

ZONING **PRACTICE**

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PRACTICE **ORDINANCE TESTING**



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Testing the Zoning Ordinance

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Many communities around the country are working with aged, outdated, and cumbersome zoning ordinances. These ordinances neither fit the existing development of their communities nor facilitate the achievement of a consensus vision for the future.

This mismatch happens for a variety of reasons, not the least of which is that older ordinances often contain complex sets of rigid regulations that lump specific uses into a pyramidal structure that actively works against achieving a mix of uses and dimensional standards narrowly designed to achieve a particular—often suburban—development form that may not reflect the existing on-the-ground conditions. Further, many communities have heavily adapted and amended their zoning ordinances over time, adding layers of additional requirements, techniques, and processes that together result in a web of regulations that may unintentionally discourage just the type of development they desire.

Some of these problems appear to be generational in nature: What was once deemed desirable has fallen out of favor for numerous reasons and must be updated. Other issues, however, are simply more functional in nature. What if, as we were drafting regulations to address a resident's unsightly addition, we looked more carefully ahead, anticipating and testing their impacts, to assure that we were not creating unintended consequences for homes across town or home owners who may want to invest in a tasteful addition 10 years from now? What if we tested that new regulation to ensure that we knew the full extent of how it would impact the homes in our community, so that we could aid in an informed decision-making process about how to move forward?

Updating a zoning ordinance is not a simple process. It involves reconciling adopted policy with existing development patterns, future development goals, and the often competing interests of landowners, residents, the business community, and elected officials, among others. With so many interested parties at the table, and so much at stake for the community and its residents, new regulations must be vetted through a

thoughtful process that is seated in reliable data, modern techniques, and a whole lot of research. As communities work to update their zoning ordinances, a proactive approach to testing regulations can ensure that new standards do not create a ripple of unintended consequences, but rather match the character of existing development and result in new development that is in line with adopted plans, policies, and community desires. Finally, if you are a fan of creative problem solving, testing can also be (gasp!) fun.

WHAT IS TESTING?

Here, “testing” refers to putting regulations through their paces, ensuring that we fully understand the consequences and impacts of what we’re proposing, drafting, discussing, and ultimately adopting. Though it is often heavily driven by data, testing itself is not purely a technical exercise. Rather, it can take a variety of forms, from presenting “proof of concept” draft districts that allow us to gauge the level of support for general approaches, to completing complex geographic information systems (GIS) analyses to ensure that we’re not increasing nonconformities through new dimensional regulations. Some typical forms of testing:

- Testing new approaches to gauge community support, such as implementing a modern planned unit development process or collapsing overlay districts into base districts
- Testing new or revised district dimensional standards (lot sizes, setbacks, etc.) to ensure that existing development patterns are acknowledged in the zoning ordinance, and that the built character and future desires of the community are accurately reflected in the range of districts provided
- Testing design standards to ensure that they are both specific enough to create high-quality development and flexible enough to accommodate architectural diversity and creativity
- Testing specific regulations, such as maximum heights, design standards, or unique provisions, such as sliding-scale setbacks, to ensure they work both within

the particular contexts that are driving their creation as well as throughout the community overall

- Testing new or revised processes to ensure they will work relative to the comfort and capacity of staff and elected officials, and that they represent an improvement over previous processes.

Zoning does not exist in a vacuum. Assessing the impacts of regulations before they are enacted is invaluable in ensuring that an updated or revised ordinance will suit the community it is designed to serve. The overarching benefit that testing can provide is the opportunity to evaluate any proposed regulations or approaches in action before they are formally adopted and enacted as part of a new zoning ordinance. The testing process allows a variety of stakeholders—staff, elected officials, the development community, and the public at large—to get a much clearer understanding of the techniques being employed and the anticipated results of the technical zoning language that is being proposed.

Testing, therefore, plays a critical role in ensuring that an updated zoning ordinance or regulation has been properly vetted through a process that aids truly informed decision making.

This article will cover when, what, and how to test zoning ordinances and regulations, and it will provide examples of how testing has been used to produce zoning ordinances that are more predictable and more closely customized to the needs and desires of their communities.

WHEN TO TEST

Broadly, the question of when to test your zoning ordinance can be answered, “now.” It can be beneficial whether you are working with a 30-year-old ordinance and thinking about updates, or are currently in the process of updating your ordinance, or if you adopted a new ordinance yesterday. Proactively assessing your community's primary tool for controlling development is a good habit to get into no matter what your community's current situation may be.

