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JANE JACOBS'S CRITIQUE OF ZONING: FROM *EUCLID* TO PORTLAND AND BEYOND

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Abstract: Jane Jacobs's 1961 classic, *The Death and Life of Great American Cities*, identifies four preconditions for the creation and preservation of vibrant, diverse cities: (1) high densities of population and activities; (2) mixtures of primary uses; (3) small-scale, pedestrian-friendly blocks and streets; and (4) retaining old buildings mixed in with new. These principles are directly at odds with the underlying presumptions of Euclidean zoning. Euclidean zoning and related subdivision regulations restrain density, separate primary uses, favor roadway designs based solely on traffic needs, and ignore the preservation of older buildings.

Since 1961, we have erected a ramshackle superstructure of project-specific review procedures, while leaving untouched the underlying presumptions of Euclidean zoning. A rethinking of Euclidean zoning, consistent with Jacobs's principles, requires regulatory strategies that work at different scales. At the scale of the street, zoning should focus on how private buildings help create and activate the public space of the street. At the scale of the urban district, codes should offer strong incentives for mixtures of primary uses and reuse of older buildings. At the scale of the metropolitan region, state oversight of local and regional planning should favor the coordination of denser, compact developments with public investments in transit.

I first read *The Death and Life of Great American Cities*¹ in the early 1970s. I was a teenager growing up in Manhattan, and I responded first to Jacobs's novelistic ability to convey the reality of New York places and scenes: from the daily ballet of strollers and shopkeepers on the sidewalks of Greenwich Village, to all-night hearings at the Board of Estimate, to the antiseptic purity of the Lincoln Center performing arts complex. But the enduring influence of *The Death and*

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¹ JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (1961).

Life also lies in its ideas. Jacobs is our urban Darwin; from the bewildering complexities of city life, she deduces a set of fundamental principles that explain how our communities evolve. I have reread her book several times during the course of my career as an architect, urban planner, real estate lawyer, and government regulator, and each time I have discovered new perceptions and ideas.

This article explores the implications of Jacobs's ideas for Euclidean zoning: the zoning regulations which most powerfully shape (or misshape) our cities, our towns, and our landscapes.² *The Death and Life* contains one of the strongest criticisms of Euclidean zoning ever written. Sometimes the criticism is explicit; but even where Jacobs is not specifically talking about zoning, the implications of her ideas are clear.

To paraphrase F. Scott Fitzgerald, Jacobs shows us that Euclidean zoning has been hard where it should be soft and soft where it should be hard.³ Zoning has been hard, or overly rigid, in dividing our cities and towns into uniform, low-density districts, each dedicated to a single primary use. And zoning has been soft, or overly permissive, in its failure to set design standards for streets, and for how buildings front upon those streets, that would reinforce the fundamental character of streets as public spaces.

I. JACOBS'S DESIGN PRINCIPLES FOR URBAN VITALITY AND DIVERSITY

The power and pungency of Jacobs's ideas derives from the distinctive mixture of three different viewpoints that one encounters in *The Death and Life*.⁴ First, Jacobs is an economic libertarian who believes in the creative power of the market. Second, she is a sensitive design critic who mistrusts the professional claims of architects and planners, but who acknowledges the power of physical design to

² The term "Euclidean zoning" describes the standard form of zoning that was widely adopted during the 1920s under versions of the Standard State Zoning Enabling Act (SZEA), and that was blessed by the Supreme Court in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning is characterized by dividing a municipality into uniform districts that regulate density, bulk, and use in a consistent manner in each district, and by the presumptions that uses should be strictly separated and densities should be restrained as much as possible. For a wide-ranging set of essays on Euclidean zoning, see *ZONING AND THE AMERICAN DREAM* (Charles M. Haar & Jerold S. Kayden eds., 1989).

³ See F. Scott Fitzgerald, *The Rich Boy*, in *THE STORIES OF F. SCOTT FITZGERALD* 177 (Malcolm Crowley ed., 1951).

⁴ For an overview of Jacobs's views on urbanism and critical responses to her work, see David R. Hill, *Jane Jacobs's Ideas on Big, Diverse Cities: A Review and Commentary*, 54 J. AMER. PLAN. ASS'N 302 (1988).

shape where we live and who we are. Finally, she is a democratic populist who favors meaningful local participation in government decisions that affect a community.

A. *Economic & Social Vitality*

At the heart of *The Death and Life* is the goal of economic diversity: the richness of business ideas and opportunities that flourish in a city. “[T]he greatest single fact about cities [is] the immense number of parts that make up a city, and the immense diversity of those parts. Diversity is natural to big cities.”⁵ This economic diversity is self-generating and regenerating. “Cities may fairly be called natural economic generators of diversity, and natural economic incubators of new enterprises.”⁶ Jacobs concludes that “the same physical and economic conditions that generate diverse commerce are intimately related to the presence, or production, of other kinds of city variety”: variety in its cultural opportunities, its physical settings, and its residents and visitors.⁷ In other words, the same forces that make a city a good place to do business also make it a good place to live.

