Northern Illinois University Law Review

Volume 15 | Issue 3 Article 9

7-1-1995

Planned Unit Development and Takings Post Dolan

Clyde W. Forrest

Planned Unit Development and Takings Post *Dolan*

CLYDE W. FORREST*

I. PLANNED UNIT DEVELOPMENT IN A NEW LEGAL AND POLITICAL CONTEXT

The Supreme Court's holding in *Dolan v. City of Tigard*[1] will have pervasive effects on Planned Unit Development (PUD) provisions of local zoning and growth management ordinances. In jurisdictions which are careful of the competing values of public interest and private property rights, only minor adjustments in ordinances should be required. Unfortunately, such jurisdictions may be in the minority, therefore considerable revision in the plans, policies, statutes, ordinances, and regulations surrounding PUDs may need to be considered.

Competing interests will adjust to the *Dolan* decision. As a practical matter, PUD regulation may continue to be infrequently litigated because of the overriding interests of developers to plan, develop, sell, profit, and go on to the next project. Richard Starr, President of Urban Investments, Inc., once stated, "developers don't care what conditions are required as long as there is time to include them in financed costs and they do not result in delay . . . ."[2] Mr. Starr certainly was not championing a free ride for any governmental condition that might be conceived. One need only note the activism of the Illinois Homebuilders Association in legislative attempts to limit regulatory conditions in the last two sessions of the Illinois General Assembly to understand the level of concern by the development industry. Costs are a natural concern. Passing costs on to buyers raises competition questions because of the unevenness of development conditions across jurisdictions.

---

* B.A., J.D., University of Tulsa; Professor and Department Head, Department of Urban and Regional Planning, University of Illinois.

1. 114 S. Ct. 2309 (1994). The Supreme Court held that the City of Tigard's requirement that Ms. Dolan dedicate a portion of her property for the city's use as a condition to issuing her a building permit constituted an uncompensated taking of property. *Id.* at 2316-21.

2. Remarks given at the University of Illinois Institute on Zoning and Planning (June 1986) (unpublished speech).

Despite the significance of *Dolan*, the majority opinion is only representative of a new political context of more sweeping importance to the public health, safety, and general welfare which local zoning attempts to further. There is no doubt that the well-financed political movement known as "Wise Use,"[3] resulting in a series of "Takings"[4] bills in the United States Congress and in forty state legislatures, have targeted environmental and land use controls.[5] Contrary to the opinion of some planning experts, "leveling of the playing field" between public interest and private property rights is not the objective of these bills.[6]

Wise Use and their financial contributors, which includes the National Homebuilders Association, is pursuing a policy to require compensation for any regulation that can be shown to have a diminishing effect on the value of regulated property and thus neuter fundamental regulatory power. Exemption of "nuisance" activities provided for in some of their proposals will tend to explosively increase litigation. Companion bills which would require a "takings impact analysis" prior to promulgation of any regulation or ordinance would open the gates to even more litigation on the sufficiency of such statements and thus delay new regulations. Thus, regulations that might be proposed to streamline or improve existing laws would become subject to a more difficult enactment process, leading to interminable tie-ups in litigation and thus stalemate bona fide reform efforts.

Winners of this new political movement, if successful, will be large land owners, natural resource industries, and land developers. Losers will be the millions of ordinary homeowners who benefit from regulations that protect the integrity of their investment and their quality of life. In political theory this movement is based on "economic determinism." Perhaps we should not forget that both economic determinism and laissez faire have proven to be disasters to the health and safety of the populations involved.

II. PLANNED UNIT DEVELOPMENT--PRE *DOLAN*

PUDs are a relatively modern, 1960s, part of the planning and land use control tool box. Fine tuning the ordinance without amending the Compre-

---

3. The Wise Use movement, founded in 1988, consists of property rights activists and leaders who want to roll back regulations that infringe on public and private land use. Lynda V. Mapes, *Property Rights Fight Facing Ballot Punches; Opponents Force Vote on Sweeping Rollback of Regulations*, THE SPOKESMAN REVIEW (Spokane, Wash.), July 23, 1995, at B1.

4. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "[N]or shall private property be taken for public use, without just compensation." U.S. CONST. amend. V.

5. H.R. 9, Title IX, 104th Cong. 2d Sess. (1995).

6. Lane Kendig, *Stop the Insanity*, LAND USE LAW AND ZONING DIGEST (Jan. 1995).

hensive Plan in relation to the zoning ordinance to achieve mixtures of use and reductions in development standards are primary objectives of PUD. PUDs may be specifically authorized by statute, as is the case in Colorado,[7] or not even mentioned as in Illinois[8] and most Standard Zoning Enabling Act states. Authority for PUDs may be linked or distinguished from amendments, special use, variance, or even subdivision plat authorization of enabling acts. PUD approval has adopted the subdivision standards for dedications in Illinois.[9] A combination Special Use, PUD, and Subdivision approval was found to be a legislative act in Illinois.[10] If a statutory link is specified in PUD provisions of an ordinance, care must be taken to address all substantive and procedural statutory requirements.

Commonly expressed objectives of the community and developer in seeking PUD approval are indicated in Table 1. Planners and developers generally support the PUD concept. Others, however, view the PUD device with skepticism: "[P]lanned unit development is not a new planning technique at all, but merely a public relations gimmick, to put over something desirable on an unsuspecting and otherwise balky public."[11]

TABLE 1. PUD OBJECTIVES

1. Greater use and design flexibility,
2. Clustering and reductions in standards,
3. Phasing of investment for the market,
4. Tailored conditions for compatibility,
5. Cost sharing in public improvements, and
6. Efficiency and economy of infrastructure.

These objectives have a defensible logic by viewing 1 through 3 as benefits to the developer against benefits to the public interest represented by 4 through 6. Negotiation of the trade-offs between these objectives results in the issuance of an agreed permit. For example, a developer may wish to test the market for smaller lot homes by combining a residential development with an integrated retail commercial shopping center. The city may be very interested in lowering housing costs for young families or senior citizens. Both sides understand that the developers profit because the residential and commercial mixed use will be more profitable than

7. COLO. REV. STAT. 24-67-101 to 108 (1988).
8. 65 ILCS 5/11-13 through 11-13-20 (1994).
9. Plote, Inc. v. Minnesota Alden Co., 422 N.E.2d 231, 235 (Ill. App. Ct. 1981).
10. Kirk Corp. v. Village of Buffalo Grove, 618 N.E.2d 789 (Ill. App. Ct. 1993).
11. NORMAN WILLIAMS JR., AMERICAN LAND PLANNING LAW § 48.01, at 272 (1987).

residential alone. But these mutual interests result in what is essentially an agreed permit between only two of the three interest groups. What about the interest of the surrounding home owners and developers who were required to build on larger lots? Will the PUD adversely affect their home values and their quality of life due to the mixed use? Is it fair to competitors, to reduce the standards that were the minimum necessary to protect the health, safety, and welfare of the community in the first place? Will this change be used to justify additional zoning district amendments and mixture of use on the major streets leading to the shopping center?

To prevent lot-by-lot unraveling of a planned land use scheme for the protection of neighborhoods, some ordinances insert preset conditions such as, "the development will not be permitted: 1) in any area of less than ten acres; 2) where it would have a diminishing effect on surrounding property values; 3) where it will introduce nonresidential volumes of automobile traffic on residential streets . . . ."

The size standard avoids the possibility of lot-by-lot PUD evasion of zoning requirements. Other standards require individual determinations of facts concerning value and traffic. On the other hand, standards may also limit the utility of PUDs and may prevent the beneficial use of PUD for infill or redevelopment purposes. Prescribing the conditions under which a PUD may be approved in the ordinance lets the development community know what the conditions are and puts neighbors on notice that a PUD is a possibility in their area.

