

CITY OF CARMEL, INDIANA SMARTCODE

TECHNICAL MEMORANDUM REGARDING SUBDIVISION COMMITTEE COMMENTS

September 25, 2009

This Technical Memorandum is provided on behalf of the Department of Community Services (DOCS) in response to the comments provided by the Subdivision Committee of the Carmel Plan Commission regarding the SmartCode Draft dated as of July 21, 2009.

General

The two primary objectives of the Carmel SmartCode are:

1. to protect function and character of existing single family residential neighborhoods from higher density encroachments; and,
2. to provide a consistent set of rules for walkable, compact, development and redevelopment of quality design and with a mix of uses in areas where retail, commercial, office and other functions make sense for our community.

These objectives are set forth to clearly define growth areas and patterns for the future; to create places and new neighborhoods for people; as well as to establish land development patterns which combat the commonly accepted negative impacts of suburban sprawl including but not limited to:

- Increased vehicle pollution and reliance on fossil fuel
- Increase in traffic and traffic-related injuries
- Increased personal transportation costs
- Increased obesity, and obesity related illnesses
- Decrease in neighborhood quality and character
- Decrease in land and water quantity and quality
- Increased infrastructure costs
- Decreased quality of life

The SmartCode area is proposed for the North-Central Carmel study area in two different ways, depending upon whether or not an area is an existing single use, single family neighborhood.

Carmel residents, the Plan Commission and DOCS all have expressed a strong desire for existing single use, single family neighborhoods to remain as such. This will be accomplished by assigning Transect Zone T3 (Sub-urban) to those areas. T3 will provide for Building Types, including Building Disposition (how the building is situated on the lot, including setbacks) (see Table 9), Building Configuration (massing, roof

type and height) (see Table 8A, Building Configuration-Height and Table 7A, Private Frontage) and Building Function (use) (see Table 12, Specific Function and Use, and Table 10, Building Function) consistent with single family neighborhoods – the Villa, House, Cottage, Sideyard House, and Courtyard House (See Table 8B, Building Types). The T3 standards for each of those elements will be based on the best examples of existing historic and new single family development in those neighborhoods and throughout the city, including overlay standards where appropriate. Note that these are actual standards, not mere “guidelines”. Finally, it should be noted that no Commercial, Retail, Office, Mixed or multifamily Residential Functions or Building Types will be prescribed for within existing single family T3 residential neighborhoods.

In contrast, other areas of the North-Central Carmel area in which Commercial, Retail, Office, Multifamily Residential and Light Industrial zoning and uses are applicable will be assigned to Transect Zones T4 (General Urban), T5 (Urban Center), T6 (Urban Core) or SD (Special District.) Again, the standards for these 3 Transect Zones and special districts will be derived from the best examples of similar areas in the community and/or Carmel’s region that will provide compact, walkable, mixed use and high quality environments.

Optional Availability of the SmartCode Outside the Central Carmel Area

An important aspect for layout of the Transect Zones is to carefully study the character of the overall community. We do this to help make sure the zones relate well to each other, and to ensure that new development is respectful of its context, and allows for smooth transitions to adjoining property.

Some cities believe it is valuable to make the Code an option that may be chosen for their entire city, instead of permitting further development pursuant to conventional zoning regulations. From a planning perspective, TPUDC has recommended that the City make the Code available as an option outside the North Central Carmel Area, not only because that possibility was raised by citizens during the charrette as a quality alternative to PUDs.

We believe the result from using the SmartCode will improve on quality and character of development, and will lead to a healthier and overall more sustainable environment. However, if the City does not desire that option at this time, it will have no major effect on the use of the SmartCode in the North Central Carmel Area.

Transition Between T3 & T4

Conventional zoning codes are based on separated development “pods” of uses and densities, with little regard for the resulting built environment or the desires of the citizens. Historically, conventional zoning has left the built environment of a City up to a developer’s discretion with limited regulation and oversight as to the physical outcome. Use-based zoning was originally intended to protect people from proximity to noxious emissions and deadly pollutants, irrespective of whether they were complementary or incompatible. Because conventional development regulations do

not effectively regulate form, buffers have been applied to mitigate the incompatibility flowing from the ineffective conventional regulation of use-based codes.

The SmartCode is based on the Transect, which provides for a continuous range of character including complementary uses and densities. At the lower end of T4 and the higher end of T3, they are very similar in height, scale, and massing. As a consequence, the difficulties created by conventional regulation that requires buffers between zones is not present under the SmartCode. It is one of the essential concepts on which the Code is based.