B. *The Power of Physical Design*

A city's economic and social vitality and diversity can be strangled or supported by the layout of its streets, parks, and buildings. Jacobs's design orientation, nurtured during her years as a reporter for *Architectural Forum*, explains the appeal of her writings to architects and urban planners. For Jacobs, physical design matters. In the second section of *The Death and Life*, she identifies and describes four urban design principles that are preconditions for the creation and preservation of vibrant, diverse cities: (1) high densities of population and activities; (2) mixtures of primary uses; (3) small-scale, pedestrian-friendly blocks and streetscapes; and (4) the retention of old buildings mixed in with new.⁸

1. Density

For Jacobs, population density is a positive factor in urban residential neighborhoods, as well as in commercial downtowns. At the

⁵ JACOBS, *supra* note 1, at 143.

⁶ *Id.* at 148.

⁷ *Id.*

⁸ *Id.* at 150-51.

time that she wrote, urbanists such as Lewis Mumford were arguing for optimum densities comparable to those in the English garden cities, of ten to twenty units per acre.⁹ Jacobs, by contrast, supports densities of 100 units per acre and up, like those that characterize such vibrant urban districts as New York's Greenwich Village, Boston's North End, Philadelphia's Rittenhouse Square, and San Francisco's North Beach and Telegraph Hill.¹⁰

But density must be coupled with variety. Jacobs rejects standardized high-density housing, like New York's Stuyvesant Town, a much-heralded project of high-rise towers in a park-like setting that was developed in the late 1940s by the Metropolitan Life Insurance Company, in favor of the rich mix of housing types found in Greenwich Village: walk-up and elevatored apartment buildings, rowhouses, and even a few one- and two-family houses.¹¹ And she accepts that encouraging higher densities with lower building heights means construction that covers a higher percentage of the lot, with less open space within development sites.¹²

2. Mixed Uses

City vitality also requires a variety of primary uses. "The district . . . must serve more than one primary function; preferably, more than two."¹³ Mixed-use districts that provide housing, offices, shops, and other services, attract a far wider range of people, while spreading out their activities over longer periods of time. Consequently, the streets and sidewalks of mixed-use districts are more active and safer both day and night, while being less congested at peak periods.¹⁴ The most effective mixture of uses are fine-grained: each block should bring together different uses, and not be dominated by a single activity, no matter how thriving.¹⁵

Mixed-use areas are also more fertile ground for new businesses.¹⁶ Jacobs criticizes the sorting out of functions into single-use districts, including government and cultural centers, because it stifles the cross-fertilization of ideas and experiences that is so important to

⁹ *Id.* at 206-07, 209; see generally LEWIS MUMFORD, *THE CULTURE OF CITIES* (1938).

¹⁰ JACOBS, *supra* note 1, at 202-03, 211.

¹¹ *Id.* at 213-15.

¹² *Id.* at 215.

¹³ *Id.* at 152.

¹⁴ *Id.* at 154-61.

¹⁵ *Id.* at 234-38, 243-49.

¹⁶ See Hill, *supra* note 4, at 311-12.

a city's economic and social health.¹⁷ A failure to bring together all the different activities that make up a city can undermine any sense of shared interests and common purpose. "Without a strong and *inclusive* central heart," Jacobs argues, "a city tends to become a collection of interests separated from one another."¹⁸

3. Streets and Sidewalks

Jacobs's single most significant contribution to urban planning is her understanding that streets and sidewalks, as much as parks, are the true public spaces of a city.¹⁹ At a time when many planners were arguing that streets were wasteful, and that pedestrians needed to be separated from cars, Jacobs looked closely at how streets and sidewalks are actually used in vibrant urban districts. She concluded that a fine-grained mixture of uses and activities must be supported by a continuous network of small blocks and frequent streets, intensified by siting parks, squares, and public buildings at key locations.²⁰

Street traffic is a necessary part of city life, she concludes, so long as one manages the use of those streets to favor buses, taxis, trucks, and pedestrians over private automobiles.²¹ Jacobs's suggestion that streets should be redesigned to favor pedestrians over cars is a precursor to current techniques of "traffic calming."²² And her discussion of how banning cars from New York's Washington Square did not create gridlock, contrary to expectations,²³ anticipates the result of the recent demolition of the Embarcadero Freeway along the San Francisco waterfront.

