

CHAPTER 1

Planned Unit Development as a Zoning Concept

As I write, more than 20 percent of all homes in this country are built by the nation's top 10 builders. This is an amazing statistic. It highlights a growing concentration in the home building industry that is changing the shape of land development because large builders build at a large scale. Planned unit developments (PUDs) and master-planned communities now make up the largest share of new development in many suburban areas and contribute to the growing demand for infill development in urban centers. In California alone, one law firm had 204,000 units of housing approved in PUDs and master-planned community projects when interviewed for this report. These trends call for a new look at PUDs and master-planned communities as a zoning strategy.

Simply put, a PUD is a development project a municipality considers comprehensively at one time, usually in the zoning process employed to approve a development plan.

SOME HISTORY

PUD as a land-use concept began in the 1950s and 1960s. Simply put, a PUD is a development project a municipality considers comprehensively at one time, usually in the zoning process employed to approve a development plan. A PUD proposal will contain a map and the regulations under which the project will be built. PUDs were at first primarily residential. They were a change in style from the standard residential developments common after the Second World War.

This change occurred because the standard subdivision ordinance and the accompanying zoning regulations have serious design flaws when applied to residential land-use projects. Most conventional zoning ordinances do not allow single-family, multifamily, and nonresidential uses in the same zoning district. They also contain site development standards for setbacks, site coverage, and the like that produce dull projects because they apply uniformly throughout each district. Subdivision control deals principally with infrastructure and lot and block layout in new subdivisions. Neither allows the review of a project on a comprehensive basis as an integrated entity, where a jurisdiction can consider its development and design details.

Allowing for effective open space was another problem inherent in standard subdivision ordinances. Building lots at the time subdivision legislation was adopted were small and located in built-up urban areas where parks were provided by the local government. As development moved to the suburbs, lots became bigger, but most of the open space surrounding single-family homes was unusable. Yet there was no way under existing zoning and subdivision regulations to link the approval of new residential development with common open space that would provide recreational and other amenities for project residents.

Developers who had to comply with these zoning and subdivision regulations typically built residential projects with a sameness that led to the nickname “cookie-cutter” development. Residential lots were all the same size. The ranch house style was common, leading to what some called “cheesebox on a raft” development in which look-alike ranch homes were built on oversized lots with private open space that received little use. Nothing in the regulations required attention to design. The song by Malvina Reynolds popular at the time caught the idea:

Little boxes on the hillside
Little boxes made of ticky-tacky
Little boxes, little boxes
Little boxes all the same

The PUD concept was a response to these failings in residential development. It was implemented by a new set of regulations in the zoning ordinance that applied primarily to residential development and required a discretionary project review followed by the approval of a development plan that displaced zoning regulations in residential zones. In its early stages, PUD was intended to provide a comprehensive development review that could overcome the shortcomings of zoning and subdivision regulation, improve project design, and provide for of common open space in return for “clustering” development elsewhere in the project at increased densities. Open space was either privately held and available only to the residents of the PUD or dedicated to the local government. Total project density was not increased. This form of PUD is usually called “cluster” development.

Planned unit cluster development had other attractions for developers. Project costs would be lower because clustering reduces the length of streets and other linear facilities. This hoped-for saving does not always occur, how-

ever, because developers claim that savings in development costs are more than offset by the increased cost of complying with PUD regulations.

PUD regulation did mark a change from the way in which land-use regulations had been applied. Instead of zoning regulations that decided what development was allowed as a matter of right, and subdivision regulations limited to measurable requirements such as street widths, PUD regulations allowed municipalities the discretion to decide what kind of development they would approve.

Changes in development style can be threatening to neighbors, and discretionary review can be unfair to developers, but several factors make limited PUD more acceptable to many communities. One was homogeneity in the residential development and demographics at the time. This was a time when a majority of the country lived as nuclear families with an average of 3.37 children. The father worked, and the mother stayed at home. Single-family housing dominated, and styles were similar. PUD ordinances allowed communities to use their discretion in deciding what developments they would accept, but that discretion was limited because any developments they approved would serve the typical family and would likely be built in the familiar development pattern. In addition, PUD regulations that followed the cluster development model were limited to single-family development and did not allow an increase in density.

