

# Flexible, Innovative Zoning Techniques

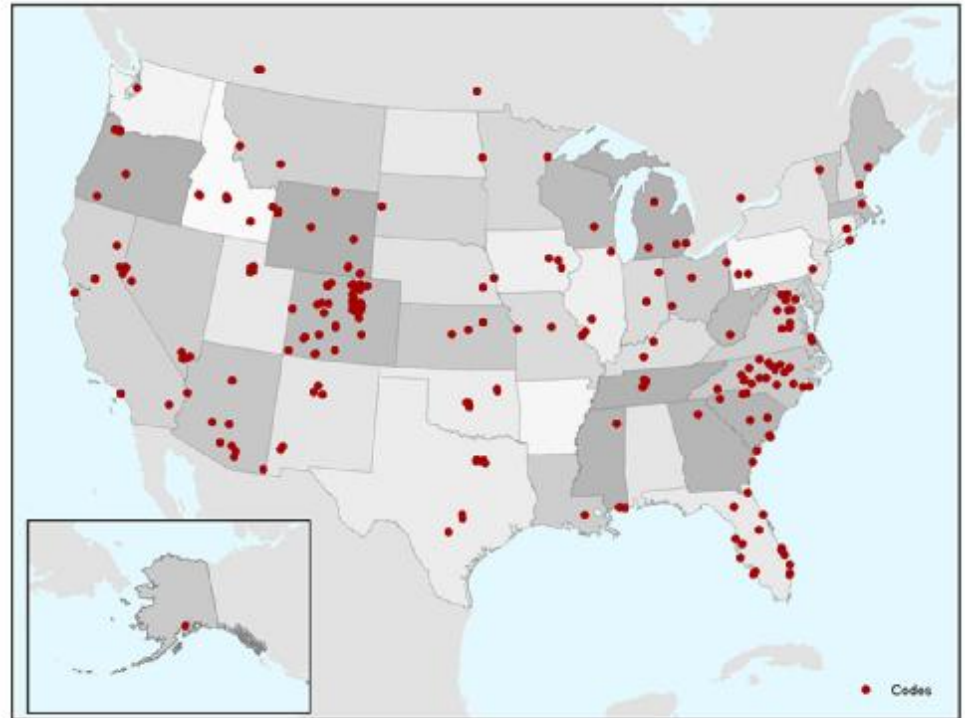


**WHAT'S NEW IN THAT OLD, STAIID,  
FIELD OF ZONING ???  
WELL . . . LOTS!**

**Don Elliott, FAICP     Kristin Cisowski, LEED AP**  
**Clarion Associates**  
**Denver, CO**

# WHO ARE WE?

- 18 Planners, Attorneys, Urban Designers, and Landscape Architects
- Over 130 development code projects in the U.S. and Canada
- Hybrid form-and-use codes, sustainable codes, and graphically illustrated codes



# WHO ARE WE?



## Don Elliott, FAICP

- i Planner/Lawyer – 27 years
- i *A Better Way to Zone*
- i *The Rules That Shape Urban Form*



