
Community Builders Institute

Salisbury - A Case Study: The Need for Good Land Use Regulations

Presented By:

Donald J. Poland, MS, AICP

E-mail: don@donaldpoland.com

Web: www.donaldpoland.com

Salisbury – A Case Study

My Typical Perspective

- Land use regulations as a barrier to investment and development
 - Regulations impact market demands and create a regulatory hurdle for investment and development.
 - Conditional uses (special permit) add time, cost, and risk to the land use approval process. Risk undermines confidence.
 - Therefore, regulations and the approval process can affect the flow of investment/development into a community.

- Land use regulations can also encourage investment and development in a community, provided the regulations create:
 - **Confidence:** if investors are not confident in the market/community, investment will not occur. Confidence can be created through the land use regulations.
 - **Predictability:** the regulations and permitting process should create clear expectations and outcomes—this creates predictability, and
 - **Stability:** the regulations and permitting process, when predictably, create stability in the market.

Salisbury – A Case Study

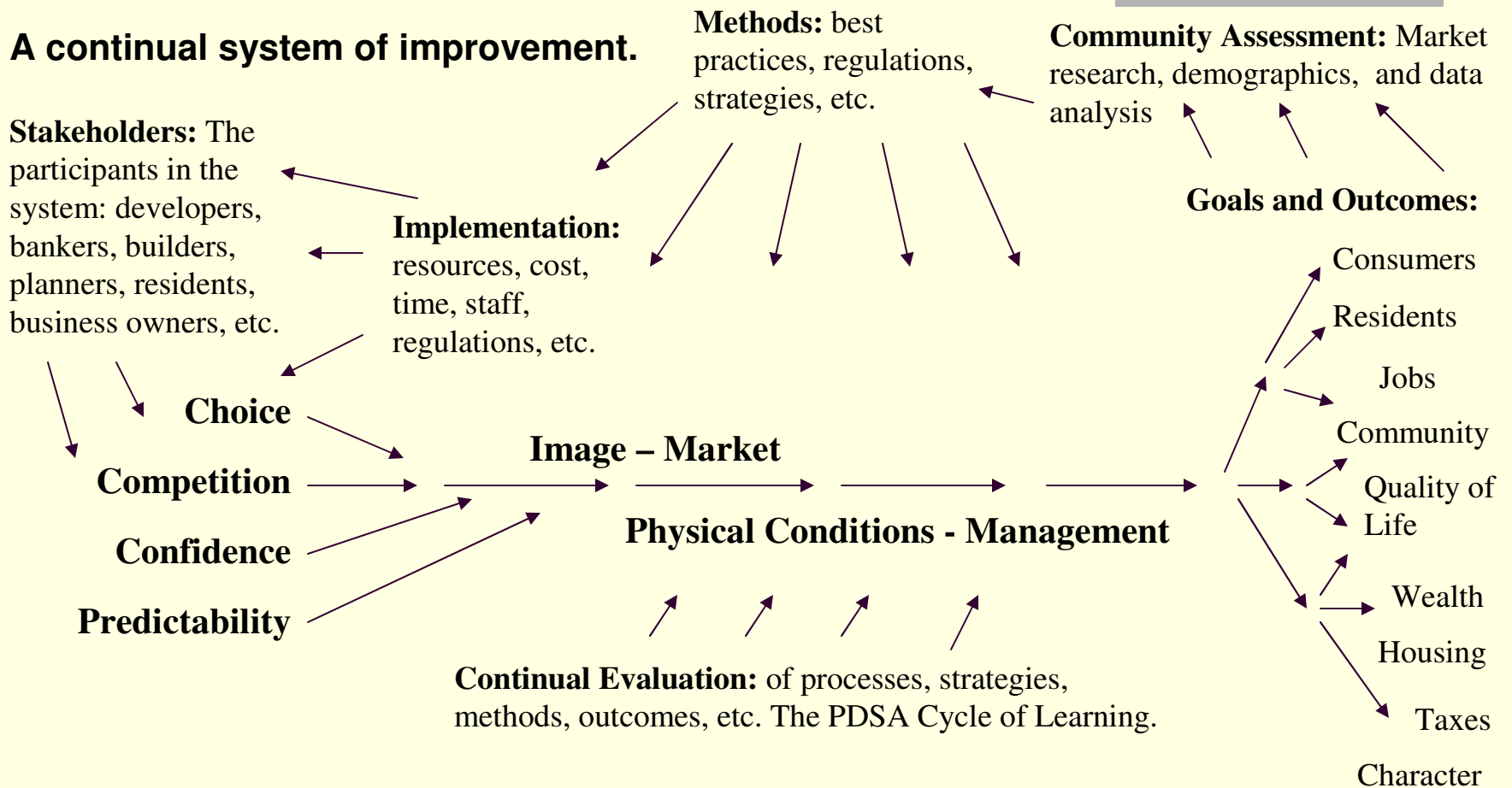
Community Planning and Investment

- Considerations for Community/Economic Development:
 - **Choice:** investment and development can flow anywhere at any time
 - **Competition:** each community is competing with other locations (local, national, or global) for investment and development
 - **Confidence:** without confidence in the market/community investment will not occur
 - **Predictability in Community:** development that is well suited for the community, now and in the future

