

Lecture #3:
Urban Formal Order II: Natural Law and Positive Law

* * * * *

“Monsignor Apollo is a good man and a good priest, but all men are apt to be incredible asses at times, especially outside their domains.”

--Walter M. Miller, Jr., *A Canticle for Leibowitz*

Urban Formal Order, Natural Law and Positive Law

- Re-cap:
 - Cities and Human Flourishing
 - Good Urban Formal Order and its devolution
 - Contemporary Reform Movements and the obstacle of existing positive law
- A hypothetical urban natural law precept and possible positive law ramifications
 - The nature of Law / Natural Law / An urban Natural Law precept?
 - n.b., good law is insufficient for good urban form, but necessary
 - Positive Law improvement #1: Use-based Zoning v. Transect-based Zoning (Form-based Codes), rather than Use-based Zoning
 - Land Value taxation (i.e., land alone), rather than Property taxes (i.e., land and buildings)



A good town / neighborhood has a discernible center

Characteristics of good *contemporary* American
traditional towns and neighborhoods



A good town / neighborhood reserves prominent sites for religious and civic buildings

Characteristics of good *contemporary* American
traditional towns and neighborhoods



A good town / neighborhood is pedestrian-friendly on its commercial streets

Characteristics of good *contemporary* American
traditional towns and neighborhoods



A good town / neighborhood is pedestrian-friendly on its residential streets

Characteristics of good *contemporary* American
traditional towns and neighborhoods



A good town / neighborhood has a variety of dwelling types (detached single-family houses)

Characteristics of good *contemporary* American
traditional towns and neighborhoods



A good town / neighborhood has a variety of dwelling types
(row-houses, left / 2-flat and 3-flat, right)

Characteristics of good *contemporary* American
traditional towns and neighborhoods



A good town / neighborhood has a variety of dwelling types
(6-unit apartments building left / 12-unit apartment building, right)

Characteristics of good *contemporary* American
traditional towns and neighborhoods



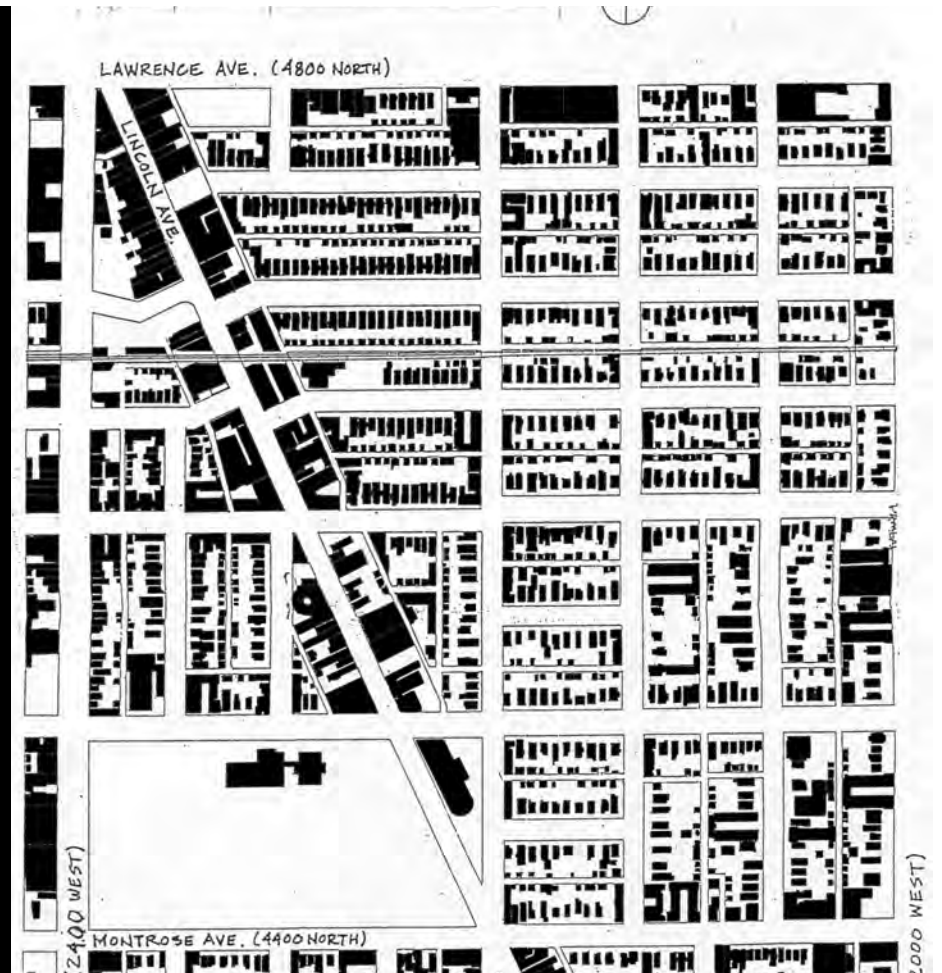
A good town / neighborhood has stores and offices located at or near its center

Characteristics of good *contemporary* American
traditional towns and neighborhoods



A good town / neighborhood has children, and an elementary school and parks / playgrounds to which they can walk

Characteristics of good *contemporary* American traditional towns and neighborhoods



A good town / neighborhood has small blocks, small lots, and a network of through streets

Characteristics of good *contemporary* American
traditional towns and neighborhoods



A good town / neighborhood places its buildings near the front of their lots
to give spatial definition to streets

Characteristics of good *contemporary* American
traditional towns and neighborhoods



A good town / neighborhood utilizes its streets for parking, and parks from alleys where possible

Characteristics of good *contemporary* American
traditional towns and neighborhoods



Contemporary good urbanism as great-grandchild of Aristotle's *polis*, with intimations of the City of God

- implicitly by its beauty and justice
- more explicitly in its physical acknowledgment of sacred order
- most explicitly in acknowledging Triune God and Incarnation

Characteristics of good *contemporary* American
traditional towns and neighborhoods

Development of the suburbs & the “modern” city:

- Causes:

- Overcrowding of cities.
- Health and sanitation concerns.
- Increase in individual wealth and amenities.
- Political change.
- New building materials / technology.



Development of the pre-1950 suburbs:

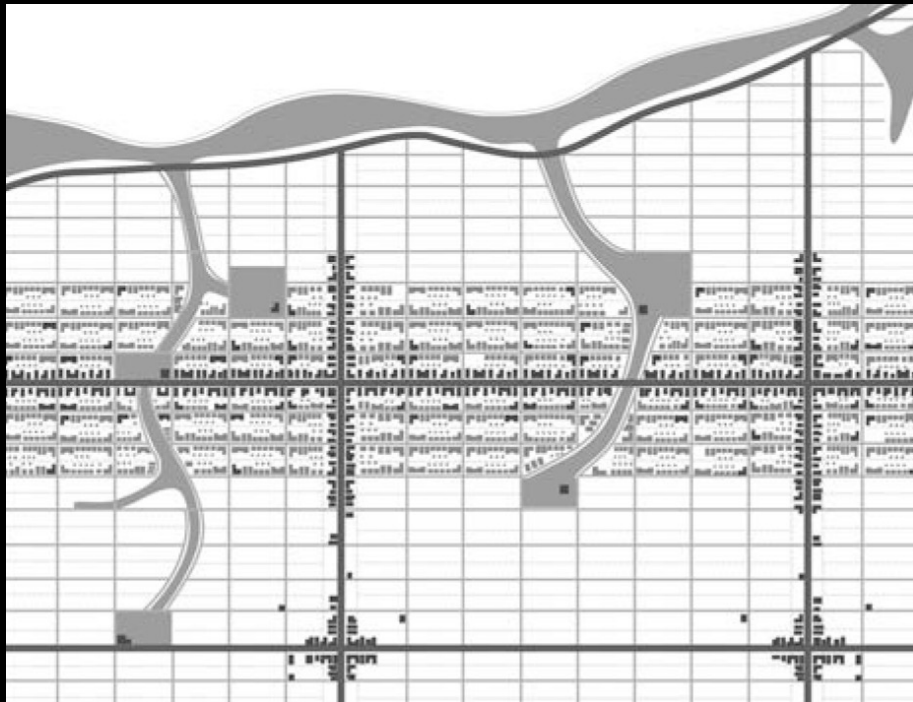
- Streetcar suburbs:

- Transportation: (1820s) horsecar - cable car - streetcar (1887).
- Streetcar could move people 4 times as fast as walking.



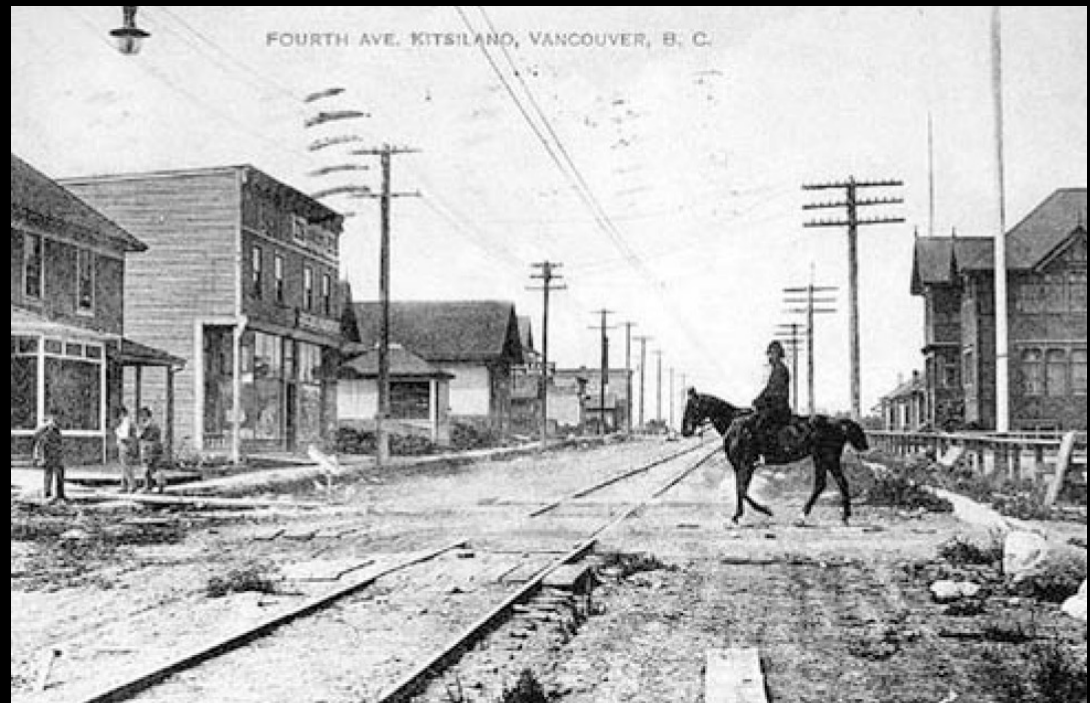
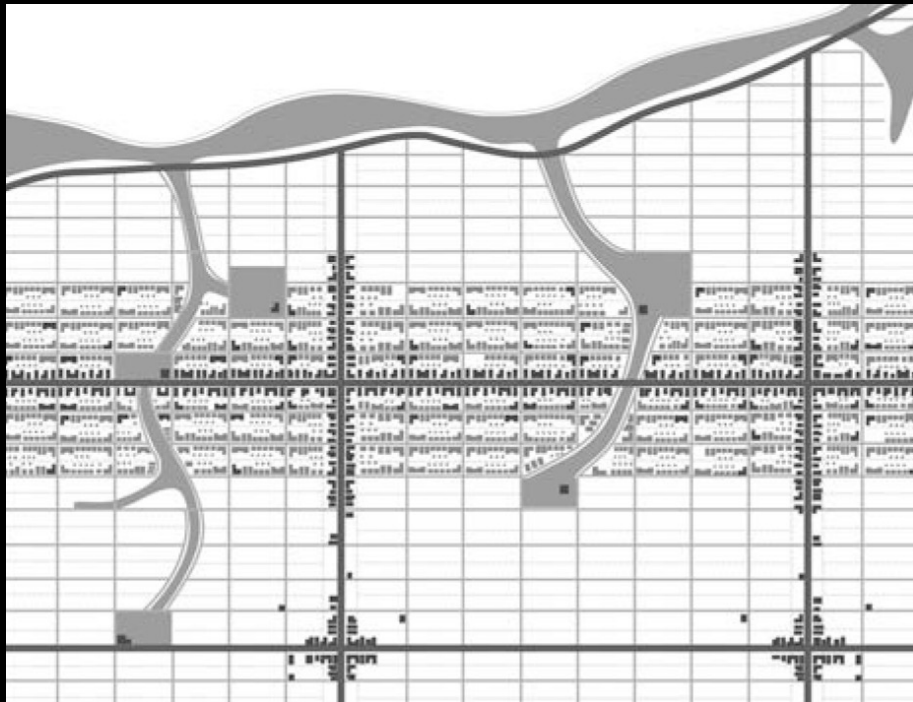
Development of the pre-1950s suburbs:

- Streetcar suburbs:
 - Development:
 - Typical American pattern of urban development (1880-1945).
 - Linear in form.
 - **Speculative development model:**
 - **Streetcar construction.**
 - **Division of land and selling of lots.**
 - Densities (13,000 - 27,000 people/sq.mi.)
 - Commercial / mixed-use along streetcar route with residential beyond.
 - 1/2 mile distance between streetcar lines.



