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Phase I Draft Report

Design Based Regulation Assessment

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DRAFT PHASE 1 REPORT

1. OVERVIEW

1.1. PURPOSE

This report is intended to help the City of Gainesville structure a program to update its land development regulations to more effectively implement the Comprehensive Plan. The most significant gaps between Plan policies and adopted Land Development Code (LDC) are in the areas of scale and design. The City has struggled to reconcile plan policy and existing regulations, particularly finding standards for mixed use development that reflect market conditions, common development practices or even neighborhood preferences. In an effort parallel to this assessment, the consultant team drafted amendments to the LDC that provide clearer guidance and greater flexibility for development within the MU-1 and MU-2 zoning districts. The draft amendments also address location and design challenges for large scale retail projects. Those amendments are a patch to the LDC and provide a sample for inclusion of design-based regulations. This document is intended to pick up where the patches to the land development regulations left off. More specifically, it:

- Evaluates existing deficiencies in the plan affecting the City of Gainesville's land development regulations (section 2.1);
- Identifies deficiencies in the adopted land development code's organization, procedures and standards (section 2.2);
- Defines design (or form) based regulation and discusses their content, advantages and limitations, as well as the distinction between design standards and architectural standards (section 3);
- Describes regulatory alternatives for the implementation of design-based regulations (section 4);
- Discusses key factors affecting the selection of the best approach for code update process (section 5); and
- Makes findings and recommendations for the substance and process of updating the City's adopted Land Development Code (LDC) (section 6).

1.2. ASSUMPTIONS

This review is based on a series of focus group meetings with City staff, architects, developers, realtors, and neighborhood representatives, as well as detailed reviews of the comprehensive plan and land development code by the following consultant team members:

- Michael Lauer, AICP – Principal for Planning Works
- Valerie Hubbard, AICP – Associate for Akerman Senterfitt
- Mark White, AICP – Partner for White and Smith
- Ginger Corless, AICP, CPRP – President of HHI Design
- Alex Law, AICP – Designer for HHI Design

The report's findings and recommendations are based on this background and the following assumptions that emerged from that background:

- Gainesville's Comprehensive Plan reflects the City's vision for its future;
- Newer design-based recommendations in the Plan reflect the City's desire to encourage traditional neighborhood development patterns that support a mix of uses and enhanced mobility choices;
- The Plan is less clear about the desire to maintain suburban development patterns in some areas, including large-scale auto-oriented retail development;
- The City's LDC has been patched over the last two decades, but does not adequately reflect the Plan's directives;
- Modifications to the LDC that are needed to resolve questions about the mix of uses, the scale of commercial development and when to apply urban and suburban standards have been addressed for the MU-1 and MU-2 districts in draft regulations prepared by the consultant team.

The draft regulations are a patch to resolve urgent regulatory challenges, but a more comprehensive review of the LDC is needed to address deficiencies in the code's organization, procedures and standards.

1.3. SUMMARY OF RECOMMENDATIONS

This report includes a number of recommendations for revision of the City's Comprehensive Plan and LDC, including:

1. In anticipatio n of the passage of Amendment 4, Comprehensive Plan policies should be revised to ensure that there is adequate flexibility for desired transitions in character and scale can take place without the need for plan amendments.
2. M odify the Plan and LDC to better distinguish core and edge area design standards.
3. The LDC should be modified th rough an open and inclusive process to:
    - Maintain the basic organizational structure, but review and revise the internal organization of chapters for greater consistency and convenience;
    - Apply design-based regulations to all zoning districts through district and supplemental use standards to better achieve plan objectives;
    - Replace specific area plans with zoning standards that address the area plan design objectives uniformly in applicable zoning districts;
    - Modify streetscape standards and related procedures to better accommodate utilities and trees;
    - Replace existing SIC based land use classification system with the LBCS system, which better distinguishes land uses based on impacts;
    - Reduce the number of zoning districts;
    - Develop more context-sensitive sign regulations; and
    - Adjust standards for the design, location and number of parking spaces required.

2. CONTEXT

2.1. COMPREHENSIVE PLAN

2.1.1. ROLE OF COMPREHENSIVE PLAN

In Florida, the comprehensive plan is the controlling document with respect to development. Section 163.3194, Florida Statutes, calls for adoption of land development regulations to implement the plan and requires that all regulations be consistent with the plan. Section 163.3194 further requires that once a comprehensive plan, or element or portion thereof has been adopted in conformity with Chapter 163, "all actions taken in regard to development orders...must be consistent with such plan or element as adopted." This section states that when the plan provisions and the land development regulations are inconsistent, the plan governs. It is therefore important to consider the need for plan amendments in conjunction with any changes to the land development code.

In Gainesville, it appears that the Comprehensive Plan has stayed abreast of the community's vision and has been revised more holistically than the Land Development Code (LDC). While the Plan continues to recognize that a portion of City is and will indefinitely remain suburban, encouraging traditional development patterns. The Plan also recognizes the crucial connection between land use and mobility options, and provides strong guidance on this issue. Despite numerous design-oriented overlays, the LDC has not generally kept pace with the overall design orientation of the Plan.

If the City transitions to design or form-based regulations, amendments to the Plan will be necessary and desirable. The Plan should outline the City's future course with respect to its vision as well as the steps for achieving that vision. More specifically, the Plan should clarify:

- The objectives of design-based regulation;
- The approach: where, how and when it will be implemented;
- The preferred design-based approach;
- Criteria for areas that will retain a conventional approach;
- Whether and under what circumstances conventional areas would transition to a design-based approach; and
- How the design-based approach will affect the need for infrastructure and how this infrastructure will be prioritized.

One consideration, in amending the Plan, is the level of specificity appropriate for Plan provisions. The City's Plan, in some instances, contains very specific and detailed standards that might better be placed in the Code. This is true particularly in portions where design concepts are being used. The Plan must be specific on certain points to meet state requirements, such as maximum intensity levels and the relative mix of uses. Specificity might also be desirable to underline the importance of a particular standard and make that standard more difficult to change. In general, however, there are clear disadvantages to becoming too specific in a comprehensive plan.

- The plan can lose its focus on the bigger picture vision of the community's future and thereby become a less compelling and effective document.
- State review is required for plan amendments, meaning that they are subject to a much more lengthy and complicated process with involvement by state agencies. This may be helpful for a more general planning document, but becomes a cumbersome process for a detailed regulatory document.
- The complications of amending plans will be much greater should the proposed Constitutional Amendment 4 be passed in November 2010. It may become very difficult to revise plan provisions that are not working as well as anticipated.
- Overly specific plan-based standards can reduce design flexibility because there is typically no variance process for plan policies.
- The provisions relating to legal standing and the processes for legal challenges differ with plans versus land development codes.

2.1.2. RELATIONSHIP TO LDC

One common and accepted approach to addressing state requirements for comprehensive plan policy language is to commit to certain actions, sometimes by a specific date. These might include commitments to land development code amendments, special studies or other types of implementation. The current Plan contains numerous policies of this type relative to design-related measures. The Plan update should remove outdated policies and make new commitments as appropriate to reflect the City's new design-based approach.

2.1.3. LDC AMENDMENTS RECOMMENDED BY PLAN

The City's Comprehensive Plan includes a wide range of policies that establish explicit and implied directives for revisions to the City's LDC. While a systematic review of all of the edits is beyond the scope if this initial review, some of the most significant policies located within the Future Land Use (FLU), Storm Water Management (SWM)), Transportation Mobility (TM), and Urban Design (UD)elements include:

- Policies for more livable designs that promote mobility options under FLU element objective 1.2.
- Guidance for transformation of suburban shopping centers to urban mixed use centers under FLU element objective 1.3.
- Promotion of mixed use development under FLU objective 1.4.
- Redevelopment policies under FLU objective 2.1.
- Integrated stormwater management under SWM element objective 1.5. Note that existing stormwater standards should provide greater flexibility for urban stormwater management facilities that include shared systems.
- Promotion of better coordinated land use and transportation systems under TM element objective 1.1 to promote greater mobility choices and produce a more livable city. Policies under this objective also address the concepts of structured parking and the benefits of "complete street" designs that serve pedestrians, transit users, bicyclists and cars.

- Right-of-way protection under TM element objective 1.4.
- Site design to reduce trip length and support pedestrians and bicyclists under TM element objective 1.5.
- Increasing transit ridership through density and design enhancements under TM objective 3.2.
- Improved urban design throughout the entire UD element.

While many of these policies have been implemented, the LDC still falls short in providing clear guidance on how these directives should be carried out. In particular, the LDC fails to:

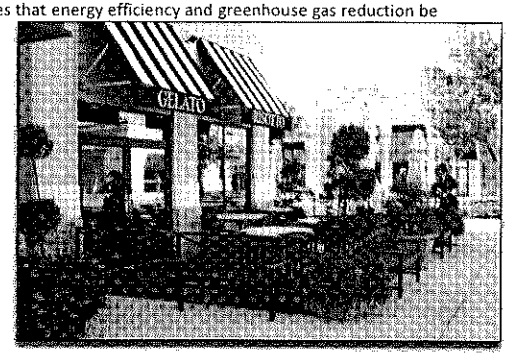
- Resolve streetscape conflicts. While there is a clear desire to create more urban streets, this often causes conflicts between utilities, tree plantings and street setbacks.
- Address design distinctions between core areas and edge areas. In particular, the LDC does not establish clear distinctions between development along urban arterials, where traffic moves at relatively slow speeds, and high speed arterials, where greater separation is needed to protect pedestrians and bicyclists.
- Describe how the scale and character of development should differ between identified activity centers. Although some of the zoning district standards address issues of scale, not all districts adequately address the appropriate scale or intensity of development.
- Establish a simple mechanism to address character differences between different areas of the City. Specific Area Plans are included as appendices to the LDC, but they create a confusing set of overlay requirements.

2.1.4. PLAN AMENDMENTS NEEDED TO SUPPORT DESIGN-BASED REGULATION

The key components needed to support the Code in the Plan are outlined in 2.1.1 above. There are few provisions within the Plan that would be inconsistent with design-based land development regulations, but additional policy language would better support this approach. The design-oriented components already present in the Plan lay important groundwork and the City has used design overlays in the Plan and Code. Many of the design-oriented policies within the Plan are intended for more general application citywide without regard to character areas or existing patterns and therefore do not provide the level of guidance appropriate for design-based regulations. The areas suitable for a design-based code encompass a number of the areas currently subject to special area plans and other more urban parts of the City. Given the probable scope of the affected areas and the magnitude of the Code changes, fairly significant Plan amendments are likely to be necessary. The level and type of amendments will vary somewhat, depending on the alternative chosen for implementing the code, but the following plan amendments may be needed:

- Both the Urban Design and the Future Land Use Elements should define the role of design-based regulation in guiding development within the City.
- The Future Land Use Element should identify the areas within which design-based regulations will be applied and the timing of implementation.
- The Future Land Use Element should provide the parameters for design-based regulations, generally outlining design factors that will be used in the Code. As explained later in this report, it is not recommended that the Comprehensive Plan contain a "regulating plan", but it could contain criteria for a regulating plan.
- Gainesville's Code is outdated, and needs a substantial overhaul. As this occurs, the City should consider new approaches for areas retaining conventional development patterns that improve their functionality and vitality. These changes may create the need for plan amendments that build more flexibility into existing Plan categories and allow greater use flexibility. (An example of this is the proposal to allow limited retail and service activities, such as coffee shops, in conventional residential districts.)
- The Plan must be internally consistent, so changes to the Future Land Use Element may result in changes to other elements. If the design-based approach allows additional density and intensity, new data and analysis will be required for the affected areas, possibly resulting in new infrastructure deficiencies that must be addressed in the infrastructure elements and in the capital improvements element. Moreover, priority may need to be placed on infrastructure to serve these areas, particularly to deal with mobility alternatives. A modified approach may also be needed for stormwater facilities and open space requirements as the current approach seems more oriented towards conventional suburban development options.
- Plan elements that currently have strong design components, including the Future Land Use, Urban Design, Transportation Mobility and Concurrency Management Elements may require changes to ensure internal consistency and consistency between the Plan and the Code. Some of the existing, overly-specific, design-based policy language may become irrelevant and/or inconsistent with the amendments that are required to support design-based regulation.

Any plan update must deal with recent state legislation, particularly House Bill 697 (2008) and Senate Bill 360 (2009). House Bill 697 requires that energy efficiency and greenhouse gas reduction be considered in various elements of the plan. Senate Bill 360 requires that a mobility plan be adopted for the entire city to address a more balanced approach to mobility options. A design-based code could address many of these requirements through the link between urban form and transportation and thus become a critical component of the City's response to these mandates.



