

# ZONING PRACTICE

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**PRACTICE LANDSCAPING**

4

# Landscape Ordinances: To Define and Protect

By Cynthia A. Bowen, AICP

Communities across the country are trying to create an identity—some through the enhancement of natural beauty.

A landscape ordinance is one way to achieve this endeavor. Traditionally, landscape provisions provided a minimum of visual enhancement and buffering for new development. But today, goals and objectives set forth in comprehensive plans allow communities to take these regulations further, and in new directions. Specifically, ordinance chapters now exclusively address landscape options for new development. Viable ordinances are essential as more communities use landscaping. This issue of *Zoning Practice* discusses how these laws are created and looks at five landscape options for communities to incorporate into their local ordinances.

One of the initial tasks for planners in drafting a landscape ordinance is to develop goals and objectives, including the enhancement of beauty, creation of open space, preserving trees that may be considered “significant,” buffering and screening between land uses, and using landscaping to create a sense of place for subdivisions, corridors, and community entryways.

## BEAUTY

Because some communities lack natural features that enhance development such as tree groves or water bodies, beautification should include provisions for trees and shrubs on commercial and industrial sites as well as in residential areas. Most homeowners have some landscaping plan for their property—often assisted by the developer—but commercial and industrial properties are less likely to have such a plan. A requirement that trees and foundation shrubs be included on commercial and industrial sites on major corridors means that color, texture, and softness will be added to an otherwise sterile environment. Minimum standards can provide maximum impact, including increased property values.

## OPEN SPACE

Open space can help achieve larger community goals such as creating parks and recreation areas and mitigating the impacts of density. Most communities place open space into one of two categories: passive or active. Active areas typically include park space with playgrounds or soccer fields. Passive areas might be environmentally sensitive lands such as wetlands or woodlands that are conducive for hiking, bird watching, or canoeing.

Local values and the goals of a comprehensive plan dictate which natural features



Scott L. Siefker

Planners cannot underestimate the transformative power of shrubbery along blank walls.

are protected by a landscape ordinance and when it can be used for preservation of open space. For example, open space dedication in subdivisions or provisions for lot coverage standards on single lots are established long before construction commences.

## TREE PRESERVATION

The development boom of the mid-90s brought tree preservation into the spotlight. The story is the same in developing areas across the country: A developer buys a piece of commercial property

on which grows mature (“significant”) trees. One of the trees is perhaps an old maple commonly used as a site marker by local residents. The developer submits the site plan and it is approved through the normal process. Construction begins and every tree on the site is removed to make way for a big-box retail establishment and a parking lot. Few trees and shrubs are added back to the site. Consequently, angry residents complain about the lack of trees to the planning department, plan commission, and city council, leading to a discussion about a tree preservation ordinance. When the goals of the comprehensive plan include protection of the natural environment, the landscape ordinance serves as an effective tool for policy implementation, and would thus provide the best opportunity for tree preservation.

## BUFFERING AND SCREENING

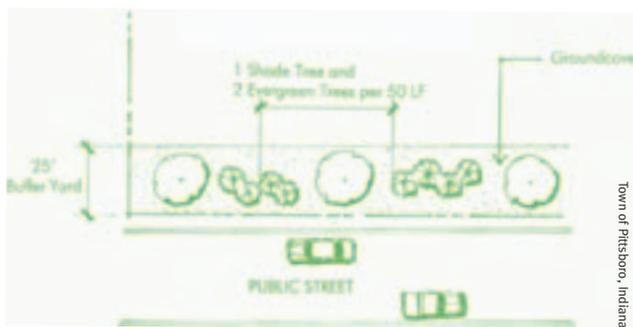
Another common goal of a landscape ordinance is buffering and screening new development from existing development. Salisbury, North Carolina, defines a buffer yard as “an area of land planted or constructed to separate uses.” Blacksburg, Virginia, defines it as “a yard improved with screening and landscaping materials required between abutting zoning districts of differing intensities or between adjoining land uses for the purpose of decreasing the adverse impact of differing uses and districts.” Blacksburg defines screening as “a method of visually shielding or obscuring one abutting or nearby structure or use from another by fencing, walls, berms, or densely planted vegetation.” Screening is intended to substantially, but not necessarily totally, obscure visual impacts between adjoining uses. Obsolete buffer and screening ordi-

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### About the Author

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Buffer yard requirements for residential subdivisions, multifamily developments, and planned unit developments in Pittsboro, Indiana.

nances have been replaced by regulations that reflect changing use intensities and philosophies about land-use patterns—for example, the prevalence of mixed-use development. Even still, land-use incompatibilities remain.