4. Old Buildings

Jacobs was writing just as the historic preservation movement was taking off, yet her arguments for preserving old buildings are primarily economic and social, rather than aesthetic or historical. Part of the physical diversity of a healthy district, she argues, is the retention of

¹⁷ JACOBS, *supra* note 1, at 165-74.

¹⁸ *Id.* at 165.

¹⁹ See generally *id.* at 29-88.

²⁰ *Id.* at 129, 178-86.

²¹ *Id.* at 363-68.

²² See Robert H. Freilich, *The Land-Use Implications of Transit-Oriented Development: Controlling the Demand Side of Transportation Congestion and Urban Space*, 30 URB. LAW. 547, 557 (1998).

²³ See JACOBS, *supra* note 1, at 360-63.

old buildings mixed in with the new.²⁴ Old buildings offer cheap space for new businesses and low-cost housing.²⁵ They also provide the visual and emotional landmarks that anchor a neighborhood in space and time.²⁶

C. Democratic Populism

Moving from urban design to urban politics, Jacobs argues that urban health and vitality require effective local participation in the political process, as it affects all areas of city life, including land use. "Our failures with city neighborhoods are, ultimately, failures in localized self-government."²⁷ Jacobs does not see neighborhoods as idealized, self-contained units—she appreciates that one of the great virtues of city life is one's ability to establish far-flung networks of contact across the entire metropolis. But Jacobs's pragmatic political sense leads her to argue that the appropriate local units of city government should be large districts, with a population from 30,000 to 100,000 and up. "A district has to be big and powerful enough to fight city hall. Nothing else is to any purpose."²⁸ To accomplish this goal, she argues that planning and regulatory decisions should be made in a decentralized fashion, at the district level. Such decisions would be more informed and comprehensive, and they would be more responsive to local political pressures.²⁹

When it comes to the role of zoning and other forms of government regulation, there is an inherent tension between Jacobs's libertarian economic tendencies and her populist political ideas. According to Jacobs, "[a]ll zoning is suppressive,"³⁰ an interference with the unfettered movements of the real estate market. But Jacobs is not attacking regulation, *per se*, or even the notion of government planning. As I discuss in more detail below, she is attacking the functionalist presumptions shared by many city planners.³¹ In this view, a city is a

²⁴ *Id.* at 187-90.

²⁵ *Id.* at 193-99.

²⁶ *Id.* at 384-88. Here, Jacobs was influenced by Kevin Lynch's investigations into how city-dwellers perceive the physical organization of their communities. See generally KEVIN LYNCH, *THE IMAGE OF THE CITY* (1960).

²⁷ JACOBS, *supra* note 1, at 114.

²⁸ *Id.* at 122.

²⁹ *Id.* at 417-28.

³⁰ *Id.* at 252.

³¹ By doing so, Jacobs traces back to Ebenezer Howard's 1898 vision of the "garden city." See generally EBENEZER HOWARD, *GARDEN CITIES OF TO-MORROW* (F.J. Osborn ed., 4th ed. 1965) (1898).

functional, repetitive machine, rather than an ever-evolving organism. By contrast, Jacobs makes an implicit argument for zoning and other forms of regulation as an appropriate means of controlling the pace and nature of smaller-scale, more gradual changes in urban land uses.³² Her goal is to strike a middle course: to preserve and enhance diversity by avoiding large-scale, cataclysmic physical and social changes (which can be caused by rapid influxes of private investments, as well as by publicly sponsored urban renewal projects), without permanently freezing a community's character.

II. EUCLIDEAN ZONING: A FUNCTIONALIST MODEL FOR CITIES AND SUBURBS

The principles that Jacobs identifies as the necessary conditions for a vital, diverse city are directly at variance with the underlying presumptions of Euclidean zoning. Where Jacobs favors density, Euclidean zoning restrains density in order to reduce congestion, crime, and other urban ills. The Standard Zoning Enabling Act (SZE), first promulgated by the U.S. Commerce Department under Secretary Herbert Hoover in 1922, made it clear that reducing density was a regulatory priority. Among the goals of zoning were: "to lessen congestion in the streets; . . . to prevent the overcrowding of land; [and] to avoid undue concentration of population."³³

Where Jacobs favors a mixture of primary uses, Euclidean zoning separates or quarantines uses so that they will not infect one another. Justice Sutherland, in endorsing zoning as a permissible act under the government's police power, expressly stated:

the exclusion of buildings devoted to business, trade, etc., from residential districts, bears a rational relation to the health and safety of the community. Some of the grounds for this conclusion are . . . aiding the health and safety of the community by excluding from residential areas the confusion and danger of fire, contagion and disorder which in greater or less degree attach to the location of store, shops and factories.³⁴

³² JACOBS, *supra* note 1, at 252-56.