2.2. LAND DEVELOPMENT CODE

2.2.1. ROLE OF THE LDC

The vehicle the City uses to codify the mixed use regulations and to process applications is critical to its success. There are many ways to package mixed use or design based regulations (such as form-based codes or big box standards). They can range from very limited modifications to the City's existing zoning structure, to a major overhaul of its entire land development regulations. Processing is also important. Just as discretionary zoning procedures often punish innovative mixed use development, cumbersome procedures can discourage development that meets the City's design objectives. On the other hand, the procedures should ensure that affected neighborhoods are given an opportunity to provide input, decision makers are adequately informed about the applicant's intentions, and that conditions are enforceable. In addition, a built out setting provides unique issues relating to vested rights and nonconformities. This report offers a framework to implement the City's mixed use policies that resolve these issues.

Any approach to a codifying design based concepts must address the following key elements. These include:

1. **Applicability.** The regulations must determine how they are triggered. When do the regulations apply? Are they mandatory or incentive based? If mandatory, to what parts of the City do they apply? What projects are eligible for incentives, and how are these enforced?
2. **Standards.** The regulations must explain the key elements of the City's design objectives. Most design based regulations address building envelope standards (setbacks, height), façade treatment and articulation, the location of buildings and parking, civic spaces, and the design of streets and other elements of the "public realm." These standards can be either loose or minimal – providing general guidance to applicants – or very prescriptive. In either case, the regulations should give applicants clear instructions about how to design their projects in a way that satisfies the regulations.
3. **Procedures.** The regulations must lay out the steps required for applicants to entitle their property. Most form based code advocates suggest an administrative approach that minimizes discretion and speeds up the approval process. However, in most communities it is also important to keep surrounding and affected neighborhoods involved and informed about the process. Whether the City opts for a discretionary or an administrative approach, the regulations should explain how applications are filed, how decisions are made, and what rights an approved application confers. In addition, the regulations can establish an entirely new process, or apply existing (and familiar) procedures to applications that are subject to the form based code.

2.2.2. LDC OVERVIEW

The City's Land Development Code (LDC) is codified as Chapter 30 of the City Code. It is a fairly conventional code that includes several decades of regulatory patches to resolve evolving land use challenges. Most of the patchwork has fallen into three categories: addressing statutory and local needs surrounding the adequacy of public facilities (e.g., water, sewer, stormwater and transportation), design standards to address area-specific concerns (e.g., specific area plans and design standards for mixed use districts), and procedures to provide opportunities for public involvement in land use and development decisions. While a detailed analysis of the land development regulations is beyond the scope of this report, the following issues should be resolved when the LDC is amended.

LDC Organizational – Chapter 30 is a fairly consists of ten conventional articles and an appendix with 7 special area plans. The overall organization of the code is rational, but the patches that have been made to the code over the years have resulted in the scattering of similar provisions throughout different areas of the Code. The as follows:

- **Article I. In General.** This article describes the scope, purpose and objectives of the LDC, in addition to establishing a reference to the Design Manual, which establishes design standards for public improvements. These provisions are commonly included at the beginning of land development codes. Newer codes have started adding a section describing how the code should be used to the introductory Article
- **Article II. Definitions and Rules of Construction.** Defined terms and rules for construction of language are commonly included at the front of a code, though some jurisdictions shift the actual definitions to the rear of the code. Gainesville adopts SIC code definitions for land uses in this article. As discussed below, the SIC is an antiquated system that was not designed to address land use impacts.
- **Article III. Vested Rights, Review, Concurrency Management and Proportionate Fair Share.** The inclusion of these provisions near the front of the LDC is uncommon, but is rational because these are precursors to most development. More commonly, concurrency management provisions are included with regulations addressing public improvement requirements, and vested rights provisions are either grouped with provisions for non-conforming situations, or grouped with procedures (e.g., vested rights determination procedures).
- **Article IV. Use Regulations.** This chapter establishes zoning districts, allowable uses in each district and some design standards. As is common for older ordinances that have been patched over a period of time, there are inconsistencies between the types of regulations included in each district. Newer codes typically limit this section to the purpose of each district and the authorized uses. Design standards (e.g., height, density, setbacks, parking requirements) are consolidated in a separate article. Similarly, procedures and standards for specific uses (e.g., home occupations, offices, mixed uses, and large scale retail development) are consolidated in an article similar to Gainesville's Article VI.

- **Article V. Overlay Districts.** The LDC uses overlays for historic preservation and for implementation of special area plans. As discussed below, broader use of form or design-based regulations called for in the Comprehensive Plan could eliminate the need for some or all of the special area plan standards. Overlay standards for environmental features are consolidated in Article VIII, which works well from a departmental review standpoint, but can be confusing for people developing under the code.
- **Article VI. Requirements for Specially Regulated Uses.** This article establishes standards for specific uses. Some version of this article appears in most land development codes. Detailed review of the specific standards of this article is beyond the scope of this report.
- **Article VII. Development Review Process.** This article describes the application requirements, review process and approval criteria for development plans, subdivisions, wellfield protection permits, plan development districts, special use permits, and traditional neighborhood development districts. Interestingly, the LDC does not consolidate all procedural requirements in this Article. Other procedures are included in Articles IV, VIII and X.
- **Article VIII. Environmental Management.** This article includes standards for landscaping, stormwater management, water and sewer utilities, environmental overlays (e.g., flood control, surface waters, wetlands and other special districts. The placement of these standards and procedures in a separate article reflects the City's organizational structure, but can lead to confusion for users, particularly when standards in different articles create development conflicts.
- **Article IX. Additional Development Standards.** This catch-all article includes the City's regulations for signs, parking, access management and assorted other matters ranging from air quality to fences, non-conforming situations and airport hazard areas. The standards in this article should be reorganized and updated to better implement the design-based recommendations of the comprehensive plan.
- **Article X. Administration.** This article is a blend of processes related to public hearings, responsibilities of various boards and committees for implementing the code, permit procedures and enforcement matters. It is unclear what the logic is for including or excluding procedures in this article versus Article VII.

Reliance on the Standard Industrial Codes – The authorized land uses in the LDC reference the Standard Industrial Classification (SIC) codes. This system, which was created in 1938 to group types of industries, has little relationship to land use impacts. In 1994, the American Planning Association coordinated with a variety of federal agencies and professional organizations to develop the Land Based Classification System (LBCS), which is much better suited to the purposes of zoning ordinances. By establishing structural, functional, ownership and activity codes, the LBCS provides standard land use definitions based on impacts.

Zoning District Proliferation – The LDC establishes 37 zoning districts in following categories: residential, office, business/mixed use, industrial, special, overlay, and planned development. These districts provide an internally compatible range of uses and development intensities. They also provide a palate of options to create more compatible transitions between districts. However, because each district is so specific, there is more limited flexibility within many of the districts. The unintended consequence of increasing the number of districts is to segregate land uses in ways that decrease mobility and produce incomplete neighborhoods – neighborhoods from which residents must drive to work, shop or play. As discussed in this report, design based regulations can address many compatibility issues in ways that enable cities to provide greater flexibility in the ranges of uses in close proximity.

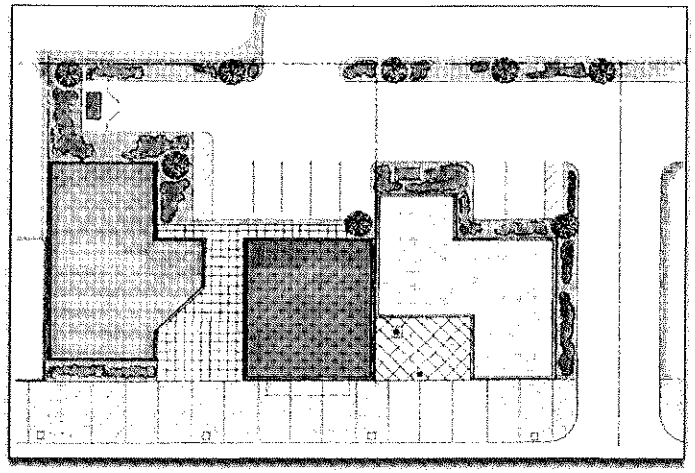
Over-Reliance on Specific Area Plans – Appendix A of the LDC incorporates eight specific area plans. These plans create areas with overlapping design regulations that are slightly different for each area. While this is a useful tool to craft location-specific regulations, many of the design standards are similar between the plans, which indicates that the standards could have broader applicability in the City. In fact, many of the design regulations created by the plan have been blended to create the new design regulations applicable to MU-1, MU-2 and large scale retail development. LDC revision should evaluate the need for each specific area plan and opportunities to transfer more consistent design provisions from the specific area plans to the body of the LDC. This may not eliminate the need for specific area plans, but it will reduce the number of plans and the complexity of applying design standards from the plans as overlays.

Utility Coordination – The City's Comprehensive Plan and LDC are clear about the desire to establish a livable urban environment with pleasantly shaded streetscapes. However, because Gainesville Regional Utility (GRU) operates largely independently of the development review process, the routing of power lines can override plans that include street trees. The LDC should establish a better process to resolve electric utility routing and facility location early in the development process. Recent efforts to coordinate the design of streetscape plantings and building setbacks should help ensure that the right trees are planted in proper locations. However, until GRU is required to establish utility locations prior to or early in the design process there will continue to be utility coordination challenges.

Context Insensitive Sign Regulations – The City's sign regulations should be reviewed in detail to ensure that standards adequately address the full range of legal and design issues related to signage. The district-based sign regulations tied to frontage of the property for freestanding signs and wall area for signs attached to buildings establish a reasonable means to ensure that the scale of signs is appropriate to the development. The regulation of the area of subdivision signs based on the number of lots can effectively scale sign size to project size. Additional standards in the mixed use districts and specific area plans further restrict sign area in some locations. The most obvious gap in the existing sign regulations is the lack of relationship between sign area and the functional classification of abutting streets or speed of traffic on those streets. The ability to read small signs decreases as the number of traffic and traffic speeds increase. In consideration of this fact, many communities allow for larger signs on state highways where speed limits are increased.

Traditional Neighborhood Development Disincentive – By placing this development pattern in a separate district, the City has created a disincentive for its use. Projects must demonstrate compliance with the LDCs extensive design requirements prior to rezoning. This requires significant investment before an applicant has any assurance that the project will be approved. Since many of the objectives

of TND development can be accomplished through simpler development review processes, there is a strong incentive to develop other products that don't quite measure up to the City's preferred TND requirements. In addition to establishing a simpler ministerial or administrative approval process for TNDs, it should consider distinguishing between mandatory and optional elements of TND design.



3. ELEMENTS OF DESIGN-BASED REGULATIONS

3.1. DESIGN-BASED REGULATION DEFINED

The Form-Based Codes Institute defines form-based codes as a "method of regulating development to achieve a specific urban form. Form-based codes create a predictable public realm primarily by controlling physical form, with a lesser focus on land use, through city or county regulations."[1] While conventional zoning tends to focus on uses, intensities and setbacks, form-based codes focus on building scale and design. The key distinctions between form-based regulations and design guidelines are that guidelines are advisory and often subjective, which frequently result in the need for design review boards. Form-based regulations establish specific, measurable standards that require little discretion and limited architectural knowledge.

The best form-based regulations address site-specific challenges and conditions that are ignored by conventional zoning. They promote compatibility between adjacent uses through context-sensitive design. They also tend to do a much better job of addressing the interface between the public and private realms (streets and buildings). They also are better suited to addressing scale and building orientation in ways that improve compatibility between adjacent public and private uses.

Rather than focusing exclusively on "one-size-fits-all" setbacks and building heights, form-based codes may include different standards for different situations. For instance, height limitations and setbacks may depend on the proximity to lower intensity zoning districts. Conventional zoning commonly ignores the orientation of a building, allowing entries, garage openings and mechanical equipment to be located on any side. Form-based codes typically require entries to face the street, while garage openings and mechanical equipment are hidden from main streets.

3.2. ELEMENTS OF DESIGN-BASED REGULATION

Form-based regulation is as varied as the conditions in which they are applied. They may stand alone or be incorporated with more conventional standards. Regardless of where they are codified, local governments may apply form-based regulations to broad range of districts and circumstances. Depending on the preference of local governments, form-based regulations may include the following components:

- **Regulating Plan.** This document maps areas where form-based regulations apply and describes the intended outcomes of the regulations. The regulating plan may be part of the Comprehensive Plan or part of the land development regulations. The mapping function of the regulating plan may be accomplished through various zoning tools discussed in Section 5 of this report.
- **Building Design Standards.** These may regulate building design features, building orientation and building mass. They may address height, bulk, entry location and design, roof lines, building materials, windows, façade treatments, porches, mechanical equipment and other building design issues. Building design requirements may be accompanied by a range of architectural standards, including optional design details, but typically do not mandate architectural styles unless there is an historic context that the city is trying to maintain.
- **Site Design Standards.** These may regulate the location of the building, building setbacks, on-site landscaping, parking location and design, open space and drainage system design.
- **Sign Standards.** These may regulate the location, materials, lighting, size, number and design of signs. Most ordinances already incorporate some level of form-based sign design standards.
- **Streetscape Standards.** These may regulate the street cross-section, defining standards for travel lanes, on-street parking where applicable, planting strips and the pedestrian zone. The transitions between the public and private realms, which incorporate the pedestrian zone, are sometimes addressed as part of site design standards.