New buffer regulations include the use of fences, berming, trees, shrubs, and setbacks. A site with neighborhood commercial uses such as a barbershop would require buffering from adjacent residential properties. In agricultural areas on the urban periphery, setback requirements are used to buffer encroaching residential developments from agricultural lands where farmers use pesticides and fertilizers.

Over the past decade, communities have called for more screening along property lines to provide privacy and more clearly define boundaries. Typically, non-residential landscape ordinances mandate screening on all sides of a property, including the front lot line at the road, parking lot edges and parking lot islands, and along the foundations of large, imposing buildings.

### LANDSCAPING FOR COMMUNITY IDENTITY

Aesthetic appeal creates identity. While architecture and lighting can also provide community character, landscaping regulations, when applied to corridors or entrance gateways into the community or a subdivision, help achieve the same end. Landscape standards consist of more

than just planting an ornamental tree, shade tree, or shrub every 30 feet. Plans for corridors require a broader, more conceptual view of how to integrate landscaping throughout many sites, including incorporating foundation plantings to minimize the dull gray of a building or introducing landscape pavers to bring distinction to the area around a walkway or jogging path.

### THE FIVE-PART LANDSCAPE ORDINANCE

Landscape ordinances ideally should have five main components: provisions for on-site landscaping, buffering and screening, street trees, parking lot landscaping, and tree preservation. Though administered differently, each component of a five-part ordinance can fulfill the aforementioned community goals and objectives. Unfortunately, most landscape ordinances hold fast to the traditional “bare bones” approach, and thus are incapable of delivering the distinction to which some communities now aspire. In this regard, the ordinances featured in the following sections are unique.

**On-site landscaping.** On-site landscaping increases the greenery on open areas of a

site, adding beauty to both property and community. It includes foundation plantings, front, side, and rear-yard greenery, and common area plantings, but usually not street frontage space such as parkways or rights-of-way, parking lots, or buffers.

Though on-site landscaping can be implemented in many ways, two common approaches include landscaping based on a percentage and specific requirements per site. For example, Blacksburg, Virginia, designates tree canopy coverage requirements by zoning district, requiring a percentage of canopy coverage on the site based on tree maturity of at least 20 years (see Table 1).

TABLE 1. BLACKSBURG, VIRGINIA, TREE CANOPY COVERAGE BY ZONING DISTRICT

Zoning District	Tree Canopy (percentage)
RR-1	20
R-4 and R-5	20
OTR	20
RM-27 and RM-48	10
DC, GC, OD and I	10
Planned Districts	Per uses above

The placement of the trees on the site is not specified and is at the discretion of the applicant.

Using a formula, the applicant must convert the site acreage to a percentage of the acreage to be covered and then ensure that the selected tree canopies at maturity are correct. What constitutes a mature tree canopy can usually be found in tree reference manuals used by landscape architects, nurserymen, and arborists. Under this approach, the applicant will need a planner

or landscape architect to assist with the layout and calculation requirements.

Brownsburg, Indiana's, on-site landscaping requirements are organized by land-use type—residential or non-residential. Depending on the use, requirements provided are for the number of shade trees, ornamental trees, and shrubs to be distributed throughout the site. The requirements

Land-Use Type	Minimum Number of Shade Trees	Minimum Number of Ornamental or Evergreen Trees	Minimum Number of Shrubs	Notes
Residential	2 trees per dwelling unit	1 tree per dwelling unit	4 large shrubs per dwelling	In lieu of one of the trees required, 12 shrubs of a 5 gallon size or greater can be substituted.
Non-Residential	1 tree per 4,000 square feet of lot area	1 tree per 8,000 square feet of lot area	5 large shrubs per 2,100 square feet of lot area	Trees should be grouped together to form a natural looking area

for residential subdivisions are calculated based on the number of dwelling units. The requirements for non-residential uses are based on the square footage of lot area (see Table 2, above).

This approach is easier for staff to administer, leads to fewer errors, and is sim-

	Adjoining Uses					
	Single Family Dwelling	Two Family Dwelling	Multi Family Use	Low Intensity Use	Medium Intensity Use	High Intensity Use
Single Family Dwelling	None	A	B	B	C	D
Two Family Dwelling	A	None	A	B	C	D
Multi Family Dwelling	B	A	None	A	B	D
Low Intensity Use	B	B	A	None	A	C
Medium Intensity Use	C	C	B	A	None	B
High Intensity Use	D	D	D	C	B	None

pler to enforce. One drawback with the regulations is that non-residential requirements are too excessive in terms of the number of shrubs and trees required for industrial properties. The Brownsburg committee drafting

the ordinance wanted a higher level of landscaping than allowed on the site. It is possible that variance requests and limited staff to process them may eventually require a simplification of the ordinance.