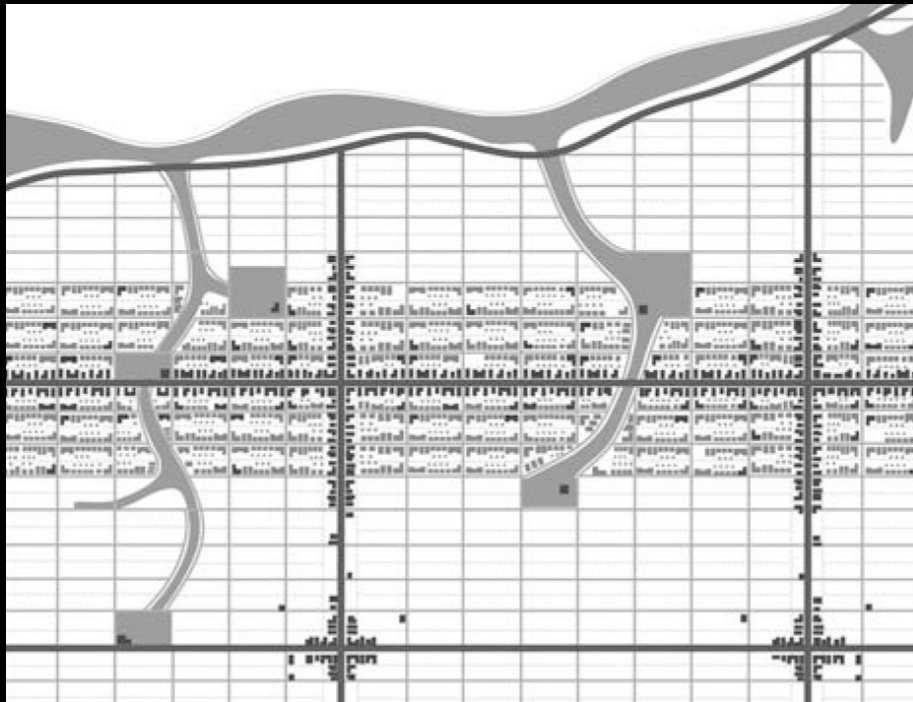
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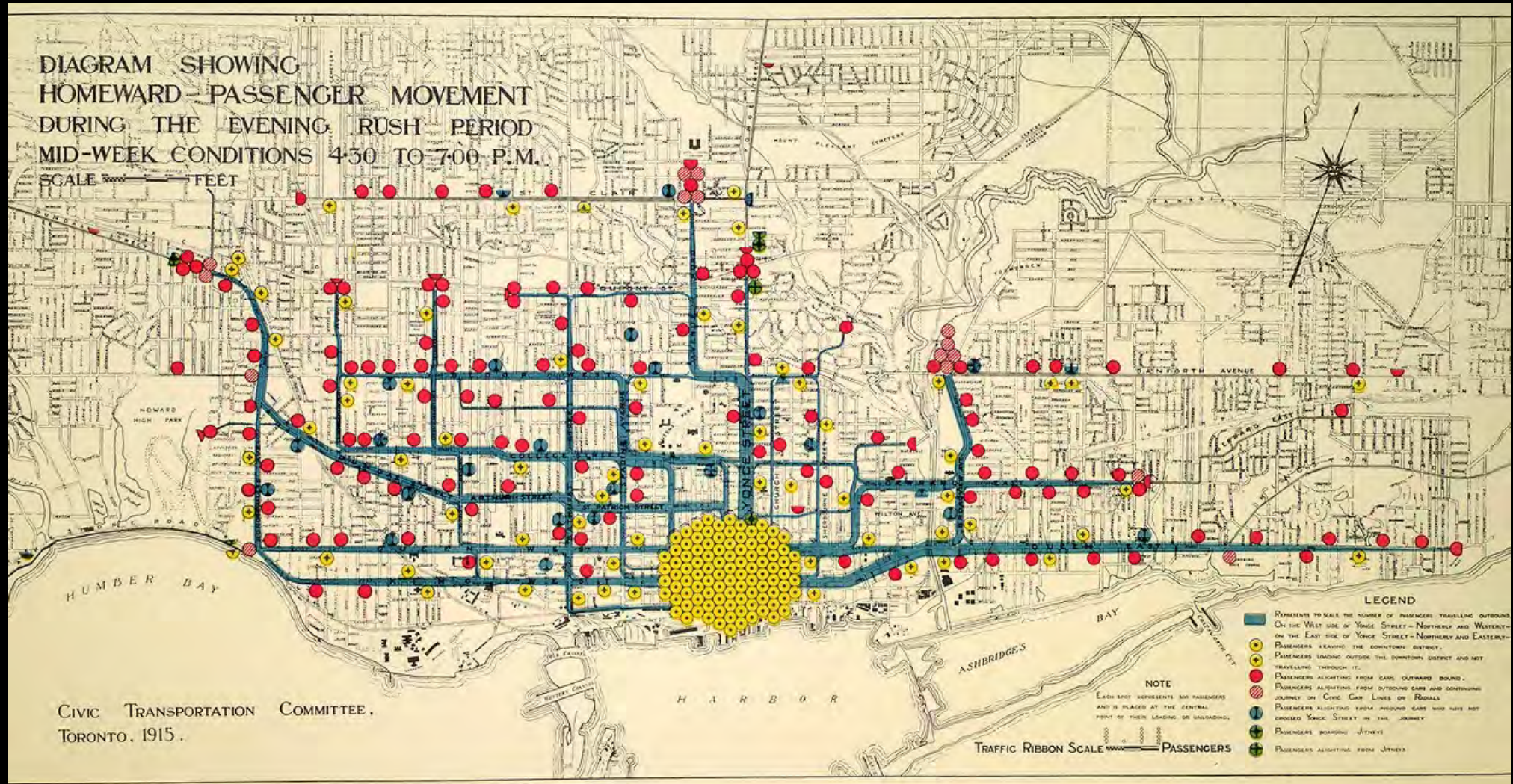
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Development of the pre-1950s suburbs:

- Streetcar suburbs:

- Examples: **Toronto**, Vancouver, Dayton, Minneapolis, Seattle, LA, etc.



Development of the pre-1945 suburbs:

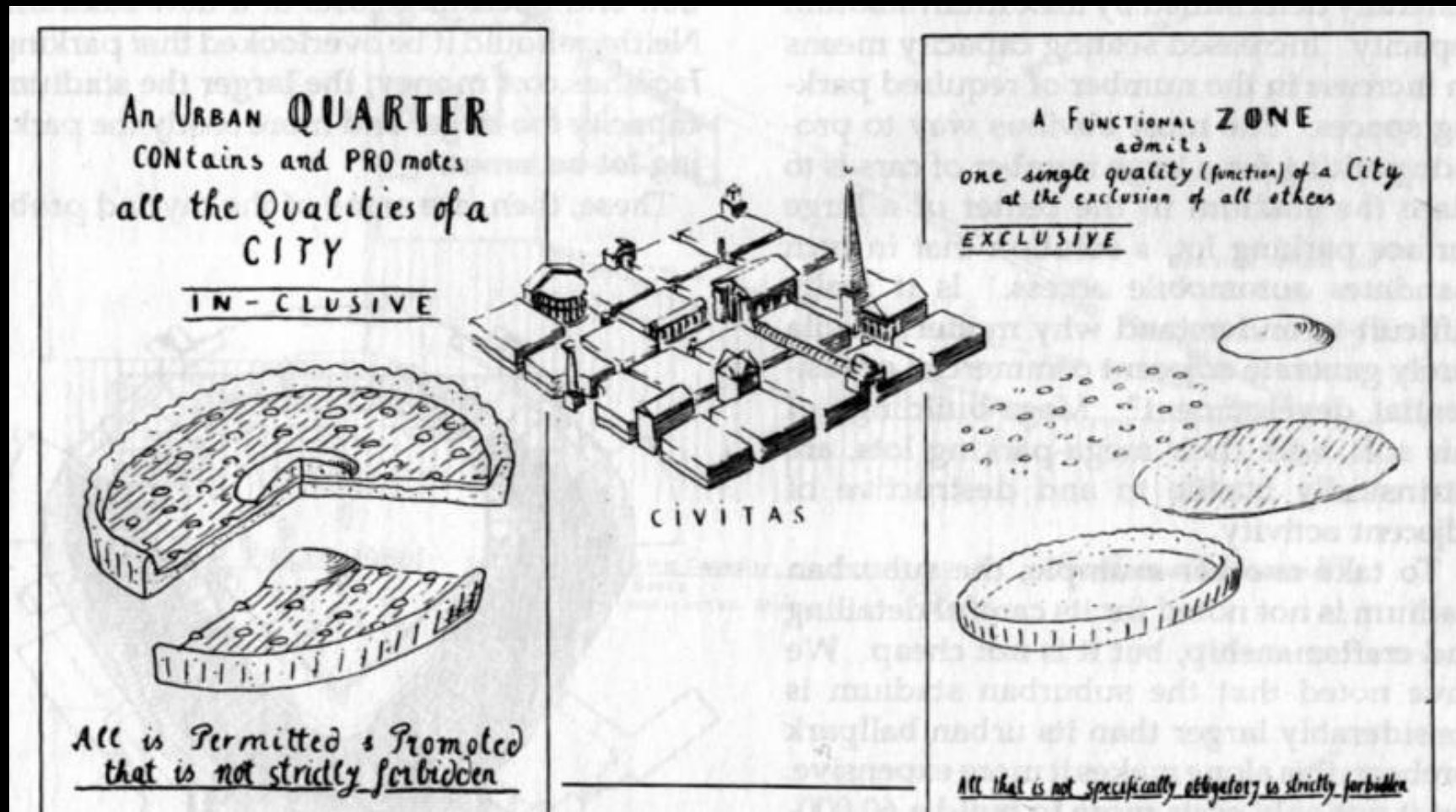
- Streetcar suburbs:
 - Streetcar system demise: Auto industry competition...
 - Cf. “Who Framed Roger Rabbit”



Development of the pre-1950s suburbs:

- Euclid, OH:
 - 1926 US Supreme Court case, *Village of Euclid v. Ambler Realty Company*
 - Landmark case regarding the relatively new practice of use-based (subsequently "Euclidean") zoning.
 - Would set the legal standard for use-based zoning across the US (n.b. explicitly racist / racialist in its arguments).