3.3. ADVANTAGES TO DESIGN-BASED REGULATIONS

As mentioned above, form-based regulations do a better job of addressing context-sensitive compatibility and the relationship between public and private space. Additionally, they can more reliably produce desired outcomes for the following reasons:

- They describe what is allowed, in addition to setting limits and focusing on prohibited designs. This gives project designers a clearer picture of desired outcomes.
- They better accommodate infill and redevelopment because of their focus on scale, orientation and other critical design elements.
- They may specify specific architectural styles, materials and uses, which provides greater design predictability for property owners and neighbors.
- They can be adapted to ensure compatibility in widely varying settings.
- They are easy to apply in small communities because they do not require architectural expertise to use, interpret or administer.

[1] http://www.formbasedcodes.org/definition.html

- They are more readily defensible than design guidelines and architectural review processes that involve more subjective decisions.

3.4. DISTINCTIONS BETWEEN DESIGN-BASED AND ARCHITECTURAL STANDARDS

Form-based codes typically address building and site design and less frequently mandate specific architectural styles. By focusing on key design features described above, form-based codes are less subjective and easier to administer. While form-based regulation does not prohibit architectural standards, it also does not require architectural standards or review. **Exhibit 3-1** contrasts architectural and form-based regulations. Both communities address building form, but the one without architectural standards allows much greater design flexibility without compromising on critical design issues of scale, parking, fenestration (windows), articulation (wall and roof modulation) and orientation. Architectural standards are most commonly used in areas with predominant historical architectural styles and in areas where there are the local expertise and will to maintain architectural control.

Exhibit 3-1: Form-Based Versus Architectural Regulation

DESIGN-BASED REGULATION	ARCHITECTURAL STANDARDS
Focus on building form, building orientation and site development	Focus on building design
Allow diverse architectural styles	Tied to designated architectural style(s)
Measurable standards do not require design expertise or discretionary decisions	Typically rely on subjective design guidelines that require interpretation by design professionals
May be applied by administrative staff	Typically require design review board

Homes with consistent form:

Homes with consistent architectural style:

4. DESIGN-BASED REGULATION IMPLEMENTATION ALTERNATIVES

4.1. REGULATORY STRUCTURE & PROCESSES

4.1.1. RELATIONSHIP BETWEEN DESIGN-BASED REGULATION AND CONVENTIONAL REGULATIONS

There is no single way to implement a design based code. The following table presents a conceptual framework for evaluating the City's approach to design based regulations. Six (6) different approaches to regulation are included. Each is assigned a plus (+), minus (-), or neutral (0) rating for several potential community objectives.

1. **Smartcode or mandatory form based codes**. We assume these would apply selectively to individual areas of the city. The City would proactively rezone these areas to require compliance with the form based code. While this would follow a charrette process or a similar public participation effort, it would not require an application by or consent of the property owners.

2. **Hybrid code**. A hybrid code would use the Land Development Code as a framework for developing new zoning districts that an applicant could migrate to. The design based districts could contain a package of standards that the applicant must adhere to. Some design typologies would be permitted by right, particularly along major corridors. The City's existing terminology would remain intact, but standards would be retooled to promote a higher level of design. This could also involve targeted revisions to existing zoning districts.

3. **Point Systems – Lists**. Instead of prescribing a set of mandatory standards, design based districts would assign point values for implementing certain design elements. The regulations could assign a minimum point score, and some standards could be mandatory and others simply tied to point scores. This could be implemented as part of either a mandatory code (#1 above) or a hybrid (#2 above).

4. **Discretionary Review**. The code would tie development approval to discretionary criteria that requires a public hearing. The criteria would be loosely worded, and could include illustrations as examples of how to comply.

5. **Incentives**. The City would award applicants who comply with the design based standards with regulatory or financial incentives. However, the City would not mandate compliance with the standards.

6. **Optional Guidelines**. The City would neither mandate nor reward compliance with the design based standards. The City could encourage applicants for discretionary approval, such as rezonings, to use them, and list them as permitted in designated districts or situations in order to discourage third party challenges to permits.

The table below lists and evaluates each of the above described approaches. This is intended as a basis for future discussion with the City on their preferred approach to developing a design based code that is calibrated to the needs of its core and edge areas.

Exhibit 4-1: Comparison of Design Review Strategies

Factor	*Smart Code*	Hybrid	*Point Systems - Lists*	Discretionary Review	*Incentives*	Optional Guidelines	Discussion
The code promotes a high level of design quality	+	+	+	0	0	0	Mandatory codes ensure compliance, while applicants can ignore incentive based or option systems. Hybrid and point systems move applicants toward better design, but are not as prescriptive. Discretionary review can provide better design, but can also produce unpredictable decisions.
The City can phase the standards in over time	+	+	+	+	+	+	All of these systems can be phased in. A mandatory system and districts in a hybrid code would test the design concepts on several sites. The City and applicants can then apply lessons learned to other areas. The other approaches require applicants to come forward.
The code can feasibly apply to both urban and suburban locations.	-	+	+	+	+	+	A mandatory code would significantly change development practices, including those in areas already developed. A hybrid approach is easier to customize to different situations, including more suburban situations. The flexible and optional systems can apply more feasibly to individual sites.
The code avoids lawsuits	-	0	0	-	+	+	Property owners are more likely to challenge mandates than options. The hybrid and point systems can vary widely, and their susceptibility to litigation is similar to the existing land development regulations. Discretionary standards can be challenged on vagueness grounds and sometimes result in arbitrary application. Applicants are not likely to challenges incentives or options.
The code provides predictable and objective standards	+	+	0	-	0	0	Predictability is a significant strength of form based codes. Hybrid codes normally contain a blend of discretionary and predictable standards. The flexible standards, incentive, and options can take a variety of forms. Discretionary standards are, by nature, subject to some interpretation and case by case review.
The code is easy to administer	0	+	-	-	0	0	A mandatory FBC is predictable but involves a number of concepts that are foreign to the City's existing standards. Hybrid codes build on existing concepts, and are therefore easier to understand for persons who are normally involved in the process. Flexible systems can be complex and have highly variable results. Discretionary standards can involve lengthy hearings and negotiations.

Flexibility – the code allows a number of solutions to design issues	- 0 + + 0 +	Mandatory standards are normally inflexible. Point systems and loose standards give applicants a number of options to plan a site. A hybrid or incentive based system can be as inflexible or as loose as the City's existing zoning regulations.

4.1.2. PERMITTED USES AND BUILDING FORMS

Design-based regulations generally create standards for different building forms or types of buildings rather than focusing on the use of the building. Building forms typically are based on the front of the building and its entries. A local example of this approach is the use of shopfronts and arcades as frontage types in the City's traditional neighborhood development regulations and special area plans. Design-based regulations addressing the standards discussed in the following sections may differ by frontage types and/or by zoning district.

Gainesville's LDC, like most conventional codes divides the City into districts for purposes of use, dimensional and design regulation. Uses can be permitted by right, or with a special use permit. The mixed use districts do not establish specific building types other than neighborhood shopping centers. Neighborhood shopping centers are defined in terms of maximum floor area, rather than through building and site design standards that yield a unique building form.

In some jurisdictions, overly restrictive use restrictions can inhibit the formation of mixed use neighborhoods. In Gainesville, the MU districts allow, and in some cases require both residential and non-residential uses. The districts establish maximum floor areas for residential uses and maximum densities for residential uses. A number of standards expressly contemplate mixed residential and non-residential uses. MU-1 allows 25% of the total floor area up to 1,000 square feet to be used for commercial or office uses for single-family compound uses. A higher coverage ratio is allowed for mixed uses (60%) than to single uses (50% in MU-1 and 75% in MU-2). The standards also address transitions from MU districts to residential neighborhoods through compatible density requirements.

The districts are unclear about when a mix of uses is mandated on a site-by-site basis. The result is that individual sites tend to build out as single use developments, with a resulting monoculture of commercial or office development along the City's corridors and centers. The City has begun to require residential uses on a case by case development for individual commercial development proposals. This has drawn criticism from applicants. The development community is often concerned that residential units in a mixed use project are unmarketable, and will create project management and leasing issues with their commercial or office tenants. This creates a dilemma for the City. The mixed use districts are a designed to create mixed use neighborhoods, but excessive use restrictions could drive commercial development to the unincorporated areas of the County.

4.1.3. SETBACK STANDARDS

Design-based regulations use both minimum and maximum setback standards to establish distinct character areas. Core areas typically employ maximum setback standards to bring buildings up to the pedestrian zone and generate more walkable environments. In addition to generating more interest for pedestrians, maximum setback standards tend to shift automotive traffic, loading and other mechanical activities to the rear of the buildings, thereby creating safer sidewalks.

The City already uses minimum and maximum setback standards to establish different intensities of development in different zoning districts. Existing standards allow some market flexibility, but do not necessarily achieve desired outcomes in core or edge areas. MU district maximum front setbacks of 80 feet allow a row of parking that separates buildings from the street, which is not quite urban in character, but less than large-scale retail developers desire along high capacity corridors. Unfortunately these standards ignore building orientation, fenestration/entryway, streetscape, and architectural standards that are necessary pedestrian realm.

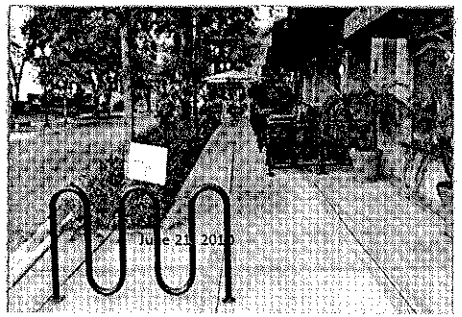
The unintended result of existing dimensional standards that try to tread the line between core area and edge area design concepts is to generate development that does not function well in either setting. Core area standards can push development too close to streets without sufficient streetscaping to create an attractive walking environment. This is particularly problematic in edge areas along high-volume, high-speed corridors.

4.1.4. DESIGN STANDARDS

Design-based regulations employ a variety of building and site design standards to produce more functional development that:

- resolves compatibility issues through better transitions between buildings and uses;
- maintains scale and proportion to create more desirable areas for bicyclists, pedestrians and transit users;
- reduces the visual impact of parking, loading and mechanical areas;
- orients building entries to the street; and
- enlivens the pedestrian realm by avoiding blank walls (minimum window areas and building modulation standards) and promoting location-appropriate pedestrian amenities (wide sidewalks, street trees, street furniture, inviting building entries, arcades, galleries, awnings and courtyards).

As discussed in section 3.4 of this report, design-based regulations may address architectural styles, though this is not mandatory. Many communities that lack a specific palate of architectural styles, the local expertise to address architecture, or the interest in mandating architecture choose to focus

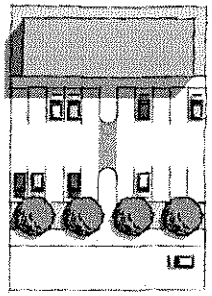


on measurable design standards that can readily be applied without limiting design creativity.

The City's UMU and CCD zoning regulations include a number of these design standards, such as entryway spacing, minimum frontage build-out, and a minimum first story floor-ceiling height. These standards are consistent with many design-based codes, which also include modulation and fenestration (window and entryway) requirements to create a functional relationship between buildings and streets. However, these standards are absent from the MU districts. The result is that standards for design quality are either missed, or are imposed through a discretionary review process.

4.1.5. PARKING

Parking standards are one of the most significant factors in shaping the character of development. Parking areas can consume significant amounts of space, provide a barrier to pedestrian movement, create safety hazards for bicyclists, pedestrians and transit users, and destroy a sense of visual enclosure. At the same time, an adequate supply of parking is critical to the economic success of businesses, and is needed for access to residences. For these reasons, most design-based regulations address the location of parking, the design and massing of spaces and the maximum number of spaces.



The LDC prescribes minimum parking standards (§ 30-332). Both vehicle and bicycle spaces are required, and the City can allow bicycle spaces to substitute for vehicle spaces on a 3:1 basis. The parking ratios include 2 per unit and 1 per bedroom for multifamily units, and 1 per 200-250 square feet for retail uses and neighborhood shopping centers. These are typical ratios, but can tend to result in excess parking supply in many communities. Section 30-114 allows off-site parking in the MU districts, but these are limited to those with residential uses and to surface parking.

4.1.6. PROCEDURES

While there are no fixed procedures for the application of design-based regulation, most advocates recommend ministerial procedures that minimize unpredictability and delay. This streamlines approval, and offsets some of the costs or risks that applicants incur by submitting to a higher level of design. Administrative procedures involve some level of risk and a high degree of trust in the standards. A community that is not completely "sold" on the tenets of community design or that have an engaged, activist public might want to retain some level of discretionary review, and may be willing to forgo some development opportunities in order to take closer look at applications.