Changes in development style can be threatening to neighbors, and discretionary review can be unfair to developers, but several factors make limited PUD more acceptable to many communities.

EARLY REPORTS AND MODEL REGULATIONS

The standard zoning act adopted by most states does not contain statutory authority to regulate PUD. This was a concern. By the mid-1960s, attention turned to the need for statutory authority. The Urban Land Institute published a model statute and held a conference introducing it about that time (Babcock and McBride 1965). It was not widely adopted and proved too rigid, though a number of states have enabling legislation for PUD today that enacts a different statutory model.

There also was a need for model regulations, so the American Society of Planning Officials, later to become the American Planning Association, asked me to prepare a report on PUD that contained recommendations for a model ordinance (Mandelker 1966). Several years later APA published another report on PUD based on a questionnaire, national interviews, and a review of PUD regulations that updated my earlier report (So, 1973). The Urban Land Institute then published a report some years later that discussed how PUD was carried out in practice and included a discussion of regulatory problems and issues (Moore and Siskin 1984).

These reports and recommendations generally assumed the typical PUD would be a cluster development limited to single-family development with no increase in project density. Multifamily uses might be permitted marginally, and commercial development could be allowed if accessory and related to the residential uses. The PUDs studied in the ULI report were also small in size. Only a few were larger than 100 acres. Development at this scale does not raise problems at the regional level, such as the impact on highway facilities and the jobs/housing balance. Cluster development could also be approved under the subdivision ordinance, though the reports recommended including PUDs regulations in the zoning ordinance as a rezoning or conditional use if a change in use or density was required.

These reports were limited in the changes they suggested. As proposed in these reports, PUD was only a marginal change to existing land-use regulation and did not substantially modify the regulatory framework. It filled a gap in existing regulations by allowing a comprehensive review of new development that promised new design opportunities while preserving open space. This expectation was clear in ordinance purpose clauses providing

PUDs can range in size from infill housing development on a few acres in a downtown area to a large master-planned community of 50 square miles in outer suburbia.

that local governments could not approve a PUD unless they found it would provide a better built environment than what could be accomplished under existing regulations. This type of purpose clause is still common.

Though the type of development contemplated under PUD regulation did not differ much from what had been done before, this kind of regulation did change the basis for development because it required PUDs to obtain approval in a discretionary review process. This was a major change. Zoning ordinances allow uses as-of-right, and subdivision ordinances have set standards. This kind of nondiscretionary regulation can be arbitrary, but it is fair if the review standards in the ordinance are fair and fairly applied.

By comparison, a discretionary approval process can provide opportunities for unfair and arbitrary decision making. The PUD review process can become an invitation to essentially standardless negotiation if the ordinance is not written properly. It can also provide opportunities to developers to overreach and obtain excessive concessions or even default on their promises by failing to provide improvements and infrastructure that were promised (Turque 2006). One feature of my early report was a concern that approval standards provide sufficient guidance and that ordinances contain sufficient protections, so that developers could not take unfair advantage. Strict provisions about development phasing, for example, are necessary so that developers do not build a profitable part of a development first and then not provide promised amenities, such as common open space. Controlling the exercise of discretion in planned development regulation is still a major problem.

WHAT PUD IS TODAY

The origins of PUD regulation explain what PUD is today. It has a dual character. As the Urban Land Institute report stated several years ago, PUD is both a physical plan and a legal concept (Moore and Siskin 1984, 5). This definition highlights the difficulty in defining PUD, as it is both a development type and a legal process for approving a development type. This dual character is reflected in a definition of PUD contained in a Eugene, Oregon, General Information sheet:

A planned unit development (PUD) is a comprehensive development plan intended to provide flexibility in design and building placement, promote attractive and efficient environments that incorporate a variety of uses, densities and dwelling types, provide for economy of shared services and facilities, and preserve natural resources. (Eugene, Oregon, Planning and Development Department, n.d.)