The multi-use (urban) neighborhood

The (anti-urban) functional ZONE

Characteristics of traditional cities: a City is like a pizza / a post-1945 Suburb like a collection of ingredients
Drawing courtesy of Leon Krier

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Components of Sprawl I: mono-culture of housing

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Components of Sprawl II: mono-culture of shopping

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Components of Sprawl III: mono-culture of offices

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Components of Sprawl IV: civic building as “big box”

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Components of Sprawl V: auto-oriented / pedestrian-hostile infrastructure

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Three mono-functional zones: single-family houses, apartments, shopping (w/parking lot)

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In the contemporary development practice, Blocks are built all at once by the same developer

Street and Blocks of Lots v. single Superblock development

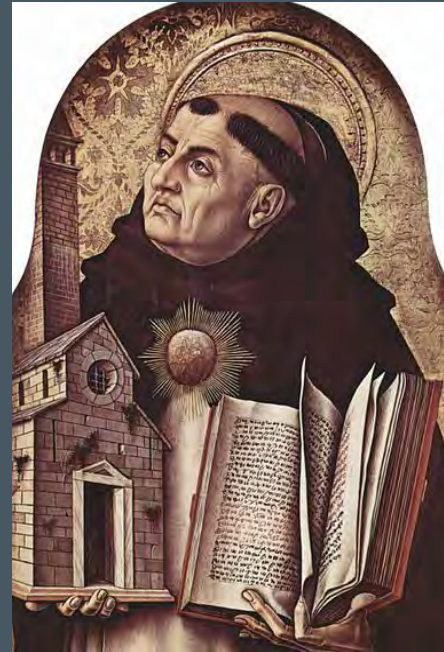
Cities as *Moral* Order: The Rule of Law (not forgetting the primacy of virtues)

- The Legitimacy of Law:
 - Eternal Law, Natural Law, Positive Law
- Both environmental stewardship and strong economies require the predictability ensured by good positive law
- *Urban form too* is shaped in part by positive law, including
 - contracts, private property, exclusive entitlements
 - building codes (materials, assemblies, construction, life-safety)
 - master plans (ideal/formal)
 - zoning law (generative, use-based, form-based)
 - tax law (e.g., how and whether a community taxes buildings and/or land)

The Nature and Role of Law



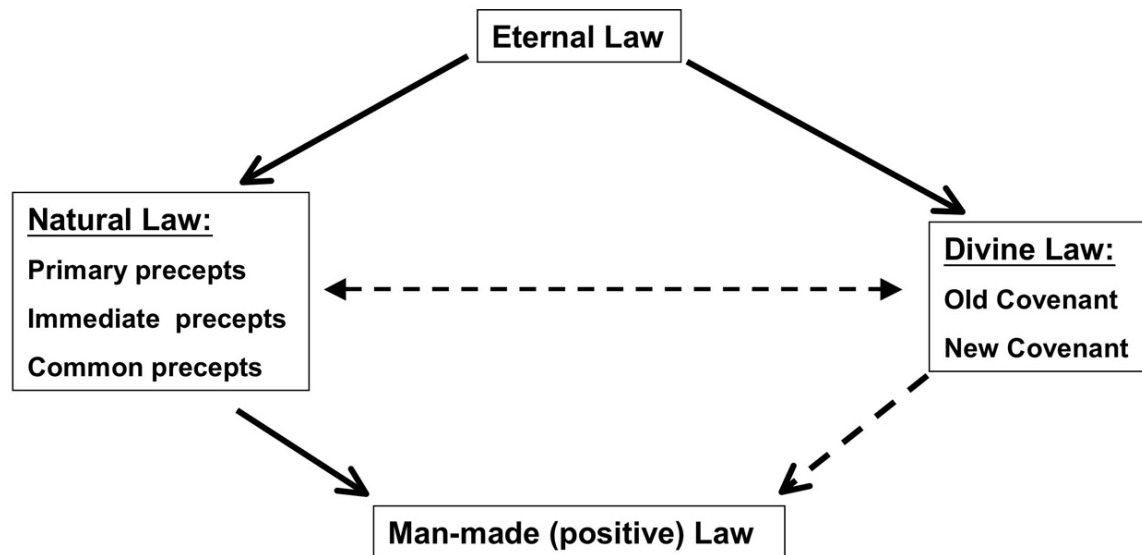
Aristotle



Thomas Aquinas

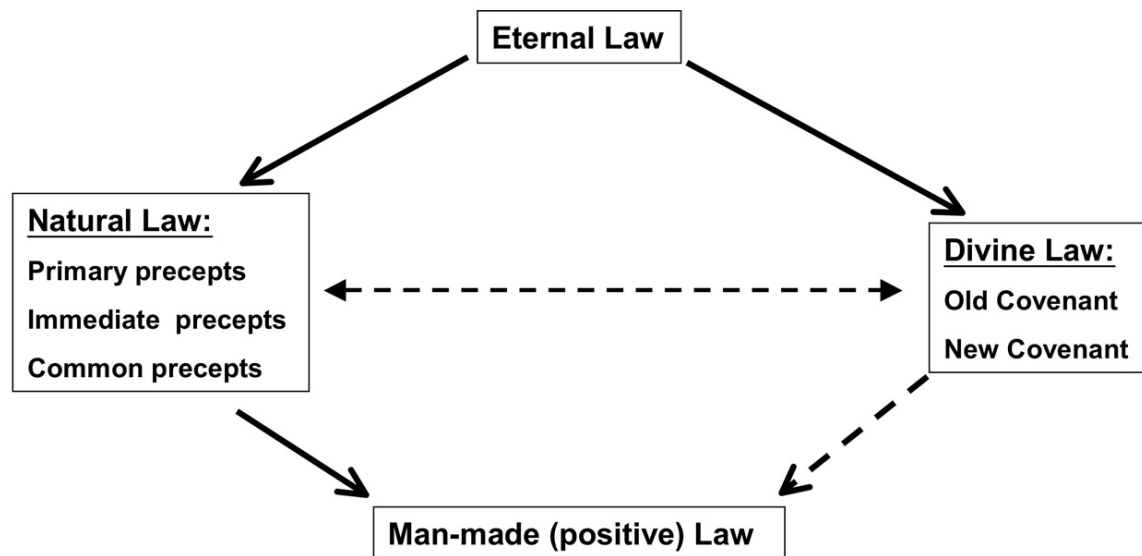
Aquinas on Law (generally):

1. An ordinance of reason
2. For the common good
3. Made by the authority responsible for the community; and
4. Promulgated



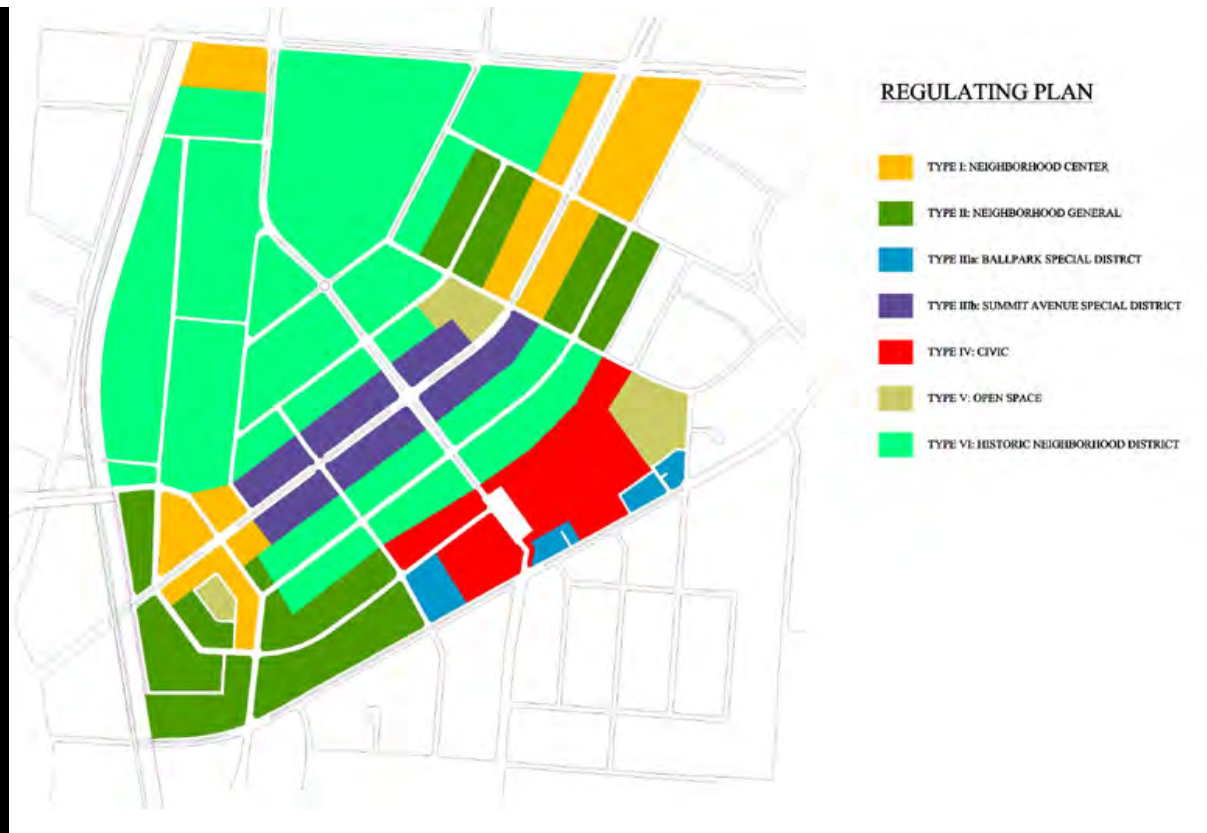
Aquinas on Eternal Law (Natural and Divine) and Positive Law:

- Positive Law derives its efficacy (i.e., its status as *law*) by virtue of its participation in the Eternal Law
- Zoning Law and Tax Law as species of Positive Law



Principles of Catholic Social Teaching

- The *dignity of the human person* from conception to natural death
- The human person as both *social animal* and *moral agent*, requiring both virtue and grace to turn toward good and away from evil
- Communal *solidarity*
- Civil society as a realm of multiple authoritative institutions the relations of which are governed by the principle of *subsidiarity*
- The *common good* as the purpose of civil government [n.b., civil society includes but \neq civil government]
- Public policy with a bias for the needs of the involuntarily poor
- The human *stewardship of creation*
- *Religious freedom* as a fundamental human right



Transect –based Regulating Plan: follows master plan design work and becomes the basis for transect-based zoning ordinance and code pages

Form Based Codes rather than *use-based codes* as necessary but not sufficient instruments for walkable mixed-use (“traditional”) urbanism

Form-based Codes

Neighborhood General - Type II Lots

Mid-Block Lots

II.9 Bungalow

Height	<p>Type II.9 buildings shall have a minimum of 1 story at a minimum height of 12' and shall not exceed 2 stories. An outbuilding is permitted, but cannot exceed 2 stories or the height of the primary building.</p>			
Building Location	<p>Type II.9 buildings shall have a 0-20' front build-to line and shall have 10% lot width sideyard setback. Maximum 75% building lot coverage. Outbuildings shall have a 7' rear build-to line.</p>			
Parking	<p>Type II.9 buildings shall have one required off-street parking space per dwelling unit, including outbuilding.</p>			
Permitted Use	<table border="1"> <tr> <td>Residence</td> <td>Res.</td> <td>Gen.</td> </tr> </table> <p>Other uses per Ordinance Section 4.2.2</p>	Residence	Res.	Gen.
Residence	Res.	Gen.		