When You're Updating

The simplest and perhaps most effective time to test zoning regulations is while they're in the process of being updated. The update process provides the far-reaching latitude to evaluate all aspects of the zoning ordinance and how they may currently be working (or not working) together to achieve the community's development goals. The update process allows for the testing of existing regulations (such as district dimensional standards, maximum heights, parking ratios, landscape requirements, etc.) to ensure that they continue to work within the developed context of a community, and that they continue to work toward achieving the community's vision for the future.

The update process also allows new regulations and approaches to be tested before they become the rules for development in a community. Are we proposing smaller minimum lot sizes? Let's test to ensure that they're going to work to accommodate existing homes and facilitate growth where we desire, but that we're not unintentionally allowing existing lots to subdivide and create new density where it may not make sense. Are we proposing moving from regulating side yards as a minimum number to a percentage of lot width? Let's make sure that the percentage is tailored to sensibly accommodate both the small lots to which it would apply, as well as the larger ones. Are we writing a new regulation to limit the height of second-story additions in residential neighborhoods because someone built a terrible one? Let's make sure that we're not unintentionally prohibiting second-story additions in entire neighborhoods where they may be totally appropriate, and pushing home owners into an unnecessary variance process.

When You're Not

When you aren't updating, it's still important to be putting your ordinance through its paces. Proactively testing allows for an ongoing assessment of the limitations and effectiveness of your ordinance to meet the demands of future development pressure, and to act as a barrier to less desirable forms of development. The first and most obvious place to look for things to test is the pattern of variance requests that you're seeing. If home owners are repeatedly asking for relief related to fences in their side yards, this may indicate a regulation that needs adjustment.

Similarly, if a good number of businesses in your general commercial district are asking for relief from ground-floor transparency requirements, you may want to test the requirements to ensure they are reasonably achievable and appropriate.

Keeping an eye on development trends and patterns in nearby communities, as well as emerging or nascent regulatory approaches, can also illuminate some areas that would benefit from testing. For instance, is the community next door seeing a number of tear-down redevelopment projects, or new homes on double lots in existing small-lot residential neighborhoods? Now might be a good time to see how your ordinance would handle new residential development of larger homes on larger lots, and if your controls allow for desirable forms of development that also protect current home owners and the fabric of the neighborhood. The brewpub you went to after work the other night—the one in the industrial area next to the glassblowing studio and the gym—could something like that happen in your community? Now might be a good time to look at older industrial areas in your community and see what may be standing in the way of their reuse or revitalization.

As new trends, technologies, and techniques emerge, how nimble is your community at recognizing and adapting to the demand for change? Proactively evaluating how your ordinance may (or may not) handle something like a roof-mounted wind turbine, a chicken coop, or a tiny house can prepare you for when the first permit application arrives at your desk. Knowing where the flexibilities and limitations lie can provide a great basis for working within an existing ordinance, or making the move to update when the tipping point is reached.

WHO DOES THE TESTING?

During an ordinance update, testing responsibilities may fall to different parties. If a consultant is the primary drafter, the consultant should also be the primary party responsible for testing any proposed regulations. Close coordination with staff is important to ensure that any data being used is the most up to date and accurate, to assist in the selection and prioritization of specific issues to test, and to identify any particularly critical areas within the community to test. In the case of process testing, following any initial "shadowing" or process engagement

with the consultant, the staff should be the primary party responsible for testing and evaluating any proposed process changes.

WHAT AND HOW TO TEST

See the list of "forms of testing" above with some examples of ways in which testing may be used when a community is revising or updating its zoning ordinance. The sections below present more detail.

Approach Testing

Approach testing is a key step at the outset of any zoning update process, particularly for communities with an older ordinance. Changes in the form of new approaches or techniques, such as the implementation of a generic use approach, or a new manner of handling nonconformities, can often be a larger mental hurdle than changes to specific provisions, such as modified building height or setback requirements. Testing such new techniques can help to ensure that they will work for your community, and that they are supportable by staff, elected officials, and the public. Approach testing is often useful when transitioning from one technique to another, or when attempting to implement a new technique or practice within a community.

Testing a new approach requires that all stakeholders understand and support the proposed change of course. For example, many older zoning ordinances subject all nonconformities to the same standards. Meanwhile, contemporary zoning ordinances often define and regulate different types of nonconformities, such as "nonconforming lots," "nonconforming uses," "nonconforming structures," "nonconforming signs," and "nonconforming site elements" (e.g., landscaping, lighting, and parking). The benefit of this approach is that, rather than rendering a structure nonconforming because of a landscape issue, it establishes a separate set of regulations that govern the maintenance and improvement of only the nonconforming element. (However, it is important to note that the enabling legislation in some states does not allow for "nonconforming site element" provisions.)