Some ministerial procedures include design review by a registered architect, town planner, or other design professional. This ensures that compliance with the standards is administered by a professional person who understands them. However, if the standards are clear, measurable and predictable, a

Exhibit 4-2: Sample Design Review Process
(Source: A Citizen's Guide to the Development Review Process)

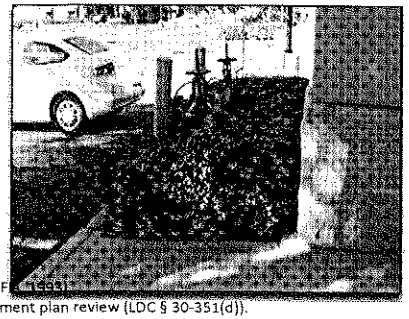
design professional may not be necessary. In fact, this may increase development costs or make it difficult to find qualified staff to administer the regulations.

Many communities find it difficult to reconcile neighborhood concerns with their goals for improved urban design. Surrounding neighborhoods may not share citywide goals for density and urban design, are often suspicious of projects that are designed without their input, and may lack confidence that conditions a developer has agreed to will be implemented and enforced. Neighborhood pre-meetings are a useful tool to involve the surrounding community in a project before the rumor mill takes hold. Some local governments require developers to consult with neighborhoods before presenting an application for review. Others simply require it on a case by case basis, or ask applicants pointed questions about whether and how neighborhoods were consulted during the public hearing process. The City requires a citizen participation process with a neighborhood workshop for every application that requires a public hearing for a site plan, rezoning, special use permit or change to the future land use map (LDC § 30-350).

The City's LDC includes several types of procedures, ranging from building permits to discretionary actions such as rezonings. The procedures are set out in Articles VII and X (Administration). Discretionary review is codified in Article VII, including development plan review and subdivision plat approval.

Comprehensive plan amendments and rezonings are usually the first discretionary steps in the development approval process. Under Florida law, a site-specific rezoning (i.e., one initiated by a property owner for a specific project, rather than a large-scale rezoning designed to implement a plan) is quasi-judicial.[2] In Gainesville, rezonings go to the Plan Board for a review and recommendation (LDC § 30-347.4), with final approval by the City Commission.

Development plan review is the most important step in the review process. This applies to all development except for single and two-family development, renovations, signs, tree removal and resurfacing/restriping of off-street parking (LDC §§ 30-153, -154) Development plans are designated as either rapid, minor, intermediate or major development (§ 30-157). Rapid and minor review do not require public notice[3] and are reviewed administratively (§ 30-158). Intermediate review applies to projects with 10,001-50,000 square feet of floor area or 26-99 dwelling units, with major review applying above this threshold.



Intermediate and major review is a 3-4 step process that requires a pre-application conference, preliminary development plan review and final development plan review, along with an optional non-binding concept plan (LDC § 30-156). A preliminary

[2] *Board of County Com'rs of Brevard County v. Snyder*, 627 So.2d 469 (F[illegible])
[3] Notice is required for the "Minor Review II" applications for development plan review (LDC § 30-351(d)).

development plan requires a quasi-judicial hearing with the City's development review board, with the final development plan approved administratively (LDC § 30-161). A master plan is required for phased development, along with a preliminary development plan for the first phase (LDC § 30-164).

Plat approval follows a similar sequence, with a design plat (the equivalent of a preliminary plat) requiring discretionary approval at a public meeting, followed by a final plat (LDC § 30-181). A design plat requires both development review board and city commission approval, culminating in a preliminary development order (LDC § 30-183). Final plats requires a final development order from the city commission (LDC § 30-185). Infrastructure requirements, such as streets and stormwater management systems, are subject to the City's design manual (§§ 30-187, 30-14, 30-23 and online at http://www.cityofgainesville.org/Portals/0/pw/DesignManual-Subdivisions-SitePlans.pdf). Minor subdivisions (those with 5 or fewer lots, no required infrastructure, public street frontage, and water and sewer service) are approved administrative ly (LDC § 30-189).

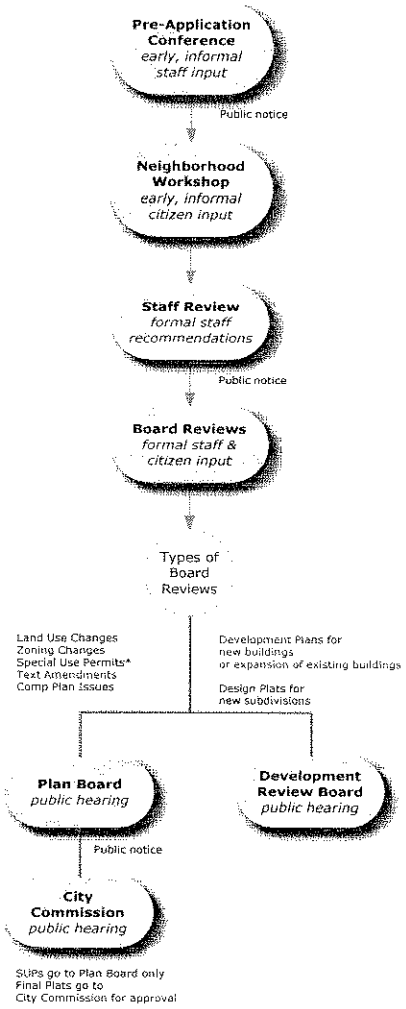


Exhibit 4-3: Levels of Review for Development Plans

Rapid Review	Minor Review	Minor Review II	Intermediate Review	Major Review
Resurfacing of existing impervious area which does not include new or additional spaces. Layout modification and/or landscaping modifications	Up to 15 new parking spaces (300 square feet each) or construction, reconfiguration or redesign of existing parking or equivalent paved area not necessary to expansion of the number of multi-family units, or the floor area of office, commercial, public service, or industrial uses.		16–100 new parking spaces (300 square feet each) or construction, reconfiguration or redesign of existing parking or equivalent paved area not necessary to expansion of the number of multi-family units, or the floor area of office, commercial, public service, or industrial uses.	Over 100 parking spaces (300 square feet each) or construction, reconfiguration or redesign of existing parking or equivalent paved area not necessary to expansion of the number of multi-family units, or the floor area of office, commercial, public service, or industrial uses.
Expansion or redesign of existing developments which will create up to 500 square feet of floor area, when submitted through the building division for a building permit. These may include decks, porches, patios, arbors, pole barns and similar accessory structures with usable floor area	New construction, expansions or redesigns of existing office, commercial or public service development that will create up to 2,500 square feet of floor area and its required parking. Porches, pole barns, and canopies up to 2,500 square feet of building area. Any deck, patio, arbor and similar unenclosed or pervious structure.	New construction, expansions or redesigns of existing office, commercial or public service development that will create from 2,500 to 10,000 square feet of floor area and its required parking.	New construction or expansion of existing office, commercial or public service development that will create from 10,001 to 50,000 square feet of additional floor area and its required parking.	New construction or expansion of existing developments of over 50,001 square feet of additional floor area and its required parking.
Developments of 500 square feet or less, of floor area, which involve no stormwater issues and no additional parking, when submitted through the building division for a building permit.	Developments located in the agricultural or warehousing zoning districts which have no common boundary with properties zoned residential or office, providing the proposed development contains only a roof and support structure with 50% or less of the total sides enclosed or industrial development up to 2,500 square feet area of developed industrial area.	Industrial development greater than 2,500 square feet of developed industrial area and located on 5 or fewer acres.	Industrial development greater than 2,500 square feet of developed industrial area and located on greater than 5 acres.	
Drawings submitted to verify site conditions for issuing a zoning compliance permit.	New construction or additions of 3 to 5 dwelling units.	Developments of 6 to 25 dwelling units.	Developments of 26 to 99 dwelling units.	Developments of 100 dwelling units or more.
Field changes or modifications to active developments where the changes do not trigger higher level thresholds, which does not alter stormwater, traffic, and fire safety or utility requirements	A change in the location and type of landscape materials, except a change in the location of buffers that exceeds the rapid review thresholds.		Changes in the location of buffers, affecting any plan that was approved by the development review board.	
Minor structural, material, or dimensional changes that do not affect the site layout or any specific provision of a prior approval, as determined by the development review coordinator	Shifts in the location of buildings, structures, parking bays, utility services and dumpsters where the city manager or designee has determined that the shifts do not substantially alter the approved plan or conflict with buffering requirements.			

Source: LDC § 30-159

The City's current approach to processing design-based projects relies significantly on discretionary actions.

As with most communities with conventional land development regulations, the City offers a planned development (PD) option (LDC Article VII, Division 4). In most jurisdictions throughout the nation, developments that reflect the design principles of New Urbanism are approved through a planned unit development (PUD) procedure. While many practitioners advocate a form-based code with set design standards, many land development codes do not offer this option. In addition, developers often opt for the more flexible standards of a PD even where clear design standards are available. The PD is therefore an important baseline to consider when assessing the procedures available to implement a form based code.

The PD regulations offer broad flexibility to developers. The process requires rezoning to the PD district, with a multi-step process involving a staff pre-application conference, concept review, rezoning, and subdivision review or development review (LDC § 30-214). A PD Report is approved as part of the rezoning. Design issues are addressed in the PD Report, with review requirements including internal and external compatibility, development intensity, open and civic spaces, and transportation choices. The purpose statement for the PD district addresses design elements such as "building orientation generally toward streets and sidewalks; provide for an integration of housing types and accommodation of changing lifestyles within neighborhoods; and provide for design which encourages internal and external convenient and comfortable travel by foot, bicycle, and transit through such strategies as narrow streets, modest setbacks, front porches, connected streets, multiple connections to nearby land uses, and mixed uses" (LDC § 30-211(b)(1)). These factors are very general in nature, however, and do not lead to fixed or clear physical outcome.

The Traditional Neighborhood Development (TND) District (Article VII, Division 6), adopted in 1999, follows a similar procedural path to the PD district. The TND includes site layout, building design and civic space standards that are clearer and more outcome specific than the PD district.

The City's current process offers several advantages. First, the discretionary review (at rezoning) provides for oversight by the approving agencies, as well as an opportunity for neighborhood notification and involvement. Second, the pre-application and concept review processes give an applicant an indication of their chances for approval before significant resources are committed to a project. Finally, the City incorporates pre-application neighborhood workshops, which offer the potential to resolve disputes before the application proceeds further.

The process has several disadvantages. First, many of the standards are negotiated or determined through case by case review. This creates uncertainty for applicants, lengthening the review process and development costs. Second, the nature of this process can create outcomes that vary from the City's policies for mixed use development. The design objectives articulated in the Comprehensive Plan and the Urban Design Element can be compromised through the negotiation process. In Gainesville, a well-educated and informed public can have the opposite result. Some members of the public may insist on cutting edge, mixed use urban design elements that do not work on individual sites along suburban corridors. This can have the effect of driving development into the unincorporated areas of the County, or of defeating design that are an improvement over the norm and that would create compatible and neighborhood supportive shopping and employment opportunities. The key is to find a process that mediates neighborhood concerns while avoiding excessively protracted approvals that defeat the level of intensity required to meet the City's urban design objectives.

In most jurisdictions, regulatory relief is normally processed by the Board of Adjustment. As with most zoning or development codes, the Land Development Code assigns the Board of Adjustment

the authority to hear appeals and requests for variances (§ 30-354). The Board of Adjustment is an independent body appointed by the City Commission. The use of a Board of Adjustment is neutral to achieving the design goals of a form based code. The City of Gainesville goes even further by substituting a professional appointee - a hearing officer – for some types of appeals. These include vested rights determinations, special use permit appeals (§ 30-234), tree removal permit appeals (§ 30-254), and – most importantly – appeals from Development Review Board decisions such as actions on a preliminary development plan (§ 30-352.1). This allows for consideration of a permitting dispute by a person with experience in land use law, urban planning or architecture, as opposed to a lay Board of Adjustment. This can improve the overall permitting system and, incidentally, the form based provisions of the Land Development Code. This issue is discussed in more detail in ""Deviations from Form-Based Provisions," below.

Development agreements are an emerging and increasingly important tool for both local governments and developers. Florida is a pioneer in the use of development agreements. The Florida Local Government Development Agreement Act, §§ 163.3220-163.3243, is one of the first development agreement statutes of its kind. Under this legislation, property owners can lock in their plans for up to 20 years, and in exchange provide exceptional infrastructure, amenities or design features. Development agreements are valuable to the private sector because they offer certainty throughout the approval process, and allow the parties to customize the rules for a specific project. At present, Gainesville uses development agreements principally for concurrency determinations (LDC §§ 30-23 [defining "certificate of conditional concurrency reservation"], 30-34). Offering development agreements for projects that use the form based code can provide a valuable inducement for preferred community design. However, the process of negotiating – and sometimes enforcing – a development agreement can be very time consuming.

4.2. INCORPORATION OF DESIGN-BASED PROVISIONS IN DRAFT CODE

There are a number of ways to incorporate a "form based code" into the City's Land Development Code. While some planning practitioners think of a form based code as a new and discrete type of land development regulation, in practice there are many ways to codify a form based code. The most important consideration is that the code incorporates Gainesville's policies for community design.