## Kristin Cisowski, LEED AP

- o Planner/Lawyer/Engineer
- o Development Code Drafting



# OUTLINE

## New Types of Codes

- Form Based and Hybrid Codes

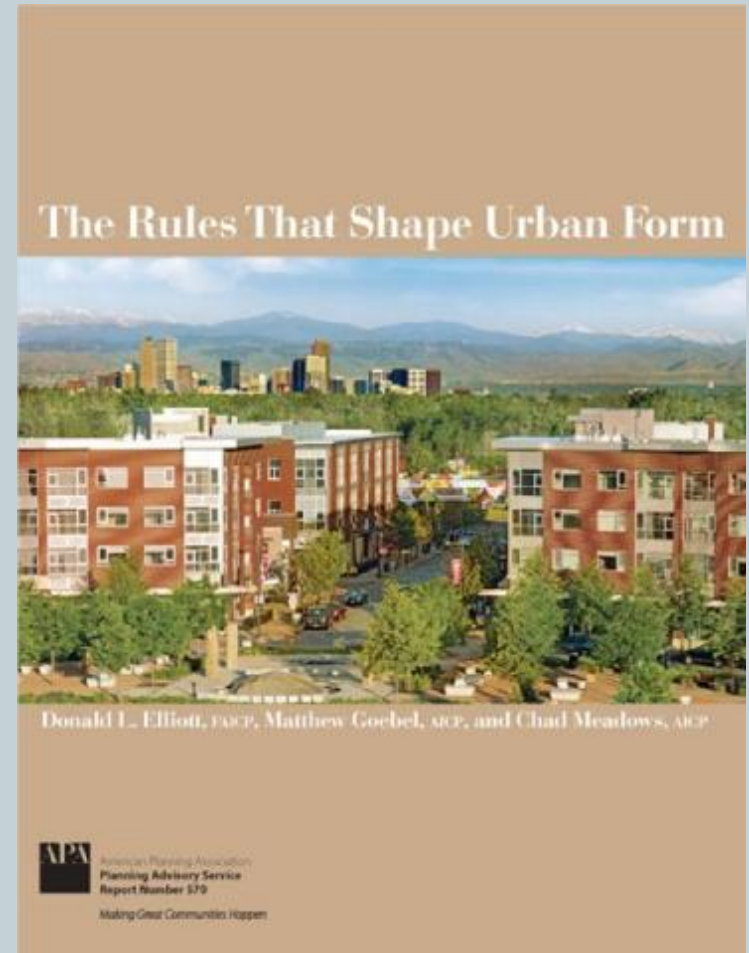
## New Land Uses

- ADUs
- Cottage / Pocket Neighborhoods
- Urban Agriculture

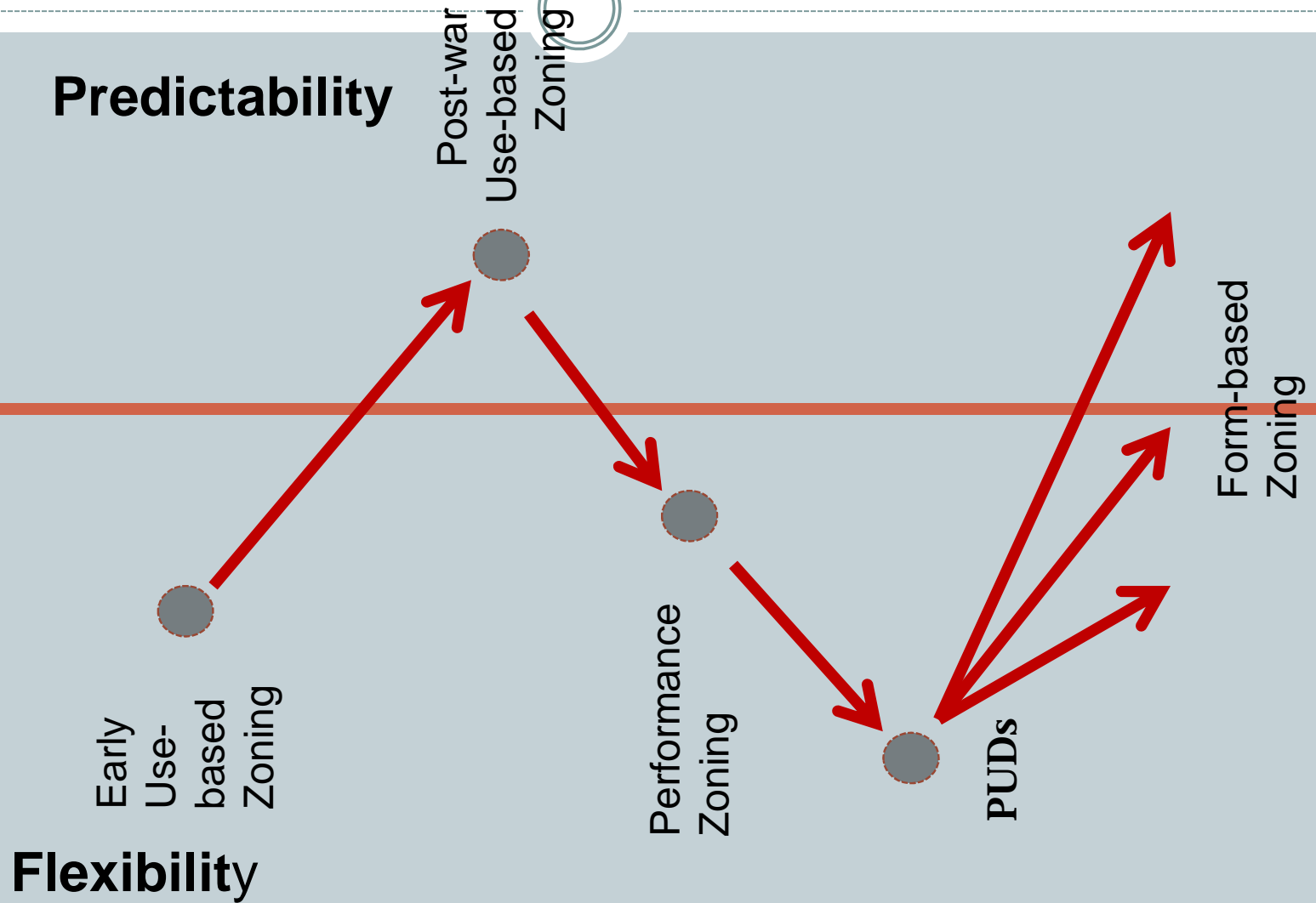
## Legal Changes

- Fair Housing
- Cell Towers
- First Amendment Timeframes

## Questions and Answers



# NEW TYPES OF CODES



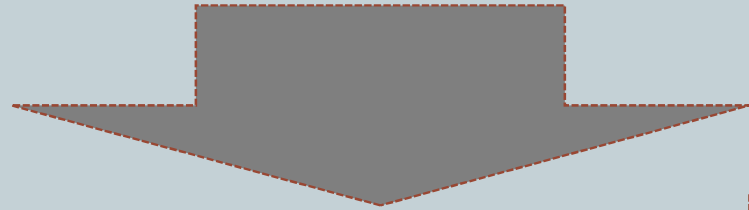
# NEW TYPES OF CODES



**Uses**

**Process**

**Form**



**Uses**

**Process**

**Form**

# NEW TYPES OF CODES

## FBCI Core Elements List

- Building Form Standards
- Building Type Standards
- Frontage Type Standards