³³ STANDARD ZONING ENABLING ACT § 3 (1926), reprinted in 3 RATHKOPF'S THE LAW OF ZONING AND PLANNING 100-1, app. A (1956) [hereinafter SZE].

³⁴ Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 391 (1926). On the exclusionary aspects of the *Euclid* decision generally, see Yale Rubin, *Expulsive Zoning: The Inequitable*

Sutherland approves of excluding multi-family housing, as well as commercial uses, from residential districts: "very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district."³⁵ And where Jacobs wants to create pedestrian-friendly streetscapes and preserve older buildings, Euclidean zoning fails to address those issues (subdivision regulations, which evolved parallel to Euclidean zoning, typically require roadway designs based solely on the needs of automobile traffic).³⁶

This is an extraordinary situation. There is no other area in environmental law where the goals of the regulatory program are not just indifferent, but actively hostile, to the best thinking in the field. To explain why this is so, I'd like to go back into the history of zoning, as it evolved in the early twentieth century.

A. *Euclidean Zoning from Its Inception to 1961*

Around 1910, pioneers of the city planning movement, like Chicago architect Daniel Burnham and landscape architect Frederick Law Olmsted, Jr., focused upon the eminent domain power, as it was being used by government agencies in continental Europe, as the primary legal tool to implement their policy goals.³⁷ Within the urban core, these planners sought to use eminent domain to create elegant boulevards, parks, and civic buildings, as Baron Haussman had done for Napoleon III in late nineteenth-century Paris.³⁸ At the urban fringe, they looked to the way that German cities controlled what we now call sprawl by buying and landbanking large areas of land, re-planning them as relatively dense, compact housing estates, and then re-releasing the land back on the private market.³⁹ Zoning, by comparison, was originally seen as a less important item in the planner's legal toolbox. The purpose of zoning was to stabilize existing areas

Legacy of Euclid, in *ZONING AND THE AMERICAN DREAM* 101-21 (Charles M. Haar & Jerold S. Kayden eds., 1989).

³⁵ *Village of Euclid*, 272 U.S. at 394.

³⁶ See STANDARD CITY PLANNING ENABLING ACT § § 13, 15 (1928), reprinted in AMERICAN LAW INSTITUTE, MODEL LAND DEVELOPMENT CODE (1976).

³⁷ On Burnham, Olmsted, and the early city planning movement, see generally MEL SCOTT, AMERICAN CITY PLANNING SINCE 1890 47-109 (1969).

³⁸ See FRANK B. WILLIAMS, THE LAW OF CITY PLANNING AND ZONING 65-67, 75-79 (1922) (discussing French condemnation statutes); DONALD OLSEN, THE CITY AS A WORK OF ART: LONDON, PARIS, VIENNA 35-57 (1986) (discussing Baron Haussman and Paris).

³⁹ See WILLIAMS, *supra* note 38, at 39-41, 83-87; see also SEYMOUR I. TOLL, ZONED AMERICAN 128-40 (1969).

once they had been properly planned, to ensure that they did not change too rapidly over time.⁴⁰

The early planners were unable to obtain the broad powers of condemnation that they sought, both because of political opposition in the legislatures and because of the judicial doctrine of "excess condemnation" and cramped definitions of the "public use" requirement.⁴¹ Zoning, by contrast, won wide and rapid support. By 1926, the year of the *Euclid* decision, all but five states had passed zoning enabling acts, most of them based on the SZEA.⁴² By default, zoning took on its present function as a template for the creation of new urban and suburban districts. Zoning's underlying presumptions were also more aligned with an ideological shift in the planning profession during the 1920s. A functionalist view of the city as a large and smoothly operating machine took hold, heavily influenced by Frederick Winslow Taylor's studies of industrial efficiency.⁴³ Euclidean zoning, with its strict separation of uses and its comprehensive and uniform dimensional standards, fit right in. Jacobs accurately points out that the functionalist view of the city, requiring the strict separation of uses, persisted as a particularly powerful ideological motivation for urban renewal projects in the 1950s, as well as for suburban sprawl developments.⁴⁴

Today, that functionalist template retains an air of inevitability. Our zoning remains stuck in the "Sim City" model of urban development. As in the popular computer game, each zone is set aside solely for single-family or apartment or commercial or industrial use, with little possibility and no incentives for the mixing of uses. Euclidean zoning is accepted as a given and reinforced by real estate developers, bankers, lawyers, architects, and city planners. We have lost sight of the fact that it doesn't mirror what Jane Jacobs and others have taught us about vital cities.

B. Zoning Since 1961: the Response to Jacobs's Critique

How has zoning changed since 1961 and the publication of *The Death and Life*? Certainly, the response to Jacobs's ideas has been en-

⁴⁰ See WILLIAMS, *supra* note 38, at 210-64; TOLL, *supra* note 38, at 128-40.