Testing such an approach, depending upon the state in which it is proposed, may first involve getting a legal OK to proceed, then discussing with staff and stakeholders the details of how this approach is different and what exactly it would mean within

their community. In this case, testing may involve finding a number of examples of situations where structures are conforming, but landscaping, parking, or lighting would be nonconforming, and explaining the differences between how the two approaches would handle such a situation. There may be a good deal of support, or there may be some reluctance depending on the details. In either case, testing the approach using real-world examples allows for a much clearer understanding and an informed decision-making process.

Dimensional Testing

Dimensional testing is an important practical step to ensure that any new regulations adequately address the existing development pattern on the ground. Many zoning ordinances contain residential district dimensional standards that create a great deal of nonconformity, making life difficult for home owners who simply want to maintain or improve their property. Lot area, lot width, and setback dimensions required by residential districts within older zoning ordinances often do not correspond to the pattern of development that has occurred. They frequently require a much greater lot area and larger setbacks than the predominant development pattern.

A key step in updating these dimensional standards is to evaluate the relationship between what is required and what is actually built in the community. GIS analysis can be quite helpful in testing this relationship and exploring patterns of development that have occurred over time, both relative to and independent of zoning district requirements. Mapping individual residential zoning districts and aggregating data on the typical lot sizes, widths, and setbacks within those districts allows us to visualize and assess levels of nonconformity across a community's residential districts and to see patterns as they emerge.

Frequently, modern ordinance updates require the adjustment of dimensional regulations within residential districts, including the creation of small-lot residential districts to accommodate older neighborhoods and denser development patterns that were previously not acknowledged through the zoning ordinance.

Further, when a community creates new residential districts or proposes

adjusted dimensional regulations, testing those regulations through GIS analysis of existing development patterns allows it to quickly gauge how many properties would be brought into conformance with zoning, versus how many properties would remain or be made nonconforming under the new regulations. In this way, dimensional testing can provide a road map for what must be changed through the zoning update process.

Design Testing

Many modern ordinances incorporate some level of design standards to ensure that new development achieves a high level of quality and a consistency with the existing character of the community. It is helpful to test them to make sure that they are stringent enough to ensure high-quality development and flexible enough not be prescriptive. A good

exercise; specific provisions within the design standards often emerge for discussion based upon their application to existing buildings, and the community's regard for those buildings. For example, comparing the proposed standards to an existing structure, and measuring conformance to provisions such as minimum percentage of transparency or required roofline articulation, can trigger some good discussion. The results of testing may surprise stakeholders by revealing that the design standards would indeed accommodate a specific building. In others, stakeholders may learn that the proposed standards would actually prohibit a beloved landmark or symbol of the community.

Frequently there is concern that standards must be flexible enough to not stifle architectural diversity and creativity within the community. A good set of design



Dimensional testing can reveal development patterns that are not accommodated through existing zoning district standards, and can provide guidance as to how standards should be adjusted.

set of design standards should regulate the essential elements of building form, setting reasonable standards that address elements such as fenestration, facade articulation, roofline form, and entry location.

To test design standards, select a number of buildings currently within the community, and use the proposed regulations to evaluate their design. Could the buildings be built again if the new standards were adopted? This can be an illuminating

standards should accommodate a variety of architectural styles and unique building designs. Testing examples of contemporary, modern, and traditional structures, and showing that they would conform, can alleviate such concerns.

Issue Testing

It is given that there will be unique, complex, or particularly sensitive issues that arise when a zoning ordinance is updated.

Fenestration Design Standards | Graphic Comparison

- Proposed transparency requirements for the ground floor (50%) and upper stories (25%) are illustrated on the first and second stories.
- A reduced requirement of 15% is shown on the third story of the building below, for comparative purposes.



Camiro, Ltd. 2017

➞ Design testing may also include specific provisions, such as different levels of required window transparency.

Hot-button issues can demand innovative or unique approaches to regulation. Such issues often revolve around a particular development project or trend. Whether you're working as a private consultant or a public-sector planner, having the ability to accurately test the impacts of regulations designed to address these issues—and to communicate the results of testing to enable informed discussion and decision making—is an invaluable skill.