“Normal” Neighborhoods

This term has been used to refer to single family residential subdivisions with no mixed retail, office, commercial or multifamily component. While this type of neighborhood has spread across the country, it is an invention of the past fifty years. This development pattern of separation by use and income, which is auto dominated with disconnected street networks, front-loaded garages and inefficient allocation of infrastructure expense, was unheard of for the entirety of all prior human settlement throughout the millennia, and primarily was a response to accommodating automobiles. Therefore, the time-tested pattern of pedestrian oriented development created under the SmartCode actually should be considered the normal neighborhood form.

Under commonly accepted Smart Growth principles, even predominantly single family residential neighborhoods are better served if there is at least some minimum degree of these other land use elements to enhance walkability and vibrance within the built environment as well as alleviating environmental and traffic issues. For instance, proximity to a corner store can significantly reduce automobile trips and positively impact convenience for people of all ages and stages of life. However, the input received to date seems to indicate that the majority of residents within Carmel's existing single family residential neighborhoods do not desire to allow even as much as a corner store within these neighborhoods. Based on that input, the T3 Zone has been customized for Carmel to provide for it to be single family residential only, with none of the other functions typically prescribed in T3.

Administrative Approval vs. Planning Commission and City Council Approval

One of the great advantages to a form based code like the SmartCode is that it prescribes all of the elements of development and building that are necessary to create an excellent built environment. If these standards are met, the outcome is predictably good. If a Plan submission for a project meets the standards of the Code and does not require any Variances, the approval of that Plan becomes an administrative function. This is one of the key benefits of the code which allows for a more streamlined review process, and which frees the Commission and City Council for more important matters. All of the elements of development will have been approved by these bodies in connection with the adoption of the Code, so it is not necessary for those standards and their application to a complying plan be revisited each time a project is proposed. Projects that require Variances or are otherwise non-complying will be subject to approval of a Variance by the Board of Zoning Appeals as

under current laws and ordinances or of a Zoning Waiver by the Zoning Administrator as delegate of the Plan Commission

Infill Development

The SmartCode uses the term “Infill” to mean “new development on land that has been previously developed, including most Greyfield and Brownfield sites and cleared land within Urbanized areas”. This is in contrast to “Greenfield”, which means “an area that consists of open or wooded land or farmland that has not been previously developed”. The 2 terms are mutually exclusive. Infill does not always mean razing of all structures and replacing them with multifamily or commercial development. Infill can mean anything from a couple of acres within a previously developed area to a larger such site. Under the SmartCode, all development, both Infill and Greenfield, must comply with the standards of the Code for the applicable Transect Zone which have been carefully crafted to complement existing development. It is these standards and the application of the Code to all development that protect existing neighborhoods. Presently, other than conventional regulation, a patchwork of overlays, and the threat of a PUD, there is no protection of this sort.

Walkability and Connectivity

Essential in creating vibrant pedestrian friendly places is the efficient circulation of vehicles, public and private frontages and connected streets. Cul de sacs are an element of conventional suburban automobile-oriented development devised by engineers and developers laying out subdivisions in an effort to squeeze as many lots as possible in to a development without regard to character, circulation or the impact to the city as a whole. Sometimes cul de sacs are seen as a way to prevent fast moving, through traffic on streets that were designed for speeds too fast for neighborhood travel. These streets were poorly designed to begin with using oversized suburban standards requiring wide streets which caused the problem of speeding traffic. However, the use of cul-de-sacs also has the effect of forcing vehicular traffic to a limited number of access points to connect to larger roads, so that those limited points become congested as well as the adjacent streets surrounding the subdivision. This is due to the fact that all of the traffic is dumped on to a limited number of collector roads.

In addition, cul de sacs prevent pedestrians from moving from one area to another because sidewalks end where streets end. Even if a path were provided to allow pedestrians to continue walking at the head of a cul de sac, they tend to be reluctant to do so, as a result of the ambiguous relationship of public to private property.

Finally, emergency service providers regularly complain of the negative impact to their response time caused by disconnected street networks and cul du sacs.

The effects of the recent suburban creation of the cul du sac have an overall negative impact to the quality of life and safety of all of the citizens of Carmel as a result of the desire of the developers who build them and the few residents who live on them. Therefore, any use of disconnected thoroughfares should be carefully considered and should be avoided except where necessary due to topography or other physical site

conditions. Attention should be given instead to properly designed streets over which vehicles will travel at lower speeds and providing pedestrians with an acceptable means of moving about.

User Friendliness/Legalese/Sentence Structure/Definitions

Several suggestions have been made to make the SmartCode easier to use, including references to section titles, table names and page numbers. These ideas will be implemented in the final version of the Code.

A comment was received that the Code contains “legalese” and paragraphs with multiple phrases. While every effort has been made to keep the Code as accessible as possible to users with a wide range backgrounds, because it is a document that must be legally enforceable, in certain instances, the use of legal terminology is unavoidable. There are legal concepts that must be conveyed and/or addressed by using certain language in order to cover them properly.