III. DEFINING POLICY AND PUD PROVISIONS

Unless constrained by an enabling act, a local community is free to create its own definition. The ordinance definition is dependent upon the purposes the jurisdiction wishes to pursue that are not covered by the general regulations. PUDs are basically useful exceptions to general regulations. Municipal administrators should conduct careful study, discussion, and review of all affected interests in a local zoning or growth management ordinance before they determine how to define PUDs in that context. Such definitions are general, complex, and loaded with patent and implicit policy. The following example will serve to illustrate this complexity.

> A Planned Unit Development is a development pursuant to a *Permit* consisting of an area of at least *200,000 square feet* for which a detailed unitary site plan has been submitted and approved by the city council *establishing or requiring conditions* which *may depart from the specific zoning requirements* for among other things, land

> uses, open space, on-site circulation for pedestrians, bicycles, *wheelchairs, rollerblades*, and automobiles, parking setbacks, housing densities, building spacings, land coverage, signs, landscaping, *design relationships*, including drainage with adjoining areas and streets, building heights, accessory uses, *architectural treatment, color*, and required *dedications.*[12]

The definition for PUD can be seen to involve a complicated development approval process which requires the exercise of both legislative discretion and planning expertise by multiple professionals. The italicized wording in the definition above indicates a need for a combination of planning knowledge involving artistic, cultural, ecological, engineering, and legal requirements. Improvements in the specificity of conditions, if that is the goal, may be achieved by adding the above underlined wording to the ordinance.

IV. SPECIFICITY OF CONDITIONS FOR PUDS

The definition of PUD presented above can be improved by the insertion of more specific conditions. Here we have the basic problem of expressing specific requirements of an ordinance when faced with an express objective of enhancing design flexibility. Thus the aim is to describe with more specificity while retaining discretion of approval and tailoring of conditions.

> A Planned Unit Development is a development pursuant to a Permit consisting of an area of at least 200,000 square feet for which a detailed unitary site plan *consistent with the Comprehensive Plan* has been submitted and approved by the city council establishing or requiring conditions *to promote the health, safety, property values, investment expectations, environmental quality and established character of developed areas and quality and amenities of new development* which may depart from the specific zoning requirements for among other things, *compatible* land uses, open space, on-site *and off-site safe, coordinated* circulation *which may require separate lanes and grades* for pedestrians, bicycles, wheelchairs, rollerblades and automobiles, parking setbacks, housing densities, building spacings, land coverage, signs, landscaping,

12. Urbana, Ill., Zoning Ordinance (1992) (emphasis added).

> design relationships, including drainage with adjoining areas and streets, building heights, accessory uses, architectural treatment, color and required dedications *to assure safe and timely access for public use, maintenance, and emergency purposes.*[13]

A strong presumption of validity in the administration of an ordinance which "includes explicit standards which shall guide the planning commission and the board of trustees in the exercise of their reasonable discretion . . . ."[14]

V. FORMULATING LAND USE POLICY

Establishment of any ordinance, let alone a complex one, which would legitimately limit the right to use private property requires a six-level process:

1. Identification and expression of a clear purpose that will be supported by citizens of the jurisdiction as important;
2. Selection of the governmental tool (or tools) which will be used to achieve the purpose;
3. Drafting, debating, and revising of proposed laws by all interested parties;
4. Enactment of ordinances which clearly relate to a public purpose and is within the requirements of the constitution;
5. Establishment of organizations and procedures which will be accepted as necessary, fair, and capable of meeting legal requirements; and
6. Monitoring and evaluation process which will periodically review the policy and its administration and cycle through the previous levels.

This outline of a planning law formulation process is basic to maintenance of community support and legal validity of a PUD as well as other regulations.

VI. PUD POLICY AND CONTINUING LEGAL ISSUES

A regulation based on a negotiation process will become vulnerable to citizen complaints unless extra care is taken in balancing the confidentiality

---

13. *Id.* (emphasis added to the definition to guide the necessary findings of a hearing body and support the specificity of prospective conditions).

14. LaSalle Nat'l Bank v. Village of Bloomingdale, 507 N.E.2d 517, 519 (Ill. App. Ct. 1987).

needs of a developer with the openness required to maintain general support. "Open Meetings Act"[15] requirements are not enough to assure this result since only official bodies are governed under the Act and much of the negotiation is done on a professional staff level. The following topics are areas where most local governments can improve the PUD process as well as the level of public understanding of its potential benefits.