**Buffering and screening.** Buffering and screening regulations generally require a buffer yard around the perimeter of a property to obscure it from neighboring uses. Applicants

can fulfill tree preservation requirements by allowing trees within the buffer yard to be counted toward the requirements. Traditionally, communities asked for a standard 30-foot buffer yard with one tree and two shrubs per every 30 lineal feet. But the growing complexity of uses makes a standard buffer yard difficult for wide application, so newer approaches have been developed.

A widely used format for buffer yard requirements in ordinances today is the use matrix for adjoining and proposed uses. Greenwood, Indiana, planners developed a minimum buffer yard matrix (see Table 3, left) when growth conditions in the community changed. This included a significant increase in residential subdivisions and commercial growth along major corridors. A buffer yard type table (see Table 3a, above right) accompanies the matrix. The proposed use and the adjoining district determine a buffer yard letter. The buffer yard table type indicates the required width of the buffer yard and the landscape requirements for that yard.

In Salisbury, North Carolina, buffer yard requirements are more complex, having been developed on a point system with mul-

Type	Minimum Landscaped Yard	Landscaping Required per 35 Linear Feet of Property Line or Right of Way
A	10 Feet	1 shade tree and 5 large shrubs
B	20 Feet	1 shade tree and 10 large shrubs
C	30 Feet	1 shade tree and 15 large shrubs
D	40 Feet	2 shade trees and 20 large shrubs

tipliers for each buffer yard. There are six levels of buffer yards, each representing a separate zoning district:

- Level 1: Residential; single-family and two-family**
- Level 2: Residential; multifamily**
- Level 3: Office; institutional and related classes**
- Level 4: Commercial; low and medium intensity**
- Level 5: Commercial; high intensity**
- Level 6: Industrial**

Salisbury also developed a district-level matrix to indicate how the buffer yards relate to one another (see Table 4 below). Again, a companion table (see Table 4a, page 5) was developed to dictate the requirements of the planting yards. Once the relationship between the existing, adjacent, and proposed zoning district is determined (and the letter designated) the companion table provides regulation details. The table has a point system for a variety of landscape types to allow

Proposed Zoning District	Existing Adjacent Zoning District Level					
	1	2	3	4	5	6
1	NA	NA	NA	NA	NA	NA
2	C	A	B	B	B	B
3	C	B	A	A	A	A
4	D	C	B	A	A	A
5	E	D	C	B	A	A
6	F	E	D	C	B	A

for flexibility in materials for the landscape buffer. Otherwise, the city would make the decision. The width of the buffer yard is based on buffer yard type. Here, each linear foot is calculated using the relevant multiplier to get the total points required for the yard type. Consequently, a combination of shade and ornamental trees and shrubs is used to meet the requirement. There also is a minimum tree requirement.

Implementation of the point-based system is complex and requires more staff time and resources to review each plan and ensure accuracy. Once the calculations are made, the landscaping must be positioned to effectively serve as a buffer. The point system would likely require that an applicant or city hire a professional planner or landscape architect. Standards for buffer yards also may include

**TABLE 4a. SALISBURY, NORTH CAROLINA, BUFFER STANDARD TYPES**  
Points for Planting Yards

Tree/Shrub Type	Points
Shade Tree	12
Ornamental Tree	6
Large Shrub	3
Medium Shrub	2
Small Shrub	1

**Planting Yard Landscaping**

Yard Type	Trees			Shrubs			Required Points per Linear Foot
	Minimum Buffer Area Width	Shade	Ornamental	Small	Medium	Large	
A	8 feet	N/A	1/100'		Optional		0.4
B	10 feet	1/100	N/A		Optional		0.6
C	15 feet	1/75'	1/100'		Optional		0.7
D	20 feet	1/50'	1/100'		Optional		0.8
E	25 feet	1/50	1/75'		Optional		0.9
F	30 feet	1/50'	1/50'		Optional		1.0

fences and berms. Some communities allow them to be used in lieu of standards such as decreasing the width of the buffer yard and the number of trees.

**Street trees.** Street tree regulations primarily focus on properties that front major corridors. They also are appropriate for entryways into residential and commercial subdivisions.