- Public Space Standards
- Block and Subdivision Standards
- Regulating Plan



# NEW TYPES OF CODES

## Building Forms & Types



Downtown Building



Building Types by Districts		Districts					
Building Types		MS-1 (Main Street)	MS-2 (B Street)	MS-3 (Transitions)	DT-1 (High Street)	DT-2 (Support)	DT-3 (East High)
	Storefront Building	●		●	●	●	●
	General Stoop Building		●	●		●	●
	Cottage Commercial	●	○	●			●
	Civic Building		●	●	●	●	●
	Row Building		●			●	
	Parking Structure					◐	

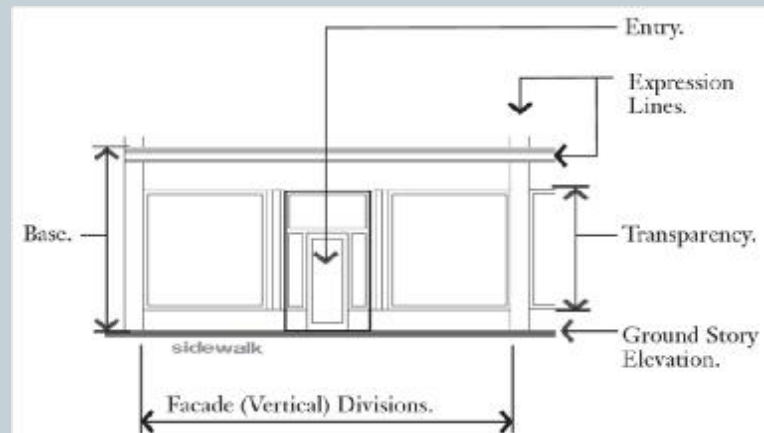
- = Permitted within district
- = Permitted only on corner parcels
- ◐ = Permitted on secondary street only

Table 1129.40 (1). Permitted Building Types by District.