Neighborhood General - Type II Lots

Mid-Block Lots

II.10 Salt-Box / Craftsman

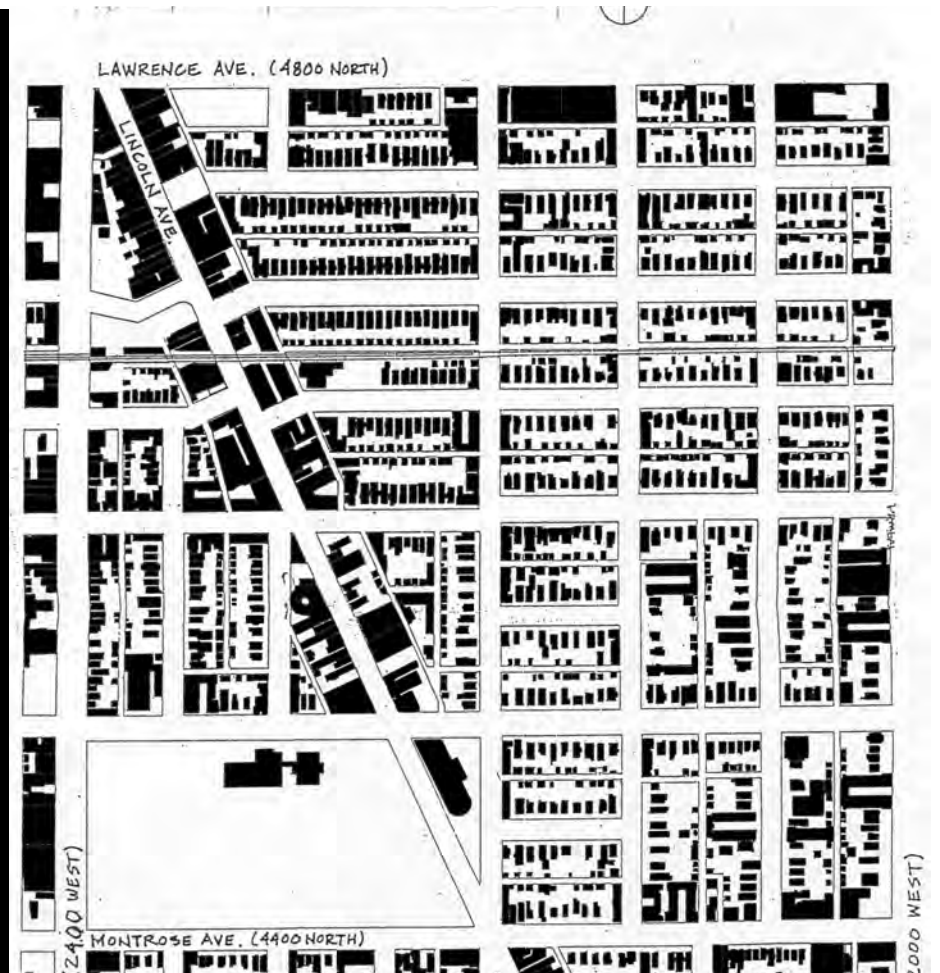
Height	<p>Type II.10 buildings shall have a minimum of 2 stories at a minimum height of 22' and shall not exceed 3 stories. An outbuilding is permitted, but shall not exceed 2 stories or the height of the primary building.</p>			
Building Location	<p>Type II.10 buildings shall have a 0-20' front build-to line and shall have 10% lot width sideyard setback. Maximum 75% building lot coverage. Outbuildings shall have a 7' rear build-to line.</p>			
Parking	<p>Type II.10 buildings shall have one required off-street parking space per dwelling unit, including outbuilding.</p>			
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Example of Zoning and Building Type code pages / General Urban (T4)

Form-based Codes

Form-based Codes



In the best pre-1950 cities, Blocks are subdivided into Lots

Street and Blocks of Lots v. single Superblock development



In the best pre-1950 cities, Blocks are subdivided into Lots and built up by multiple developers

Street and Blocks of Lots v. single Superblock development



In the best pre-1950 cities, Blocks are subdivided into Lots and built up by multiple developers

Street and Blocks of Lots v. single Superblock development

New Urbanism:

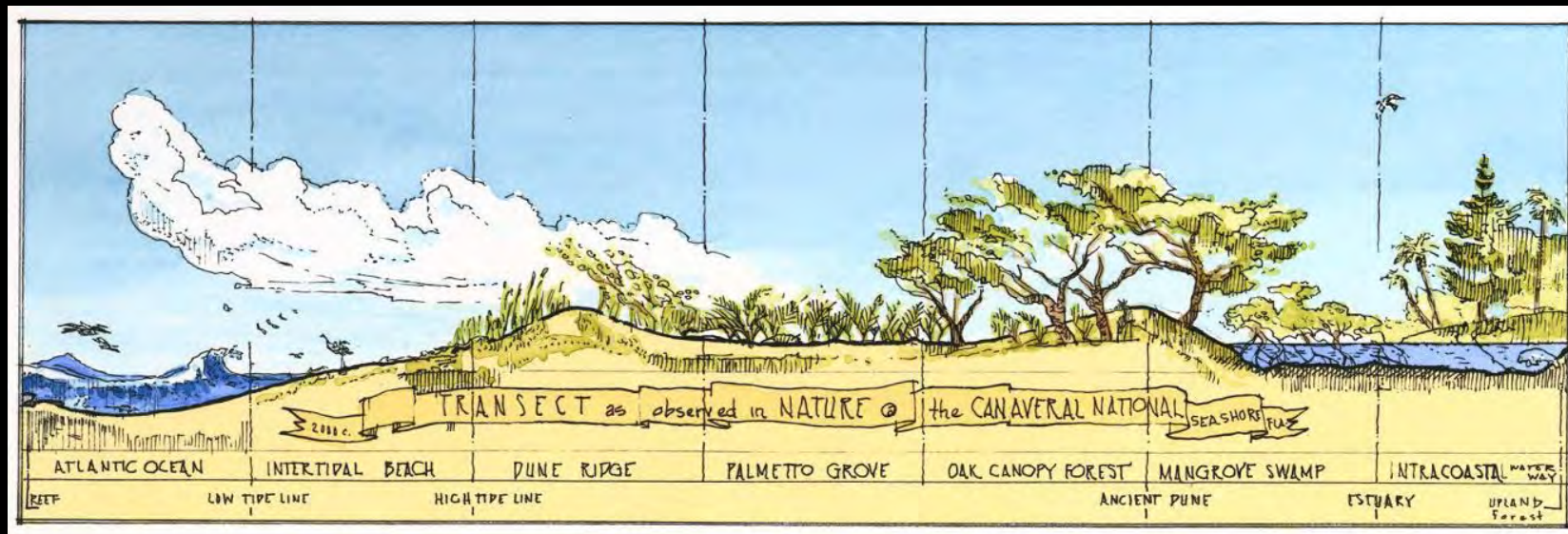
- Emergence:
 - promotes walkable neighborhoods containing a range of housing and a mix of uses (traditional urbanism).
- Post-WWII:
 - Urban design & land-use organized primarily around the automobile.
 - Health, safety, and welfare (reaction to overcrowding of the industrial city).
 - Separation of uses.
- 1960's-80's:
 - Lewis Mumford, Jane Jacobs, Leon Krier, Christopher Alexander, Andres Duany, Elizabeth Plater-Zyberk.
 - Criticism & reaction against modern urban design & land-use.
- 1991:
 - Ahwahnee Principles (Sacramento, CA).
- 1993:
 - Congress for the New Urbanism founded.
 - Andrés Duany, Elizabeth Plater-Zyberk, Stefanos Polyzoides, Elizabeth Moule, Peter Calthorpe, and Daniel Solomon.

The Transect and Transect-based zoning

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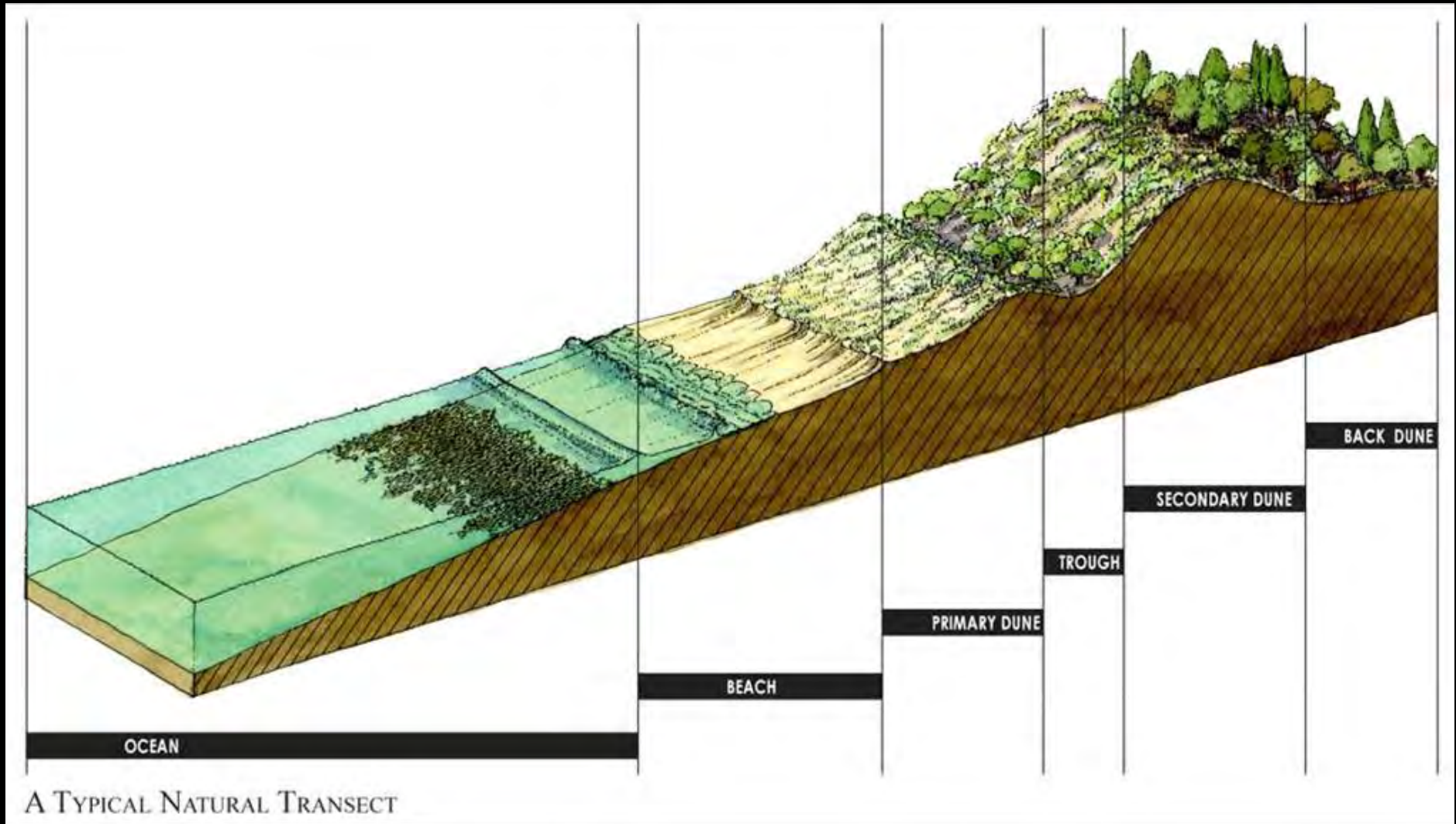
Transects



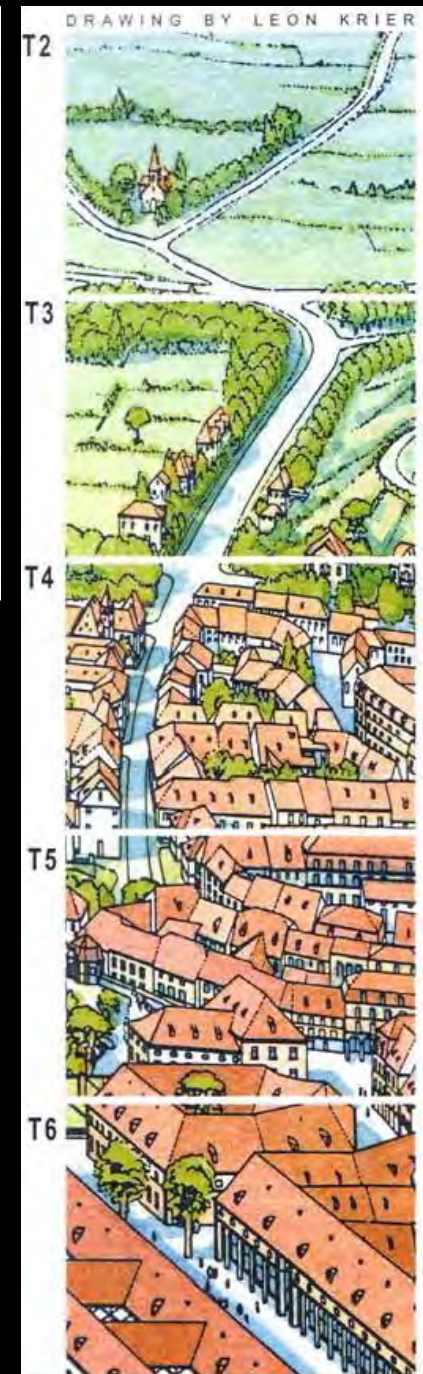
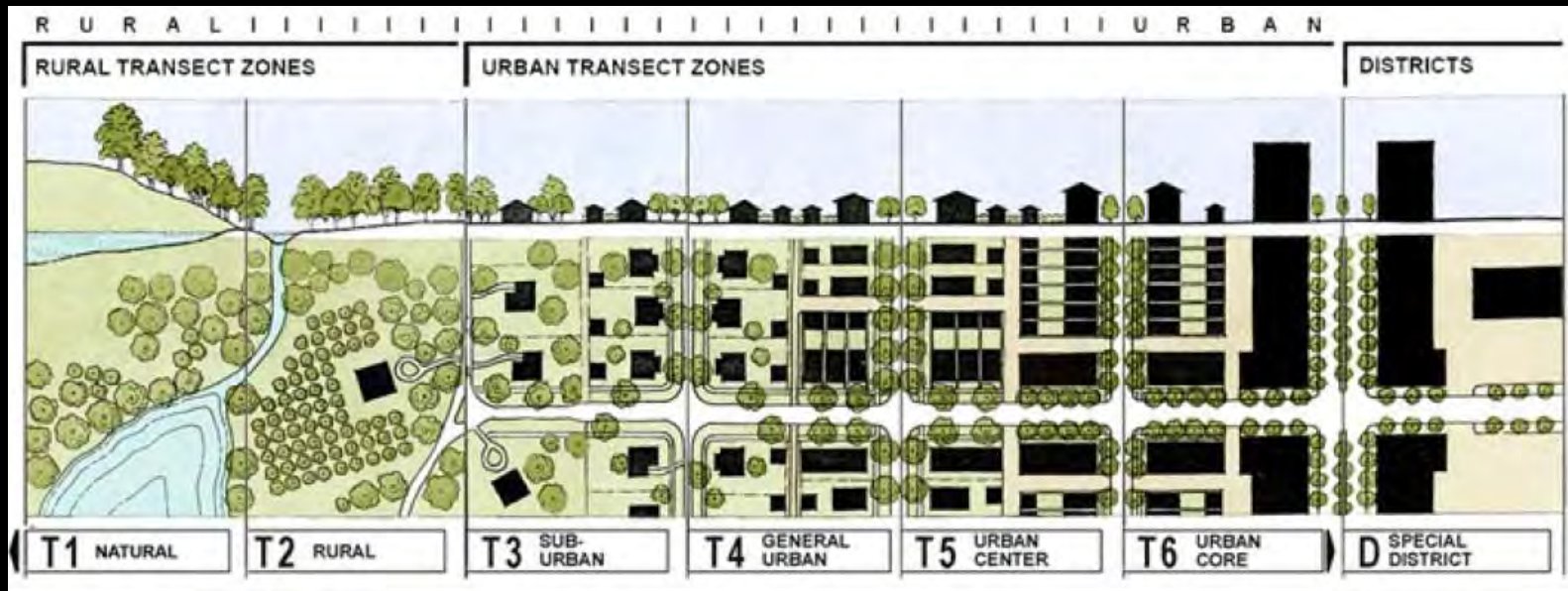
- What is a transect?
 - A diagram describing a range of natural and man-made habitats.
 - Natural transects
 - Rural-to-Urban transects.