It is often the case in legal documents that provisions which are conditional or applicable in certain situations require sentences with multiple phrases that may seem duplicative, convoluted or even grammatically incorrect run-ons. Some instances of this are found in the SmartCode however, upon further review by the TPUDC team’s coding and legal expert as well as the Plan Commission’s attorney; these instances withstand legal and grammatical scrutiny and have been deemed necessary for the legal enforceability of the SmartCode. Every effort has been made to make these as easy to understand as possible. It should be noted that the SmartCode is being used successfully by a number of users with no legal background, such as laypersons, planners, architects, city personnel, planning commissioners, council persons and contractors.

A suggestion was made to limit terms used in the Code to those found in the dictionary. Other than legal terms and terms in common use by architects and planners, the only known word in the Code that is not listed in the dictionary is “enfront”. While this word is useful throughout to refer to a particular concept and relationship between certain elements, this will be changed to “along” throughout the Code.

With respect to other terms defined specifically in the Code, the protocol of placing definitions of frequently used complex concepts in a single place is intended to reduce the length and complexity of sentences and the overall document by providing a short way to refer to those concepts. For instance, by defining the term “Transect Zone” in a single place, the 59 words necessary to express that concept can be reduced to 2 words each time it is used. Even within the definition of Transect Zone itself, there are 4 other defined terms, which in turn have multiple word definitions that include other defined terms, etc.

In a similar way, the Tables of the Code are placed in a single place, such as in Article 7 – Definition of Terms, because they are used throughout the Code. For example,

Table 14 is referred to dozens of times, so it is not practical for it to appear with each reference to it.

Hopefully, the expanded Table, Section and Page reference protocol described above will enhance the usability of the Code.

Neighborhood Guidelines

See the discussion under “Infill Development” above. As noted, the Code itself will include the standards that will protect existing neighborhoods. Presently, except in overlay areas, there is no such protection. The final version of the Code will include standards that are based on the existing historic and new neighborhoods, enhanced with the important overlay standards where applicable. These standards will be much more than “guidelines”, they will be enforceable standards that must be followed. The existing neighborhoods, therefore, will not need to be exempted from the Code; instead, the Code will protect them.

Understandable Code

It is anticipated that the referencing protocol described under “User Friendliness, etc.” above will help individuals who desire to understand the Code to do so. As a point of comparison, the SmartCode would seem to be more “understandable” than the 100’s of pages of the existing conventional code and multiple overlays. Presumably, few of the members of the public who have expressed an inability to understand the Code actually have undertaken to read the existing regulations or the SmartCode. In any event, there will be explanatory materials in the form of a “users guide” available to anyone who desires to gain a better understanding of the Code. If someone genuinely is interested in understanding the Code, they need to read it in its entirety and the explanatory materials. Across the country, individuals who have approached the Code in that way have found it readily understandable. It cannot be understood by flipping through the Tables and trying to find a specific lot on the proposed Initial Community Regulating Plan.

Thoroughfare Map/A & B Grids

The Thoroughfare Map will be provided. It reflects the existing Thoroughfares and several recommended Thoroughfares which, if the City decides to provide for them, will need to be approved in the same manner as any other new road or street in the City. Any additional Thoroughfares that would be proposed in connection with a development would need to be proposed by an owner in a Community Regulating Plan the elements of which, including the Thoroughfare standards, would be required to comply with and be approved under the Code.

The final draft of the Code will categorize all streets as A Grid only, with all Thoroughfares held to the same standards.

Sector Map

The final version of the Code will not contain an option for areas outside of the North Central area to be developed under the Code, (see discussion above under “Optional Availability etc.”), and will not include provisions regulating at the Sector Scale so there

will not be a Sector Plan. The Sector provisions were included initially based on inclusion of such an optional provision. Rather than using a Sector Plan to identify permanently protected areas, the Initial Community Regulating Plan will handle that concern by assigning those areas to T-1 Natural Zone or Civic Zone.

Overlay Maps

Where applicable, the Overlay standards of Old Town will be incorporated into the Code as special requirements. It is anticipated that standards for all other overlay areas will be blended with and/or replaced by the standards of the Code, and that the Old Town Overlay Area will be designated on the Initial Community Regulating Plan.

Contributing Buildings Map

Updating the Contributing Buildings Map is not specifically a part of the SmartCode adoption process. However, Contributing Buildings and the special treatment accorded to them will be included in the Code by reference to the existing map, designations and requirements. Contributing Buildings will replace the concept of “Buildings of Value” in the final version of the SmartCode.