Form based coding is the notion that development should be divided and regulated by design features rather than strictly segregated by use. In other words, districts should be governed by building form rather than by use. A more accurate and user-friendly term for the concept is a "design-based code." The Form-Based Codes Institute, a group of practitioners who are advancing the concept, defines a form-based code as:

"A method of regulating development to achieve a specific urban form. Form-based codes create a predictable public realm by controlling physical form primarily, with a lesser focus on land use, through city or county regulations."

The FBCI suggests that a form-based code have the following elements:

Element	Description
Mandatory Elements:	
Regulating Plan	*A plan or map of the regulated area designating the locations where different building form standards apply based on clear community intentions regarding the physical character of the area being coded.*
Building Form Standards	*Regulations controlling the configuration, features, and functions of buildings that define and shape the public realm.*
Public Space/Street Standards	*Specifications for the elements within the public realm (e.g., sidewalks, travel lanes, street trees, street furniture, etc.).*
Administration	*A clearly defined application and project review process.*
Definitions	*A glossary to ensure the precise use of technical terms.*
Optional Elements:	
Architectural Standards	*Regulations controlling external architectural materials and quality.*

Source: FBCI, at http://www.formbasedcodes.org/definition.html.

The FBCI lists 13 jurisdictions that have adopted or are considering form-based codes: Petaluma, California; Azusa, California; Arlington, Virginia (Columbia Pike Special Revitalization District Form Based Code); Flagstaff, Arizona; Grass Valley, California; Fort Myers Beach, Florida; Oakland, California (New Pleasant Hill BART Station Property Code); Hercules, California; Sarasota County, Florida; Woodford County, Kentucky; Sonoma, California; Miami, Florida; and Ventura, California (http://www.formbasedcodes.org/resource.html). Farmer's Branch, Texas has also adopted a form-based code for transit-oriented development areas. Miami recently adopted a citywide form based code, while San Antonio, Texas incorporated form based zoning features into its Unified Development Code nearly 7 years ago. Many more jurisdictions throughout the nation have adopted codes that would qualify as a form-based code under the FBCI's definition.

In practice, most zoning and land development regulations include most of the elements listed above. The City's future land use element and zoning map lists areas where different land development regulations apply. The Land Development Code regulates building configuration, public spaces, streets, signs, landscaping, and environmental resource protection. It also describes how an applicant establishes project entitlements. What sets a FBC apart is the attention to site and building design – such as how building configuration, lot disposition, street design and civic spaces form a unified whole-without prescribing a specific architectural style. There is no single way to write or to implement this type of regulation. It can embrace everything from minor revisions of the City's existing zoning regulations to a wholesale, design based code that mandates a complete change in local development practices. It is up to the City to decide where to draw this line.

4.2.1. MANDATES VERSUS INCENTIVES

An important policy decision is whether – and to what extent – the design based elements are mandatory or optional. Mandatory standards are more effective than optional ones, because applicants must obey them. Applicants are free to ignore optional standards, and to continue to produce conventional development patterns that led to this effort in the first place. Mandatory standards can avoid unfairness to applicants who proceeded with the form based code by ensuring that their competitors on neighboring sites comply with the same standards. In addition, developers often want neighboring property to conform to higher standards because it benefits their own property values.

Mandatory standards are also controversial. The private development industry, in particular, may resist the real or perceived costs of compliance. Rear loaded parking and other design features are sometimes seen as a security or market risk. There are also potential legal challenges. For example, minimum height standards were invalidated in an older case from North Miami Beach.[4] Rear parking mandates were invalidated as applied to a gas station in a Missouri case.[5] In addition, the effect of Florida's takings legislation – the Bert Harris Act – on these types of standards is indeterminate, and will certainly vary from case to case.

There are middle ground approaches between mandates and incentives. One approach is a point system. This assigns a given number of points to particular design features, with applicants required to obtain a minimum score. Applicants have the flexibility to choose which design features to use in order to comply with the regulations. Another is a listing approach, with applicants required to comply with some, but not all, of the design standards. This type of system tells applicants to consider the design standards in their project planning process, while giving the flexibility to choose the options that work best for their site and market conditions. It can also be phased in over time, with corrections to the points as market conditions change and developers and administrators learn how to adjust their development practices. If the design standards are profitable and have widespread support, the system can gradually transition to a mandatory one.

Another incentive based approach is concurrency. Florida law prohibits the issuance of development permits that would cause a reduction in adopted level of service (LOS) standards for designated facilities, including roads (F.S. § 163.3180). Exemptions from concurrency are limited by statute. The City can waive transportation concurrency requirements for designated "transportation concurrency exception areas" (TCEA). The City has designated the entire area within its 2002 city limits as a TCEA (Comprehensive Plan Future Land Use Element, policy 1.5.6). Under SB 360, the City can impose a wide range of mobility strategies within the TCEA instead of conventional roadway expansion. These must consider urban design, appropriate land use mixes, and network connectivity plans needed to promote urban infill, redevelopment, or downtown revitalization (Florida Statutes § 163.3180(5)(e)).

Outside of a TCEA, the City must use "professionally accepted techniques for measuring level of service for automobiles, bicycles, pedestrians, transit, and trucks." The transportation LOS measurement techniques may consider "increased accessibility by multiple modes and reductions in vehicle miles of travel in an area or zone." For example, Hillsborough County, Florida, allows a trip generation reduction for designated traditional neighborhood developments, pedestrian oriented development and transit oriented development applications based on empirical research about anticipated trip reductions for mixed use development that follows the design standards set out in its code. This is a reasonable, uniform approach that avoids arbitrary decision making, and spares applicants the time and cost of hiring transportation planners or engineers to make the case for trip reductions on an application by application basis. While the City is not bound by this in its TCEA, the same approach can be used to development different types and levels of urban design and offsite mitigation standards and conditions that are tailored to Gainesville's urban and suburban areas.

4.2.2. "SPLICING" OR HYBRID LAND DEVELOPMENT CODES

Whether to completely embrace community design, or to introduce it gradually, is an important policy decision for Gainesville. Many communities are simply not ready for a complete urban code. Market acceptability, reluctant builders, neighborhood opposition to density, and resistance to changing infrastructure standards can scare elected officials away from a "yes" vote on an urban code. Fear of the unknown is a common deterrent to any new form of land development regulation. In addition, many communities are simply not unhappy with their suburban development patterns, yet are willing to consider better or more efficient options.

In Gainesville, the City has already incorporated a number of design based features into its Land Development Code. However, neighborhood resistance to higher densities and intensities, and developer resistance to mixing uses, reducing parking, or incorporating more expensive design features could undermine a complete form based coding approach. Options that address both groups' concerns, while tailoring the code to the unique needs of the City's urban and suburban areas, calls for a wider approach to coding than a narrower form based code.

Communities who fit this description might consider "splicing" elements of urbanism into their existing codes. This creates a "hybrid" code. A hybrid code weaves urban standards into existing Euclidean zoning districts, or creates parallel urban districts. This is a common approach that allows a community to gradually embrace urbanism, without dictating it or taking an approach that might be seen as drastic.

A hybrid code builds design based elements into conventional land development regulations. This is less effective at achieving most community's design objectives, because developers are typically given the option to proceed under conventional regulations instead of the form based code. However, it is a more palatable approach for communities who want to tread lightly on the marketplace, and who prefer a more incentive-based approach to land development regulation. In particular, a hybrid approach provides the following advantages over a mandatory form based code:

[4] *City of North Miami v. Newsome*, 203 So.2d 634 (Fla.App.1967).
[5] *Dallen v. Kansas City*, 822 S.W.2d 429 (Mo.App. 1991).

Hybrid codes are the only politically feasible solution in many communities. Most communities do not want a pure FBC, but would like to see New Urbanist concepts built into their land use regulations. Many opposition groups tend to emerge when mandatory form based codes are under consideration, such as:

- neighborhood groups opposed to higher densities, elimination of minimum parking requirements, and other changes
- planning staff concerned about administration and the fear that citizens will complain about new development
- developers concerned about market viability, cost, visible parking and signage

Hybrid codes allow the concept to be tested. Change in many communities is an evolutionary process that requires years for construction, occupancy, observation and acceptance. Projects that reflect Gainesville's community design policies can be built under a hybrid code to test the market and to show neighborhood groups how the concept works on the ground, without turning the entire land development regulatory system upside town.

Hybrid codes can actually create better incentives for community design than pure, stand-alone, FBCs that are mandatory in limited areas. This can be accomplished by establishing good, regulatory incentives for using the FBC in a variety of settings, rather than mandating it on a few test sites.

Use regulation still matters. Local communities and neighborhoods continue to have legitimate interests in the use of buildings and structures, regardless of their form. A structure in a residential neighborhood that has appropriate proportions and building-street relationships is legitimately objectionable if it is applied to uses that generate excessive traffic, noise, or other conditions (such as adult bookstores, heavy industry, etc.) Some form based code advocates claim that these issues are completely resolved by state and local environmental regulations. This is simply not true. Moreover, these regulations require constant oversight and enforcement and, which could be avoided if the long uses are prohibited to begin with.

Hybrid codes are complete and comprehensive. Form based zoning cannot replace a local government's entire development code. Most form based codes simply do not deal with many of the issues that planners must address on a day to day basis. These include:

- environmental regulations;
- supplemental regulations for difficult uses such as landfills, quarries, cell towers, etc.;
- nonconforming uses and situations;
- establishment and jurisdiction of permitting agencies;
- subdivision regulations;
- infrastructure guarantees;
- unique areas such as airports; and
- infrastructure capacity.

Form based codes do not deal comprehensively with the impacts of infrastructure or sustainability on good urbanism. These include storm water management, the location of water and sewer lines, and similar issues. Some New Urbanist codes have recently embraced the concept of "light imprint" tools to promote sustainability and to minimize stormwater runoff or other potential environmental impacts of compact development patterns (see http://www.cnu.org/node/1209). In urban areas, this can include gated tree wells, underground cisterns, and natural vegetation. In suburban areas, pervious pavement, vegetated swales, bio-retention swales, and rain gardens can mitigate runoff while taking advantage of a more dispersed development pattern.

The notion that conventional zoning tools cannot be used to produce good design is debatable. Most conventional zoning ordinances simply do not demand good community design. However, the language of conventional zoning can be used, in part, to implement the City's community design policies. Examples include maximum setbacks (referred to sometimes as a "build-to" line), minimum densities, maximum parking, and similar tools. This nomenclature is more usable by most planning departments and administrators, as well as developers, than a complete new language.

Form based zoning does not deal comprehensively with difficult uses, such as gas stations, that can have an adverse to impact on the urbanism of neighborhoods. The law prohibits the complete exclusion of these types of uses from local zoning ordinances. Practical considerations dictate that they be allowed as well. But even residents of urban communities will continue to drive, and will therefore need places to fill up their cars. There are examples of creative design solutions for these types of uses, such as the "gas backwards" Exxon station in the Kentlands development in Gaithersburg, Maryland. However, dictating these types of solutions is not a politically palatable-or legal-solution and many communities. And, conventional zoning districts are one way to deal with this problem, if used appropriately. For example, the City could map limited nodes or corridors for these uses, with a conditional rezoning required to site the uses in other locations.

The hybrid code has the advantage of broad acceptability. In many communities, this is the only realistic choice given the political orientation of the elected officials or powerful resistance by stakeholders. It allows the development community to "test drive" the concept in the marketplace, without the blunt instrument of unilateral mandatory regulations. It also allows uses and building forms to continue that some might see as having a public benefit. For example, conventional garage-oriented homes serve a distinct segment of the housing market, and big box stores offer low consumer prices and - in many situations - a positive fiscal impact. However, these building forms are not permitted in many of the more aggressive urban codes.

In addition, hybrid codes have the advantage of familiarity. Applicants, zoning administrators, and neighborhood activists may be familiar and comfortable with their land use terminology. New terms and standards - even if they are an improvement - require a learning curve. This can cause resentment, delay development approvals, and require additional staff time to "tool up" for implementation of the new code. One can hardly blame development professionals and zoning officials from resisting the additional time and effort required to learn a new code. Fortunately, the existing language of zoning and infrastructure design can accommodate the salient elements of urbanism. This allows a reorientation and reconfiguration of the standards, without requiring a change in the language or organization of the local land development regulations.

A disadvantage of the hybrid approach is that it may not generate significant change in a short period of time. Because urbanism is not mandatory, development is free to proceed along conventional lines. Where there is market resistance or unfamiliarity with the concept, the benefits of the new standards may not be seen for a long period of time - if ever. However, most zoning reforms that involve urban standards have incorporated a hybrid approach. Examples of communities that have completely abandoned use regulations or completely restructured their codes to date are rare.

Three examples of hybrid codes include the San Antonio, Texas Unified Development Code, the Hillsborough County (Florida) Community Design Regulations, and St. Petersburg, Florida. Each code represents a different approach to blending urbanism with conventional zoning regulations.