This definition includes both the process and physical design elements of PUD. It notes the opportunity for flexibility in design and building placement, which can occur through the approval process, but also emphasizes elements in physical design that must be included, such as mixed uses, densities, and the preservation of natural resources. The definition does not expressly state that the design of PUDs must be better than what might be obtained through traditional zoning, but it is implied.

One omission is a size requirement. PUDs can range in size from infill housing development on a few acres in a downtown area to a large master-planned community of 50 square miles in outer suburbia. This variety suggests that different kinds of regulation are required for different types of development and that no single approach to PUD regulation can fit all alternatives. Downtown sites, for example, may not have natural resources to preserve. A definition may not be able to catch all of these alternatives.

A PUD that has a variety of mixed uses is usually called a master-planned community when it is built on a large scale. The development of increasing

numbers of these communities is one of the most important changes in the PUD concept in recent years, and this increase has significantly changed the way in which communities draft and apply PUD regulations. We have had master-planned communities for some time, of course—large-scale developments often with thousands of homes and divided into neighborhoods with mixed uses, including retail and employment centers. Now, especially in the west, the south, and other growing areas of the country, the master-planned community is becoming the standard method of development. Their larger scale and mix of uses may require different kinds of regulatory treatment in PUD ordinances.

So how should a PUDs be defined, or is a definition necessary? The Eugene definition can be generalized to better emphasize both the process in which PUDs are approved and the type of development contemplated by the regulations:

A PUD is a development that has been approved in a process that requires the comprehensive review of project design and that can include a variety of project types, including infill developments, housing developments, and mixed-use developments, such as master-planned communities.

Ordinances may need definitions more specific to the types of PUDs that are allowed.

THE CHANGING MARKET AND POLICY ENVIRONMENT FOR PUDS AND MASTER-PLANNED COMMUNITIES

Changes in market demand, development practices, the scale of development, and community expectations have substantially altered the market and policy environment for PUD regulation. These changes need to be considered.

Housing demand, for instance, has called for major changes in the housing products that PUDs and master-planned communities offer. One observer commented several years ago that a mass market in housing no longer exists; rather, it is breaking into niche markets with different housing needs (Halter 1998, 1). This change has occurred because the homebuyer profile has changed, and the stereotypical nuclear family of the past no longer drives the housing market. The nuclear family is a minority, and the number of children on average in each family has decreased by one-third. Employment has shifted from production to service, and time is a growing amenity as many families need dual incomes, and work demands put pressures on family life. Working at home through telecommuting is increasing and requires a different kind of housing that contains a work environment. Developers may also design and build for different housing preferences, featuring “green,” “conservation,” and other types of development in their projects based on polling efforts before a spade of earth is turned (McCrummen 2006).

Another important influence on PUD and its regulation was the publication in 1998 by APA and the International City/County Management Association of a best-selling influential book, *Best Development Practices* (Ewing and Holder 1998). The book recommended land-use, transportation, housing, and conservation practices now widely used by developers—practices that have found their way into PUD ordinances. *Best Development Practices* did not deal with design issues, but design issues have also become increasingly important. Some of this is just greater attention to good design, but some of it shows the influence of the development model preferred by the new urbanism movement (Arendt 2004).

NEW URBANIST AND DESIGN ISSUES

The current popularity of new urbanist development is evident by the number of books and articles expounding its advantages over develop-

Changes in market demand, development practices, the scale of development, and community expectations have substantially altered the market and policy environment for PUD regulation. These changes need to be considered.

ment produced by conventional zoning. One of its important concepts is a development model of self-contained, self-sufficient communities in which reliance on the automobile is substantially reduced. This objective is achieved by providing internal employment opportunities, improving pedestrian access, and requiring street connectivity to the adjacent grid, eliminating the isolated cul-de-sac that reduces mobility. New urbanism also has specific design standards for homes and buildings that feature front porches and street adjacency, while mandating details all the way down to facade specifics.

New urbanists have not favored PUDs as a means of implementing their community design philosophy, but several PUDs have included the concepts. A town center, mixed uses, street connectivity, and more are featured in The New Town at St. Charles near St. Louis, Missouri.