Take, for instance, my recent experience with a hospital and its adjacent neighborhood. Neighbors had become concerned that the height limitations placed on the hospital property by the current ordinance were too permissive, and that if redevelopment were to occur to the maximum permitted height, they would find their homes in shadow throughout the day. Working with local planners, and with input from representatives of the neighborhood and the hospital, we were able to test the impacts of a variety of potential permitted heights and required mitigation strategies, such as increased required setbacks from residentially zoned property, and upper-story step-backs. Shadow studies tested the impact of potential adjustments, and the results showed that a

tailored combination of increased setbacks, step-backs, and a reasonable maximum building height would minimize any potential impacts on the adjacent neighborhood, while maintaining the ability for the hospital to reasonably expand in the future.

Finally, there can often be a chorus of voices that arises to address particularly sensitive development trends, such as an influx of new residential construction that is out of scale and threatening to undermine the character of an established neighborhood. Creating controls to address these types of development trends demands sensitive testing to ensure that they will indeed prevent the negative impacts of such development—but that they still provide the flexibility for people to improve their homes, or for redevelopment to occur in a manner that can meet market demands. Testing can help to make sure that you're addressing the issue at hand, and not creating a separate issue through the adoption of a new regulation.

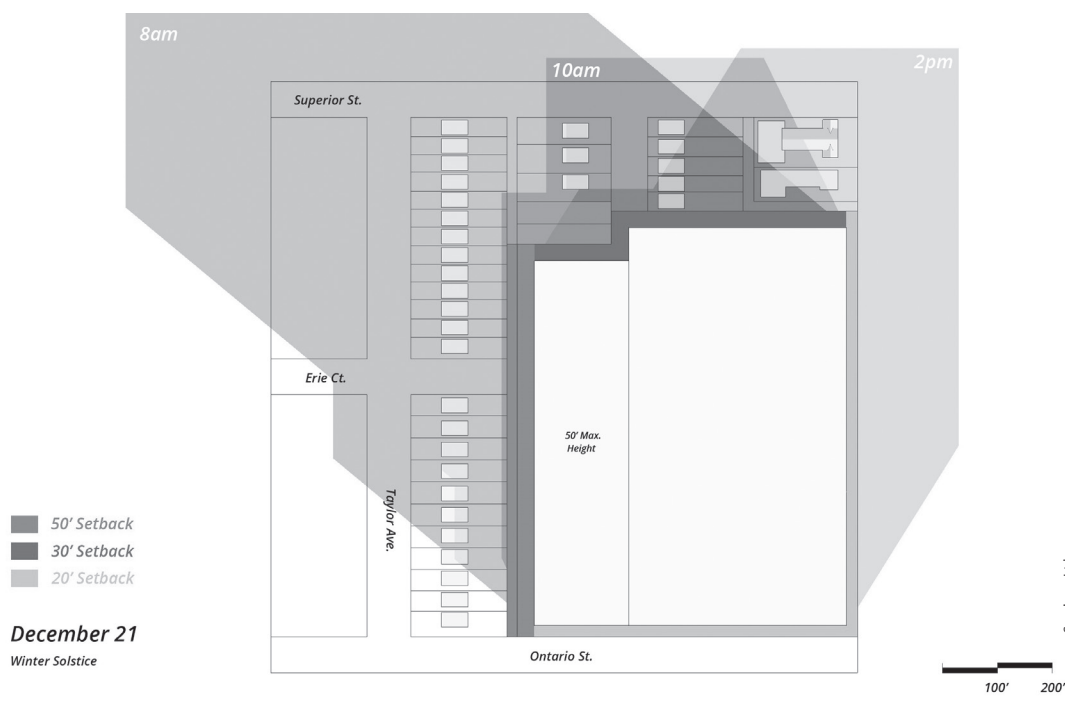
Issue testing can be some of the most important work in updating a zoning ordinance. Specific regulations that address unique conditions must be adequately tested to ensure that they are not creating

unintended consequences or contributing to regulatory tangles that will need to be resolved later on. This type of testing, as it deals with unique issues and solutions, is also some of the more fun and engaging work in an update process.

Process Testing

As part of an overall ordinance update, staff should consider putting new processes through their paces before they are adopted and enacted. In most communities, an ordinance update does not involve major changes to the way that applications are handled and processed, but even minor changes can have a big impact on workflow. It is important to have a grasp of staff capacity to implement new procedures, or to simply practice the new procedures before they are in place.