The San Antonio Unified Development Code (UDC) uses both a parallel code the zoning and splicing approach to urbanism. A set of "Use Patterns" near the front of the code establishes design standards for several forms of urbanism. These include traditional neighborhood developments (TND), transit-oriented development (TOD), grayfield redevelopment, and "commercial centers" in residential neighborhoods. The standards are established visually and in the text. They are predictable, numerical standards that allow the local administrative official to approve a proposed development through an administrative site plan review process. This process is available in districts where the Use Pattern is permitted by right. This route this avoids the discretionary hurdle of a rezoning, which is the normal route to approving mixed use developments or commercial developments near residential neighborhoods.

Urban standards are spliced into the base zoning districts as well. Two types of districts are established: base districts, overlay districts, and special districts. Base districts follow the conventional pattern of residential, commercial and industrial districts. Fifteen of the base zoning districts include maximum front setbacks, and three of the commercial districts include maximum building size restrictions. Overlay districts are mapped on top of the base districts, and establish supplemental standards. While these include the usual airport and environmental districts, it also includes a Neighborhood Conservation (NC) zones that allows existing neighborhoods to customize development standards to the existing built environment. Finally, special districts are those that supplant a base zoning district to include an alternative set of standards. The ""MXD" Mixed Use District and "TOD" Transit Oriented Development District enable Use Patterns in district where they are not permitted by right. In addition, an "IDZ" Infill Development Zone establishes flexible design standards for the City's older, built-up areas. Both planners and the development community have viewed this aspect of the code as a success, as it has resulted in numerous built projects that respect the City's urban context.

The City's development standards promote urbanism as well. The street design standards added a set of urban street standards for use in the TND, TOD, Commercial Center and greyfield redevelopment context. Street connectivity standards apply to both conventional and urban development. The park and open space standards incorporate a variety of open spaces and civic space models. The parking standards include maximum in addition to minimum parking ratios, with TND and TND developments exempt from the minimum parking requirements. Urban development technologies are exempt from the city's traffic impact analysis and mitigation requirements. In addition, the landscaping standards recognize urban situations, with less landscaping required for smaller sites, and landscaping barriers are removed from the TND and TND design standards.

The Hillsborough County Florida community design regulations are an example of an optional code approach to hybrid regulations. The Hillsborough code establishes a parallel set of traditional neighborhood development, transit-oriented development, and pedestrian oriented development standards that coexist with the county's existing zoning regime. Because all land development decisions in the State of Florida must be consistent with comprehensive plan, but code establishes a series of density parameters. Within a given density level, development may proceed by right. Beyond that level, the proposal requires a comprehensive plan amendment. If development rights are transferred from conservation areas, the by right option may also be permitted.

Exhibit 4-4: Hillsborough County Densities & Administrative Options

	Lot or Parcel designated as appropriate for TND in Community Plan	Lot or Parcel not designated as appropriate for TND in Community Plan, or not subject to a Community Plan
Increase in density or intensity to maximum permitted by next higher land use category without TDR	Permitted	Permitted
Increase in density or intensity above maximum permitted by next highest land use category with TDR	Permitted	Prohibited

Reference: Hillsborough County Comprehensive Plan, Future Land Use Element Policy E2-2.4, E2-2.5; Hillsborough County Land Development Regulations, § 5.08.03.

St. Petersburg illustrates an approach to blending suburban and urban development in a series of form-based zoning districts. The City's "Vision 2020" Plan divides the city into a series of neighborhoods, corridors and centers. The plan calls for more compact, pedestrian oriented development. However, St. Petersburg contains distinctly traditional and distinctly suburban neighborhoods. Suburban neighborhood groups made it clear from the onset of the code update process that they were not unhappy with the built form of the city's suburban areas. Their preferred approach was a continuation of distinctly suburban development patterns, along with more pedestrian oriented development standards. The new zoning districts divide the city into a series of neighborhood, corridor and center districts along with two development tiers. In the traditional tier, the district standards are very urban. These feature maximum parking ratios, build-to lines, and vernacular architecture. In the suburban tier, the standards are distinctly suburban, internal pedestrian circulation and limitations on the scale of development in residential neighborhoods.

Under a hybrid approach, Gainesville's form based standards would be integrated into the fabric of the LDR draft by:

- Building aggressive design based standards into one or more new districts. These districts would include the full range of building modulation, lot disposition and parking standards that are needed to fully deploy design based standards. The districts would either be pre-mapped – thereby becoming mandatory at their designated locations – or used as floating for application by landowners. It would be similar to the City's existing PUD and TND regulations, but with updated standards.
- Building some design standards into the base zoning districts. For example, some of the City's commercial districts could include lot disposition, building modulation and design based parking standards. These would differ, and be more lenient, than the form based districts. Or, these standards could be tied to incentives, with developers allowed to proceed by right under the existing standards, and with a streamlined approach using the new ones.
- Developing or designated processing procedures for development that uses the City's preferred community design standards. An administrative process could apply to smaller scale projects with few or no immediate neighborhood impacts. A discretionary process, such as a rezoning, could apply to larger projects, those abutting residential neighborhoods, those exceeding a designated scale, or those that cannot achieve a designated score under a more flexible system (such as a point system).
- Identifying additional incentives for development that achieves community design objectives. For example, San Antonio designates tax increment financing and other city-administered assistance for development that proceeds under its Use Patterns. While identifying funding is difficult in the current recessionary economy, this sets the stage for allocating economic assistance when it becomes available.

4.3. THE "SMARTCODE"

A highly publicized and very aggressive version of a form based code is the "Smart Code." Developed by Duany Plater-Zyberk & Co., one of the leading firms in the new urbanism movement, the Smart Code is a comprehensive alternative to conventional zoning ordinances. The Smart Code is based on the "transect" concept. A transect is a geographic cross-section of a region that can be used to identify a continuum of habitats, ranging from rural to urban, that vary by their level and intensity of urban character.

The continuum of the transect lends itself to the creation of different zoning categories, from rural preserve to urban core. Smartcode advocates recommend that it should not be integrated with existing zoning regulations. Instead, it is meant to be an alternative code, co-existing with the existing code.

The Smartcode has been adopted by a handful of communities, including:

Coconut Grove, Florida			✓		
Flowood, Mississippi - - optional	October 2005			✓	
Moss Point, Mississippi	September 2006				
Leander, Texas	September 2005				✓
Montgomery, Alabama	January 2006			✓	
Petaluma, California	July 2003		Central Petaluma		✓
Pike Road, Alabama	August 2005		Sectors O-1, G-3, G-4		
Sarasota, Florida	June 2004		Downtown		✓

Placemakers, a consulting firm specializing in Smartcode adaptation, reports that 53 other jurisdictions are considering adopting the Smartcode. Placemakers reports that at least ten other jurisdictions have adopted transect-based codes. The transect divides a community or region into functional planning areas labeled "T1" through "T6." Two of the transect zones, T1 and T2, are reserved for natural areas. The T3 zone is reserved for low density, rural neighborhoods. T4 and T5 are medium density and intensity areas, with T5 providing a broader range of retail, office, lodging and civic building forms. T6 is the highest intensity zone, which is normally associated with the central business district.

The SmartCode is a comprehensive document, regulating all aspects of neighborhood development. Following transect continuum, the regulations range from the very rural in T1 through very urban in T6. The regulations include the following:

Exhibit 4-5: Smartcode Regulations

Regulatory Matters	Description
Building Disposition	"Disposition" refers to the number, location, coverage, orientation, and location of the building on the site. This includes setback standards. Lots are divided into "layers" that govern the permissible location of buildings and other site components, such as parking.
Building Configuration	Building height and elevation
Building Function and Density	The use and number of dwelling units. Density is typically a function of the available parking.
Parking	The amount, location, design, and access to parking. Parking is generally permitted on a rearward layer of the lot.
Architecture	Wall materials, proportions and dimensions, including standards for building frontages (such as porches, galleries, and arcades), doors, windows, entryways, and roofs.
Environment	Standards for plantings, impervious surfaces, and stormwater management. These standards tend to be very general.
Landscape	Standards for landscaping and street tree planting.
Signage	Location and type of signs
Ambient Standards	Standards governing noise, lighting and storage.
Visitability	Access for disabled persons, including clearance and dimensions of buildings and first floor baths.

The code includes a comprehensive set of Street typologies that are appropriate for the applicable transect zone. The street standards govern right of way, lane widths, on-street parking, curb radii, curb types, and landscape types. A comprehensive system of frontage types is included, detailing the design of sidewalks and other transitional areas from the street to the lot.

The transect designations are supplemented with sector plans and a number of community types. The sectors range from two types of open space designations, four growth sectors, and a special district. Transect zones are reserved for community plans, and are a subset of the sectors. The community types include clustered development, traditional neighborhood development, regional centers, and transit-oriented development.

The Smartcode has several advantages for local governments considering its adoption. First, the code is comprehensive, encompassing not only typical zoning standards, but infrastructure standards as well. Second, the standards are, for the most part, very specific, thereby resolving vagueness issues normally found in design based codes. Third, the code provides a useful starting point for developing comprehensive development typologies that govern streets, blocks, lots, building forms, and associated infrastructure. Finally, while most of the standards are not new, there are several innovations such as frontage topologies.

The Smartcode has limitations as well. First, the transect is an oversimplification of the existing or desired built form of many communities. In particular, it has little relationship to the narrow, linear form of Gainesville. This is not necessarily a flaw in the transect model, but rather a condition that can be adjusted as the local level.

Second, the Smartcode does not accommodate numerous types of subareas or subregional urban form typologies. These include suburban nodes and corridors, campus style development, warehouses, industrial parks, and utilitarian uses that require more space than the Smartcode standards permit. These are forms of development that the City will probably want to continue, or that it is not ready to prohibit. Under the Smartcode's "Special District" designation, they would continue to operate under the jurisdiction's zoning regulations. However, the transect model does not plan for the location or allocation of these uses at the planning level. Instead, they would occur randomly and under market conditions, but not in response to where a community wants to expand infrastructure or other planning conditions. If a community has abandoned its conventional zoning regulations and supplanted them with the Smartcode, they would not be available at all.

Related to this issue, the Smartcode does not include specific standards for utilitarian uses. Utilitarian uses include either large, big box development patterns that are automobile dependent and the predominant pattern along most suburban corridors, or industrial or semi-industrial uses that serve neighborhoods or provide manufacturing sector employment. These include gas stations, car repair establishments, warehouses, mini-warehouses, distribution centers, and industrial. How are these regulated under the Smartcode? The answer is the "warrant" or "deviation" procedure and the "SD" Special District.

These are discretionary procedures that allow the community to entitle these types of uses. A positive feature of this approach is that turns the normal practice of by right approvals for zoned uses and discretionary approvals for urbanism on its head. The downside is that it lacks standards. These are uses that many will promote legitimate planning policies in many communities, or that should be permitted as part of a more pragmatic approach to urbanism. A community could resolve this issue by adding clear standards, an "A" versus "B" street allocation or similar limitation, or landscaping, building and site design standards that avoid negative impacts and/or allow the uses to evolve over time. However, the answer to this issue is not found in the current Smartcode model.

Third, the Smartcode creates a new language that requires reeducating local administrators, applicants and neighborhoods. Often, the change in language is unnecessary. For example, a "transect" could be a comprehensive plan land use category or a zoning district. Terms such as "enfront" could be replaced with clearer and simpler terms, such as "front." These are easy fixes, but may be necessary to adapt the Smartcode to local customs, practices, and procedures.

Fourth, the Smartcode contains a number of new procedures that may be adequately addressed by existing zoning or subdivision approvals. The code requires four levels of plans - sector, new community, existing community and building scale. In a conventional system, these are typically addressed as comprehensive plan amendments, rezonings, site plans and building permits. A community can apply urban standards to these procedures without compromising the quality or character of development it wants. This would also avoid the need to retrain administrators to learn an entirely new set of procedures, or to reappoint an entirely new administrative agency.

Fifth, the Smartcode's environmental, landscaping, and noise standards are thin. While communities can add more detail where needed, it must refer to models other than the Smartcode in doing so.

Finally, the code raises a number of legal issues relating to takings, constitutionality, and authority. For example, the T-1 zone includes an "O-1" Preserved Open Sector that includes only open space that is protected in perpetuity. To the extent that this applies to private property, this could be viewed as a taking of all economic use of the property, which is considered a categorical taking that requires compensation to the landowner.

A summary of the Smartcode indicates that agricultural uses are permitted only by warrant. Some standards are vague and overbroad, which can be corrected by adding detail. These issues can be resolved by careful rewriting and adaptation of the code to the local situation.

4.4. DEVIATIONS FROM DESIGN-BASED PROVISIONS

No set of land development regulations will work for every site, every applicant, or every neighborhood. There are often sound reasons to deviate from the regulations to avoid economic hardship, unusual neighborhood impacts, or difficulty in compliance that can create a constitutional issue as applied to a particular property. In addition, not all streets or block require a high level of design. Big box development, car washes, or similar uses can provide positive economic benefits to a development (for example, by anchoring a street with more robust design controls), essential neighborhood services, or other benefits. There are various ways to implement a deviation procedure.