Used with permission from The New Town at St. Charles

The new urbanist movement attacks traditional zoning as a barrier to the kind of development it would like to see, but it has not favored PUD as a method of implementing its design ideas. It prefers, instead, a detailed “form-based code” that prescribes the new urbanist criteria for development and that applies as-of-right with no need for approval in a review process. Whether a detailed code of this type is desirable is a matter of debate. Some experience with form-based codes shows they can produce unintended and undesirable results (Mitchell 2002). Another option, which some communities have adopted, is to include new urbanist design standards as requirements for the approval of PUD. It is also possible to adopt standards allowing hybrid developments that include both new urbanist and traditional designs (Ewing 2000).

PUD ordinances, like new urbanist codes, contain design requirements intended to avoid look-alike and “cookie-cutter” developments that jurisdictions want to avoid. Anti-monotony requirements that require variations in exterior treatment are one example (Kendig 2004). Comprehensive design standards can also be included that enact general design principles. Some communities have adopted highly sophisticated and detailed design standards in the PUD ordinance that must be applied in development plans (Melby 2005).

RESOURCE PRESERVATION

Demands for natural resource conservation have also influenced the regulation of PUDs. These regulations from the beginning required usable and adequate open space for residents, but the open space required was usually intended for resident activity, with no extensive attention to the preservation of natural resource areas. The publication of Randall Arendt’s book, *Conservation Design for Subdivisions* (Arendt 1996), was an influential event that brought conservation concerns more immediately into land development

practice. Arendt argued for specific attention to the preservation of natural resources. He showed how a subdivision planned for the total buildout of a site could be redesigned to preserve natural resources, yet keep its density in a cluster design that increased densities outside preserved areas. Arendt took the concept of cluster housing a step further by making natural preservation a dominant priority. Communities have followed his lead in PUD ordinances by enacting natural resource preservation and requirements for developers to follow. They have also adopted conservation design subdivision regulations that require the application of Arendt's principles.



Vicky Ranney

The publication of Randall Arendt's Conservation Design for Subdivisions in 1996 was an influential event that brought conservation concerns more immediately into land development practice. Arendt argued for specific attention to the preservation of natural resources. He showed how a subdivision planned for the total buildout of a site could be redesigned to preserve natural resources yet keep its density in a cluster design that increased densities outside preserved areas. This is Prairie Crossing, a conservation subdivision PUD, near Chicago.

CHALLENGES AND CHANGES IN THE REGULATORY ENVIRONMENT

These changes in development practices, and in the variety and character of PUDs, have challenged the regulatory environment in which communities process these developments.

A threshold question is whether the discretionary approval process common to PUDs ordinances is still necessary; that is, if problems exist in the zoning ordinance, why not fix them? If PUD ordinances are intended to produce "better" development and if a community knows what kind of development it prefers, why not draft ordinances that require the "preferred" development and allow that development as-of-right without the need to go through a discretionary approval process? Such an alternative allows up-front agreement on the preferred type of development, and on standards for that development which can then serve as the basis for drafting ordinance standards. Conservation design subdivision ordinances are such an alternative, as are new urbanist codes.

Other critics fault the costs of discretionary review in PUD ordinances, including the cost of delay, the cost of showing compliance with PUD regulations, and the cost of uncertainty created by not knowing when, whether, or how a PUD application will be approved. They argue a zoning ordinance can be written to accommodate the desirable features of PUD without requiring an expensive and time-consuming review process.

Finally, the NIMBY issue often arises; namely, PUDs offering a different style of housing or higher densities sometimes attract community opposition and challenge in a voters' referendum. Process attracts public participation, which is necessary and can be helpful, except that NIMBY opposition often is unjustified, and securing approval over public opposition is difficult. I have heard of difficulties with NIMBY opposition to PUDs everywhere. Allowing PUDs as-of-right avoids this problem.