In Salt Lake City, street trees are required along parkways to protect parkway users, expand design flexibility, and improve environmental conditions. The regulations apply to all lots fronting parkways, the back of the curb (or edge of pavement), and the sidewalk. The lots must provide one tree per 30 feet along the parkway, and must be maintained by the adjacent property owner. The trees can be clustered or placed in a line.

Durham, North Carolina, requires street trees for all non-residential developments without right-of-way plantings. The trees are required to be within 25 feet of the adjacent street right-of-way at a rate of one tree for every 30 linear feet.

Tucson also has standards for street landscape borders, which include trees. The city requires that the strip of land have a width of at least 10 feet measured from the street and be located entirely on the site. However, at least five feet of the 10-foot border strip can be in the right-of-way with approval from the city engineer. The requirements for this border are similar to a buffer yard in that at least 50

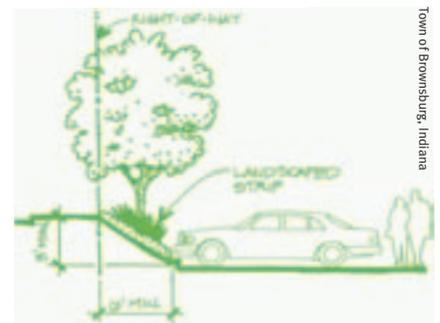
percent of the area must be covered with shrubs or ground cover. One canopy tree must be provided for every 33 linear feet of border. The trees can be spaced at varying distances.

For landscaping ordinances that require street trees, most regulations are straight forward. But planners who draft ordinances must understand two important design issues that affect the character of a street: placement of the tree and clustering versus a linear pattern.

**Tree placement.** Some communities allow trees to be placed in the right-of-way rather than on adjacent private property. In such cases is the burden of maintenance on the community or the property owner? Usually, trees in the right-of-way are the

municipality's responsibility. Unfortunately, budgets often prevent cities from doing the maintenance and tree replacement necessary to keep the parkway landscaping alive and healthy. Tree root systems also can damage water, sewer, fiber optic, and other public works lines at a significant cost.

**Tree patterns.** Trees can be clustered along the street frontage for a more natural look or placed in a straight line. The natural shape and flow of the corridor together with the community's desire for enhancement should guide this decision.



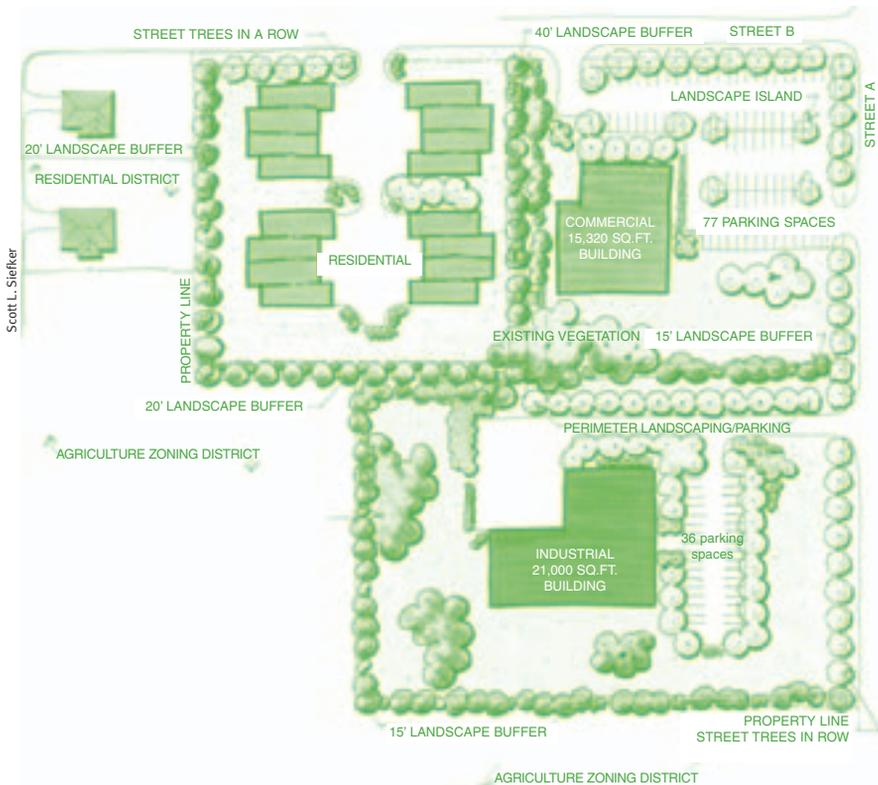
A landscaped perimeter parking strip is one way to counter the effects of large, impervious surfaces such as parking lots.