- Key Levers of Change for Creating a Culture of Investment:
 - **Image:** how the community/market is perceived—positive or negative
 - **Market:** what are the local market conditions—strong, soft, or weak
 - **Physical Conditions:** what are the conditions on display—public infrastructure, private properties, and amenities
 - **Management:** how we manage change—improving the market/community

Salisbury – A Case Study

Planning and Investment (Development) as a Flow Diagram



Source: Based on a Chart in Deming's, "The New Economics"

Salisbury – A Case Study

The Lack of a Land Use System

Land Use – Plans, Regulations, Administration, and Permits:

- Land use is rarely viewed as a system, but as series of individual components, with different needs, objectives, goals, and outcomes.
- It is sometimes a process where:
 - commissions (sometimes staff) work against developers and development,
 - where regulations conflict with markets and property rights,
 - where boards and commissions view their roles in opposition to each other, and
 - where the goals of conservation and economic development are viewed as opposites (one being good and the other being bad depending on a persons point of view).
- This disjointed (lack of a) system often causes tension, conflict, and inefficient or ineffective processes and policies.

Salisbury – A Case Study

A View of Land Use as a System

Land Use as a System:

- A network of independent components that work together to try to accomplish the aim of the system. The aim of the system is too effectively and efficiently plan for the use of land and to regulate such use of land in a way that balances the social, economic, and environmental needs of the community.
- The land use system is made up of:
 - government agencies and policies (boards, commissions, regulations, plans, and the related application and permit processes),
 - participants (commission members, administrative, technical, and professional staff, property owners, residents, applicants, developers, and all the related professionals involved in land development and conservation),
 - influences (market conditions, geographic location, topography, and natural resources), and
 - considerations (the balance of law with community needs and individuals rights).

Salisbury – A Case Study

Land Use Administration as a Flow Diagram

A continual system of improvement.

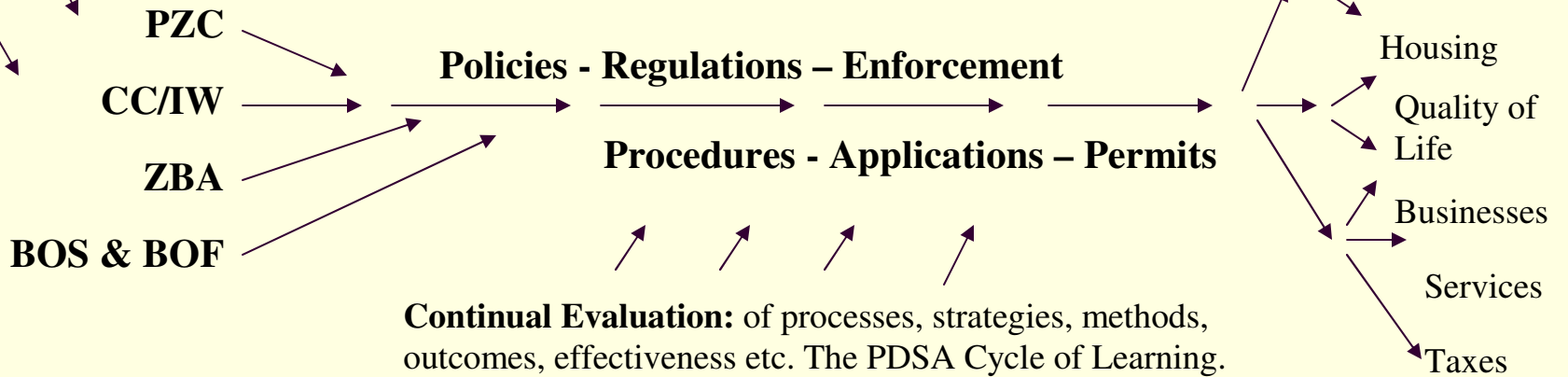
Stakeholders: Land use commissions, residents, developers, builders, businesses, town staff, property rights, etc.

Methods: Plans, best practices, strategies, legal requirements, etc.

Vision: What we want our community to be?