⁴¹ See WILLIAMS, *supra* note 38, at 128-48; see also *Cincinnati v. Vester*, 33 F.2d 242, 244-45 (6th Cir. 1929), *aff'd* 281 U.S. 439 (1930) (discussing excess condemnation).

⁴² See SZEA, *supra* note 33, § 3.

⁴³ SCOTT, *supra* note 37, at 120-27, 250-52.

⁴⁴ JACOBS, *supra* note 1, at 18-25.

thusiastic⁴⁵—but it has also been timid. Although planners and designers have recognized the importance of Jacobs’s “generators of diversity,” most of the old presumptions of Euclidean zoning have remained in place.⁴⁶ Instead of reforming the underlying system, we have erected on top of it a ramshackle superstructure of project-specific reviews—special permits and special overlay zoning districts and planned unit developments (PUDs) aimed at pummeling major development projects into more urbane shape.⁴⁷

This ramshackle superstructure has led to some undeniable successes. On a project-specific basis, such review processes can counteract some of the effects of Euclidean zoning. Approval of a special permit or a PUD can allow a higher level of density and a broader mix of uses than zoning would otherwise allow as-of-right. Through project review processes, communities have adopted discretionary urban design standards that favor the retention of existing street and block patterns, the preservation of older structures, and the reservation of ground-floor streetfronts for shops, restaurants, and other active uses.⁴⁸

But there has also been a cost. Because these reforms are project-specific, and not comprehensive, the counter-productive, as-of-right requirements of Euclidean zoning have been sidestepped, not removed. To tempt developers into the project review process, regulatory systems will offer a density or height bonus to offset the increased time and costs that are involved. Such incentives can cause all parties to undervalue small-scale, incremental renovation and infill projects—the incremental reinvestments that Jacobs showed us were so important for the stability of an urban district. Thus, favoring large private investments can cause the same kinds of cataclysmic change that Jacobs decried in the public urban renewal projects of the 1950s.⁴⁹

⁴⁵ See generally Hill, *supra* note 4.

⁴⁶ CLIFFORD L. WEAVER & RICHARD F. BABCOCK, CITY ZONING 119-20 (1979). The authors’ 1979 assessment remains accurate today.

⁴⁷ On New York City’s pioneering use of such innovations, see generally Norman Marcus, *Zoning from 1961 to 1991: Turning Back the Clock*, in PLANNING AND ZONING NEW YORK CITY 61-102 (Todd W. Bressi ed., 1993). On special review procedures in urban zoning, see WEAVER & BABCOCK, *supra* note 46, at 58-69, 119-31 (1979).

⁴⁸ WEAVER & BABCOCK, *supra* note 46, at 55-69. For a comprehensive example of project-specific standards within a special review district, see BOSTON, MA, ZONING CODE art. 38 Mid-Town Cultural District (2000).

⁴⁹ See Hill, *supra* note 4, at 305.

The project review process may also involve such intense bargaining—particularly when there are no clear and predictable standards to govern the outcome—that it is very frustrating for developers and communities alike. Sometimes the result is to cause the public to distrust the entire regulatory system.⁵⁰

Finally, because of the localized nature of project review, such processes cannot address how development occurs on a regional scale. The regional perspective is particularly important. By fostering or requiring low density development with a high separation of uses, Euclidean zoning is one of the great generators of suburban sprawl, with all of its environmental, economic, and social costs.⁵¹ In fact, *The Death and Life* began as a chapter in William Whyte's 1958 collection, *The Exploding Metropolis*, the book that first used the word "sprawl" to describe development patterns on the urban fringe.⁵² Jacobs was concerned with the effects of regional patterns of investment and development on the social and the natural environment long before most of the environmental movement woke up to these issues. Yet even Jacobs, writing in 1961, did not anticipate the accelerating trend toward sprawl development patterns, or the emergence of "edge cities"—clusters of office buildings, shopping malls, and housing developments around major nodes in the interstate highway system.⁵³

But just as Euclidean zoning has served as a generator of sprawl, zoning can play an important role in reversing the trend. Zoning can shape new developments in brownfields and other abandoned areas within older cities, which have been made available for new uses by shifts in the economy. Zoning can also implement alternative visions for edge cities, to give them a more truly urban character.⁵⁴

⁵⁰ WEAVER & BABCOCK, *supra* note 48, at 181-97.

⁵¹ See generally William H. Whyte, Jr., *Are Cities Un-American?*, reprinted in THE EDITORS OF FORTUNE, *THE EXPLODING METROPOLIS* 23 (1958).

⁵² See generally Jane Jacobs, *Downtown Is For People*, reprinted in THE EDITORS OF FORTUNE, *THE EXPLODING METROPOLIS* 157 (1958).