**Parking lot landscaping.** Parking lot landscaping softens and adds texture to the hard vastness of the impervious surface. Ordinances typically address multi-family residential and non-residential uses. Landscaping in parking lots is a dual process: landscaping the perimeter of the lot and landscaping the lot interior, including the islands. Some ordinances mandate a standard percentage of the parking lot that should be landscaped and others base the landscaping needs on the number of parking spaces. Similar to buffering standards, parking lot provisions have been around longer than some of the other standards discussed in this article, so they, and the approach to administering them, have changed to suit community needs.

Des Plaines, Illinois, has provisions for both interior and perimeter lot landscaping. A flat percentage is used for the interior parking lot landscaping. Regardless of size, at least five percent of the parking areas must be landscaped. Des Plaines also has provisions for island landscaping with minimum size requirements for each island: 100 square



Street trees serve multiple functions, including buffering between pedestrians and vehicular traffic, shading sidewalk pedestrians, reducing the urban heat island effect, and greatly improving the look of a commercial or transportation corridor.



A comprehensive landscape ordinance allows low-intensity commercial and industrial uses to co-exist in harmony with adjacent residential properties, as this illustration demonstrates.

feet in area and a minimum width of 8 feet. For every 100 square feet of landscaped area, one shade tree and a ground cover feature must be planted.

Perimeter standards apply to parking lots that face public streets, have 10 or more spaces, and are located within 20 feet of a lot line. The basic requirements for the perimeter landscape strip is that it must be seven feet wide and contain one shade tree for every 40 feet and one shrub for every three feet of yard length. The plantings can be clustered or spaced evenly in a linear pattern. The whole length of the perimeter yard must be landscaped if adjacent to a residential use and 75 percent landscaped if adjacent to a non-residential use.

The Blacksburg ordinance covers both the interior and exterior portions of the parking lot. At least five percent of the parking lot must be landscaped. Parking area calculations include parking spaces, aisles, and islands, but exclude access drives not containing parking spaces. The requirement is

one tree for every 10 parking spaces. Islands are 18 square feet and parking is permitted only on three sides, a provision that essentially prohibits stand-alone islands. The regulations state that if the parking lot is adjacent to a public street, a perimeter planting bed must be provided at a width of at least 10 feet. The requirements allow the overall parking percentage to be satisfied in the perimeter bed if necessary.

The Brownsburg landscape ordinance has separate regulations for interior and perimeter parking lots. Interior parking lot landscaping is based on the square footage of the parking lot. For every 125 square feet, five square feet must be on a landscaped island. The regulations dictate island placement and the maximum allowable area for parking rows. Islands can have one tree and four small shrubs.

Perimeter landscaping is required only for lots that contain more than 20 spaces or when the lot is located along a property line or street frontage. Landscaped areas must be

at least five feet wide and extend the full length of the parking lot. The landscaping standards call for one tree per 30 linear feet and one medium shrub per three linear feet. Vegetation can be clustered or spaced. So a hardship is not created, and to reduce the burden on the property owner to provide the entire level of landscaping required in the ordinance, parking lot landscaping credit can be applied to on-site buffer yard and street tree landscaping.

Costly maintenance prevents some communities from requiring parking islands. Public works departments, often responsible for clearing snow on non-residential parking lots, may see the islands as hazardous to equipment, and police departments may discourage the planting of large bushes on islands so as to not compromise visibility.

**Tree preservation.** Some communities have made tree preservation mandatory. Others just encourage it. The key to these regulations is the caliper of the tree and how communities make developers measure it. Tree caliper is a standard trunk diameter measurement usually taken six inches above ground for up to and including four-inch caliper size and 12 inches above ground for larger sizes. Communities should preserve trees higher than eight caliper and encourage developers to measure only those with a greater caliper, as tree inventories can be costly.

Under a mandatory system, removed trees often have to be replaced. As with all landscape provisions, standards for tree preservation can be simple or complex, depending on the desires of the community. Tree preservation in Brownsburg is done through the landscape ordinance, but a growing number of communities are adopting tree preservation ordinances.

Landscape ordinances have other functions not herein discussed, including provisions for site visibility triangles, screening of heating and cooling units, replacement values, site plan review, enforcement provisions, and maintenance. Some ordinances also include a list of recommended trees and shrubs. The list can be adopted as part of the zoning ordinance, but should serve only as a guideline so changes can be made in the future.