Implementation: resources, investment and cost, time and effort, staff, etc.

A Balance of Goals and Outcomes



Source: Based on a Chart in Deming's, "The New Economics"

Salisbury – A Case Study

Overview

Salisbury:

- A small mostly rural/village style New England community
- Population of 4,000, median sales value \$558,000 (2009)
- Five lakes create a weekend community
- Generally a wealthy community – traditionally old New England money
- Recently, influx of new money from the New York City market

The Issue:

- Increases in appeals and litigation over land use permits
 - A significant cost in legal fees to the town

Assumption:

- That there was a specific cause(s) or issue that was creating these issues
 - Administrative mistakes, errors, etc.

Salisbury – A Case Study

The Project

- Retained as an outside consultant to evaluate the land use system, including:
 - Zoning, subdivision, and wetland regulations
 - Permit application processes and procedures
 - Agency and staff roles and responsibilities

- Intended outcome was to identify the issues and recommend changes that would solve the issues

Salisbury – A Case Study

General Findings

- The issues/problems could not be attributed to a special cause or any specific person, regulation, process, or board or commission.
- In general, Salisbury had reached a point in its evolution as a community where the complexity of modern development and development pressure had become more complex than the existing land use system was designed to handle.
- The increase in litigation was not pointing to special cause (mistakes or errors), but to common cause problems within the overall system of land use (regulations, procedures, and processes).
- The value of land and the cost of investment had grown so high, that too much was at stake for property owners to not litigate what they believe are threats to their investments.

Salisbury – A Case Study

General Findings

- An underlying anti-government and anti-regulation culture had resulted in land use regulations that were very basic in their design and lacking in specific standards and administrative processes. This included a lack of:
 - clear standards for application,
 - no specific standards for surveys, maps, and plans,
 - vague regulations and definitions, and
 - little to no administrative and enforcement procedures.

- For example, an application for a new house could be submitted with a hand-sketched site plan or the commission could require professional designed plans.
 - The intent was to not overburden property owners with the cost of surveys
 - The outcome was a lack of standards and resulted in a lack of consistency in processes and procedures.

Salisbury – A Case Study

The Undesirable Outcomes

- In general, the land use system was not working.
- The lack of regulatory standards and processes were undermining confidence, predictability, and stability.
- Residents felt the land use commissions and staff were not doing their job.
- Land use commissions and their members thought the other commissions and their members and staff were not doing their jobs.
- While the real estate market was still stable, it was evident that if this lack of confidence and predictability continued, the market could have been undermined.

Salisbury – A Case Study

What Can We Learn From Salisbury

- While regulations can be barriers to investment and development, they also provide confidence and predictability and create stability, which are essential to encouraging investment and development.
- We need to better understand property and balance the property rights of the individuals (owners and neighbors) with the role of government and government regulations to provide a predictable and stable market.
- It is critical for communities to update and continually improve their land use regulations and procedures.
- Land use regulations and procedures must be clear, consistent, and reasonable. At the same time, the regulations must balance the rights of property owners and the responsibility of government to protect the public, health, safety, and welfare for all.

Salisbury – A Case Study

Updating the Improving Land Use Regulations

- Organize regulations into a user friendly layout of chapters and provisions. One possible means of organization:
 - Powers and Authority
 - Interpretation and Definitions
 - General Provisions (regulations that apply to all zoning districts and property)
 - Residential Zoning District Regulations
 - Commercial and Industrial Zoning District Regulations
 - Site Development Regulations (parking, signs, landscape, drainage, etc.)
 - Special Regulations (flood zones, historic preservation, etc.)
 - Administration and Enforcement

- Provide clear regulations, standards, and definitions to reduce misunderstandings and inconsistencies. Utilize charts, tables, diagrams, and graphics to explain requirements.

Salisbury – A Case Study

Creating User Friendly Zoning Regulations

Outcomes

- Eliminate duplication through grouping same or similar requirements into meaningful chapters and section headings.
- Write in plain English. Avoid technical jargon.
- Avoid too many references and cross references of sections.
- Utilize tables for uses to reduce language, pages, and to create greater ease of use.
- Provide diagrams to demonstrate design requirements...a picture is worth a thousand words.