A NATURAL TRANSECT



THE NEW URBANIST RURAL-TO-URBAN TRANSECT

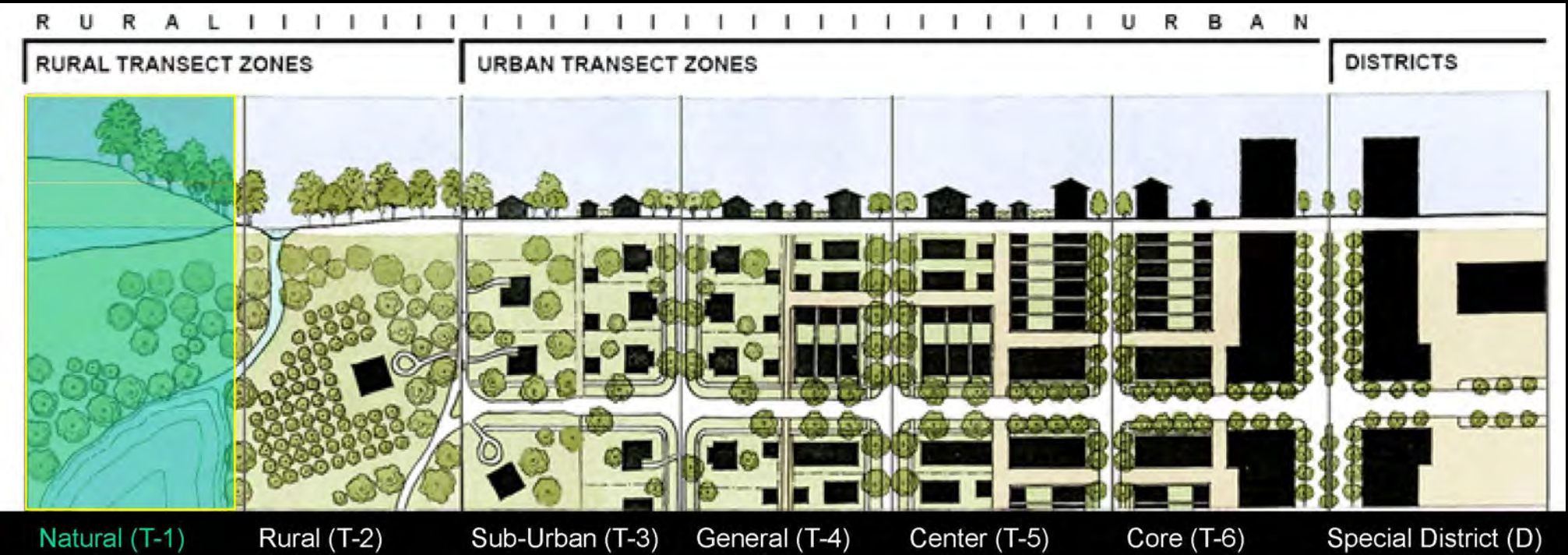


The Rural-to-Urban Transect is a diagram of human habitat describing the relationship of the rural environment to traditional urban environments. The Rural Transect proper (zones T1 / Natural and T2 / Rural) designates areas generally not subject to human settlements larger than the family, and differentiates between natural landscapes (both raw and preserved) and cultivated landscapes. The Urban Transect refers in turn to that range of human habitats that support human flourishing, within which human settlements are part of a sustainable eco-system. These habitats, diagrammatically depicted as Transect zones (“T-zones”) range from less dense (T-3) to more dense (T-6); but each urban T-zone denotes a walkable and mixed-use human environment (defined by an approximately five-minute walk, ideally for persons of varying ages and economic classes).

THE NEW URBANIST RURAL-TO-URBAN TRANSECT



Zone T-1 / Natural or Preserve



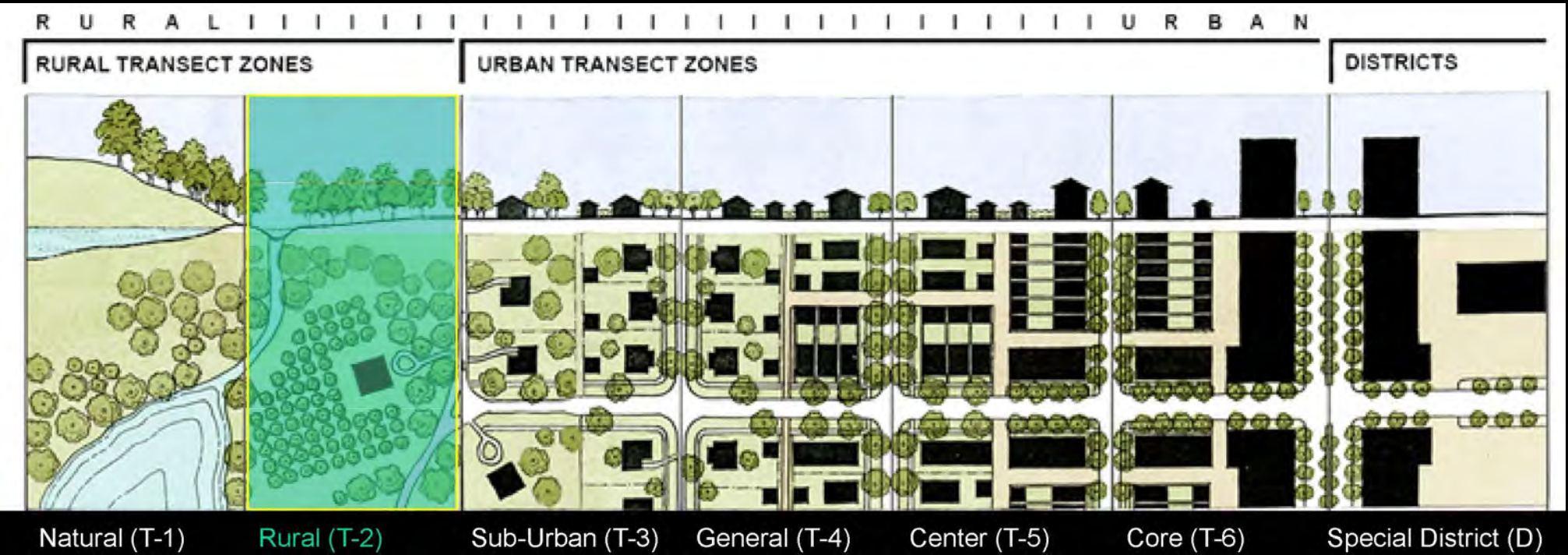
Zone T-1 / Natural or Preserve



Zone T-1 / Natural or Preserve



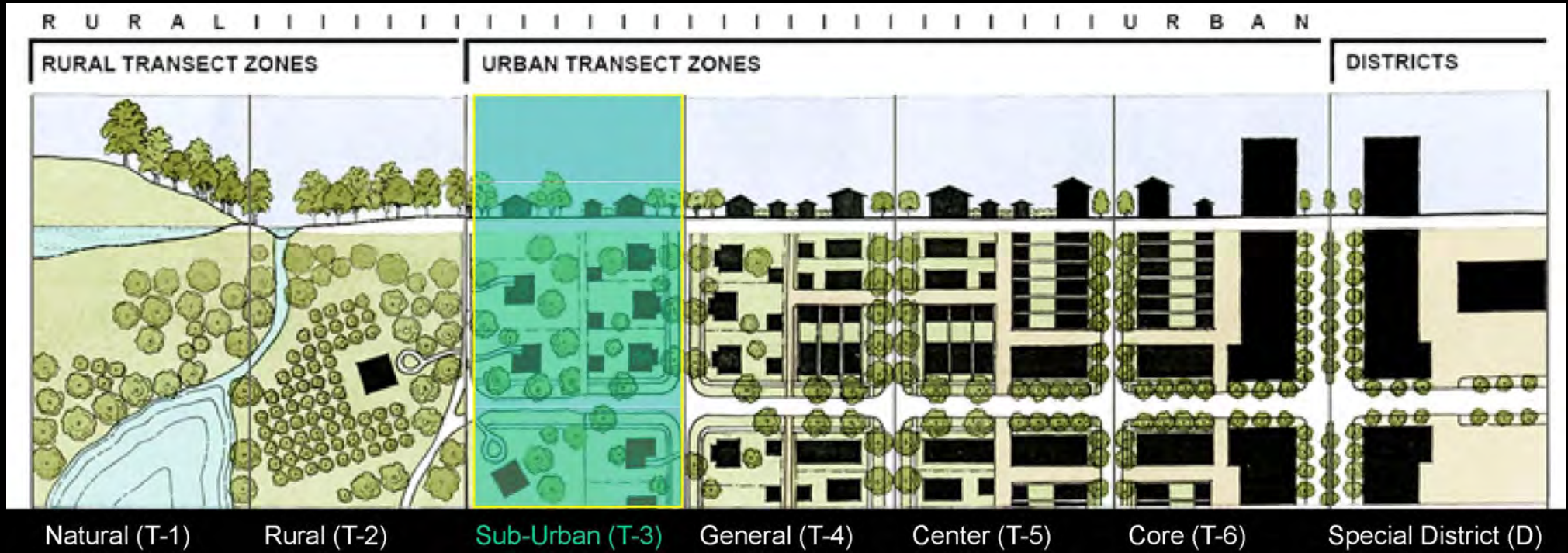
Zone T-2 / Rural or Reserve



Zone T-2 / Rural or Reserve



Zone T-3 / Sub-Urban



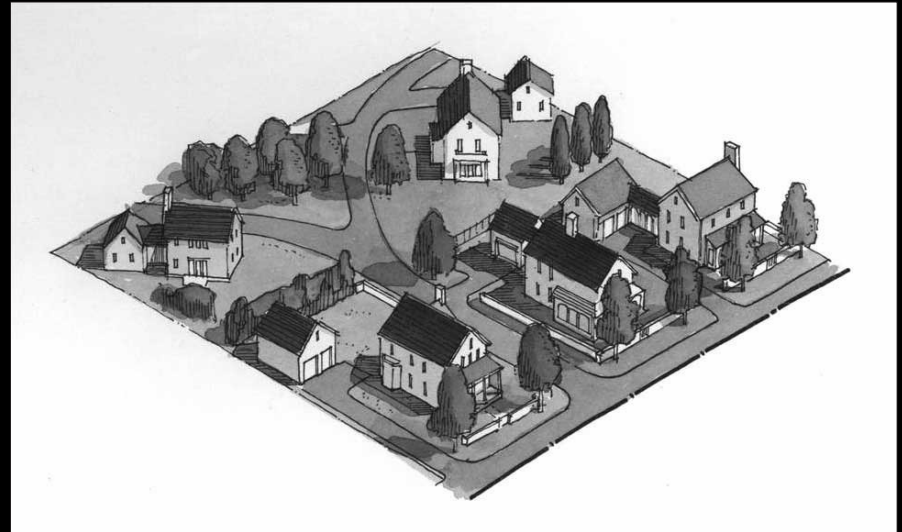
Zone T-3 / Sub-Urban

Detached buildings of various sizes, typically set back from street front property lines with plentiful porches;