This type of testing generally involves taking applications received—either during the update process or beforehand—and running them through a parallel internal (nonbinding) process, evaluating them against new standards and ensuring that procedures and time frames established through the new zoning regulations work for staff and



testing can help to ensure that they work together to create the type of new development that a community is looking for. As such, it is a valuable tool for communicating the impact of such regulations to a variety of stakeholders, the public, and elected officials. This type of testing can be very involved (essentially executing hypothetical projects under the proposed regulations, from design through application and approval) or relatively simple, depending upon the desires of the community and the time and capacity available within a project scope.

The most common, easily executed, and helpful type of project testing, however, is a before-and-after comparison of a



Shadow studies test the impacts of allowed maximum heights, as well as the effectiveness of mitigation strategies such as increased setbacks from adjacent residential property and required upper-story step-backs.

that no toes are stepped on or barriers created to an efficient workflow. Comparing proposed processes to existing ones can lead quickly to intuitive assessments of any new regulations. The inclusion of something like a completeness review process, for instance, can come as a relief to staff who may often find themselves in the position of

attempting to assemble the missing pieces needed to process an application.

Project Testing

Project testing is where it all comes together. Whereas the previous types of testing primarily involve specific tuning of regulations to ensure they each achieve their specific intent, project

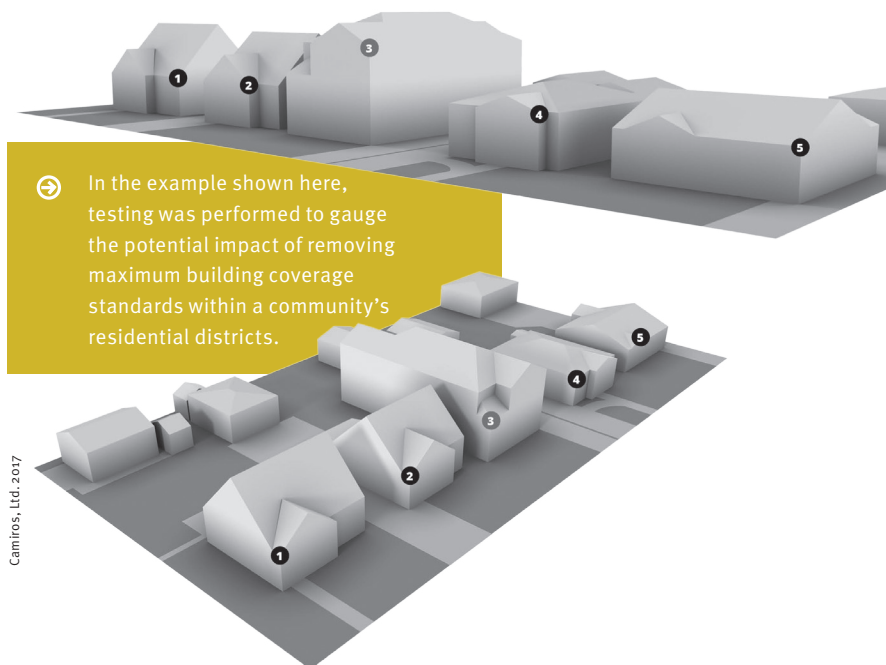
development or development type—what could occur under the existing regulations versus what could occur under new regulations.

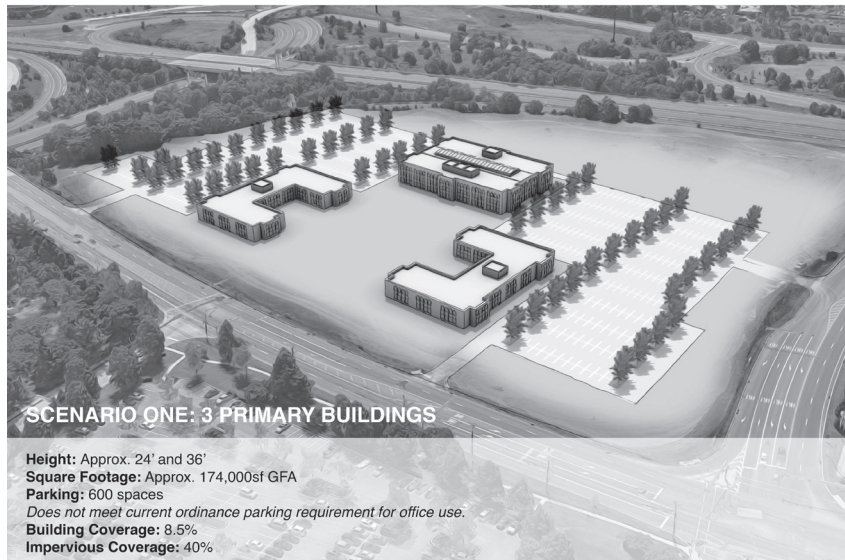
Testing could be based on real or hypothetical development: Do we want to evaluate a real project against new regulations to see how it may be different, or do we want to create a hypothetical project and show the impact of existing regulations versus new regulations? Both avenues can be helpful in communicating key changes between an old ordinance and a new one, and the answer to the real versus hypothetical question may be different from community to community based upon the desire or hesitancy to second-guess or reevaluate existing development. In cases where existing or “real-world” sites are used to conduct testing, we must be sensitive to the implicit difficulty in labeling existing developments as either “good” or “bad,” and be sure to choose sites based on quantitative characteristics or similarities to other undeveloped locations, rather than a qualitative judgment of a development as something deserving of a “redo.”