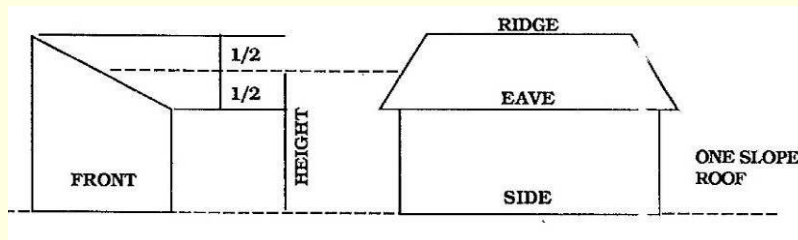
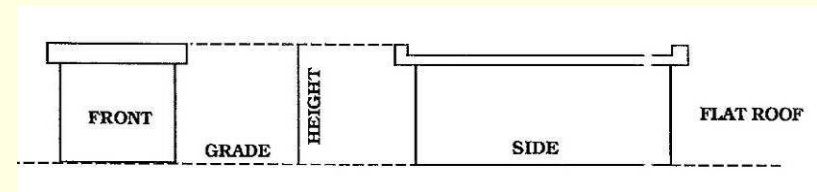
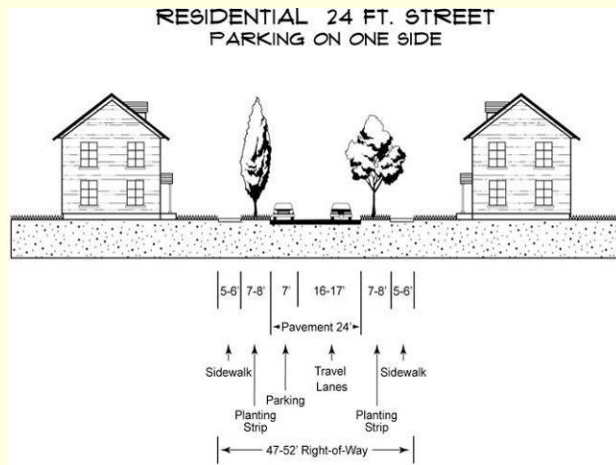
Salisbury – A Case Study

Example of Cross References

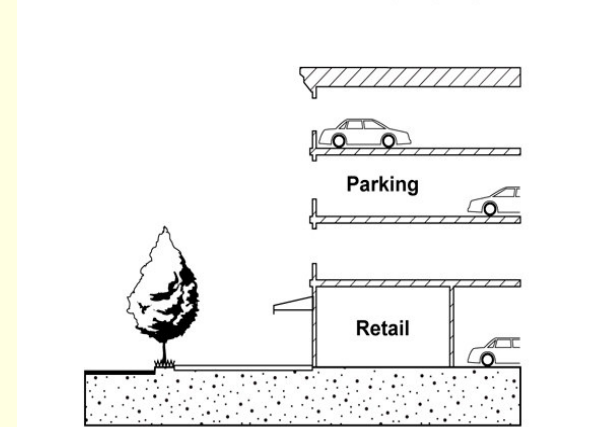
- Cross references to other sections (often multiple sections) in a provision or sentence make the document very difficult to read, understand, and administer.
- For example, section 3.3.3(c) reads, “An RCD shall be limited to one Long Pedestrian Shed (1/2 mile radius) including T4, T5, and T6 Zones as specified in Table 14A, and may be adjoined without buffers by one or several partial or entire Standard Pedestrian Sheds, each with the individual Transect Zone requirements of an RCD as specified in Tables 2 and 14A.”
- To understand this one provision of the code the reader must know what an “RDC” is, what a “Long Pedestrian Shed” is, what each of the T4, T5, and T6 Zones are, and reference table 2 and table 14A.
- This language is not user friendly.

Salisbury – A Case Study

Utilize Graphics and Diagrams to Explain Regulations



PARKING STRUCTURE ELEVATION



Salisbury – A Case Study

Updating the Improving Land Use Regulations

- After definitions, the administration and enforcement section of the regulations is the most important portions of the regulations.

- Administration and Enforcement section should include:
 - Permits administered by staff
 - Permits administered by commissions
 - Types of permits and application requirements
 - Plan and survey requirements
 - Enforcement authority and procedures

Salisbury – A Case Study

Encouraging Investment – What an Applicant Wants

- How does a community provide a land use system that protects public health, safety, and welfare and encourages investment in the community?
- Consider what applicants, developers, and investors expect from the land use approval process.
 - *“The Development Review Process: A Means to a Noble and Greater End”* by James van Hemert, AICP identifies a list of what applicants want:
 1. Predictability
 2. Fair Treatment
 3. Accurate and Accessible Information
 4. Timely Process
 5. Reasonable and Fair Costs
 6. Competent Staff
 7. Elegant Regulations

Community Builders Institute

Salisbury - A Case Study: The Need for Good Land Use Regulations

Presented By:

Donald J. Poland, MS, AICP

E-mail: don@donaldpoland.com

Web: www.donaldpoland.com

Phone: 860.655.6897