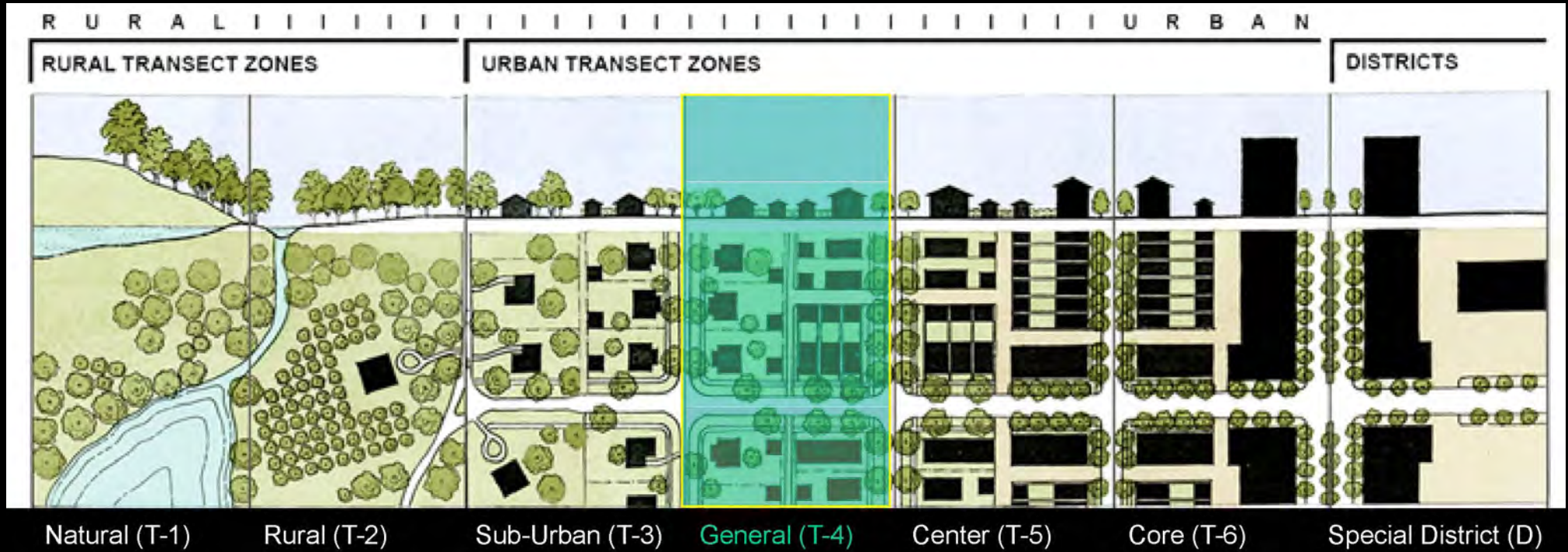
Accommodates rear lanes, but is also common to find front-loaded houses with de-emphasized garages;

Streets have a rural character;

Density ranges from 2 to 8 units per acre



Zone T-4 / General Urban



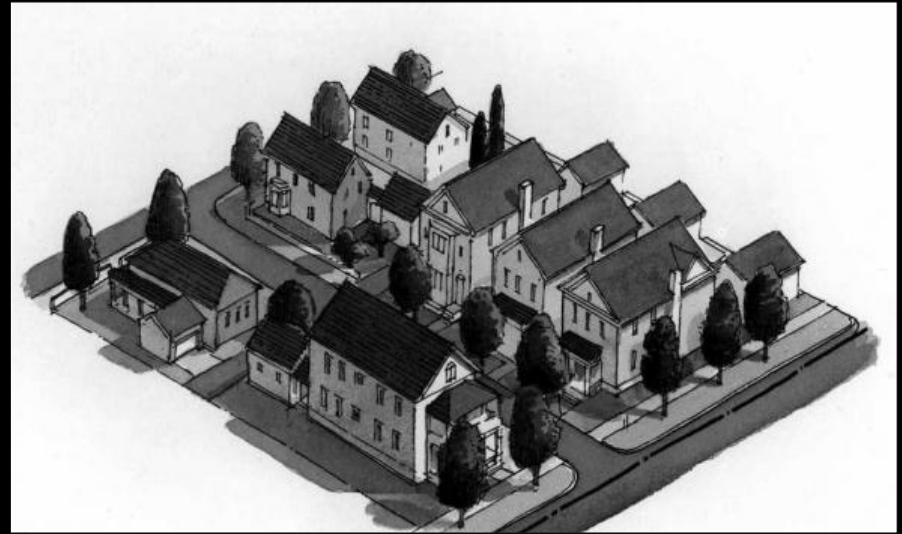
Zone T-4 / General Urban

Buildings may be attached or detached, the character is urban, but density remains fairly low (6 to 12 units per acre);

The streets have sidewalks on both sides with raised curbs;

Alleys are the norm;

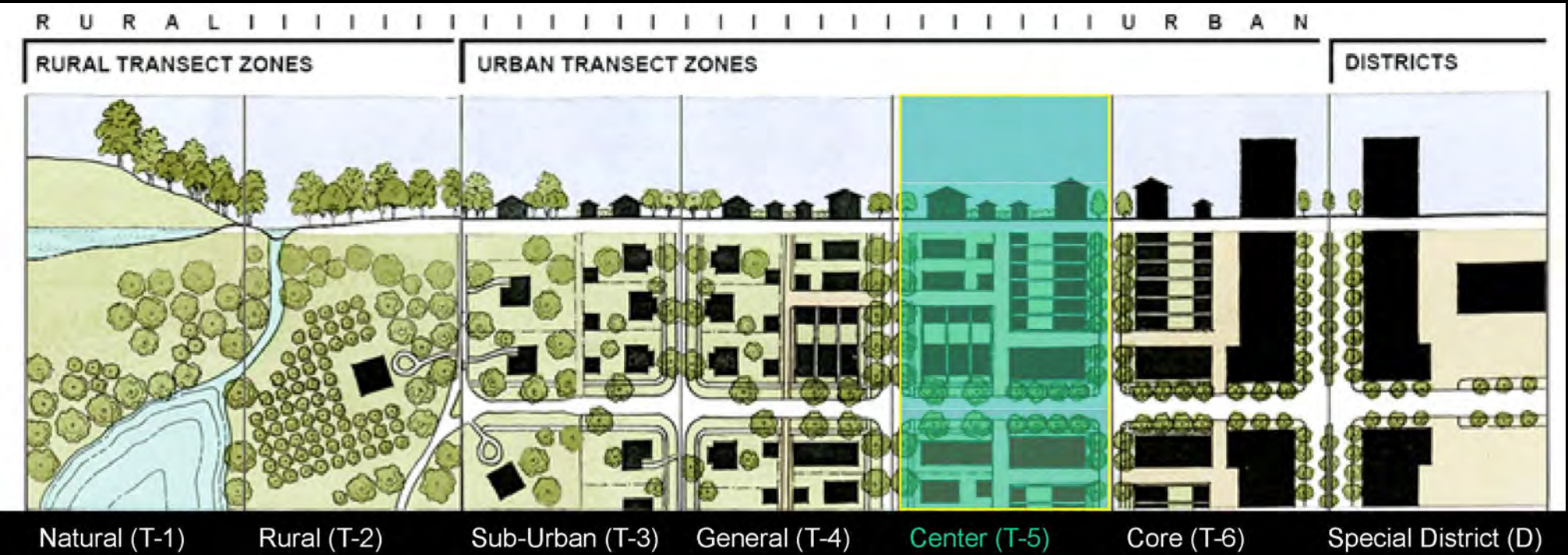
Although a mix of uses is permitted, non-public building types in the T-4 zone are commonly intended to be primarily residential.



Zone T-4 / General Urban



Zone T-5 / Urban Center



Zone T-5 / Urban Center

T-5 buildings are more often attached rather than detached; and are of a type presumed and designed to accommodate different uses within the same building;

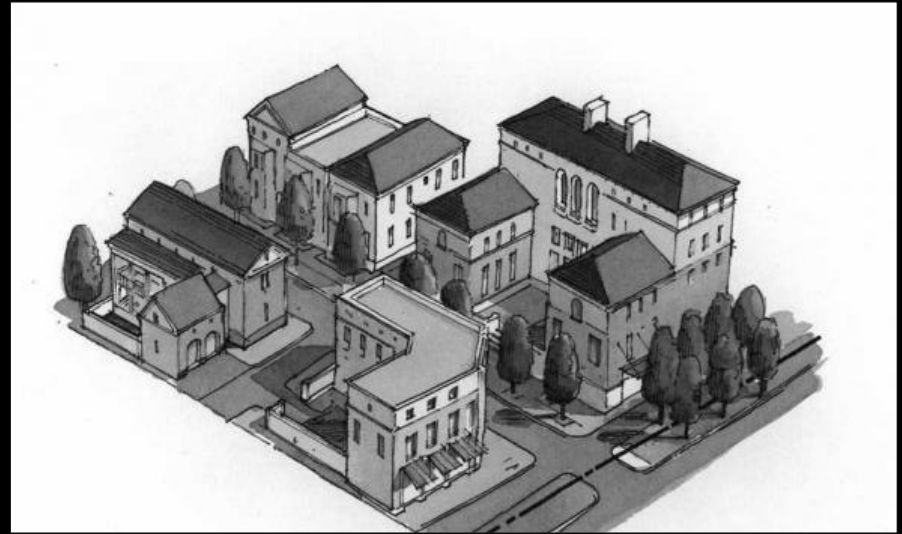
Sidewalks are wide (10 to 20ft);

The percentage of the lot covered is generally high;

Transit service is frequent at this end of the Transect;

Parking is often in the middle of the block and on-street;

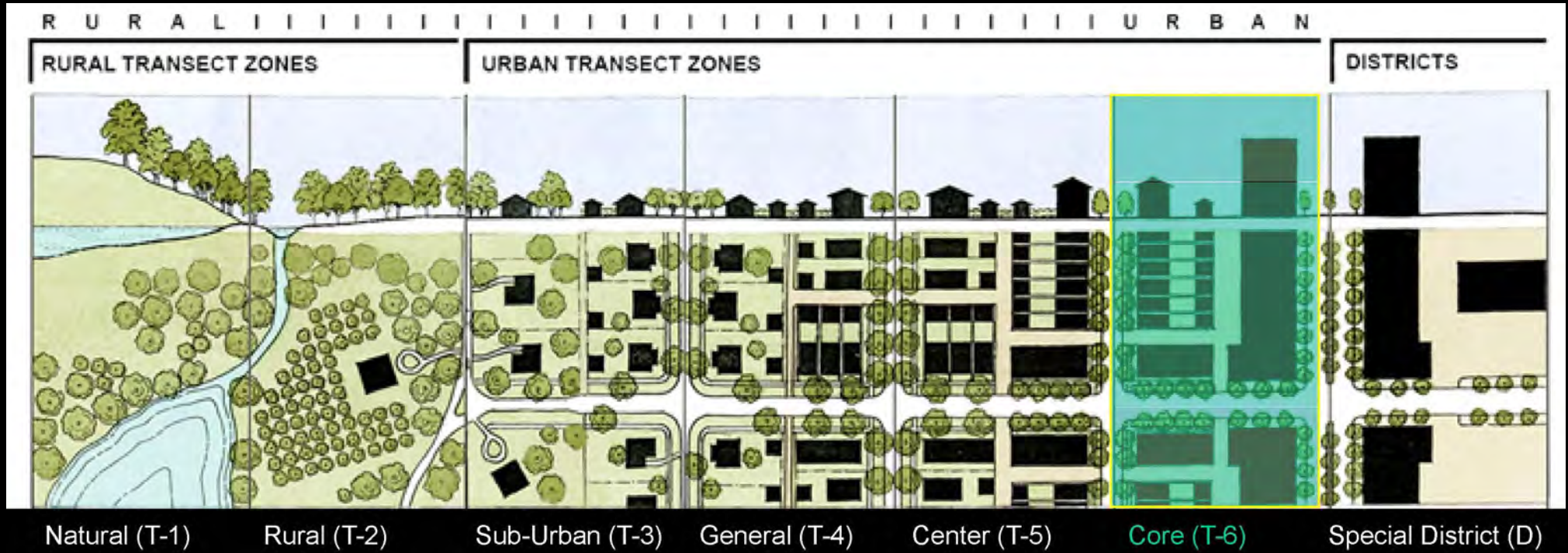
Residential densities may be from 10 units per acre and upward