ORGANIZING SUPPORT FOR THE PLANNED UNIT DEVELOPMENT PROGRAM

By Dwight H. Merrian, FAICP
Robinson & Cole LLP, Hartford, Connecticut

Planned development projects are similar to many others, except they tend to be larger and more complex. These attributes make them targets for opposition. Following just 10 cardinal principles can help win over the opposition and get approvals.

1. Don't Think of The Opposition as "Opposition," but as Potential Allies to Be Won Over

Many developers go into a project approval process believing there will be opposition they must somehow defeat. The reality is that most future opposition can be avoided. The developer and the public advocates supporting the planned development need to start with a positive attitude.

The effort should begin with the objective of having no opposition at the hearing and getting a unanimous decision. The developer must be committed to do everything that is reasonable and not budget-busting or project-killing to satisfy each and every need and desire (no matter how bizarre) of everyone who may have an interest in the project. Some planned development project advocates may say, or think, that such kowtowing to the "opposition" is demeaning or ridiculous, or not required by law, or costs money, or involves extra time, or sets bad precedent for future projects—and most of developers start out saying that, until they experience positive results from addressing the needs of opponents. Meeting the real and perceived needs of the community leads to projects being approved, gets the project into positive cash flow territory, generates local tax revenues more quickly, and earns planned development advocates a reputation as caring people who listen, respond, and accommodate.

2. Have a Plan of Action and Keep It Close to the Chest

First, there must be a plan of action. It may or may not be written, in whole or in part, depending upon the sensitivity of the strategy. However, there must be a plan of some type. Second, the secret details of the plan must remain secret. The plan should not be widely disclosed because it will ultimately leak out. If the plan includes land acquisition and assembly, developers and planners will need to work through one or more layers of business entities to prevent those whose properties are being acquired as part of a larger assembly from leveraging their positions.

In military security, a person must have the necessary clearance to receive confidential information, but they also must have a "need to know." No one involved in the development team should know more than they need to know to do their job. Those who think they are being helpful by widely distributing memos and other status reports to a large development team are simply opening the floodgates to disclosure.

All of the players must be known for the plan to be complete. Part of the action plan, from the market survey through land assembly, should be to identify the key players in the community and address how to approach them.

These key players are important in the process of "grass-tops" organizing, as distinguished from what is the better known technique of "grassroots" organizing. "Grass-tops" organizing is a method of obtaining the support of community leaders, as opposed to the support of the general public

found in "grassroots" campaigns. Don't fall into the populist trap of thinking it is necessary to convince the masses. It isn't. You need to convince the influential leaders.

3. Know the Community's Agenda

Armed with the information about who the real powers are in the community, it is then essential to learn more about the community's agenda(s). Much of it will be as expected. Some of it is often unimaginable.

One of the most straightforward techniques, which can be part of a grassroots organizing campaign, is to do a telephone survey. Another way to find out more about the community's agenda is to conduct one-on-one interviews and focus groups.

Finding out what personal agendas might exist can be extremely important. In one project, a portion of the development required the construction of a stormwater drainage line on the developer's property in a location that required the removal of a large tree on the developer's property. A woman who owned a house abutting the project expressed a concern for that tree to which she had considerable attachment because she had looked at it for many, many years from her kitchen window. She thought it was "hers." The developer's response to this concern was a simple one: no problem, he offered to construct an additional manhole in the stormwater system and divert the pipe around the tree.

Was this crazy? Absolutely not. For the cost of a thousand dollars he turned one of the members of the potential opposition (an abutter with statutory standing to appeal) into a stalwart ally who sang his praises throughout the neighborhood during the time the application was pending before the administrative agencies and ultimately was part of the group that supported the project before the legislative body at its final hearing.

4. Be Willing to Set Aside Perceptions of What Constitutes the Public's Agenda When There Is Better Information

One of the leading causes of aircraft crashes during instrument operations is the pilot's refusal to believe the instruments. If there is good information from the telephone surveys, written surveys, focus groups, individual interviews, and so forth, it is essential to set aside biased perceptions of the public's agenda (even though some will claim they know they are right and the survey data must be wrong) and begin following what is really important to the community.

