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Charley's Corner

Prototypes and Categories: Making Zoning Laws That Work

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Sometimes, the different pieces of my life come together in interesting ways. Those of you who have read previous columns know that I have been researching cognitive linguistics in order to understand how we law librarians might be able to communicate better with self represented litigants, and in particular how to help them overcome the difficulties of understanding legal discourse. In my "spare" time, I serve on the Sehome Neighborhood Association Board in Bellingham, Washington. Sehome is a neighborhood designated by the City of Bellingham, as allowed under its code and in conjunction with the Washington State Growth Management Act. Our association is drafting a new neighborhood plan that will eventually be incorporated into the Bellingham City Code and will affect zoning in our neighborhood. Now these two activities have become connected, much to my surprise.

One aspect of cognitive linguistics is the theory of prototypicality. As we use language naturally, our concepts are based on prototypes. I explained prototypes in my last column, so I hope you don't mind if I simply refer to my previous discussion, rather than repeat myself.

A second component of prototypical thinking is that the categories created by these concepts do not necessarily have very strict boundaries. Indeed, it is the extending of these boundaries through analogy and metaphor that is at the root of much of our creative process. So the boundaries are somewhat loose, or "fuzzy," as in "fuzzy sets." This aspect of categorization is in sharp contrast to the traditional Aristotelian notion that categories have strict essences that create definite boundaries. This traditional notion of categories has been used by philosophers and most other disciplines for better than twenty-five hundred years.

The presumed need for strict boundaries for our categories is obvious. How can a society make laws about a particular class of things or events if the class itself is not strictly definable? If the edges are fuzzy? Of course, much of what is decided in appellate opinions is whether the particular thing or event falls within the class of things or events that are ruled on by the statute or common law principle under discussion. As I had mentioned several columns ago, the traditionalist Professor Frederick Schauer believes that the strict adherence to the classification of things and events must be maintained, even to the extent of making what is obviously a bad ruling, in order to preserve it. If the ultimate decision is bad, then the rule-making body should subsequently change the law to perfect it. Professor Steven Winter, versed in cognitive linguistics, sees it otherwise. (Recall the "No animals on the bus case" in my column in the

Spring 2006 issue.) Professor Winter believes a sensible notion of what the rule-making body meant can be had by examining the obviously intended prototype and making a rational judgment as to the limits of the class beyond that which is stated in formal words in the rule under discussion.

So now you may sense where I am going. Sehome is an older neighborhood, with most of the housing and multi-family units built prior to 1930. One large section of it is designated as the Sehome Historic District, with many houses over one hundred years old. (My own house will be 100 in 2008.) The home-owning residents in the neighborhood are generally in consensus that they would like the neighborhood to stay much as it is, with any newer development made to match in style, size and view corridors the existing housing. However, a large percentage of the properties in Sehome are rental homes, as there is a significant population of college students in Sehome who attend Western Washington University. Some landlords and property managers have let some properties run down, sometimes with the intent to make a case with the city that the house should be replaced with a small fourplex apartment building. That would supposedly help with Bellingham's burgeoning population and, of course, make the landlord more money.

The residents of Sehome are not interested in making Sehome so restrictive in zoning that nothing new can be built. They also don't want rules so restrictive that Sehome becomes like Monterrey, California, or Santa Fe, New Mexico, communities where the zoning codes are so strict as to add considerable cost and loss of functionality to new developments. How do you strike a proper balance?

One method being examined comes from Olympia, Washington, and some other communities. Olympia's *Urban Design Vision and Strategy* has photographs of various buildings and houses, which are rated on a system showing approval or disapproval. Design review there now alludes to this graphic presentation. A new development is accorded points for or against, depending on how well the planned development matches the preferred buildings shown in the photographs. In effect, the preferred structures are now being used as a prototype for good construction, and not-preferred structures are examples from outside the set of acceptable structures, i.e., are examples outside the class.

Contrast this with an apartment building recently approved for construction in Sehome, wherein the developer continually brought back plans, making small adjustments until the city's attorney and the planner said, "We know the development is not at all like the others in Sehome, but the developer met the letter of the law for each of the expected features, so we have no choice but to approve the development." Sehome is predominately Victorian, Western Craftsman, and Prairie Style Four-Square houses. So features such as hipped roofs are called for. The developer presented something that looks like a three-story glass pagoda, copying enough of the individual architectural features to barely pass muster. It is evident that words do not accomplish what pictures could.

Another standard we are looking to include are the LEED-ND and LEED-Housing standards. (http://www.usgbc.org/) These standards were created by the U.S. Green Building Council to create buildings that are environmentally sensitive, conservation-friendly, possibly employing

alternative fuels, and use a smaller carbon footprint. They also have aesthetic elements, such as putting parking lots behind buildings. The standards use a point system and award construction with enough positive points over negative points as Silver, Gold, or Platinum levels. Quite a number of cities are adopting these standards. Although these standards do not depend as much on graphical presentations, they still create soft lines as to what is acceptable and what is not. For instance, a large house would get deducted points for being too big, but might still qualify if it had enough other points from other factors, e.g., has solar heating, high insulation, and so on. The standards are quite extensive, so there is considerable room for variance. So, acceptability is not a hard and fast rule. A house that met the Platinum level (90-128 out of a possible 129 points, plus the required features) would be very close to the prototype.

During one of our meetings, I was able to ask a developer who is following our progress what he thought of the LEED standards and the use of photos for prototypes. His main concern was that the group in charge of applying the standards, which in our case would be a design review board appointed by the city council, include some architects so that he would not be held to impossible construction standards that would hugely inflate costs for a very small gain. Otherwise, this relatively forward-thinking developer said he appreciated this type of input because it simply made more sense than hard and fast rules that usually don't accomplish what the city wants and just create barriers for developers. He noted, for instance, that some building codes, stuck in old technology, would not allow for the newer types of construction materials that LEED standards would prefer.

What struck me about all this is that forward-thinking communities are now using these prototype methodologies, as opposed to simple yes-or-no hard-and-fast rules. These new methods represent the way people actually think about such processes. As the Supreme Court justice used to say about pornography, "I can't define it, but I know it when I see it," so people who live in a community know what sorts of houses belong in that community. It is a visual, even visceral, understanding, not easily spelled out in words. Our concepts are built from our sensory experiences.

It will be interesting to see how the courts treat these new kinds of rules. While they may seem vague to those who don't have the appreciative understanding of the sense of the community, they would seem altogether clearer than narrowly written rules to those who do employ them. Will judges be ready for this? Are we ready for this?