Design Standards

Architectural Residential Design and Landscape Residential Design standards or guidelines can be incorporated by reference or by grafting into Article 5 of the Code if the City desires to include them to supplement the standards in the Code.

Sections Between T3 and T4

Please see discussion above under “Transition Between T3 and T4” for additional information regarding this issue. Axonometric Sections have been provided in the transect transition study poster. It should be noted, however, that the City’s existing codes do not regulate development and buildings relative to sight lines (other than perhaps for traffic safety purposes) or sun angles. There is some question whether such regulation would be enforceable in the absence of a private grant of specific air rights, sight or sunlight easements.

Overlay Areas

Please see discussion above under “Overlay Maps” and “Neighborhood Guidelines”. Existing Overlay Areas will be assigned their appropriate Transect Zone assignments, similar to the manner in which they presently are part of a conventional zoning district. In all overlay areas other than the Old Town Area, the standards for the various Transect Zones that will be prescribed by the Code will provide the standards by use of the standards of the Transect Zones to which they are assigned. In the Old Town Area, where an Old Town overlay standard is determined to be preferable to the standard that otherwise would be prescribed by the Code for the applicable Transect Zone, it will be handled by applying a Special Requirement, designated by the Community Regulating Plan.

Land Use Matrix

The Code provides Residential, Lodging, Office, Retail/Service, Civic and Other as general categories of Functions. Each of these has certain specific Functions identified where it is necessary to prescribe or prohibit those specific Functions within a Transect Zone. Even these specific Functions are broader than some of the specific Functions in the existing code.

Many of the existing regulation's distinctions among various uses are unnecessary in the context of a form-based code. The existing code hyper-focuses on use because that essentially is its basic means of regulation. That is not the case with form-based codes like the SmartCode. While Functions **are** regulated in a form-based Code, it is only one of several aspects regulated in the standards for Building Type. The SmartCode regulates not only Building Function but also Building Disposition and Building Configuration. See discussion above under "General".

However, for ease of administration and use, the final version of the Code will contain all of the existing conventional regulation's uses under the definitions of each of the general Function categories. The Specific Functions table also will be expanded or contracted, as necessary, to prescribe or prohibit specific Functions within the general categories across the Transect.

Monon Trail Sections

Since the initial draft, the Monon has been provided for with a special Multi-modal Path assembly that has been added to the Thoroughfare Assemblies. The two available Monon Trail sections currently available will be added to the SmartCode Thoroughfare Assemblies.

Existing Neighborhood and Historic Neighborhood Protection

Please see above under "General", "Infill" and "Neighborhood Guidelines" regarding this topic.

Prohibition of Assembly of Lots in Existing Neighborhoods

It would be unconstitutional under both the Federal and State constitutions to prohibit the purchase or sale of private property based on its location with a neighborhood or subdivision.

SmartCode as Option Outside of the Central Carmel Area.

Please see discussion regarding this topic under "Optional Availability" above. This topic should be given further consideration and a determination made by the City whether to adopt this strategy.

Removal of Transect Zones not Applicable within the Central Carmel Area

This can be addressed based on the City's decision regarding use of the SmartCode as an option outside of the Central Carmel Area. The T1 Zone will need to be retained if the Code will be applicable within the Central Carmel Area in lieu of using O-1 Preserved Open Sector on a Sector Plan to designate permanently protected areas. The other Transect Zones that are not applicable in Central Carmel will be left blank as placeholders as recommended.

Table 4B

The suggested change will be made.

Explanation of How a Buffer is not Required between T3 and T4

See discussion above under “Transition Between T3 and T4” and “Sections Between T3 and T4”. Buffers are a product of single use Euclidean zoning where uses deemed incompatible are juxtaposed. They are not required other than by conventional land regulations. The SmartCode specifically does not require them, irrespective of any requirement in the City’s conventional regulation.

The point is well taken, however, that the reference in the Code to “appropriate transitions without buffers” may be difficult to enforce, and that will be redrafted in the final version of the Code. However, there is no legal requirement that buffers be provided between different zones and it follows that it is unnecessary to require sections to justify not providing buffers. Therefore, other than addressing the “appropriate transitions” language, there should not be anything further required to legally enforce this provision. As noted above, the SmartCode’s Transect Zone standards for the various elements of design provide much more than “guidelines” for transitions. The elements themselves are carefully crafted within overlapping ranges to assure that they are compatible at their points of adjacency.

T3 Lot Widths

The Planning Department is reviewing these standards and they will be adjusted as appropriate in the final version of the Code.

Spell Checking

The final version of the Code will be spell checked further.

Specific Edit Comments

The specific edits that have been submitted have been reviewed and considered carefully. In many of the instances, they have been used as the basis for revising the applicable provision. In a number of cases, the edits have not been made based on the rationale and explanations set out above.