

1978

## Cluster Housing in Rhode Island

Jonathan L. Feinstein  
*University of Rhode Island*

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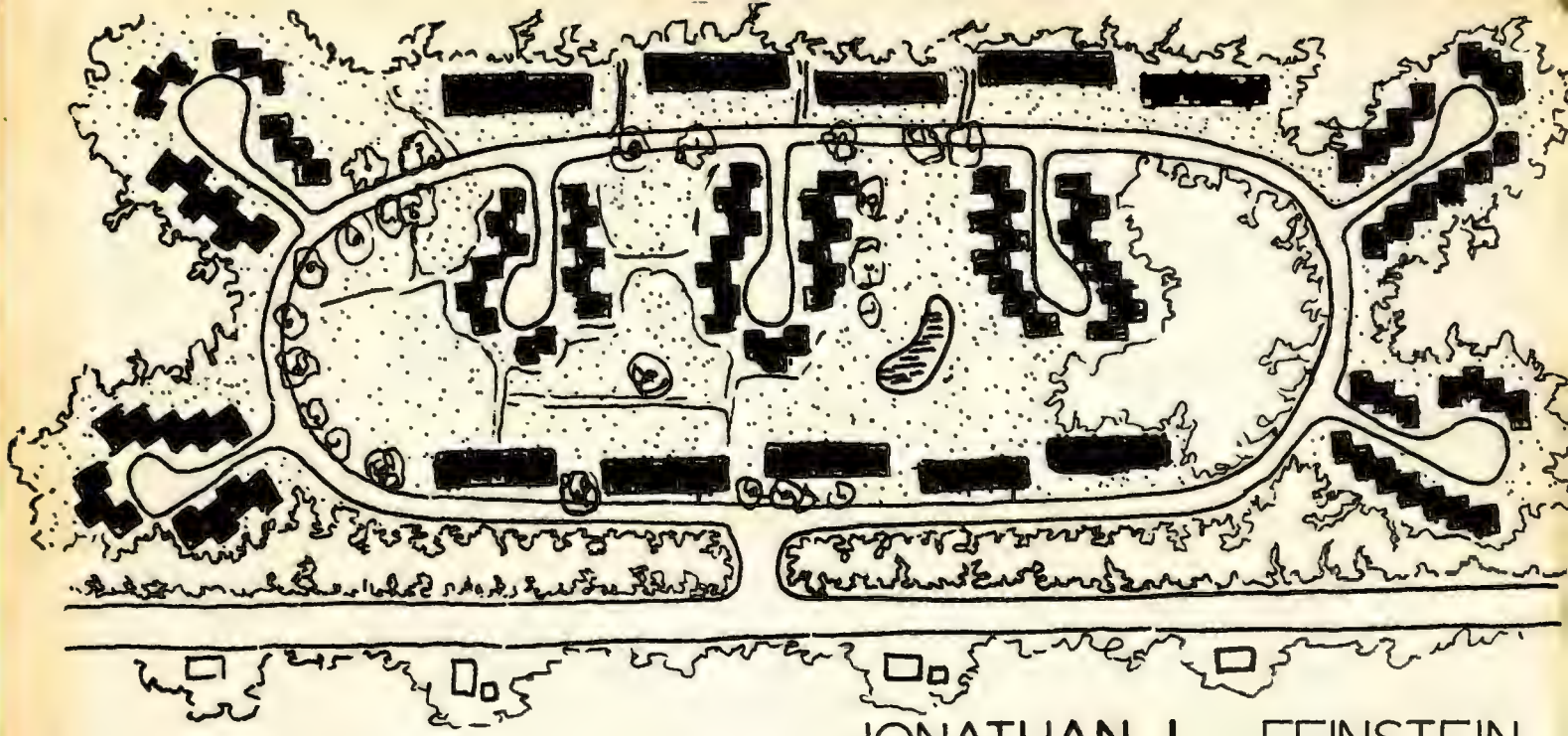
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JONATHAN L. FEINSTEIN

# Cluster Housing



CLUSTER HOUSING IN RHODE ISLAND

By

JONATHAN L. FEINSTEIN

A Research Project Submitted in Partial Fulfillment  
of the Requirements for the Degree of  
Master of Community Planning

University of Rhode Island

1978

MASTER OF COMMUNITY PLANNING  
RESEARCH PROJECT

of

JONATHAN L. FEINSTEIN

Approved:

Major Professor

A handwritten signature in black ink, appearing to read "Fred J. Kuper", written over a horizontal line.