Communities want to avoid borrowing landscape ordinance provisions carte blanche from other places. Rather, planners should first determine what works locally. Only then should provisions from elsewhere be used.

The landscaping ordinances featured in this article are available to *Zoning Practice* subscribers by contacting Michael Davidson, Editor, *Zoning Practice*, American Planning Association, 122 South Michigan Avenue, Suite 1600, Chicago, IL 60603, or send an e-mail to [mdavidson@planning.org](mailto:mdavidson@planning.org). ■



## NEWS BRIEFS

### COURT FAVORS CITY IN RLUIPA DECISION

By Lora Lucero, AICP

Do religious institutions need to submit complete applications to the city when requesting approval of a rezoning? When all was said and done, that was the issue the Ninth Circuit Court of Appeals was addressing in *San Jose Christian College v. City of Morgan Hill*, (360 F.3d 1024 (9th Cir. 2004)).

On March 8th, the court ruled in the city's favor, concluding that the city's denial of the rezoning application did not deprive the applicant of its First Amendment right to the free exercise of religion; and the city did not violate RLUIPA (Religious Land Use and Institutionalized Persons Act (42 U.S.C. §§ 2000cc-2000cc-5)). Furthermore, the city correctly applied the California Environmental Quality Act (CEQA) to the project.

San Jose Christian College found property in Morgan Hill, California, previously zoned for a hospital but seemed ideally suited for a campus. Since the original PUD development plan was directed solely at the hospital use, the college filed an application to change the allowable uses within the PUD to accommodate anticipated "new uses such as outdoor sports fields, a gymnasium, a theater/chapel, and student resident hall(s)." The college indicated it expected to grow to around 1,200 students within the next 20 years, but the current enrollment would be limited to 400.

The city informed the college that its application was incomplete because it did

not provide sufficient information on the site plan. The city also wanted information about the use of the property, including: "the number and hours for its proposed evening sporting events as well as any large events, and whether these events would overlap with peak classroom use; whether the 300-400 people anticipated for Sunday service in the gym would include the students residing on-site, or reflected people coming in from off-site; proposed expansions; the location and detail of the lighting proposed for the future outdoor sports field and the number of bleachers; and how many seats would the proposed theater/chapel contain—500 or 1,500."

The college blanched at Morgan Hill's request and decided to scale back its version of an initial application, eliminating any mention of the gymnasium, outdoor sports field, field house, and chapel/theater uses. It also revised its environmental initial study, indicating it only intended to enroll a maximum of 400 students, rather than the 1,200 students it initially mentioned. Meanwhile, the promotional materials the college circulated indicated that there was "adequate space for playing fields and future expansions" and the property "would allow the college to at least quadruple its current size of about 400 students." The city denied the rezoning application because the college failed to comply with application requirements.

The college filed a complaint including constitutional and RLUIPA claims, but the district court granted summary judgment in favor of Morgan Hill. On appeal, the college argued that the district court made a mistake—actually several mistakes—but the Court of Appeals disagreed. First, the Morgan Hill PUD ordinance does not implicate free speech because it is a content-neutral "time, place, and manner" restriction. [*City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986)]. And the city's denial does not equate to a denial of the right to assemble even though the church's congregants cannot assemble at that precise location. Second, the city did not violate RLUIPA, because RLUIPA requires that the land-use regulation impose a "substantial burden" on the right of free exercise—meaning the regulation must be "oppressive" to a "signifi-

cantly great" extent. The Court concluded that the PUD ordinance imposed no restriction whatsoever on the college's free exercise; it merely required the college to submit a complete application. Finally, the city acted in accordance with CEQA requirements when it concluded that the college failed to consider the potential impacts of the foreseeable future development.

The Amicus Curiae Committee of the American Planning Association filed an amicus brief in support of Morgan Hill's position, which can be found at [www.planning.org/amicusbriefs/](http://www.planning.org/amicusbriefs/). The decision of the Court of Appeals can be reviewed at <http://caselaw.lp.findlaw.com/data2/circs/9th/0215693p.pdf>

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Cover photo by Michael Davidson. A planned unit development in Chicago's Ravenswood neighborhood, where landscaping helps to soften the "hard edges" of the development, buffers cars from surrounding areas, and provides green space for passive recreational use.

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CAN A LANDSCAPE  
ORDINANCE CREATE  
IDENTITY?