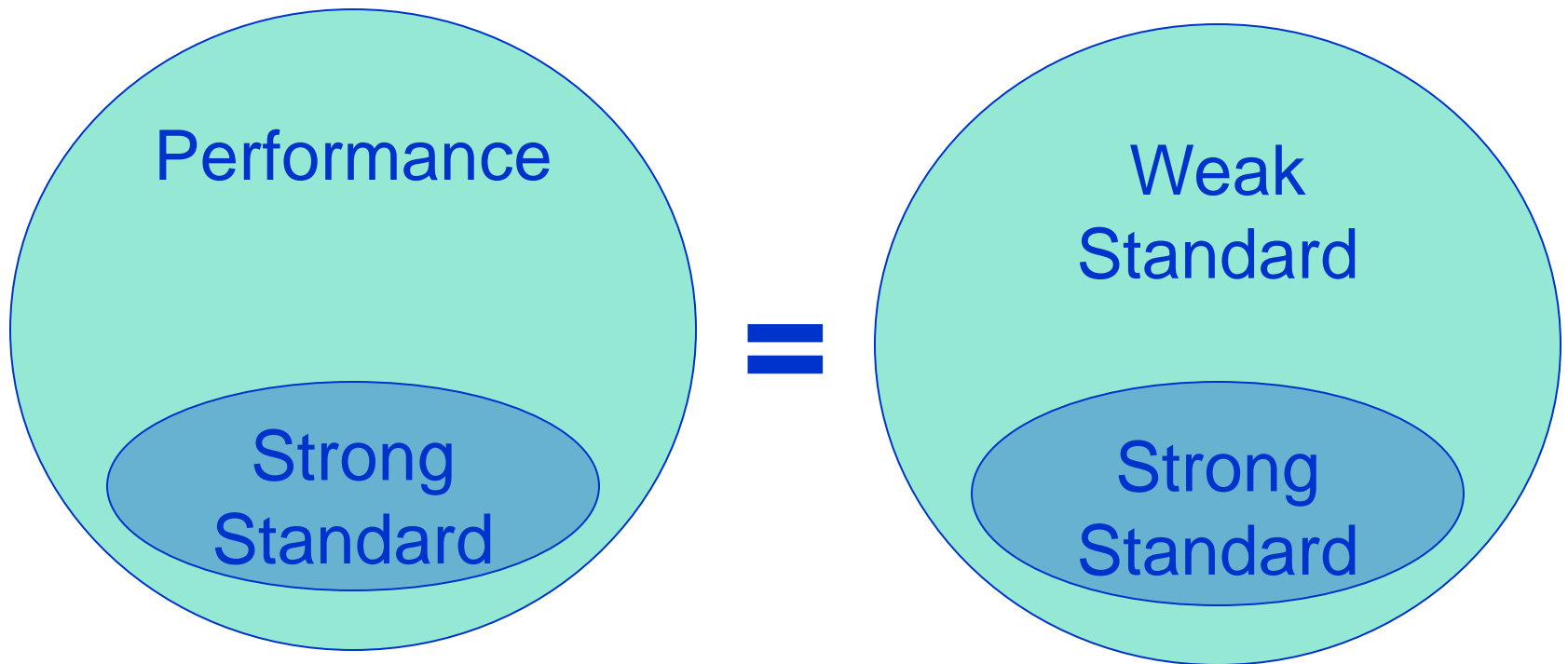
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For Example:

- **Standard** zoning with objective measures for areas already developed with many homes, or near cities, because the character of the area is well-defined and neighbors want that character to continue
- **Performance** zoning (or standard zoning with fewer measures) for rural areas where flexibility is needed – but limited to rural / agricultural / low density uses
- **Negotiated** zoning for large and unique developments that will not be repeated



**Often the same results can be achieved
with different tools**



Most counties that adopt zoning do so for some combination of three reasons

1. Predictability

- Voters and property owners want to know that their investments will not be undermined by what happens nearby
- As populations grow, those voices get louder
- IF you have a plan, it's a good implementation tool
- BUT, the trick is to find zoning tools that ensure predictability on topics of concern to their voters while allowing flexibility in other areas