Zone T-5 / Urban Center



Zone T-6 / Urban Core



Zone T-6 / Urban Core

Differs essentially from T-5 zones only in terms of T-6's higher densities of population and activities;

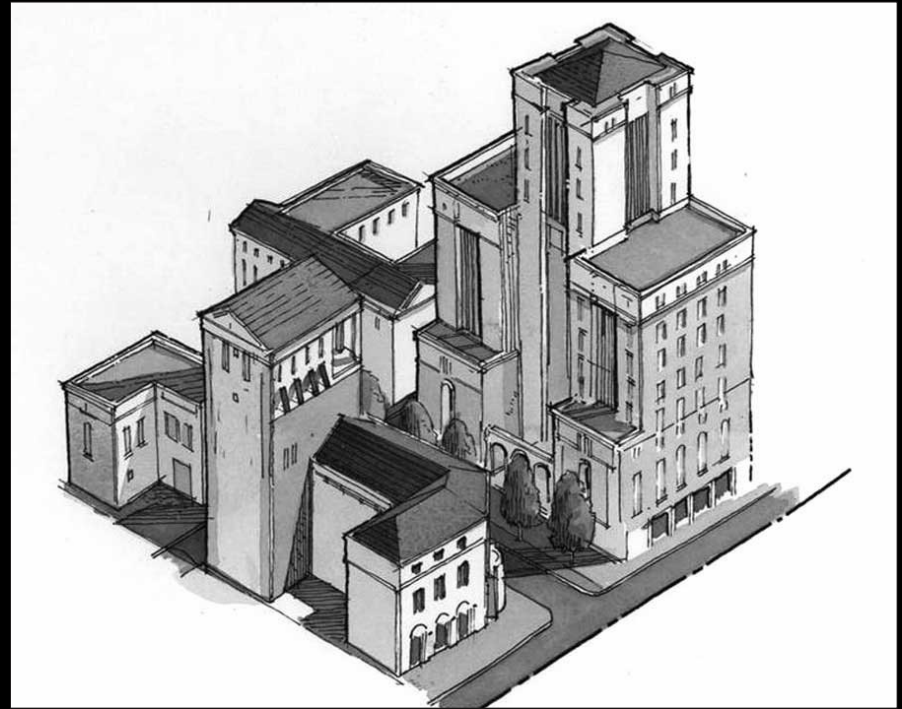
Sidewalks are wide (15 feet or higher);

The percentage of the lot covered is generally high;

Transit service is the most frequent at this end of the Transect;

Parking is often in structured garages and on-street;

Residential densities may be upwards of 20 units per acre



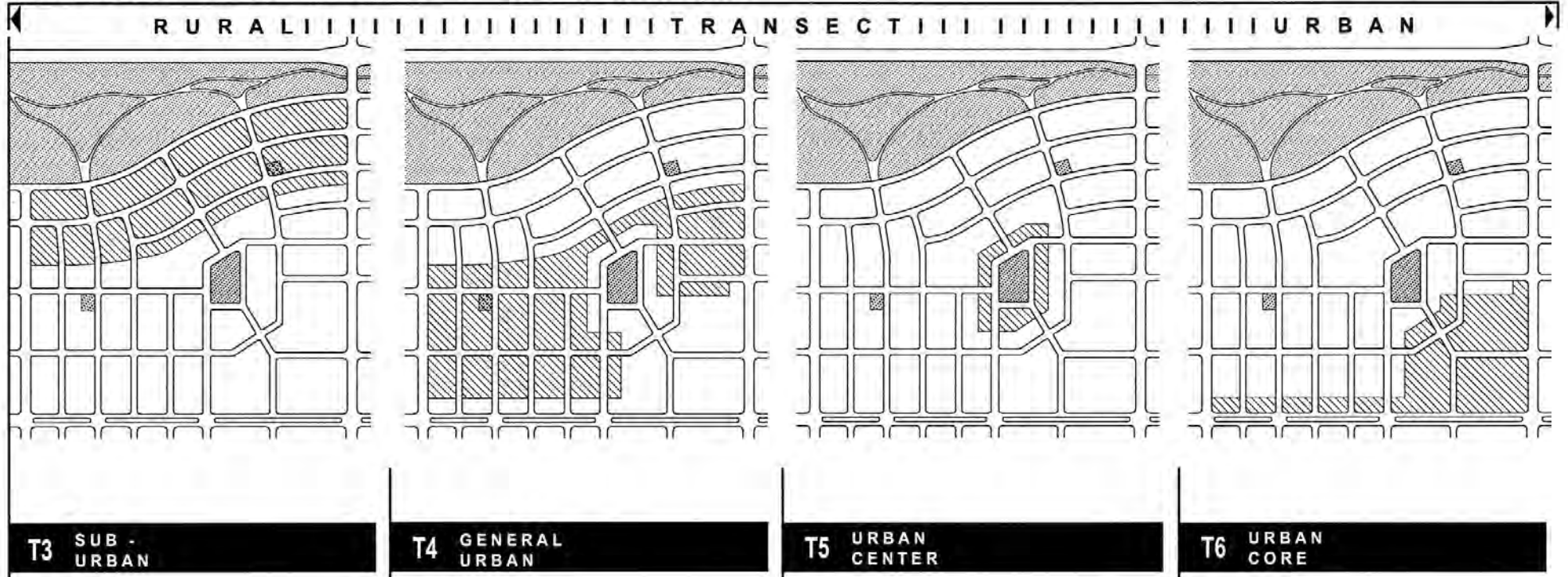
Zone T-6 / Urban Core



Zone T-6 / Urban Core

- The Urban Core is not necessarily at the center of the neighborhood.

OVERVIEW OF APPROPRIATE ELEMENTS FOR EACH ZONE



With no Mosaic pretensions, following are ten precepts about which natural law theorists as well as ordinary people everywhere more or less agree; to this list I am going to propose an eleventh precept relevant to making human habitat (and, *eo ipso*, New Urbanism). The first two are commonly regarded as primary precepts of the natural law—the moral axioms upon which all other moral precepts are based.

- 1) Good should be pursued and evil avoided.
- 2) Harm no one gratuitously.

From these primary precepts are derived more or less by direct inference various immediate precepts, including the following (in no particular order):

- 3) Render impartially what is due to every person (i.e., “be just”).
- 4) Do not take innocent human life.
- 5) Honor marriage and don’t commit adultery.
- 6) Care for children and the elderly.
- 7) Be trustworthy.
- 8) Don’t steal.
- 9) Treat others as you yourself would wish to be treated.

The tenth precept is an example of a common precept of the natural law. More detailed than an immediate precept and more remote from the primary precepts, common natural law precepts are called “common” rather than “immediate” because there may be exceptions to them and because they may not be so widely known as the primary and immediate precepts. The tenth precept, concerning the principle of subsidiarity, is implicit in much of the Aristotelian–Thomist natural law tradition, but was not really recognized and articulated as a natural law principle until the first third of the twentieth-century, in response to the rise of the totalitarian state:

- 10) Observe and obey the law of subsidiarity (viz., that—in the words of Pius XI’s 1931 encyclical *Quadragesimo Anno*—it is wrong “to assign to a greater and higher association what lesser and subordinate associations can do”; i.e., larger institutions should not attempt to do what smaller ones as well or better).

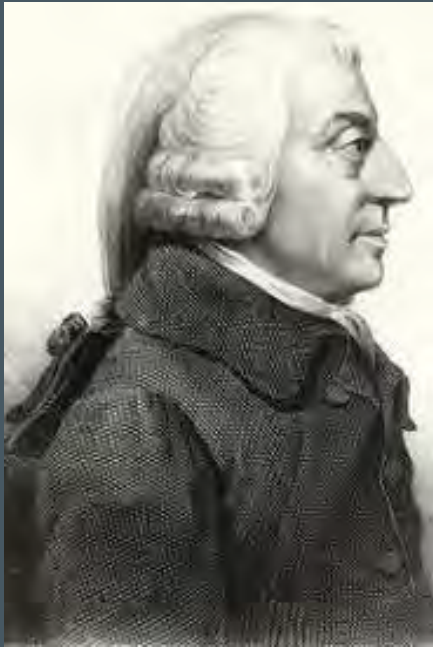
We remain some distance from a more detailed discussion of the Urban Transect. Nevertheless, insofar as the Urban Transect may be regarded not simply as a tool but also as a discovery, the historic specificity of its discovery and articulation is similar to the historic specificity of the discovery and articulation of the principle of subsidiarity, inasmuch as prior to the rise of sprawl the Urban Transect was likewise not in need of articulation. So here is an eleventh natural law precept, a new one describing something real but heretofore understood only implicitly. It is best thought of as a common natural law precept because it is not inferred directly from the primary precepts of the natural law, and because it requires arguments of the kind I am here offering—not least an argument about the Urban Transect—in order to recognize it as a natural law precept.

11) Human beings should make mixed-use, walkable settlements.

Land Value Taxation and the Post-Liberal Economy

Socializing Land and Incentivizing Development
as Common Good Practical Politics

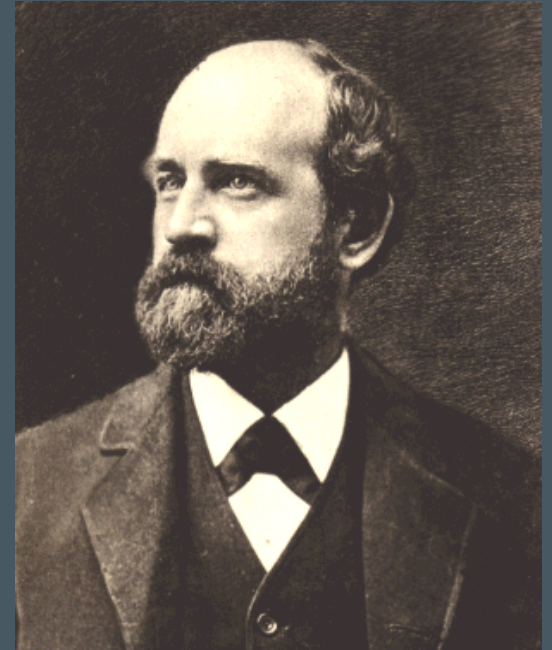
Land Value Taxation and the Post-Liberal Economy