Another approach is to decide which standards are critical to Gainesville's community design objectives, and which are good but dispensable. In the Hillsborough County, Florida traditional neighborhood code, that community established a number of standards that were non-essential and could be waived either administratively or through a discretionary variance. The essential standards could not be waived. The Hillsborough County code establishes 3 categories: non-variable, waivable up to 10%, and those that require variances:

Exhibit 4-6: Sample Waiver Structure (Hillsborough County LDRs)

Process	Standards
Essential – not variable	• allocation of TND subareas • minimum densities and intensities • phasing of residential and non-residential development for transportation concurrency reductions • distance between residential and non-residential uses for Pedestrian-Oriented Development and Transit-Oriented • distance between the proposed development and transit facilities for Transit-Oriented Development • maximum average block lengths • maximum driveway widths • minimum garage setbacks • street design standards • street connectivity ratio • maximum percentage of "B" Streets • parking lot location standards
Limited waiver (up to 10%)	• maximum building size • maximum front setback • maximum (absolute) block length • minimum percent of Neighborhood subarea lots that must be within 1,320 feet of a parcel designated for commercial use in a Commercial or Core subarea and which takes access from an "A" Street
Variance	• all other standards

A similar approach is using A versus B Streets. Designated "A" streets must comply with a high level of design. "B" streets have lower design standards and can accommodate more utilitarian uses. The Hillsborough County code and a form based code recently adopted by Albuquerque, New Mexico, employ this approach. In Hillsborough County, "A" Streets are subject to minimum front setback, façade articulation, and architectural standards. "B" Streets can accommodate utilitarian building forms, front loaded parking, or other project features that have a lower level of design. The code designates building types that are allowed only on "B" Streets. "B" Streets are restricted to 5 lineal feet per acre of total project area, and shall not exceed 10 percent of the total length of all streets within designated Commercial and Core subareas. Block faces cannot be split by "A" Street and "B" Street designations. This approach allows design flexibility, and also the establishment of big box or other utilitarian uses that are profitable in the short run and can anchor the higher level of design in subsequent phases of a TND. In Gainesville, the code could designate portions of existing streets as "B" Streets, or tie a "B" street designation to developer commitments for design or amenities along an "A" street.

4.5. ORGANIZATIONAL ALTERNATIVES

This section discusses where the provisions identified above should be located in the City's Land Development Code ("LDC"). There is no set rule for how to codify a form based code. The following are some general alternatives for codifying a form based code.

- **Regulating Plan.** A Regulating Plan identifies locations for the application of form-based regulations. This is a highly touted ingredient of form based codes, but is not indispensable. The need for a separate plan or map depends on how and where the City wants to apply form based standards. Many cities apply design based standards successfully to corridors with zoning map revisions and textual statements of applicability, without an additional plan.

  A Regulating Plan can either be codified as an integrated graphic, or incorporated by reference as a separate document. It does not require codification as part of the regulatory text. However, if it is intended to bind development, it must be incorporated by reference. Another alternative is to adopt the regulating plan as part of the City's Comprehensive Plan. This makes the Regulating Plan difficult to change, because it triggers the plan amendment process in Chapter 163, Florida Statutes. Because the City has not used a form based code before, we recommend that the Regulating Plan become part of the LDRs rather than the plan.

- **Type of District.** The type of district used to implement the form based standards is an important policy decision. The district could use one of the following classifications for the areas listed in Exhibit 5-1:

  Floating Zone. This is a zoning district that is typically not mapped in advanced, but instead is applied for by a property owner. The regulations in the floating zone would supersede those in effect before the rezoning occurred. A Planned Development (PD) is an example of a floating zone. Administratively, a form-based floating zone would be available for application by the City or by a private landowner. In other words, the City could decide to apply it over multiple parcels pursuant to a city-initiated rezoning, or a master developer could apply the parcels and then ask for floating zone approval.

  Overlay Zone. An overlay zone supplements the zoning regulations of the city's "regular" zoning districts (the underlying districts). Property with an overlay district classification is subject to both sets of regulations, with the overlay regulations applying if there is an inconsistency. If this approach is used, the form based regulations will need to carefully exclude regulations from the underlying districts that would pose a barrier to the design outcome that the City is trying to achieve.

  Base District. This approach would codify the form based regulations as one of the City's "regular" residential, office, business/mixed use, or industrial districts established in Article IV, Divisions 2-5 of the LDRs. Like the floating zone approach, the form based regulations would be codified along with the City's residential, commercial, industrial and public district classifications.

- **Transitional Areas and Context Sensitive Compatibility Standards.** Transitional areas can be codified several different ways. First, they can be defined textually – i.e., with 50 feet of a residential zoning district. Second, they can be identified on a Regulating Plan. Finally, they can become a separate zoning district. Because of the City's small land area and the variety of building forms and neighborhood types in each designated area, we recommend that the City designate the transitional areas in a Regulating Plan. If the City decides not to go forward with a Regulating Plan, these areas can be defined in the zoning district text.

- **Sign Standards.** Sign standards are codified at Article IX, Division 1 of the LDC. These standards apply comprehensively to all zoning districts. The standards as codified do not pose any special issues for the form based standards. Form based codes sometimes include additional requirements for the location of wall signs, with freestanding signs prohibited. The form based standards could recognize additional sign types based on their design characteristics, such as blade signs (for retail frontages) and bracket signs (for residential transition areas). In addition, the City could consider banning off-premise signs the areas subject to the form base standards in order to complement the higher level of design.

- **Administration Procedures and Definitions.** The form based districts can reference the procedures that will govern permitting. Administrative procedures can apply to smaller scale developments or locations along commercial streets, with discretionary review applying to more intensive development forms or exceptions from the district standards. For some types of development – based on location or scale – the City could consider a minor review process that involves only technical review committee oversight. Larger, more intensive developments, those adjacent to existing residential neighborhoods, or those with a less favorable palette of building design or sustainability elements could require a higher level of discretionary review.

5. LDC UPDATE CONSIDERATIONS

This section discusses factors affecting the code update process. Recommendations for a specific project scope and tasks are included in section 6.2 of this report.

5.1. FACTORS AFFECTING REVISION PROCESS

There are a wide variety of approaches to revision of land development codes, each having distinct advantages and disadvantages. Processes differ by product, scope, drafting responsibilities and review responsibilities. The best approach to the process depends on the extent of amendments needed, the urgency of the needed amendments, the desired structure of the end product, the resources available to make amendments and the resources available for review of draft amendments.

Extent of Revisions. When minor amendments are proposed, the City may most efficiently achieve its ends by amending existing ordinances. Most code revisions fall under this category of patching existing codes. While this is quick and efficient, if a code has been patched over many years or if the scope of needed changes is broad, this approach can lead to inconsistencies in substance, style, format and organization. At some point, most jurisdictions find it necessary to take a more comprehensive review of the ordinance to resolve inconsistencies that have accumulated over the years and to introduce new regulatory approaches and standards. After more than 20 years of patching, Gainesville's ordinance has reached the point of needing a more comprehensive revision. For example, there are many special area plan standards that vary only slightly by area without clear justification for the lack of uniformity.

Urgency of Needed Revisions. Faced with short term regulatory challenges, most communities choose to quickly patch existing codes. In fact, most of the effort in this initial assessment has been devoted to resolving some of the difficulties the City has had with development in mixed use activity centers. The City's approach has been to develop regulatory patches that can quickly resolve these issues without extensively modifying the existing regulations. Given existing economic conditions and the fact that the issue of greatest urgency has been addressed, the City now has the luxury of time to pursue more comprehensive review and revision of the LDC.

Desired Regulatory Structure. Some communities have pursued the development of parallel codes to address design-based regulations (see section 4 for discussion of hybrid versus stand-alone design regulations), but most jurisdictions have worked to consolidate development standards and procedures within a unified code such as the LDC. This consolidated structure makes it much easier to understand, develop under and apply development regulations in a consistent manner because all regulations are in a single code and there usually is a coherent process to resolve conflicts between provisions.

Drafting Resources. Local staffs typically make minor amendments to codes, but they seldom have the uninterrupted time or expertise required to devote to a comprehensive code revision. While local staff typically have the best understanding of the local challenges that are not well addressed by existing codes, they usually lack the time required to research different regulatory strategies and their impacts. When staff time can be freed to work on a code, available personnel may lack the experience required to recognize the full range of legal, growth management, logistical and design experience to develop a complete code. Gainesville has an extraordinarily capable, but limited staff. Although their expertise will be invaluable in defining challenges, reviewing regulatory alternatives, and recommending preferred regulatory strategies, existing responsibilities do not leave them enough time for a focused redrafting of the City's LDC.

Review Resources. The most effective codes are those that have been thoroughly reviewed by all affected parties. Codes that are drafted by committee seldom produce desired results. Codes that have been reviewed by those that propose, review, approve, construct, occupy and live next door to development produce the best results. There is no such thing as a perfect code, but there is an ideal balance between certainty and flexibility that encourages desired development and makes it more difficult to develop an inferior product. The best way to reach this balance is by testing the code on desired products and those that have or would potentially yield undesirable results. Adequate review minimizes the unintended consequences of draft regulations. This process is best conducted by a committee of individuals with technical skills and practical experience with the local development process.

In sum, the magnitude of updates to Gainesville's LDC is great enough that the City should pursue a comprehensive review and amendment to the code. Because urgent regulatory amendments have been prepared in conjunction with this assessment, the City has no need to rush through the update process. The City can take the time for a comprehensive revision and comprehensive testing.

5.2. PUBLIC PARTICIPATION

While the role of the public in revising land development codes is generally not as extensive as it is for comprehensive plan amendments, meaningful public involvement is essential to:

- Understand community concerns, desires and values;
- Learn which standards and procedures are working and which need to be changed;
- Help the public understand what can and cannot be accomplished through land development regulations;
- Foster support for adoption of proposed amendments; and
- Create ongoing support for code enforcement.

As law in Florida, the comprehensive plan establishes the intent of the regulations and resolves major land use and regulatory policy issues. Because the plan establishes what the land development regulations are

supposed to accomplish, the focus of code revision is primarily on how best to accomplish adopted policies. The technical nature, complexity and the interrelated nature of code provisions limit the effectiveness of many typical public participation approaches. However, meaningful public participation prior to initiation of the public hearing process is essential to ensure that the outcomes of the code reflect plan directives adopted by the community.

Technical Committee. As discussed in the previous section, more technical members of each stakeholder group should be deeply involved in the code revision process to review the impacts of regulatory decisions that are not fully addressed in the comprehensive plan. This is best accomplished through a technical committee that can provide guidance on regulatory policy issues raised throughout the drafting process. This Committee will need to understand procedural, land use, service provision and design requirements of the code. Committee meetings would be public, but generally would not provide opportunities for public input. This technical committee should be comprised of approximately a dozen people who understand the development review process, with representation of:

- Public sector: planning, engineering and other public service entities;
- Development interests: commercial and residential developer, builder, realtor and engineering; and
- Other interests: neighborhood associations, environmental groups, housing providers.

Policy Guidance: At a less detailed level, the process should include a group to provide policy guidance throughout the process. City staff can help interpret plan policies, but there will be times throughout the code revision process that code drafters will need to confirm the intent of the comprehensive plan. The role of the Policy Committee may be filled by the Planning Board, the City Commission's Community Development Committee or a newly formed group comprised in part or entirely of representatives from various City Boards and Commissions. This Policy Committee will not be involved in the detailed code analysis, but will provide general policy guidance as requested throughout the process by the Technical Committee. All Policy Committee meetings would be public meetings.

General Public Participation. In addition to being able to attend the meetings of the Technical and Policy Committees, the public should be offered a variety of forums for input prior to initiation of the public hearing process. At least three open public forums or charrettes should be conducted at the following points in the process.

1. At the outset of the project, the public should be invited to identify their concerns and desires for revisions to the code. This forum should provide ample opportunity to comment on the development review process (including opportunities for public involvement), aspects of the code that are working well and areas where the code fails to achieve desired results.
2. During the drafting of the code, a series of special topics discussions should be held to address specific regulatory issues of concern (e.g., parking, neighborhood protection, development review processes, etc.).
3. Prior to initiating the public hearing process, an open forum should be held to discuss proposed changes to existing standards and procedures.

Charrettes typically are used to involve citizens in design projects. Planning Works trained facilitators have used charrette process for a much broader range of purposes, including community visioning and the development of design-based regulations. This hands-on approach involves participants more actively in an intense multi-day series of workshops. This approach shortens turn-around time between meetings and enables participants to see how their input is used without having to wait a month or more between meetings. Exhibit 5-1 shows a typical schedule for an LDC charrette. This three-day event includes targeted stakeholder meetings, regular coordination with staff and decision-makers, and ongoing opportunities for informal discussions.