VII. LACK OF PLANNING

The most grievous errors of many PUD ordinances is the lack of any attempt to publicly deal with points 1, 2, and 6 listed above in Table 1. Since the majority of jurisdictions are not statutorily required to engage in public planning, they fail to have clear objectives and don't know what ordinances to use. Thus, the cumulative effect of non-planning, the *Dolan* decision and the other Supreme Court "takings" cases[16] creates a financially and politically hazardous situation for local governments.

VIII. DENSITY CHANGES

The potential to increase the density of land use by being relieved of the necessity of complying with regular density standards may go too far. In some Illinois cases, the courts refused to grant PUD applications that contained higher land use densities than the municipality was willing to allow.[17] Two Illinois decisions: *Hoekstra v. City of Wheaton*[18] and *DuPage Trust Co. v. City of Wheaton*[19] foreshadowed part of current takings law by indicating that the municipality, having enacted PUD provisions, must shoulder the burden of proof in denying higher density development requests.

IX. AUTHORITY TO ENACT

Despite the fact that Planned Unit Development is not mentioned in the Standard Zoning Enabling Act-based states like Illinois,[20] most decisions have approved the use of the tool while considering the legality of the

---

15. *See, e.g.*, 5 ILCS 120/1 *et seq.*

16. *See, e.g.*, First English Evangelical Lutheran Church of Glendale v. Los Angeles County, 482 U.S. 304 (1987); United States v. Dow, 357 U.S. 14 (1970); United States v. General Motors Corp., 323 U.S. 373 (1945).

17. Hoekstra v. City of Wheaton, 323 N.E.2d 124 (Ill. App. Ct. 1975).

18. 323 N.E.2d 124 (Ill. App. Ct. 1975).

19. 347 N.E.2d 752 (Ill. App. Ct. 1976).

20. 65 ILCS 5/11-13-1 (1994).

particular case. The leading case is *Cheney v. Village No. 2 at New Hope*,[21] which approved a new zoning district as a PUD which included high density development and mixed uses in an area designated by the Comprehensive Plan as low density residential. The Pennsylvania Court approved the specific development, the technique of PUD and the ability to effectively amend the Comprehensive Plan by negotiation with a developer. This was despite the fact that Pennsylvania had previously been a strong uniformity and specific authority jurisdiction.

By contrast, in Illinois, half-acre zoning was upheld in the face of a developer's request for a multi-family PUD because the area was inadequately served by public utilities and the developer was not proposing to meet the utility needs.[22] Thus, a clear alternative to PUD conditions is rejection of the PUD request. Rejection for a specific health or safety issue leaves it up to the developer to meet the objection in a future application.

X. UNIFORMITY OF REGULATION

The most pervasive problem of PUDs as a matter of policy is the difficulty of dealing with the uniformity requirement. The uniformity rule requires in general that land and land uses in similar circumstances should be subject to the same regulation and that different treatment must be justified for some distinguishable health, safety, or general welfare purpose. As a constitutional requirement of the Fourteenth Amendment[23] and as a statutory requirement of most zoning enabling acts, this rule in relation to PUDs has been largely ignored or implicitly justified.[24] In Illinois, the courts have reasoned that contract zoning is a violation of the uniformity requirement and is therefore invalid unless specially justified. The court in *Colvin v. Village of Skokie*[25] found contract zoning invalid as a uniformity violation. In *Goffinet v. County of Christian*,[26] the court determined that conditional rezoning based on agreement with the owner was not invalid due to specific unique conditions.[27]

---

21. 241 A.2d 81 (Pa. 1968).

22. LaSalle Nat'l Bank & Trust Co. v. County of Cook, 402 N.E.2d 687 (Ill. App. Ct. 1980).

23. The Fourteenth Amendment to the United States Constitution provides in part, "No state shall make or enforce any law which would deny any person . . . equal protection of the laws." U.S. CONST. amend. XIV.