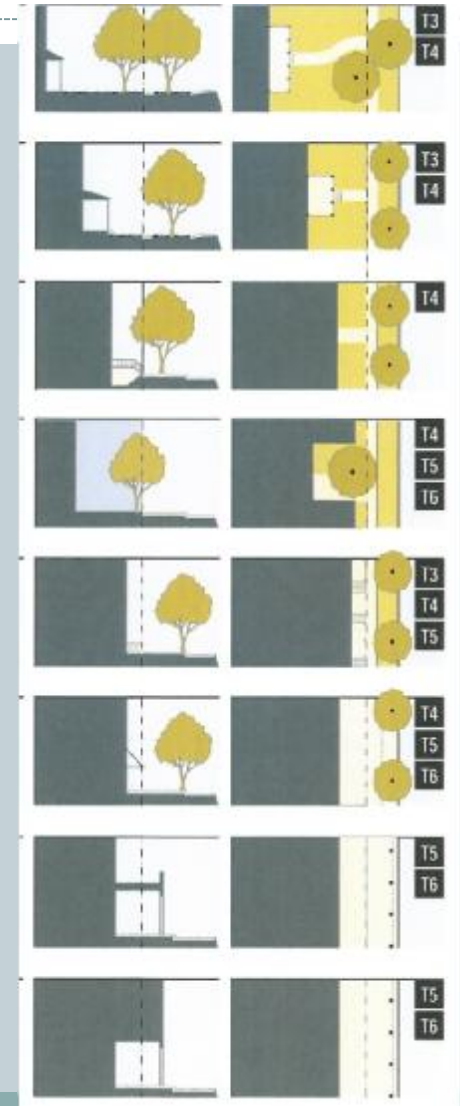


# NEW TYPES OF CODES

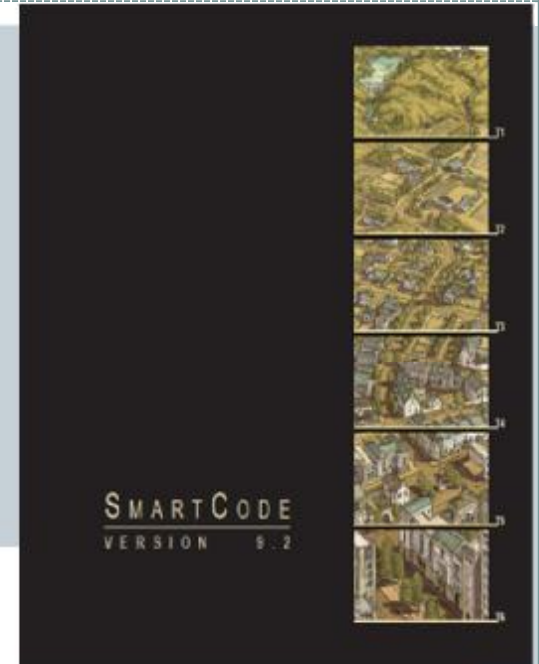
## Frontage Types



Storefront Frontage



# NEW TYPES OF CODES



**Austin**

**Mooreville**

**Denver**

**Arlington  
County**












**Livermore**

**Miami**

# NEW TYPES OF CODES



## The Take-aways

	Austin	Mooreville	Denver MS	Arlington	Livermore	Miami
Building Types						
Frontage Types						
Public Space Standards						
Block & Subdivision						
Regulating Plans						
By Right Development						

# NEW TYPES OF CODES



## Other Routes to Flexibility

### 1. Conditional Zoning

- Rezoning to another district with conditional prohibiting
- Legality depends on state law – but some version of this is pretty common

### 2. Neighborhood Conservation Zones

- An Overlay Zone that includes tailored character/scale/feature controls for specific neighborhoods
- Group them together under an umbrella district, but controls differ in each