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2. Managing Service Costs

- Types and patterns of growth can have a big impact on costs of infrastructure and public services
- In general, contiguous, growth costs less to provide community water, sewer, sheriff, EMS
- Even if not contiguous, predictable types and densities of development make it easier to plan for service expansion in the future
- Most residential development doesn't generate as much in tax revenue as it costs to serve, so try to reduce those losses and offset them by other development residential development

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3. Managing Impacts on Others

- Many types of development have impacts on properties around them – added traffic on shared roads, dust and erosion, lights at night, etc.
- Zoning allows the county to impose regulations to limit those impacts – i.e. by limiting traffic generation, requiring designs that reduce erosion etc.
- By stating clearly which types of impacts are acceptable, and which are not, zoning sends clearer signals to the market about where investment can occur most easily

Each type of zoning tool has its pros and cons

Type of Zoning Tool	Pros	Cons
Standard		
Performance		
Negotiated		
Form-Based		

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Form-Based	Very high control over shape, form, and details of buildings. Sometimes more flexibility in building use. Very predictable for neighbors	More expensive to draft. Sometimes more expensive to administer.

Two Ways

1. By your choice of zoning tools and standards

- If you want more flexibility, adopt generous standards
 - Allow more density, taller buildings, so that most of the applications meet the standards and get approved
- Use performance measures – approve based on estimated traffic counts or water needs, not the number of houses
- Use PUDs for the truly unusual

2. Build in flexibility for staff to approve minor deviations

- Allow them to vary standards by 10% for site conditions

Zoning was created during the 1920s as a pro-business tool to increase efficiency by guiding development where its impacts will be acceptable.



- It is hard to stand directly in the path of strong market forces for very long –the rule will probably get changed
- But you can guide market demand and investment to places where it can be serviced more efficiently
- Almost all zoning tries to “bend” market forces to encourage development in some areas and discourage it in others
- Counties that adopt zoning often use Negotiated Zoning (PUDs) to handle exceptional market forces in unexpected locations

Most counties strive to have applications processed as quickly as possible, both to save applicant time and county staff time. As a general rule that means over-the-counter approval for the majority of applications:



The key to speed is setting clear standards and letting staff make most of the decisions (subject to appeal)

It depends on the type of zoning

Standard – Generally yes

- Although some counties require “site plan review” for multi-family, commercial, and industrial projects

Performance – Generally yes, after you have shown that the application meets the performance standards

- But because judgments are involved, some counties send these to the Planning Commission for review and approval

Negotiated – Often no, because PUD zoning often is vague and requires the applicant to obtain approval of a more detailed site specific plan before pulling a building permit

Form-based – Generally yes, provided you meet the detailed standards

No, for two reasons

1. It wasn't made equal to start with

Land varies a lot, and the impacts of development often vary according to the qualities of the land

- Steep slopes
- Poor/unstable soils
- Wetlands
- Floodplains
- Groundwater – or not

2. History matters

The patterns in which cities, roads, pipes, and settlements have been built make it more efficient to develop in some areas, and more expensive in others

But shouldn't it be treated as legally equal?

- That's mostly a local choice
 - Except where state and federal law impose requirements
- But the law has never assumed that is true
 - Nuisance law has always applied – an activity in a place that creates unacceptable impacts for neighbors has always been subject to termination
 - Subdivision law applies without zoning – some types of land can be laid out for safe development lots, others cannot

Very different

- Zoning applied to areas where development already exists should usually be crafted to reflect those development patterns
- Redevelopment usually occurs very slowly, so imposing new “modern” standards is unlikely to change “outdates” patterns to “modern” patterns anytime soon
- And you want to avoid creating “non-conformities” – situations where properties become “illegal” because zoning was adopted
- Some codes do that by clarifying that pre-existing development shall be “deemed” conforming, but new development and redevelopment on the lot must meet the new standards
- Greenfield zoning is less constrained, but should still recognize location and service efficiency