24. Orinda Homeowners Comm. v. Board of Supervisors, Contra Costa County, 11 Cal. App. 3d 768 (Cal. Ct. App. 1970).

25. 203 N.E.2d 457 (Ill. App. Ct. 1964).

26. 357 N.E.2d 442 (Ill. 1976).

27. *Id.* at 449.

XI. SPECIFIC DEDICATION REQUIREMENTS

Land dedication conditions of approval for development have been established by subdivision case law in Illinois. The Illinois test is one of the most precise of all state requirements and was referenced with apparent approval in *Dolan*.[28] This rule, from a case which involved a PUD and a subdivision, requires that conditions of dedication of land for public use must be "'uniquely attributable to' and fairly proportioned to the need . . . created by the proposed developments."[29] It would appear that the Illinois requirement is more precise than the "rough proportionality" test of *Dolan*. The Naperville ordinance in *Krughoff* established a formula which is recalibrated every two years to determine how much need for school and park land is generated by each residential development.[30] Subdivision law is relevant in those jurisdictions which have the flexibility of using the planning enabling act to exercise development control ordinances for the implementing of their comprehensive plans.

XII. JURISDICTION

Illinois municipalities may adopt and enforce development control ordinances and subdivision regulations within their corporate boundaries and within one and one-half miles of such boundaries in their extraterritorial area.[31] Since "subdivision" regulation is authorized but not defined, an inclusive definition requiring development to be subdivided as recorded planned units would accomplish municipal development control in accord with an adopted plan to the exclusion of county subdivision controls. This would not exclude county zoning control or permit municipal zoning in the extraterritorial area. It would permit planning and subdivision controls.[32] A municipal Planned Unit Development Subdivision ordinance is particularly appropriate for urbanizing areas which generate demands for municipal services and infrastructure.

The jurisdictional bonus for municipalities makes the PUD concept applied as subdivision ordinances too valuable for the well-planned municipality to ignore. Even if the requirements of the "takings" cases pose more legal difficulty, a good PUD is worth the effort. What do these cases

---

28. 114 S. Ct. 2309 (1994).

29. Krughoff v. City of Naperville, 369 N.E.2d 892, 895 (Ill. 1977).

30. *Id.*

31. 65 ILCS 5/11-12-5(1) (1994).

32. *See, e.g.*, City of Urbana v. County of Champaign, 389 N.E.2d 1185 (Ill. 1979); Village of Lake Bluff v. Jacobson, 454 N.E.2d 734 (Ill. App. Ct. 1983).

require of local government in relation to establishing reasonable conditions of approval of land develop zoning permits?

XIII. "TAKINGS" CASES AND PUDS

The reasonable use requirement of prior cases, and *Dolan*,[33] in combination with *Nollan v. California Coastal Commission*,[34] have created two new requirements for valid PUD conditions and conditional permits in general. These requirements are as follows:

1. An essential nexus (exact relationship) must exist between a legitimate state interest and a permit condition; and
2. If the essential nexus is established, the nature of the conditions imposed by the permit must be roughly proportional to the adverse impact to be prevented.

In both *Dolan* and *Nollan* the Court found conditions of a regulatory permit to be invalid.[35] Facts in both cases show that owners were granted the necessary permit for their use but they wanted it without the conditions. The conditions required dedication of a public easement by the owners over a minor part of their property. Could the jurisdictions have denied the permits because of some important health, safety, or general welfare public purpose? In general, perhaps, but what the Court was telling us is that it is up to the government to preestablish the importance of the public purpose and the relationship of the regulation to the purpose (nexus) and that the conditions must not be more than necessary to prevent the harm to the public purpose without undue hardship on the owner (roughly proportional).

PUD administration involves two actions which are implicated by the *Dolan* and the *Nollan* cases: the use of discretion and the ad hoc promulgation of conditions.[36] Both of these activities fall squarely into the *Dolan* and *Nollan* requirements. Preestablished conditions which meet the roughly proportional requirement are infeasible since the conditions are a response to a unique development proposal. That is, they were not contemplated by the ordinance or the plan at the level of detail required to both approve the permit and justify the conditions.