# NEW LAND USES



## 1. Accessory Dwelling Units

- A second, size-limited, dwelling unit accommodated on the same lot as a primary dwelling (typically a S-F detached or S-F attached dwelling) — intended for smaller households (elderly, students)
- Can be either “internal” — within the envelope of the primary structures — or “external” — in a freestanding garage or carriage house



# NEW LAND USES



## 1. Accessory Dwelling Units

### Almost Universal Standards

- Limit one per lot
- Size limited to 600-800 sq. ft.
- Property owner must reside in one of the two units

### Frequent Standards

- 1 more parking space
- No entrance facing the street
- Only on large lots





# NEW LAND USES

## 1. Accessory Dwelling Units

### The Big Myth

- “This will double the density of our single-family neighborhoods”
- No
  - Many properties cannot accommodate them
  - Many property owners do not want a second resident
  - Participation has been low



# NEW LAND USES



## 1. Accessory Dwelling Units

### Advice

- If you really want ADUs, don't require the extra parking space
- Don't include a "relatives only – no rentals" clause – it's practically unenforceable
- Don't over-regulate the design – the existing housing stock is too varied
- Try it – monitor impacts – and adjust





# NEW LAND USES



## **2. Cottage/Pocket Neighborhoods**

A collection of small footprint houses (often 800-1200 sq. ft.) on private streets, designed to fit into unused small, irregular parcels either

- Within existing single-family neighborhoods
- OR
- At the edges between single-family neighborhoods and more intense areas

**Think: Regulating the density by square footage of housing instead of dwelling units**

# NEW LAND USES

## 2. Cottage/Pocket Neighborhoods



**Third Street Cottages  
Langley, WA**

**8 cottages on 29,400  
sq.ft. site  
11.8 du/ac**

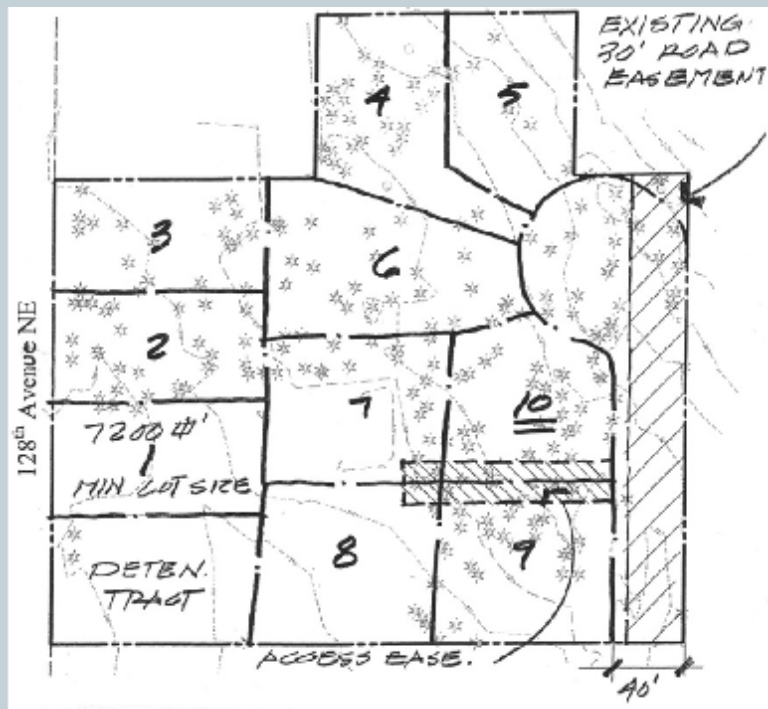


# NEW LAND USES

## 2. Cottage/Pocket Neighborhoods

### Danielson Grove Cottages

Site that would have 10 7,200 sq ft. lots can accommodate 15 smaller lots



# NEW LAND USES



## 2. Cottage/Pocket Neighborhoods

### Typical Standards

- Limit on FAR for the site – but usually not # of DUs
- Sometimes a limit on 2x # of DUs under prior zoning
- Minimum project separation = 500 to 1,500 ft.
- 50% lot coverage
- Parking = 1 space < 700 sq. ft., 1.5 < 1,000 sq. ft.
- Front porch required = 64 sq. ft.
- Normal 20 ft. front setback



