

Property rights are affected by zoning and form-based codes

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An article appeared on the Planetizen website this week entitled *Top 10 Misconceptions about Form-Based Codes* in which the author of the article, who was also the director of a company that writes FBCs, pled his case against what he believed were unfair and inaccurate conceptions about these codes.

FBCs have been replacing conventional zoning codes at a quickening pace over the past few years. According to the author, 252 out of 400 FBCs that have been written have actually been adopted by cities in some form or another. I suspect, but can't prove, that there are many more cities considering the adoption of these codes and are simply in the process of renovating their comprehensive plans as a predicate to doing so.

Such is the case with the City of Tulsa, who rewrote their comprehensive plan (PlaniTulsa) several years ago, and is now considering adopting FBCs in a few limited areas of the city, presumably to demonstrate their desirability. While I am grateful that city planners have not attempted to force a full-blown FBC through, I fear that the code will evolve that direction incrementally over the coming decade. I am also grateful that churches like LifeChurch have been able to build in retail areas instead of being told to go elsewhere, as is commonly happening in a number of other cities.

A form-based code is much as its name implies in that it seeks to set a standard for construction that forces buildings to be designed and placed to form a streetscape or fulfill a theme that city planners seek to accomplish. (That's the *Reader's Digest* version, FBCs are much extensive in their scope.) For example, a FBC typically requires a "build-to" line where new construction must be placed, instead of a "setback" line that we find in conventional codes. A setback line normally prevents buildings from being placed too close to a street or other property lines.

The author of the article cited ten myths, which I will list here, but due to the limited space I have in this article, I will only discuss a few.

The ten are: "FBC dictates architecture; FBC must be applied citywide; FBC is a template that you have to make your community conform to; FBC is too expensive; FBC is only for historic districts; FBC isn't zoning and doesn't address land use; FBC results in "high density residential"; FBC requires mixed-use in every building regardless of context or viability; and FBC can't work with design guidelines and complicates staff review of projects."

I would disagree that any of these are actual myths, but I don't think that that can be stated as an absolute for any one of them. There is a degree of truth to some of them, but not all.

For example, to state that it is a myth that a FBC is too expensive may be accurate if you compared the actual bricks-and-mortar cost of what you would have built, a comparison that can't actually be done without building both. What makes a FBC more expensive is what you

don't see. For example, land costs will likely be more due to land regulations, or as I recently experienced, a project was abandoned because the FBC regulations would not allow a project to be designed for cash flow and profitability. Another example might be that a FBC would require a certain amount of "affordable" (i.e. subsidized) housing to be provided in a housing project or mixed use development, forcing the prices of the remaining units to be higher than market prices would have been normally.

If there were one of the stated myths I would agree is a myth, that would be that "FBC isn't zoning and doesn't address land use" because it certainly is on both counts.

As is the case with most urban planners, churches are not given much consideration. If there was to be an eleventh myth I would add, it would be that "FBC's aren't friendly to churches." When I made that same statement to a city planner, he quickly agreed with me. And consider this statement that was e-mailed to me by another planner who favoured FBCs: "We are opposed to the meg-church isolated in the countryside or suburbs surrounded by acres of parking. This is an environmentally and socially unsustainable model; it paves the landscape, it forces driving, it isolates the membership from the rest of the community, and it isolates the non-driver from the church. It is profoundly anti-civic."

In my opinion, conventional zoning codes and FBCs are two extremes, and neither one addresses property rights or freedoms adequately, or in their most pure form, at all. Eventually, Americans will wake up to this fact, demand something different, and allow architects, developers and owners to have the freedom to do what Americans do best when they are free.



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