Project testing can be most helpful to illustrate new regulations as they relate

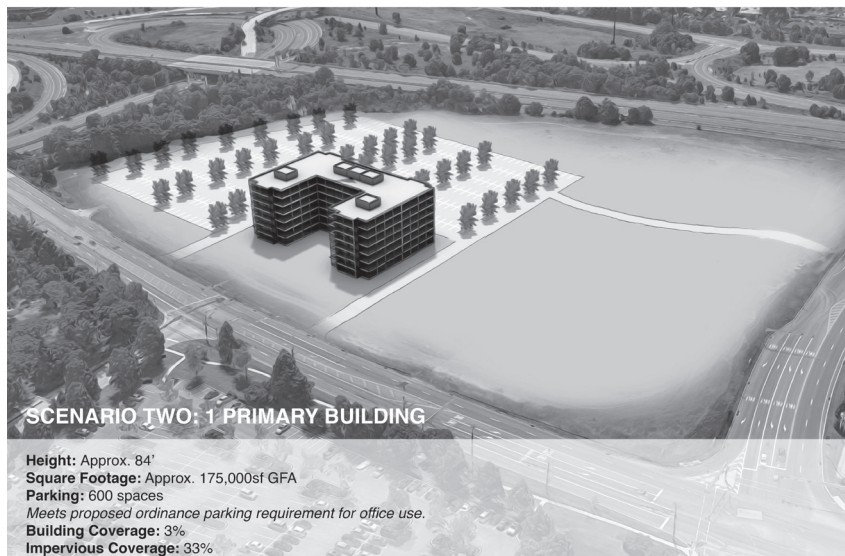


In the example shown here, testing was performed to gauge the potential impact of removing maximum building coverage standards within a community's residential districts.





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➡ Comparing existing regulations to new ones, such as through project testing, can help to illustrate how proposed regulations may be reflected in on-the-ground development.

to a variety of physical and dimensional characteristics of development. A buildout analysis, for instance, examining the most intense development that could occur on the same site under two different sets of regulations, is often helpful in drawing distinctions between new and old. Similarly, a comparison of projects with the same square footage and development program can effectively illustrate the impact of new regulations as they relate to permitted building siting, coverage, parking ratios, landscaping requirements, heights, and design character.

COMMUNICATING RESULTS

Though most of what has been covered here has dealt with techniques for testing zoning regulations, communicating the results of that testing is perhaps the most critical piece of the puzzle. When sharing the results of testing, we must ensure that diagrams, models, spreadsheets, or any other forms of communication are clear and effective, and that we are explicit about what exactly was tested and how we are interpreting the results.

The key value of testing regulations is that it provides the ability to clearly

communicate the results of proposals to stakeholders, the public, and elected officials. This enhances their ability to make informed decisions about the future of the community through a new zoning ordinance or regulation. That value is easily diminished if the results of that analysis are not clearly communicated in a readily digestible form. All drawings should be clearly labeled, and synopses in plain English should be included to aid the understanding of audiences who are familiar with zoning and those who may not be.

ABOUT THE AUTHOR

Christopher Jennette, AICP, is an urban designer and planner with Camiros in Chicago. His experience includes a broad range of disciplines, from zoning to urban design and landscape design at a variety of scales. He is committed to working closely with communities in developing thoughtful, responsive planning and design solutions that positively impact people's daily lives.

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WHAT ARE THE BEST APPROACHES TO TESTING YOUR ZONING ORDINANCE?

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