# NEW LAND USES



## Accessory Gardening

-- was always OK but many codes are silent and should be clarified



## Urban Agriculture

A primary use – 1-3 acres – allows sales and structures – and sometimes larger animals



## Farms (think Tractor)

A primary use-- historically not an urban land use but cities with large areas of land now allow it



# NEW LAND USES



## **Do You Need a Separate “Urban Ag” Zone District**

### **Philadelphia**

- No – just allow urban agricultural uses in most districts

### **Dayton**

- No – address it as a use allowed in some districts

### **Youngstown**

- Yes – to discourage larger investments on big vacant areas that we would then have to serve with water/sewer/police/fire

### **Cleveland**

- Yes – for sites on where gardens are “highest and best use” for the community

## **The real issue**

Who owns the land, and what is it worth for other uses?

# NEW LAND USES

## Can you Sell Produce Grown on the Property?

**Increasingly -- Yes**

**Usually includes processed food grown on the property as well**

**Sometimes subject to a business license**

**Sometimes limited to back yard or not in front setback**

**Size often limited (e.g., 50 sq. ft.)**



# NEW LAND USES



## What About Support Structures?

**Tool & equipment sheds often allowed at 120-400 sq. ft.**

**Hoop houses often allowed – subject to height limits**

**Cold frames generally allowed**

**Usually subject to maximum total lot coverage and setbacks**





# NEW LAND USES



## **Soils – the AAARGH!! Topic**

**Greening the World meets public health realities**

**Everybody must test for lead**

**If a commercial or industrial parcel – must test for 5 heavy metals and clarify which concentrations levels are OK**

**So . . .Trucked-in soil is the norm**



**Clarion Associates**

# LEGAL CHANGES



## **Fair Housing – has gotten harder**

- -- and is going to get MUCH harder

1. Fair Housing Act of 1968 (and 1988)
2. State antidiscrimination acts
3. State zoning enabling laws
4. State “Group homes” statutes

AND

5. Obligations under federal funding programs
  - CDBG, HOME, other HUD programs



**Clarion Associates**

# LEGAL CHANGES



## Fair Housing

### Protected Classes

- Race, Color,
- National Origin
- Religion
- Sex
- Familial Status
- Handicap
  - Includes recovering drug users & HIV/AIDS

### But Not

- Sexual Orientation
- Homelessness
- Victim of Abuse
- Income
  - Fair Housing is NOT the same as Affordable Housing

# LEGAL CHANGES



## Fair Housing

**Handicap—*protects persons with disabilities or those associated with them***

- (1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
  - (2) a record of having such an impairment, or
  - (3) being regarded as having such an impairment,
- but such term does not include current, illegal use of or addiction to a controlled substance

# LEGAL CHANGES



## Fair Housing

Ways that local regulations  
can violate the FHA:

- Disparate *treatment*
- Disparate *impact*
- Failure to make *reasonable accommodation* in your rules, or to allow reasonable modifications of a structure – to accommodate a disability



# LEGAL CHANGES



## Fair Housing

### Watch out for:

- Restrictive “family” definitions
- Facility spacing requirements not backed by medical evidence
- Special permit requirements that address who is housed
- State laws protecting “developmentally disabled” and “mentally ill”
  - Far narrower than FHA