Adam Smith

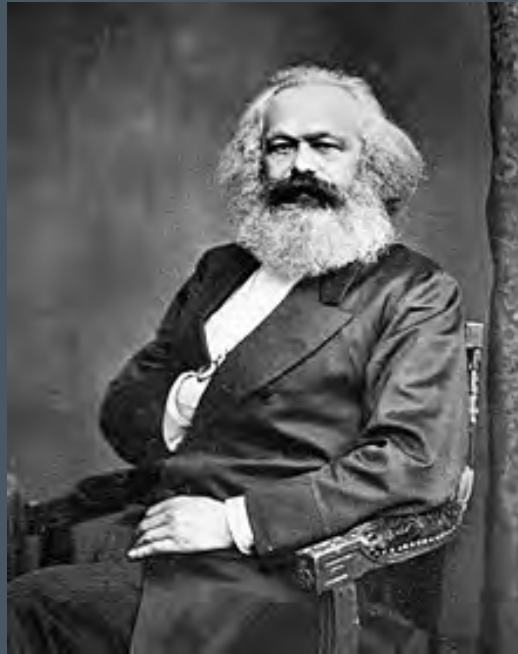


David Ricardo

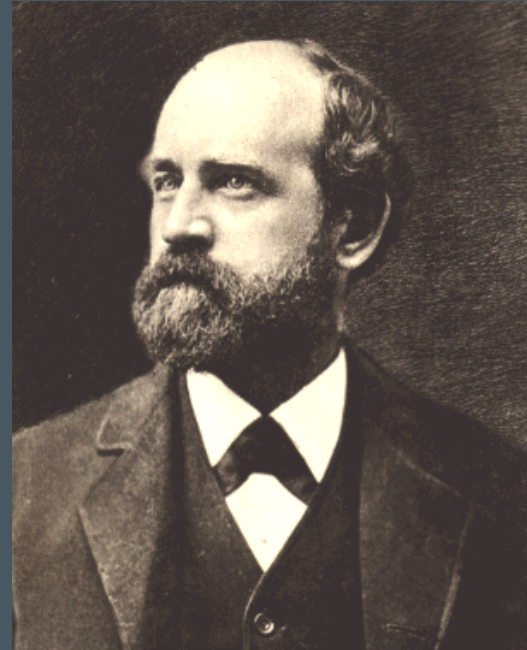


Henry George

Land Value Taxation and the Post-Liberal Economy

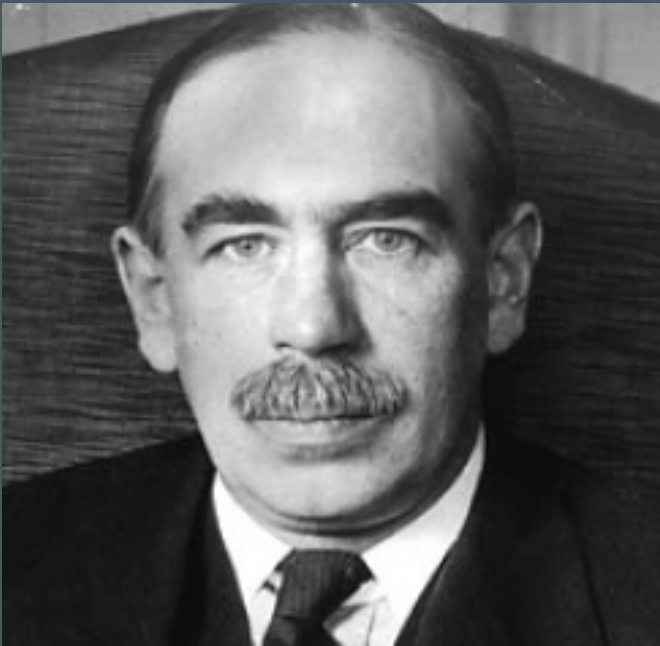


Karl Marx

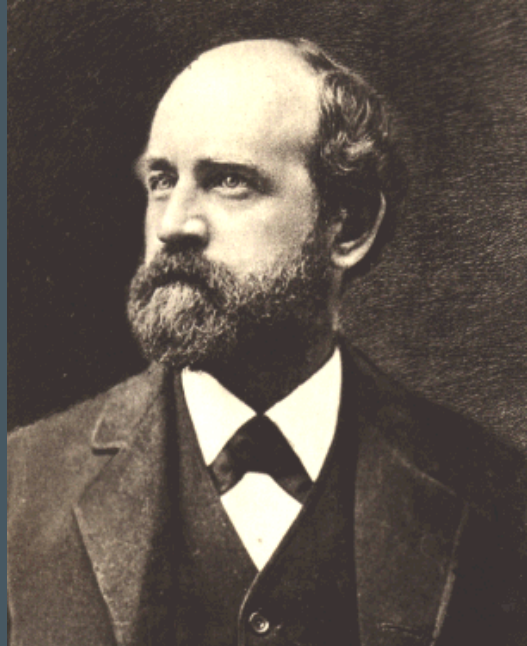


Henry George

Land Value Taxation and the Post-Liberal Economy



John Maynard Keynes



Henry George



Friedrich von Hayek

Land Value Taxation and the Post-Liberal Economy

Capitalism

	RENT
	WAGES
	INTEREST

☒ To Society ☐ To The Individual

Table 1

	RENT
	WAGES
	INTEREST

☒ To Society ☐ To The Individual

Table 2

Communism

RENT	
WAGES	
INTEREST	

☒ To Society ☐ To The Individual

Table 3

RENT	
WAGES	
INTEREST	

☒ To Society ☐ To The Individual

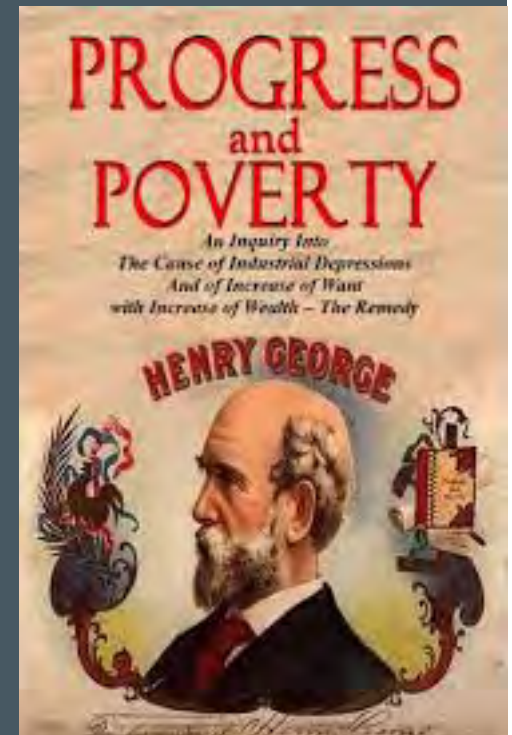
Table 4

Socialism

Georgism

“Take now... some hard-headed business man, who has no theories, but knows how to make money. Say to him: ‘Here is a little village; in ten years it will be a great city...the railroad will have taken the place of the stage coach, the electric light of the candle [and] it will abound with all the machinery and improvements that so enormously multiply the effective power of labor. Will in ten years, interest be any higher? [The] wages of the common labor?’ He will tell you, “No.’ ‘What, then, will be higher?’ ‘Rent, the value of land. Go, get yourself a piece of ground, and hold possession.’ And if, under such circumstances, you take his advice, you need do nothing more. You may sit down and smoke your pipe; you may lie around like the [aristocracy of Europe or South America]; you may go up in a balloon or down a hole in the ground; [but] without doing one stroke of work, without adding one iota of wealth to the community, in ten years you will be rich! In the new city you may have a luxurious mansion; but among its public buildings will be an almshouse.”

-- Henry George. *Progress and Poverty*



Land Value Taxation and the Post-Liberal Economy

Defining Some Key Terms:

Wealth: all material things produced by labor for the satisfaction of human desires and having exchange value

Land: The entire material universe exclusive of people and what people produce

Labor: All human exertion in the production of wealth

Capital: Wealth used to produce more wealth, or wealth in the course of exchange

Rent: That part of wealth which is the return for the use of land

Wages: That part of wealth which is the return to labor

Interest: That part of wealth which is the return for the use of capital

Distribution: The division of wealth among the factors that produce it

PROPERTY TAX (diagram courtesy Chuck Marohn)

Total Assessed Value of Block = \$1,000,000 (\$400K Land / \$600K Buildings)

Total Tax Revenue on Block with 4 Lots = \$10,000 (@ 1% Tax Rate)

Lot (vacant) = \$100,000

TAX = \$1,000

Lot (occupied) = \$100,000

Building = \$300,000

TAX = \$4,000



Lot (vacant) = \$100,000

TAX = \$1,000

Lot (occupied) = \$100,000

Building = \$300,000

TAX = \$4,000



LAND VALUE TAX (LVT) (diagram courtesy Chuck Marohn)

Total Assessed Value of Block = \$400,000 (Land only)

Total Tax Revenue on Block with 4 Lots = \$10,000 (@ 2.5% Tax Rate)

Lot (vacant) = \$100,000

TAX = \$2,500

Lot (occupied) = \$100,000

Building = 0

TAX = \$2,500



Lot (vacant) = \$100,000

TAX = \$2,500

Lot (occupied) = \$100,000

Building = 0

TAX = \$2,500



Land Value Taxation and the Post-Liberal Economy

Land Value Taxation:

As Source of Public Revenue

For Environmental Preservation

For Efficiency of Collection and Minimal Negative Externalities

How Much Rent Should the Community Collect?

Labor yields *Wages* / **Capital** yields *Interest* / **Land** yields *Rent*

Produce (wealth) = Rent + Wages + Interest (OR: Produce - Rent = Wages + Interest)

- “[No] matter...the increase in productive power, if the increase of rent keeps pace with it, neither wages nor interest can increase.”
- “Thus, where the value of land is low, there may be a small production of wealth, and yet a high rate of wages and interest.... And where the value of land is high, there may be a very large production of wealth, and yet a low rate of wages and interest.... [Where] productive power increases...wages and interest will be affected not by the increase but by the manner in which rent is affected. If the value of land increases proportionately, all the increased production will be swallowed up by rent, and wages and interest will remain as before.... [Only] when the value of land fails to increase as rapidly as productive power [can] wages and interest...increase with the increase of productive power.”

Unimproved land value = the dollar-amount-worth of a parcel of land without any buildings or improvements on it.

It is typically calculated based upon its location and upon comparable vacant land sales.

Two Tenets of The Single (Land Value) Tax Theory:

1. Virtually all revenues required to fund local governmental programs and services can and should be raised by a tax on land; and
2. This tax should replace most if not all other taxes

Three Georgist Assumptions:

1. Land, being a resource that no human being has created, is properly understood as *common wealth*;
2. Generally, when you tax something you get less of it;
3. A tax on land cannot diminish the quantity of land.

Five Big Questions:

Under a Land Value Tax...

- 1) How might a Land Value Tax be implemented?**
- 2) How much revenue might it raise?**
- 3) What would be the difference (grossly) between Rural and Urban Tax Rates?**
- 4) Who wins and who loses?**

Urban Formal Order I: Space and Anti-space

Weeks 1 - 6: Some quick summary points...

- “Aristotelian urbanism” is not an *ideology*, but rather refers to an observation of how pre-modern human settlements actually work, how they are organized, and what they are for.
- The fact that we no longer make cities this way does not mean such an approach to urbanism today is an unrealizable or unrealized ideal. Virtually *any village, town, or city neighborhood made before 1945* exemplifies its characteristics, many in an ongoing way; though many have also been neglected, and some ruined.
- Because of the kind of culture we now are – individualistic as our cultural personality ideal, utilitarian and bureaucratically rational as our default organizational modes – we cannot *make* Aristotelian urbanism absent some kind of counter-cultural setting *within* the precincts of modernity (“Tocqueville”) or at a distance – perhaps physical, but necessarily *spiritual* – from the precincts of modernity (“Benedict”)
- Otherwise, “traditional architects and urbanists” is (perhaps) little more than service to a niche market in the growing economic and power inequalities of the global economy
- Planned communities today rarely turn out as architects and urbanists plan them, because building is constrained by laws reflecting some understanding of what’s good for the community.

Urban Formal Order I: Space and Anti-space

Quick summary points (cont.)...

- But what to do when there is no strong community? When laws exist to protect the interests of *individuals* (and invariably *powerful* individuals)? If you reject the notion that a market economy, though properly normative, is *not* an autonomous entity unconstrained by other considerations, and reject the idea that the market economy is *not* oriented to the production of common good material conditions?

Q: What is / might be required today in order to *make* walkable, durable, mixed-use *Aristotelian* settlements?

A: A certain kind of *community* (legal, moral, and perhaps if not probably religious); certain kinds of physical and economic conditions; certain skilled craftsmen as members of the community:

- A population (including children, and agreement about importance of nurturing children)
- Land (taxed)
- A shared view of an over-riding good – i.e., a *common* good -- and the character virtues required to achieve the community's shared good
- Constraints upon internal forces that threaten the common good; implying...
- Laws / Rules (and their enforcement)
- An economy characterized by a division of labor, including a quantity of skilled labor related to building construction