Exhibit 5-1: Sample Charrette Schedule

<table>
<tr><th></th><th>Day 1</th><th colspan="2">Day 2</th><th colspan="2">Day 3</th></tr>
<tr><td>9:00 AM</td><td rowspan="3"></td><td rowspan="4">Stakeholder Group Workshops</td><td rowspan="10"></td><td>Technical Committee</td><td rowspan="3">Elected / Appointed Officials Open House</td></tr>
<tr><td>10:00 AM</td><td rowspan="3">City Staff / Consultant Team Orientation</td><td rowspan="3">Stakeholder Group Workshops</td></tr>
<tr><td>11:00 AM</td></tr>
<tr><td>12:00 PM</td><td>Lunch</td><td>Lunch</td><td rowspan="2">Steering Committee Lunch Meeting</td></tr>
<tr><td>1:00 PM</td><td>Steering Committee Meeting</td><td rowspan="6">Stakeholder Group Workshops</td><td rowspan="6">Public Open House</td><td rowspan="6">Meeting Prep</td></tr>
<tr><td>2:00 PM</td><td rowspan="5">Elected / Appointed Officials</td><td rowspan="5">Stakeholder Group Workshops</td></tr>
<tr><td>3:00 PM</td></tr>
<tr><td>4:00 PM</td></tr>
<tr><td>5:00 PM</td></tr>
<tr><td>6:00 PM</td><td rowspan="2">Kick-Off Meeting</td><td rowspan="2">Community Workshop / Wrap-Up Celebration</td></tr>
<tr><td>7:00 PM</td><td></td><td></td></tr>
</table>

In addition to these charrettes, the public participation process should include outreach to civic, neighborhood, business, environmental, development and other organizations. Periodic presentations to organizations can do much to clarify what the code proposes and to correct misinformation that inevitably is brewed in local coffee shops prior to initiation of the code adoption process. At least one per month should be scheduled, and more if staff resources are available.

Media outreach should be in effect throughout the process. In addition to providing regular updates to local news agencies, a web page should be maintained to apprise the public of the status of the project, meeting schedules and key decisions. The web page should provide links for submittal of comments. Finally, the

web page should include a series of FAQ documents to address topical issues and respond to public concerns about the code that arise during its drafting.

Finally, copies of FAQs, web links and other information on the LDC revision process should be distributed at the City's ongoing public outreach meetings for the Comprehensive Plan Evaluation and Appraisal Report process and at other City information meetings.

5.3. LDC REVISION SCHEDULE

The schedule for revision of the City's LDC should reflect the magnitude of change proposed. The elimination or reduced role of specific area plans as overlay districts will undoubtedly raise concerns for affected residents, property owners and business operators. Similarly the introduction of more ministerial approvals and a reduction in the numbers of public hearings will alarm many who fear what could be developed nearby. These changes alone will necessitate extensive public outreach to ensure that proposed design-based regulations will yield better results than existing processes. If development regulations are clear and equitable, staff and the development community are likely to embrace the changes, as will many board members who will face fewer, but more substantive decisions. The neighbors of properties undergoing development or redevelopment will want assurances that they will be informed about projects and that approved developments will adequately mitigate negative impacts.

To achieve these objectives, the City should plan a development revision process that is scheduled over at least a two year process. This will give stakeholders the time to express their concerns, understand alternative ways to address those concerns, reach consensus for regulatory approaches that best balance the needs and desires of competing interests. In addition to summarizing the findings of this report, the following section includes a detailed scope and schedule for code revision.

6. FINDINGS AND RECOMMENDATIONS

6.1. FINDINGS

While the City's LDC is generally well organized, it suffers from problems that are common to codes that have been patched for several decades. In many areas, it is outdated, needlessly cumbersome to use and administer, and insufficiently developed to implement the City's Comprehensive Plan. In general, the comprehensive plan is current and clear about desired outcomes, though in some cases it is overly detailed (e.g., including regulatory standards) and in others unclear about how the plan should be implemented through the LDC (e.g., the failure of the plan to distinguish between urban and non-urban areas). Based on the initial review conducted pursuant to this study the recommendations presented in the following section are needed to address the following findings:

1. Planning staff and the development community currently have a constructive working relationship that lends itself to an effective code revision process.
2. Applicants, staff and decision-makers have to implement design policies without sufficient design standards in the LDC.
3. The special area plans establish an unnecessarily complex regulatory system that could be greatly simplified.
4. Plan design policies could easily be administered in most areas by City staff without the need for additional design review boards or hearings. In fact, more predictable and uniform design regulations provide opportunities to reduce the number of hearings
5. Development outcomes sometimes fall short of development approvals due to the process that allows Gainesville Regional Utilities to override approved plans for streetscapes and other landscaping.
6.

6.2. RECOMMENDATIONS

6.2.1. KEY LDC REVISIONS

While the list in this section should be supplemented based on a line-by-line review of the existing LDC and discussions with stakeholders about the effectiveness of both written and unwritten regulations, the following recommendations provide a good outline of the most significant LDC revisions that are needed.

- Apply design-based regulations to all zoning districts through district and supplemental use standards to better achieve plan objectives.
- Extend design regulations for more livable designs that promote mobility options to zoning districts other than the MU-1 and MU-2 districts addressed during phase one of this project.
- Provide more constructive guidance and meaningful incentives for transformation of suburban shopping centers to urban mixed use centers.
- Adjust stormwater standards to provide greater flexibility for urban stormwater management facilities that include shared systems.
- Modify street design, block length and connectivity standards to promote greater mobility and produce a more livable city.
- Resolve streetscape conflicts. While there is a clear desire to create more urban streets, this often causes conflicts between utilities, tree plantings and street setbacks.
- Address design distinctions between core areas and edge areas. Distinguish between development along urban arterials, where traffic moves at relatively slow speeds, and high speed arterials, where greater separation is needed to protect pedestrians and bicyclists.
- Describe how the scale and character of development should differ between urban and core areas and between zoning districts.
- Replace specific area plans with zoning standards that address the area plan design objectives uniformly in applicable zoning districts.
- Replace existing SIC based land use classification system with the LBCS system, which better distinguishes land uses based on impacts.
- Develop more context-sensitive sign regulations that distinguish standards based on the velocity of traffic along abutting streets and the character of the area.
- Adjust standards for the design, location and number of parking spaces required.
- Modify TND standards to allow for administrative review of certain projects.
- Expand the flexibility of staff to grant minor waivers to specific design standards for infill development.

6.2.2. IMPLEMENTATION OF DESIGN-BASED REGULATION

As explained in this report, there are many ways to establish and administer design-based regulations. Given local resources, the community's desire for high quality neighborhoods, and the need to increase mobility options for residents, the consultant team recommends the following approach for the implementation of design-base regulations:

- Adopt design-based regulations as part of the LDC rather than through a separate code. Apply standards though a combination of district and use-based regulations that minimize the need for additional overlay districts.
- Use the comprehensive plan and zoning district maps to establish differences in the character and design standards within core and edge areas of the City in lieu of developing a separate regulating plan. These documents should be modified to eliminate or minimize the need for special area plans.

- Use administrative approvals to apply design regulations to the greatest extent possible, particularly for infill, mixed use and traditional neighborhood development.
- Limit design-based regulations to building form (do not mandate architectural styles) except in historic districts.

6.2.3. CODE REVISION PROCESS

The code revision process should be designed to provide an open forum for stakeholders to express concerns, participate in meaningful discussions of proposed standards and procedures, make recommendations and comment on draft text. The Planning Works team recommends the overall approach shown in Exhibit 6-1, which is described in more detail in the following scope of services

Exhibit 6-1: Overall Code Revision Process

6.2.4. RECOMMENDED LDC REVISION PROCESS

The following scope of services outlines an approach to LDC revision that makes targeted use of staff and the Planning Works Consultant Team.

PHASE 1: DIAGNOSING CURRENT CODE STRENGTHS AND WEAKNESSES

Task 1.1 Review Existing Data, Refine Outreach Plan

Review the existing LDC to assess the effectiveness of the regulations at achieving the goals and objectives of the Comprehensive Plan. The Team will coordinate with City Staff to schedule initial outreach efforts and launch the project website. The team's familiarity with the Comprehensive Plan and Land Use Development Code will minimize the cost of this initial review.

Task 1.2 Charrette #1 – Diagnosing Regulatory Strengths and Weaknesses

Lead a 3-day charrette to kick-off the planning process by discussing strengths and weaknesses of the current LDC and exploring regulatory alternatives to resolve LDC deficiencies. These meetings will build on the phase 1 focus group outreach, which primarily addressed mixed use challenges. For each of the charrettes, the Planning Works Team will work out of an "open studio" on site and the public will be invited to stop in to view progress and share their thoughts with the Team. In addition to providing public access to the experts, this approach will "de-mystify" the planning process. Discussion topics will be scheduled as follows:

Day 1 – Procedures, Administration, and Land Use

Day 2 – Sustainability and Infrastructure Standards

Day 3 – Subdivision and Site Design

Task 1.3 Findings and Recommendations Presentation

Present the key findings and recommendations of Phase 1 in a joint workshop that will include the City Commission, City Plan Board, Steering Committee and Technical Committee.

PHASE 2: SELECTING REGULATORY STRATEGIES

Task 2.1 Refine LDC Outline

Refine the working LDC outline based on comments from Task 1.4 and identify significant regulatory changes that are anticipated in the new LDC. Annotations will highlight alternative standards and procedures that should be considered in charrettes 2 and 3.

Task 2.2 Charrette #2 – Technical Framework

Conduct a three-day charrette focusing on the LDC's technical framework, including the proposed reorganization. Charrette sessions will involve the Steering Committee, Technical Committee, the public and other stakeholders in discussions of the following topics:

Day 1 – Procedures, Administration, and Special Purpose Regulations

Day 2 – Zoning Districts and Development Standards

Day 3 –Improvement Requirements

Task 2.3 Charrette #3 – Design Framework

Conduct a three-day charrette focusing on the LDC's design framework. Charrette sessions will involve the Steering Committee, Technical Committee, the public and other stakeholders in discussions of the following topics:

Day 1 – Sustainable Subdivision Design

Day 2 – Sustainable Site & Building Design

Day 3 – Other Design Standards

Task 2.4 Detailed Annotated LDC Outline and Report

Based on the results of the charrettes, refine the annotated outline and describe where new and existing regulations will be located in the new LDC. Before beginning Phase 3, Staff and the Technical Committee will be asked to confirm that the annotated outline should serve as the basis for organizing the draft regulations.

PHASE 3: ASSEMBLING THE LAND USE DEVELOPMENT CODE

Task 3.1 Coordination Sessions

Ensure smooth coordination of all tasks and meetings and to effectively conduct public outreach, including maintaining the project website and managing notices of and invitations to the charrette and refinement workshops. The Planning Works Team will hold internet-based teleconferences with Staff and the Technical Committee to ensure that the Team is moving forward in accordance with the City's expectations and to resolve technical issues.

Task 3.2 Prepare Preliminary Public Review Draft

Draft a preliminary LDC based on the annotated outline prepared in Task 2.4. Prior to Task 3.3, the draft LDC will be reviewed by the project counsel to ensure internal consistency and compliance with Florida law. The draft LDC will include the following provisions, which will be organized in accordance with the annotated outline:

Administration and Procedures

Zoning Districts and Uses

Site and Subdivision Development Standards and Design Guidelines

Public Facility Improvement Requirements

Regulations for Specific Uses

Task 3.3 Charrette #4 – Bringing It All Together

Present the draft LDC at a two-day charrette. Charrette sessions and workshops will provide both general and specific discussions of the purposes, procedures, standards and effects of the new LDC.

Day 1 – How the LDC Works

Day 2 – What the LDC Requires

Task 3.4 Planning Works Team Work Sessions

Hold regular internet-based teleconferences to ensure the draft LDC is meeting internal milestones.

Task 3.5 LDC Refinement Workshops

Conduct LDC refinement workshops to address issues that arise during the process. Workshop topics and formats will be determined in coordination with City Staff.

Task 3.6 LDC Refinement Workshops

Conduct LDC refinement workshops to address issues that arise during the process. Workshop topics and formats will be determined in coordination with City Staff.

PHASE 4: FINALIZING, ADOPTING, AND IMPLEMENTING THE LDC

Task 4.1 Prepare Final Public Review Draft

Following Task 3.6, prepare a final Public Review Draft for review by Staff and the Technical Committee. After addressing Staff and Committee comments, the Team will make the draft available via the project website.

Task 4.2 City Plan Board Hearing

Present the draft LDC at a public hearing before the City Plan Board to describe the effect of the LDC, to answer community questions, and to forge consensus for adoption of the LDC.

Task 4.3 City Commission Hearing

Present the draft LDC at a public hearing before the City Commission. Prior to this meeting, the Planning Works Team will prepare an addendum of revisions requested by the City Plan Board.

Task 4.4 Refine Final Draft

Following LDC adoption, coordinate final revisions and prepare a digital version with hyperlinked text and illustrations.

Task 4.5 Training Workshops

Conduct workshops for City Staff, elected and appointed officials, the development community, and the public to educate them on the new LDC, including the development review process and significant changes to development standards and requirements.

6.2.5. SCHEDULE

Schedule: As discussed in the previous section, the scope should be spread out over the course of at least two years to provide adequate time for discussion, drafting, staff review, public review and the adoption process. Generally, Phase 1 would take place over the first three months of the project. Phases 2 and 3 would take place over the next 18 months. Phase 4 would require approximately 6 months.