# LEGAL CHANGES



## **Fair Housing – the BIG Change**

**New proposed HUD rule move from  
“Analysis of Impediments”**

**-- show you did nothing bad**

**to**

**“Affirmatively Furthering Fair Housing” ---**

**-- show you’re doing good**

**60 day comment period is over**

**-- Final rule expected soon**

# LEGAL CHANGES



## **Fair Housing – the BIG Change**

### ***AFH Tool:***

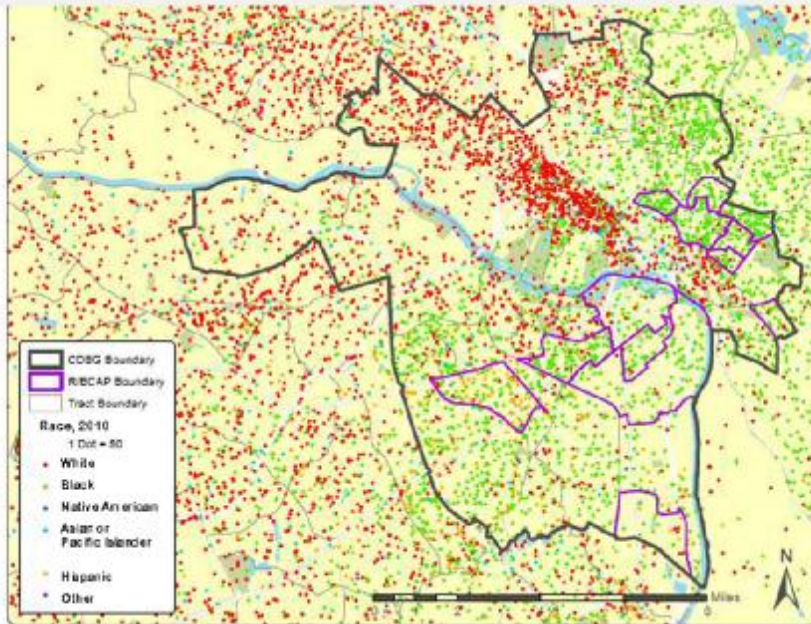
- Methodology and Focus Topics Required
- Very data heavy – and you must use (or consider) the HUD data
- Areas of focus
  - Integration and Segregation
  - Concentrations of Poverty
  - Disparities in Access to Community Assets
  - Disproportionate Housing Needs in Protected Classes