⁵³ The term "edge city" was coined by Joel Garreau to describe an ex-urban area containing at least 5 million square feet of commercial space and 600,000 square feet of retail space—that is, several large office parks and a regional shopping mall. JOEL GARREAU, *EDGE CITY: LIFE ON THE NEW FRONTIER* 6-7 (1991).

⁵⁴ JONATHAN BARNETT, *THE FRACTURED METROPOLIS* 27-46, 154-60 (1995). Zoning plays a less important role in stable, mature urban neighborhoods, or in impoverished areas that suffer from inadequate public services. *Id.* at 118, 175; WEAVER & BABCOCK, *supra* note 46, at 29-52.

III. RETHINKING EUCLIDEAN ZONING

I return to the conclusions that I drew from Jacobs's principles: zoning has been hard where it should be soft, and soft where it should be hard. Jacobs's critique is still accurate today:

[T]he greatest flaw in city zoning is that it *permits* monotony. Perhaps the next greatest flaw is that it ignores *scale* of use, where this is an important consideration, or confuses it with *kind* of use, and this leads, on the one hand, to visual (and sometimes functional) disintegration of streets, or on the other hand to indiscriminate attempts to sort out and segregate kinds of uses no matter what their size or empiric effect. Diversity itself is thus unnecessarily suppressed⁵⁵

If zoning has been overly restrictive in hampering dense, mixed-use development in places where it ought to occur, then the challenge is to zone actively for density and a mixture of uses.

Zoning for density and mixed uses is not enough, however, where it produces projects and streetscapes that are scaleless and unfriendly to pedestrians. Although standard Euclidean zoning (along with subdivision and roadway standards), appears to be value-neutral, it actually favors large, free-standing buildings, surrounded by parking.⁵⁶ Thus, Euclidean zoning biases make it nearly impossible to create a new development that replicates the qualities that make historic neighborhoods like Boston's Beacon Hill or Back Bay so attractive.

To be true to Jacobs's urban design principles, we need to rethink Euclidean zoning more broadly. I'd like to offer a variety of strategies, all of them in use in various places in the United States or Canada, that would reshape zoning to implement Jacobs's principles more fully. These strategies work at a variety of scales: from the scale of the neighborhood street, to the scale of the urban district, to the scale of the entire metropolitan region.

A. *Regulating at the Scale of the Street*

The first strategy is embodied in the model zoning codes being developed by members of the New Urbanist movement, notably the

⁵⁵ JACOBS, *supra* note 1, at 237-38.

⁵⁶ See generally Michael Kwartler, *Legislating Aesthetics: The Role of Zoning in Designing Cities*, in ZONING AND THE AMERICAN DREAM 187-220 (Charles M. Haar & Jerold S. Kayden eds., 1989).

Florida planning firm of Duany Plater-Zyberk & Company.⁵⁷ New Urbanist zoning codes began as privately enforced subdivision regulations in places like Seaside, Florida, and Mashpee Commons on Cape Cod. Now they are being adopted in communities across the nation. Oregon has recently issued a new model zoning code, jointly sponsored by the Departments of Land Conservation and Development and Transportation, which incorporates many of these New Urbanist elements and is applicable to all of its towns and small cities.⁵⁸ On a smaller scale, many of the urban design principles embodied in New Urbanist codes have been used in special review procedures in New York and other cities since the 1970s.⁵⁹

New Urbanist codes differ from earlier codes in three significant ways. First, these codes are expressed in detailed physical diagrams, as well as words, acknowledging that zoning explicitly regulates physical design. Second, these codes treat the street as a public space—unlike Euclidean zoning, which ignores the street, and conventional subdivision regulations, which treat the street solely as a traffic conduit. And third, although New Urbanist codes have primarily been used to define standards for planned unit developments or other special review procedures, they are increasingly being used to redefine as-of-right zoning rules in an entire district or community.

New Urbanist codes start with the design of the street—the width of travel lanes and sidewalk, the presence of parked cars, and the way that buildings front upon that street. Within urban districts, all streets must have minimum sidewalk widths, and provide on-street parking.⁶⁰ Within private building lots, parking must be set back to the side or rear of a building, to preserve the pedestrian character of the street.⁶¹

⁵⁷ On New Urbanism generally, *see generally* CHARTER OF THE NEW URBANISM (Michael Leccese & Kathleen McCormick eds., 2000); ANDRES DUANY ET AL., SUBURBAN NATION (2000).

⁵⁸ *See generally* OREGON TRANSPORTATION AND GROWTH MANAGEMENT PROGRAM, MODEL DEVELOPMENT CODE AND USER'S GUIDE FOR SMALL CITIES (1999) [hereinafter OREGON SMALL CITIES].