In one large planned development, the developer was so certain that traffic was going to be the premiere issue that he spent \$80,000 on a computer simulation of traffic flows around the facility. The money was not totally wasted because it was an excellent way to present complex information, but it turned out that the public did not care as much about traffic as it did about their personal safety when parking in the proposed structured parking.

With all of the initial discussion of traffic, the proponents had logically pushed the discussion of personal safety down to number five or six in the list of subjects to be presented during the hearings.

(continued)

ORGANIZING SUPPORT FOR THE PLANNED UNIT DEVELOPMENT PROGRAM (continued)

With this new information, the presentation for the hearing was reordered, with the safety issue addressed upfront by credible experts. The public's concerns were largely set aside at the outset and the project was approved.

5. Follow the Guidance of *Getting To Yes* and Make Sure that Trust Is Never an Issue

One of the practical suggestions of "principled negotiation" as set forth in the important book, *Getting To Yes*, is that we should never make trust an issue in dealing with potential adversaries. When planners and developers start asking the neighbors to trust them, they are generally not going to get the support they need. Instead, tell those who might be adversaries that trust is not an issue, that the proponents are prepared to step up to the plate, reduce to writing, and guarantee by bilateral, enforceable contract exactly what the developer and its successors will do and exactly what is expected of them.

6. Hire a Public Relations Professional

Many planners, lawyers, and experienced developers like to feel they know how to put together the right message and communicate it to others. But the fact is most developers and community advocates never go into a major project anymore without a public relations specialist because they have learned so much from them about how to shape their message to win approvals.

Also, the public relations person can do a better job generally than the planner, developer, or the lawyer in keeping communications flowing to the community. A dedicated website is a must today.

7. Do Everything You Can to Keep Members of the Community from "Prematurely" Taking a Public Stance against the Project

Once somebody has "gone public" with their position, it becomes a "face saving" problem to get them to come off that position.

If you think you are going to lose someone's support, you need to do everything you can to get them to hold off announcing their position until you have had a chance to resolve any problems they may have. Planners and developers should even delay the commencement of a hearing and perhaps withdraw an application to avoid someone of importance going public against the project.

Doing that (holding off on a hearing or withdrawing) sends a strong message to the influential person that you really care about their position and you want to work with them.

8. Show You Care

If you show you really care about the interests of people in the community, they will almost always (but not always) respond favorably. This means returning phone calls promptly, being accessible 24/7, meeting people face-to-face, driving out of your way on the way home from work at night to drop off packages of information, keeping everybody fully informed with all types of documentation as to what you are doing, and so forth.

No question about it, it's a big job, but in the long run it takes much less time and much less money to take care of the community's concerns in this way. The most successful planned development proponents are the ones who will take their personal time, especially evenings, to go to the community.

9. Show Gratitude after the Fact

Project advocates need to look forward and think of the project they may have next year or next decade where they will need the community's support. There is nothing more powerful at a public hearing than to bring an abutting or near neighbor from a prior, controversial project and have them testify about how wonderful you were in addressing the community's concerns and how great the project has been since it was completed. And there is nothing better than having opponents see the success of prior projects first hand.

Some surveys of the impact of large-scale projects on single-family residential neighborhoods show no adverse impact on property values. Generally, the most powerful opposition groups to projects come to really like their neighbors when the projects are done.

So when the planned development breaks ground and when it first opens, make sure to hold a ceremonial event and invite everyone, including the toughest opponents, because they ultimately may be advocates later on.

10. Give When It Makes Economic Sense to Give; Do Not Fight for a Position Because You Know Your Position Is the Right One or the Legal One, But Fight Only for that which Makes Economic Sense

If the planned development is in a hot residential market that looks like it may be peaking and there will be a million dollars more profit by getting units constructed and marketed this year rather than next year, it makes sense to spend \$100,000 or even \$500,000 in getting the community satisfied with the project and getting it approved now instead of a year later.