University of Rhode Island

1978

TABLE OF CONTENTS

<u>Chapter</u>		<u>Page</u>
1	Cluster Concept. . . . .	1
2	Cluster Characteristics in Rhode Island Communities . . . . .	14
3	Open Space . . . . .	30
4	Management of the Cluster. . . . .	39
5	Legal Analysis . . . . .	67
6	Cost Analysis. . . . .	80
7	Visual Analysis. . . . .	95
8	Conclusion . . . . .	117
	Appendix	
	Bibliography	

LIST OF TABLES

<u>Table</u>		<u>Page</u>
1	Dimensional Regulations - R.I. Cluster Ordinances. . . . .	22
2	Increase in Material Costs, 1973-Present . .	82
3	Cost Comparison of Conventional Subdivision vs Cluster Subdivision . . . . .	83
4	Site Design of Conventional vs. Cluster Development . . . . .	84
5	Summary of Site Development Costs. . . . .	86
6	Cluster Housing Cost Comparison. . . . .	88

## LIST OF ILLUSTRATIONS

<u>Illustration</u>		<u>Page</u>
1	Cedarhurst on Wickford Harbor, North Kingstown, R.I. . . . .	96
2	Approach to Cedarhurst I . . . . .	97
3	Housing Style - Cedarhurst I. . . . .	98
4	Open Space - Cedarhurst I . . . . .	100
5	Transportation Access and Parking . . .	102
6	Hamilton Gate, Saunderstown, R.I. . . .	104
7	Transitional Clusters, North Kingstown, R.I.. . . . .	105
8	Porter Estates, North Kingstown, R.I. .	106
9	Natural Habitat I - Hardwood Forests, Aerial, (a) Ground View . . . . .	109
10	Natural Habitat II - Coastal Ecosystems, Aerial, (a) Ground View . . . . .	111
11	Natural Habitat III - Upland Wetland, Aerial, (a) Ground View . . . . .	113
12	Natural Habitat IV - Slope and Geological Constraints, Aerial, (a) Ground View. . . . .	115

APPENDICES

<u>Number</u>		<u>Page</u>
1	North Kingstown Cluster Ordinance . . . . .	126
2	Coventry Cluster Ordinance. . . . .	129
3	South Kingstown Cluster Ordinance . . . . .	134
4	Smithfield Cluster Ordinance. . . . .	142



## ABSTRACT

This study has focused its attention on the conceptual theories of clustering in relation to the actual practices which are occurring today in Rhode Island. The study provides a historical framework for the cluster process and subsequently describes the following components: cluster characteristics in Rhode Island communities, open space, management, legal constraints, cost and a visual analysts. All of the chapters begin with a general discussion which provides a framework for the Rhode Island cluster experience.

## ACKNOWLEDGEMENT

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## DEDICATION

This research project is dedicated to my parents for their constant support throughout my pursuit of an education.

CHAPTER : 1

CLUSTER CONCEPT

## INTRODUCTION

This chapter will provide an introduction to the historical basis for clustering in the United States; discussing the influence of zoning and other factors in the development of the cluster process. Special attention will be given to the problem of defining the "cluster". The conceptual definition of the "cluster" will be discussed in this chapter, while the "working" definitions will be analyzed in later chapters.

## THE CLUSTER CONCEPT

Proponents conceive of cluster developments as a viable alternative for residential growth in city and suburb. Their uniqueness is founded on a premise that houses can be grouped together to promote a greater utility of individual lot space, resulting in more creative design and use of the remaining land in the tract.