Other questions involve the case-by-case development of conditions. Whether a case-by-case justification of rough proportionality will be acceptable to the courts is a growing question. In addition, the expense and time delay of ad hoc studies to establish adequate findings of fact may kill

33. 114 S. Ct. 2309 (1994).
34. 483 U.S. 825 (1987).
35. *Dolan*, 114 S. Ct. 2309 (1994); *Nollan*, 483 U.S. 825 (1987).
36. *Nollan*, 483 U.S. 825 (1987).

worthwhile projects. These questions are important because the *Dolan* decision is based on a determination that the findings and reasoning of the local government were inadequate to establish the rough proportionality required.[37] Courts can and are willing to second-guess legislative bodies on questions of adequacy of facts. On the other hand, why should the public pay to justify alternatives to the preset conditions as to use, height, coverage, access, and improvements which are typical of PUDs? It must surely be understood by developers that such evidence will now be required of them at their expense.

In addition, the fact that such conditions may be negotiated by staff or by elected officials may serve to prevent the streamlining of development review procedures in order to buttress the chance of presumed validity of a legislative decision. Even if the conditions were agreed to by the developer, they might later be challenged on the basis of involuntary agreement. For example, the plaintiff in *Dolan* contended she was effectively coerced to accept the conditions in order to get the permit.[38]

XIV. WHO WINS WHAT?

Dolan leaves a puzzle. Why was a suit brought? Recall that in *Dolan*, the owner received the permit she requested,[39] and from a development perspective, the conditions may have benefitted her. There was a benefit? Yes, because the effect of the conditions would ordinarily reduce the owner's real costs for taxes, insurance, maintenance, and tort liability for property they were not using profitably. In fact, developers may often request that local governments accept such dedications as part of a permit application. Unless facts exist which are not apparent from the opinion, one can assume an ideological basis of "the city can't tell me what to do" for the litigation.

An ideological shift since 1987 is certainly reflected in Supreme Court opinions. Starting with *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*,[40] and *Lucas v. South Carolina Coastal Council*,[41] and continuing through *Dolan*,[42] the majority has invalidated regulations which permitted restricted use of property, but diminished value in a manner which expresses support for private property rights over the

37. *Dolan*, 114 S. Ct. 2309, 2316-21 (1994).
38. *Id.* at 2317.
39. *Id.*
40. 482 U.S. 304 (1987).
41. 112 S. Ct. 2886 (1992).
42. 114 S. Ct. 2309 (1994).

public interest. The *Lucas* case is an example of a failure to provide provisions for administrative relief, such as a variance, to prevent a restriction of all reasonable use.[43] It appears that the State of South Carolina was left with the problem of leaving remaining lots less desirable, which created the impression of unreasonable regulation since the abutting lots were developed. *Nollan* and *Dolan* share similar factual links which may be useful to consider. They both involved:

1. Relatively small or single parcel development proposals;
2. Surrounding lots that were developed;
3. Health and safety reasons for conditions that were not expressed; and
4. Public access on a portion of the property was required.

Where such facts combine and public policy support for a plan is not strong, it may be that the venerable variance or eminent domain would be the better tool. If compensation is given to one owner, however, a real distinction must be articulated to justify that decision from those where compensation was not given. In small development situations, it seems clear from *Lucas* that greater administrative flexibility is needed.[44] Perhaps a "PUD on Pilings" would have solved the *Lucas* drainage or safety problem and permitted the use. In *Nollan* and *Dolan*, one can expect that the cost of litigation far outweighed the acquisition cost of bikeway and floodway easements.

XV. CONDITIONAL RECOMMENDATIONS FOR PUD ADMINISTRATION

As long as facts are unique, courts decide cases, and legislative bodies meet, recommendations on land use law should be conditioned upon current analysis of the topic. The following recommendations serve to improve the PUD process in general and aid in addressing and avoiding the most significant takings issues.