⁵⁹ New York City, which pioneered the use of many special review procedures, is engaged in a citywide review of its zoning code, aimed at more predictable, urban-design-oriented standards. *See* Joseph B. Rose, *Reforming the New York City Zoning Resolution* (Apr. 20, 1999), available at <http://www.tenant.net/land/zoning/unifiedbulk/reforming.html>. For the proposed revisions, *see* NEW YORK CITY DEP'T OF CITY PLANNING, UNIFIED BULK PROGRAM (Dec. 8, 1999), available at <http://www.ci.ny.us/html/dcp/html/bulksum.html>; NEW YORK, N.Y., ZONING TEXT AMENDMENTS (Feb. 14, 2000, as amended through Jan. 8, 2001), available at <http://www.ci.nyc.ny.us/html/dcp/html/zone.html>.

⁶⁰ DUANY PLATER-ZYBERK & CO., TRANSECT-BASED NEIGHBORHOOD DEVELOPMENT CODE §§ 4, 8E (July 7, 2000).

⁶¹ *Id.* §§ 5, 8C.

New Urbanist zoning may also require mandatory shopfronts along the sidewalks in designated retail frontage locations. It may also require that arcades, stoops, or porches provide a human-scaled transitional zone.⁶² Special standards are established for civic spaces—parks, greens, and plazas. Standards also allow or encourage special architectural treatments for civic buildings, from government buildings and schools, to religious, cultural, and transportation facilities.⁶³

B. *Regulating at the Scale of the Urban District*

Moving up from the scale of the street to the scale of the district, density and use regulations are significantly relaxed in New Urbanist codes, compared with those in Euclidean zoning. Densities are defined as minimums, but not as maximums. A wide range of residential and commercial uses are allowed in most districts, accompanied by physical constraints intended to ensure a mix of uses.⁶⁴

In existing urban areas, allowing sufficient density is usually not a problem; the challenge raised by Jacobs's principles is ensuring an appropriate mix of uses. As an alternative to the extensive amendments required by a New Urbanist code, Toronto has incentivized mixed use through its definition of "split zones."⁶⁵ As an example, one might zone a district with a maximum Floor Area Ratio (FAR) of 5.0, but limit the maximum residential FAR to 4.0 and the maximum commercial FAR to 2.0.⁶⁶ In this way, the landowner can only achieve the maximum buildout by providing a mixture of uses. This strongly encourages Jacobs's fine-grained mixture of uses, building by building and block by block, that make lively urban districts, while allowing landowners the flexibility to make choices about use within the framework of the marketplace.

The conservation of older buildings is also an important element of district planning. The challenge is to go beyond the preservation of landmark districts, where there have been notable successes, to a more broad-based set of incentives for reusing older buildings that

⁶² *Id.*

⁶³ *Id.* § 6.

⁶⁴ *Id.* §§ 5, 8C.

⁶⁵ See TORONTO, ONTARIO, ZONING BY-LAW No. 438-85 § 8(3) (1994) (amended June 1997).

⁶⁶ FAR, a widely used zoning device to limit density, is expressed as the ratio of a project's total floor area to the area of the lot. Thus, a FAR of 5.0 for a 20,000 square foot lot would yield a maximum total floor area of 100,000 square feet. The shape of the project is further defined under zoning by setback and height restrictions.

may not be aesthetically or historically exceptional. New Jersey has recently revised its state building code to make standards more flexible for older buildings.⁶⁷ Within the first year of the change, the rehabilitation of older buildings increased eighty-eight percent in Jersey City and sixty percent in Newark.⁶⁸

C. *Regulating at the Scale of the Region*

Finally, there is the regional scale of development. Because of the balkanization of local governments within American metropolitan regions, the only effective way to reverse the Euclidean biases of low density, single-use, automobile-dependent development patterns at the regional level is through regional or state-level smart growth laws and programs. There are now about a dozen states that have adopted such laws.⁶⁹ The Oregon program, which is the most ambitious and the most fully developed, can serve as an example.⁷⁰

Two legal elements are central to the Oregon program. First, local zoning regulations and project decisions must be consistent with a community-wide land use plan.⁷¹ Second, that plan must be reviewed by the state and found to be consistent with state-level land use and development goals.⁷² In particular, state policies require each city and town to distinguish growth and preservation areas through the

⁶⁷ UNIFORM CONSTRUCTION CODE, Rehab. Subcode (N.J. Dep't of Cmty. Affairs, Div. of Codes & Standards 1998), available at www.state.nj.us/dca/codes/forms/rehab/rehab-guide.htm.

⁶⁸ Richard Moe, *Civil Codes*, PRESERVATION, Nov./Dec. 2000, at 6.