1041 Powers are for counties that:

- Want some of the powers that come with zoning without defining districts or saying the “Z” word; or
- Want an extra level of control over specific types of high impact development; or
- Want to adopt standards that can apply to HR cities, the state, and in some cases federal government applicants

Essentially, it’s a permit system in lieu of zoning districts. The county:

1. Sets standards for a specific type of development (new communities, water projects, etc.); and
2. All new development of that type needs to meet those standards in order to get a permit to go forward

The Textbook Answer

- Plan --- then zone --- then install infrastructure
- Tie the zoning to intended service and development patterns
- Tie the infrastructure to zoned types and densities of development

But that is not a legal requirement

- Colorado law requires that zoning be based on a “zoning plan” – generally interpreted to be a map of the proposed districts, not a comprehensive plan

Many communities do not follow the textbook

- Some zone without a comprehensive plan -- because they can agree on what impacts and costs they want to avoid – and even some areas they want to see developed or not developed -- even if they cannot agree on a vision for the future
- Others zone areas of existing development to ensure that that character will be continued into the future – without a plan
- If infrastructure has been installed, zoning is sometimes adopted later to reflect the densities and types of development needed to support that infrastructure – and to avoid development that the infrastructure could not support
- Zoning without a plan is likely to restart the planning discussion

1. Keep use regulations fairly general

- It's easy to get carried away and overregulate by listing very specific uses when their impacts are actually very similar
- Most new codes use fewer, broader categories of uses to allow more flexibility for owners and to reduce the costs of tracking or approving minor changes in use

2. Be flexible about accessory uses

- So many businesses can be conducted from homes with minimal impacts that it only makes sense to regulate those with big impacts on their neighbors
- One good way to keep rural land economically viable is to get more creative about the list of agriculture- and rural-related uses that can help generate cash flow without changing the character of the area

3. Start with the character and location of the land

- Mesa County ties to comp plan densities
- Larimer and Routt use an optional “walk the land” approach that rewards careful design
- Montrose used a “valley and foothills” zone where standards depend on land character
- Kansas counties tie it to an ag land quality index
- Some lands are simply not appropriate for dense development – others are not appropriate for low density development – because of the costs that type of development imposes on others

4. Minimize “Non-conformities”

- Draft around the existing character of developed areas – or make sure the code treats them as legal – unless you are really trying to drive them out (which is very rare)
- Most non-conformities are “benign” – they just reflect past practices and don’t hurt anyone – so let them be
- Zoning is much better at guiding the future than fixing the past

5. Reserve PUDs for large and unique developments

- PUDs work best when they are used to modify an underlying system of zoning – not as a replacement for objective standards
- PUDs are time consuming to negotiate and harder to administer and amend than other forms of zoning – only use them when you're willing to devote significant staff time to maintaining them over time
- **Don't** base zoning on negotiating everything

6. Delegate authority to staff and PC

- Faster and more consistent approvals happen through staff-oriented review systems
- Where more judgment or public comment is needed, let PC make the decision
- Use BOCC approval only for large and difficult approvals (PUDs, gravel, power, etc.)
- Appeals are always available – but seldom used
- If necessary use a “call-up” system – staff makes the decision but PC or BOCC can call it up if it meets “large or unusual” criteria

7. Pay attention to long-term service costs

- Remember the Interstate Highway system
 - Operating and maintenance costs dwarf the initial investment cost over time
- Deciding who will fund initial infrastructure capital costs is important
 - And those costs are increasingly placed on the applicant – because taxpayers refuse to pay them
- But knowing and covering the long-term operating and maintenance costs is more important
 - They continue indefinitely

8. Keep it simple and flexible

- The zoning systems that are most acceptable to the property owners, investors, and the public are those that are predictable and easy to understand
- Simplicity cuts administration and staffing costs
- Allow breathing room for minor “flexibility” within a framework of overall “predictability”
- Focus on guiding the big patterns of future development – the ones that most determine county image, economic potential, and service costs – and don’t try to manage the details