1. Municipalities should not use the word PUD, but use the term Planned Subdivision or other descriptive term within their authority.
2. Counties might use the term PUD if they wish to exercise flexible zoning development control within the entire unincorporated area.
3. All jurisdictions should carefully amend their ordinances with reference to specificity of conditions they may impose and their links to important public purposes.

---

43. *Lucas*, 112 S. Ct. 2886 (1992).
44. *Id.*

4. Requirements of dedication of easements or rights of way for public purposes should be specifically supported by relevant studies and findings that the development requires the rights of way for the public health, safety, or general welfare require such dedications to establish the essential nexus. Where such special studies are needed, applicants for PUD permits should be required to pay for them through a fee system.
5. When a relatively small parcel of land is involved in a development permit, extra care must be taken to establish the need for any conditions imposed upon the development, and it is preferable to have all such conditions preestablished in an ordinance.
6. Implementation of a Comprehensive Plan, Official Map ordinance and a Capital Improvement Plan should be specifically referenced as objectives of conditions of approval.
7. Definitions of Planned Unit Development should be carefully crafted to accomplish stated and specific public purposes authorized by law.
8. Final decisions on PUDs, which create new conditions, should be by ordinance to achieve clear legislative action.
9. The method of determining the nature and size of any condition should be specified in the ordinance in a manner that establishes the nature of the impact and requires conditions that are roughly proportional to mitigate that impact.
10. Any approved PUD should be specifically located on the official Zoning Map ordinance, and any prospective PUDs should also be indicated on the Zoning Map.
11. Recipients of a PUD permit should be required to acknowledge the voluntary acceptance of any conditions concurrent with the issuance of such permits.
12. Applicants for a PUD shall be required to submit credible evidence in the form of appropriate studies to indicate the impact of the proposed development's impact on the health, safety, values, public service, utility demands, and environmental quality, and they must propose conditions to mitigate any unreasonable adverse effects on surrounding properties and on the existing and future public welfare.
13. Local governments wishing to secure the maximum potential benefits of PUD for the public should become proactive in the identification, design, and approval of such applications.
14. Adjacent jurisdictions of municipalities and counties should work to provide uniform development, zoning, and subdivision regula-

tions based on minimum levels of controls to protect the public health, safety, and general welfare.

15. Consideration should be given to the creation of two classes of PUD. One class should be for small parcels to facilitate redevelopment or infill development. In the first class the majority of conditions should be preestablished in terms of compatibility of adjacent land use and available public infrastructure. The second classification would be for large or complex developments in relatively undeveloped areas.
16. Care should be taken in all PUD, conditional or special cases, variance, amendment, or subdivision review ordinances to retain the discretion to deny such a request. Denials should be based on the nature of unmitigated adverse impact on the health, safety, or general welfare, and reasonable use options on the affected property. Both types of findings should be specified in the decision.
17. All jurisdictions should look for and specify health, safety, and general welfare impacts in relation to every development.

CONCLUSION

The exercise of discretion in the administration of PUDs requires a combination of professional input, experience, and deliberation that will continue to offer challenges to planners, developers, and local officials. General plans, specific facts, studies of implications, creative negotiation (involving all parties at appropriate stages), and reasonable conclusions are the best we can do in a dynamic world.

Reality compels choices between competing policies and policy makers. Is a policy that would compensate or permit greed at the expense of health, safety, and quality of life workable? Who would we prefer to make policy for us, representatives of private property profiteers or elected officials who are dedicated to our health, safety, and general welfare? Local officials should decide if regulation, taxation, or spending is the appropriate tool and when each will be used. Planned Unit Development is a regulatory tool which is intended to balance profit with public interests. Who will you trust? Over whom and what can you expect to exercise some control?

Planned Unit Developments represent a tool to address a growing tension between the development community and defenders of a broader public interest. Cooperation at this level on a regular basis could prevent land use crisis management, costly delay, and litigation for all concerned parties. An unregulated development industry will surely ruin our collective futures and an over-regulated development industry is not in anyone's best interest. Can we agree to cooperate in effective governing?