

# **Our zoning code should be protection for property rights**

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By [Randy W. Bright](#)

In last week's article, I discussed the fact that so many property owners and their local governments are in conflict with each other. This is in spite of the fact that most local governments have zoning codes and comprehensive plans that are intended to create harmony between the two.

Where does this disparity begin? I contend that most zoning codes, at least since the infamous Kelo vs. New London case - the one that gave cities and municipalities the ability to seize property from one person and give it to another - there has been a growing distrust between citizens and their local governments. And why would there not be under that threat?

Last week I suggested that there is a better way of creating peace and harmony among communities, and it begins with this: people who live and do business in a community have to be secure in their property. Otherwise, they may be less prone to invest in property in their community if they feel that there is some risk that they could lose it.

Not only that, people need to feel secure in the development and use of their property as they see fit. This is the point that our new zoning codes begins to transgress upon property rights, because they enumerate and demand things that take decisions away from property owners. In last week's article, I wrote that citizens have gradually come to accept these violations as normal, and it has led to an attitude of futility.

A developer told me on several occasions, "just tell me the rules so I can play the game". In other words, when the assumption is made rules must be accepted as uncontestable, you agree to do things that don't make business sense or that clearly violate my property rights, solely in order to achieve a net result, which is profit.

Ironically, this is called "predictability." In order for developers to be able to plan a path of action to accomplish a project, rules, even onerous rules, are better than dealing with agencies that offer interpretations of rules one day, only to change the rules the next day. In other words, the devil you know is better than the devil you don't.

The solution is to minimize the rules in zoning codes and to allow development to be market driven, free of rules that are written to achieve political agendas (such as the creation of high density residential) and free of extortion (such as demanding property owners build and donate infrastructure as a condition of issuance of a building permit or requiring developers to rent or sell their property at below market rates in order to achieve social equality).

I have frequently recommended the book *The Five-Thousand Year Leap* because it explains so well how our founders dealt with the issue of law in forming our Constitution. On one side was tyranny, under which citizens would live under the rule of a central authority, be it a monarch or

a strong central government. On the other side was anarchy, in which everyone could do whatever they wished without consequence.

The founders realized that our system of government must rest somewhere between the two extremes, and that is indeed how things were in the beginning. Since then, numerous laws have been created, pulling us toward the side of tyranny.

It is my contention that the new zoning codes, especially form-based codes, are following that same path. And like many other laws, what appears at the surface to be harmless is in fact the imposition of rules that affect property rights. Here are just a few examples:

When certain portions of land are categorically placed in reserve in order to prohibit one type of development over another, this is an unconstitutional restriction of a property owner's right. This can be found in the draft of our proposed zoning code in the rules regarding land in the AG (agriculture) districts.

The numbers found in bulk and area requirements are not necessarily meaningful until you actually design a project to conform to them - and realize that you can't produce the results you need.

Should anyone (including a church) be required to justify that their project will result in certain public benefits before they receive a building permit? Who will define what public benefits means?

We need a zoning code to establish order in our communities and to protect and preserve property rights, and a proper code will ensure the predictability that citizens and investors need. This proposed code needs improvement and scrutiny to pull it back to the center between tyranny and anarchy. Re-center and minimize it and the result will be progress and prosperity.



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