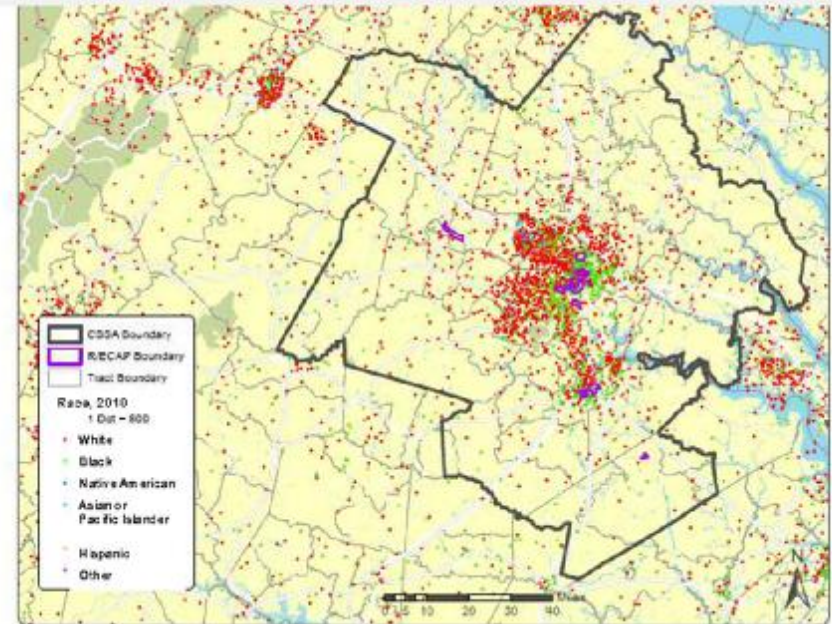
# LEGAL CHANGES

## Fair Housing – the BIG Change

Map 1. Race/Ethnicity 2010, Jurisdiction X



Map 1. Race/Ethnicity 2010, Region X



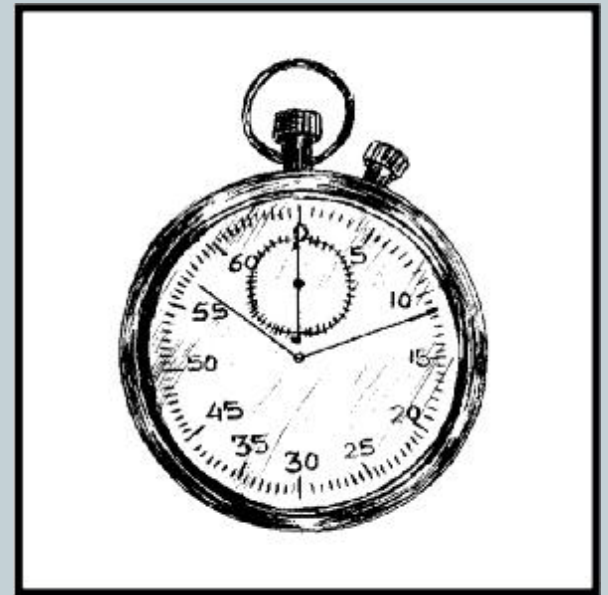
# LEGAL CHANGES



## Cell Towers – the Shot Clock

A rebuttable presumption that you should be able to review and decide on:

- A collocation application within 90 days; and
- A new tower application within 150 days



# LEGAL CHANGES



## Cell Towers – Collocations

Very hard to deny an application for collocation that does not “substantially change” the tower size:

- Tower height increase  $< 10\%$
- Antenna array height increase  $< 20$  ft.
- Widen  $< 20$  ft. or width of tower
- $< 5$  new cabinets
- No excavation beyond site

These are now declared by Feds as “no biggie”



# LEGAL CHANGES



## Cell Towers – Findings Required

- Roswell, GA Planning Commission recommends approval of cell tower
- City Council denies in light of strong neighborhood opposition
- Denial refers to transcript of hearing for written findings of reasons for the denial
- Provider challenges whether that meets the “in writing” requirement of the Telecommunications Act
- District Court = NO, Appeals Court = YES
- Supreme Court = YES, but . . . .



# LEGAL CHANGES



## **First Amendment Uses and Structures** **Signs – Adult Uses – Religious Institutions**

### **The problem:**

- Unpopular applications tend to get delayed for further study or further negotiations
- Delaying the exercise of free speech and free exercise rights tends to have a “chilling effect” on the use of those rights

*“Move to Continue . . .  
Again”*



# LEGAL CHANGES



## First Amendment Uses and Structures

### The courts' emerging solution

- Zoning codes must have a time limit within which applications for adult uses and signs must be made
- If there is an administrative appeal of that decision, there must also be a time limit within which the appeal decision must be made
- Probably applies to religious institutions



# LEGAL CHANGES



## First Amendment Uses and Structures

**Regulations based on “secondary impacts” of adult uses getting closer scrutiny**

- Most studies on increased litter, crime, loitering, etc. involve “adult entertainment” uses (i.e. areas around strip clubs and adult theaters)
- Few studies address “adult retail”, but secondary impacts may be much lower there
- Might want to distinguish between them in your zoning ordinance



# LEGAL CHANGES



## Marijuana

**Colorado legalizes medical MJ in 2000 and recreational MJ in 2012**

- Both required major efforts to create licensing and land use regulations and enforcement capacity at both state and local levels
- Much more complex than you think – the industry involves growing --- testing – transportation – distribution – and retail operations





# LEGAL CHANGES



## Marijuana

### The Very Basics

- Yes, your community can ban them – the right to possess does not include the right to grow, test, distribute, sell, or buy in a specific location.
- State license required, and state taxes due, but most regulation is by locals
- Local taxes authorized
- Most cities enforce primarily through licensing – not zoning – other than basic use and spacing requirements
- Need Colorado ID to buy in some cities
- No smoking in public – ever



# LEGAL CHANGES



## **Marijuana**

### **Rural Park County**

- 500-1,000 straight line spacing from sensitive uses
- No sales of alcohol, tobacco, food, beverages
- Lots of building security – annual licensing
- Sale only to those with CO identification



### **Urban Denver**

- 5 mixed use zone districts off-limits
- 1,000 straight line spacing from sensitive uses
- Limitations on advertising and operating hours
- \$5,000 annual fee plus 5-15% taxation



# QUESTIONS ?



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