⁶⁹ See generally James H. Wickersham, Note, *The Quiet Revolution Continues: The Emerging New Model for State Growth Management Statutes*, 18 HARV. ENVTL. L. REV. 489 (1994).

⁷⁰ See generally GERRIT KNAPP & ARTHUR NELSON, *THE REGULATED LANDSCAPE: LESSONS ON STATE LAND USE PLANNING FROM OREGON* (1992); Robert L. Liberty, *Oregon's Comprehensive Growth Management Program: An Implementation Review and Lessons for Other States*, 22 ENVTL. L. REP. 10,367 (1992). The future of Oregon's program is now in doubt after the November, 2000 passage, by voter initiative, of Ballot Measure 7. This measure amends the state constitution to require compensation for the adoption or enforcement of any regulation that reduces the fair market value of real property, with a narrow exception for historically recognized nuisance laws. For an interpretation of the measure's potential effect, see Op. Att'y General No. 8277 (Feb. 13, 2001). A trial court judge has ruled the measure unconstitutional on procedural grounds. See Oregon Dep't of Land Conservation and Dev., *DLCD Measure 7 News & Information*, PERSPECTIVES (last updated Feb. 27, 2000), at <http://www.lcd.state.or.us/perspectives/measure7.html>.

⁷¹ OR. REV. STAT. §§ 197.175, 197.250 (Supp. 1999).

⁷² *Id.*; see *Baker v. City of Milwaukie*, 533 P.2d 772, 778 (Or. 1975).

definition of an Urban Growth Boundary (UGB) that is mapped in its plan and enforced through local zoning.⁷³

UGB require communities to allow density, rather than prevent it. Under state law and policy, each community must show that its zoning provides enough density to support long-term regional population and employment trends.⁷⁴ Under the statewide policies, every community must have some multi-family housing.⁷⁵ If zoning is not sufficiently dense to accommodate anticipated growth, then communities must upzone within the UGB to achieve the necessary densities, rather than expanding the growth area.⁷⁶ As a result, Oregon is virtually the only place in the nation to have reversed the trend toward sprawl in favor of urban densification.⁷⁷

Oregon has also used planning to coordinate local land use policies with public transportation investments, at the metropolitan and statewide level. A series of mixed-use new developments along the new light rail line through the western suburbs of Portland locate housing, shops, and offices within walking distance of the transit stops.⁷⁸ The state's new model zoning code for towns and small cities stresses land use strategies that favor pedestrians and transit over private automobiles. The code was jointly developed and sponsored by the state's department of land development and the department of transportation, showing how crucial it is to include both transportation and land use authorities in solving regional problems.⁷⁹

⁷³ Environmentalists tend to focus on what happens outside the UGB: the protection of farms and forests, both key parts of the state's economy. But from an urban viewpoint, what happens inside the UGB is much more important. See Oregon Dep't of Land Conservation and Dev., *Oregon's 19 Statewide Planning Goals and Guidelines* (Feb. 2, 2001), available at <http://www.lcd.state.or.us/goalhtml/goals.html>.

⁷⁴ *Id.*

⁷⁵ *Id.* at Goal 10; see also OR. REV. STAT. §§ 197.303, 197.312 (Supp. 1999) (stating municipalities must remove barriers to needed housing). In the Portland metropolitan region, with 1.3 million residents, half of all land zoned residential must be zoned multi-family. OR. ADMIN. R. 660-007-0030 (Nov. 15, 2000).

⁷⁶ See Liberty, *supra* note 70, at 10,379.

⁷⁷ The long-term plan for the Metropolitan Portland region predicts accommodating a 43% population increase over the next forty years, from 1.3 to 2 million people—with only a 7% increase in developed land, from 233,000 acres to 252,000 acres. See *The Nature of 2040: The Region's 50-year Plan for Managing Growth*, METRO, June 2000, at 6.

⁷⁸ Robert T. Dunphy, *Transit-Oriented Development: Making a Difference?*, URB. LAND, July 1995, at 32, 34–36.

⁷⁹ See generally OREGON SMALL CITIES, *supra* note 58.

IV. CONCLUSION

I'd like to close with one of my favorite passages from *The Death and Life*: "Intricate minglings of different uses in cities are not a form of chaos. On the contrary, they represent a complex and highly developed form of order."⁸⁰ The fundamental problem with Euclidean zoning is that it incorporates an overly simplistic notion of what constitutes an ordered environment—a notion that ignores how cities actually operate. Jane Jacobs has taught us not to fear cities. Our challenge is to reform our zoning regulations to let cities be cities—to let them become the dense, complex, highly ordered places that Jacobs has shown us.

⁸⁰ JACOBS, *supra* note 1, at 222.