But sometimes it is necessary to fight fire with fire. The opposition may be created and funded directly or indirectly by market competitors. Sometimes people will simply be out to extort money. If people are not willing to deal honestly about their alleged concerns, you are bound to look behind them and try to find out who is the cause of the opposition. There are grave anti-trust implications of some types of opposition, conducted in certain ways, and you should not be reluctant to discover that activity and take action against the miscreants.

It is true that the Noerr-Pennington Doctrine protects much of the opposition, even by market competitors, but sometimes people can go too far, and you need to be able to identify those situations and be prepared to take corrective action.

CONCLUSIONS

These 10 principles are not magic. The commonality is that it takes thinking about the needs of the opposition and working hard to meet those needs to get the planned development project through the approval process.

Whether as-of-right ordinances can produce good projects without the opportunity for discretionary review is another matter, and other critics argue that discretionary review is still needed to obtain really good project design. It is also true that even ordinances with as-of-right standards require interpretation to decide what they mean and sometimes end in judicial review to determine that meaning. A compromise is to enact detailed standards in a PUD ordinance to provide a development format but still require discretionary review of individual projects. Some communities take this approach, but other critics believe it is too rigid and open-ended standards are preferable.

FITTING PUD INTO THE SURROUNDING COMMUNITY

PUDs, especially larger projects, have an impact on the surrounding community, and can create jobs, housing, and traffic problems. When a PUD is limited in scale, its external impacts are likely to be minimal, especially if it includes only single-family residential development with no increase in density, as in cluster zoning. These developments should not generate substantial additional traffic, should not make new demands on public facilities, such as schools, and should not notably affect the jobs/housing balance. There should be no question of consistency with the plan if a residential PUD is in a neighborhood previously designated by the plan for residential use.

The impact of a PUD is often a source of contention with surrounding residents. When a PUD is limited in scale, however, that impact is likely to be minimal, especially if the PUD includes only single-family residential development with no increase in density, as can be provided for with cluster zoning. There should be no question of consistency with the plan if a residential PUD is in a neighborhood previously designated by the plan for residential use. This is The Glen PUD near Chicago.



Daniel R. Mandelker

All this changes once a PUD does not comply with existing zoning by changing the authorized housing type, increasing densities, or introducing nonresidential uses. Modest density increases and the introduction of limited nonresidential uses may not have a significant effect on traffic congestion, the adequacy of public facilities, or the character of the surrounding area, but major changes in use and density will. The problem is even more serious in undeveloped outlying areas where a developer proposes a large-scale master-planned community.

PUD ordinances can include requirements to take these problems into account. One is a jobs/housing balance requirement that requires an adequate balance of jobs and housing to reduce effects on the community outside the project. Another is a requirement that a PUD must provide an adequate amount of affordable housing so that housing will be available for persons who cannot afford market-rate housing (Weitz 2003). Ordinances can also address the traffic problem by requiring a development to capture internally

the traffic it generates. A number of communities have an adequate public facilities requirement for all new development to ensure the development will not occur unless adequate public facilities are available. PUD ordinances can also include their own adequate public facilities requirement.

THE ROLE OF THE COMPREHENSIVE PLAN

The role of the comprehensive plan in the review of PUDs is closely tied to whether they will have impacts on the community at large. They may then have a major effect on growth and development and the adequacy of public facilities, issues considered in the comprehensive plan. Consistency with the comprehensive plan should then be required. Statutory mandates for a comprehensive plan, and statutory requirements that land-use regulations be consistent with a comprehensive plan, are becoming more common. PUDs must be consistent with the plan in states that require it, and consistency can be required by ordinance even with no statutory mandate. Some PUD regulations require projects to be consistent with a comprehensive plan, but often there is little detail or guidance on what consistency means, and the comprehensive plan may not include policies for PUDs.

This latter situation is not a good one. If a community expects to have PUDs and master-planned communities on a major scale, it needs to plan in advance to integrate them into its development and public facility policies. This can be done by providing a development framework that shows where they should be located and how the necessary public facilities and services will be supplied. The plan can also provide essential design policies, such as a design policy for project development that will ensure the development of communities that implement the plan. Densities, the mix of uses, and other design elements that will shape the character of PUDs can be further identified. The PUD ordinance can then implement the plan with more detailed standards and requirements and can require consistency with the plan.

The scale of master-planned communities provides good opportunities to achieve hoped-for planning objectives.

THE ADVANTAGES OF MASTER-PLANNED COMMUNITIES AS A DEVELOPMENT ALTERNATIVE

Master-planned communities raise smart growth questions. Though smart growth proponents support PUDs as infill in urban centers, they oppose sprawl development at the urban edge, and some consider the master-planned community an unsuitable form of urban sprawl. This objection needs consideration because master-planned communities have many advantages as a development alternative that regulations can support to obtain a more desirable living environment.

One problem with this argument is that infill development in urban centers cannot meet all anticipated development needs; in other words, master-planned communities are needed as development alternative (Priest 2002). And development at the edge will not create urban sprawl if growth management programs limit sprawl through urban growth boundaries and the careful placement of self-contained satellite communities. In this kind of development framework, the scale of master-planned communities provides good opportunities to achieve hoped-for planning objectives. As Donald Priest points out:

The large scale of sites to be developed gives development planners great flexibility in arranging land uses. This greatly enhances the opportunities to establish compatibility between the needs of man and nature. This is a major advantage, considering the planning constraints that apply to small-scale projects. Planning at a large scale necessitates evaluation of natural systems and environmental impacts at a large scale. It also leads to the evaluation of more alternative development possibilities. Indeed, the assessment of the suitability of land for development is the starting point for planning large-scale projects. These actions provide the basis for plans that ensure that the communities will represent the best expressions of the principles of sustainable development. (Priest 2002, 12)

Priest also argues that large-scale development provides better opportunities to protect natural resources because environmental protection and conservation measures are more easily carried out in large-scale developments. They also have the necessary scale to:

- provide mixed uses and a variety of housing types;
- create a jobs/housing balance;
- reduce trip lengths;
- use infrastructure and transportation facilities efficiently and responsibly; and
- respond to consumer preferences in housing.

These comments underscore the importance of scale in regulating PUDs, and the need to have more than one PUD option when development at dramatically different scales is expected. They also provide a different perspective on whether there should be a minimum size for PUDs. The issue is not whether a minimum size is necessary, but, rather, a community should mandate different minimum sizes for different kinds of PUDs if size is an issue.

HOW THIS REPORT WAS DONE AND WHAT IT INCLUDES

The purpose of this report is to provide recommendations on how PUD ordinances can be drafted and to review the case law and state statutes that authorize the regulation of PUD as a development technique. There is no all-purpose model of PUD regulation. Communities will need to make choices about which review process to use and which substantive standards should apply. This report recommends a number of alternatives for PUD regulation that communities can consider.

In preparing this report, I did a literature search on PUDs as well as telephone and on-site interviews with planners, developers, and local government officials in different parts of the country. I also interviewed planning consultants who have a wide national experience in writing and implementing PUD ordinances. Typical PUD ordinances, graphics, and other materials were collected, and ordinances were extensively searched on the web.

Chapter 2 provides an overview of the issues a community must consider when it decides to adopt a PUD ordinance. Chapter 3 provides recommendations on process, and Chapter 4 provides recommendations on substantive standards. Chapter 5 discusses the case law. Chapter 6 reviews statutory authority. A CD-ROM accompanying this PAS report includes graphic material, such as maps and photographs, development plans and agreements, articles, statutory materials, and electronic files of Chapters 4 and 5 to facilitate the extraction of regulatory language that communities may find suitable for use in their PUD standards. As always, consult with your local land-use attorney to make certain that the language complies with all applicable law in your state and local jurisdiction.

CONCLUSION

PUD has clearly changed from a modest attempt to provide flexibility, better design, and open space in residential development to a major land-use program that can create developments for both small-scale infill spaces and large master-planned communities on the urban fringe. Its content has also changed to place new emphasis on design, natural resource preservation, social objectives, and the implementation of land development policies included in comprehensive plans. It is an exciting change in the way we use our land that requires careful analysis and attention.