Some of the general features of the cluster include:

- ✓ 1. The preservation of some part of a tract of land in its natural condition;
- ✓ 2. The preservation of natural amenities which will be beneficial to the community and to the future residents of the development;

3. An economic saving, as large portions of the tract need not be served by streets and utilities; their linear footage can be substantially reduced from what would be needed in a conventional subdivision;

4. The incorporation of special amenities: cluster developments provide the options of various recreational activities such as: golf, swimming, riding, boating, birding, and others which may be of interest to the homeowners;

5. The reduction of lot size. Promoters of clustering claim that individual lot sizes need not be large, because the cluster achieves the same effect as large-lot zoning, by leaving the intervening spaces in common ownership;

6. The guiding and control of growth: clustering enables a community to plan for more efficient utilization of land for residential development;

7. A more efficient and creative site design: Today, clustering enables a development to be planned with more efficiency in mind and more creativity in design. Clusters may be developed around an energy efficient theme, capitalizing on the new energy

saving designs which can be made very successful because of the close proximity of the individual houses in the cluster.

### THE HISTORICAL BASIS FOR CLUSTERING

Clustering is an ancient idea, it was the principle of the New England village and green, and its appeal has proved timeless. "Garden City" advocates had reapplied it in the planning of several prototype communities, most notable: Radburn, New Jersey, in the late twenties; the green belt towns of the New Deal; and Baldwin Hills in Los Angeles during the late thirties.<sup>1</sup>

History has shown us that the design of clusters dates back to the primitive cultures of the world. In these cultures, the village was often defined by the organization of individual dwelling units into groups to enclose a community space and simultaneously form a defensible enclosure. The main entry of each unit faced into the community space. In some cultures, the dwelling units were connected to actually form the enclosure, whereas in other cultures, they were aligned to define, but not formally enclose the community space.<sup>2</sup>

In time, as the population increased, the village became the town. Although many of the village characteristics

remained, houses were located away from the main public spaces. The entry no longer fronted the main community space, but fronted a secondary community space in the form of a pathway or street leading to the town center.<sup>3</sup> The building up of town led naturally to a need for the increased care of the open spaces that remained. At a town meeting held in Boston, March 30, 1640, it was agreed that henceforth, there should be no land granted either for house plot or garden out of the "open ground or common field". This order, carefully observed, reserved to the town the famous Boston Common as a public park.<sup>4</sup> Not until 1682, was another provision of this type made, and then, not by the town members, but by the proprietor, William Penn. Forseeing the rapid growth of his city, he ordered five squares laid off and set aside for the permanent use of its people. These early efforts were important because they emphasized the need for open space in the development of cities.

#### ZONING: THE BEGINNING AND ITS INFLUENCE ON CLUSTERING

During the 1920's, cities in America were undergoing continual crises in land use. Mixtures of land uses were appearing everywhere. Residential zones were being occupied by commercial garages and machine shops; loft buildings were located in exclusive shopping districts; and breweries and



small stores were found in light manufacturing establishments. There was an acute need for a cure of this mixture of land-use and zoning became the answer for the troubled cities.<sup>5</sup>

Zoning is a form of local police power that restricts certain types of building or land use to selected districts. The earliest comprehensive zoning ordinance was passed in 1916 to prevent skyscrapers and high-rise garment industry lofts from encroaching on the fashionable Fifth Avenue retail district.<sup>6</sup>

By 1919, at least ten states had authorized all or certain classes of cities to adopt zoning. In that year, the Congress instructed the commissioners of the District of Columbia to prepare comprehensive zoning regulations. In 1921, there was a flood of zoning legislation. Connecticut, Indiana, Kansas, Michigan, Missouri, Nebraska, Rhode Island, South Carolina, and Tennessee granted cities the privilege of invoking the police power to regulate the use of land, as well as the height and area of buildings; none had previously authorized the use of zoning.<sup>7</sup> In 1921, Herbert Hoover (Secretary of Commerce) became so impressed with the importance of zoning, that he appointed a special advisory commission to draft a model or State Zoning Act under which municipalities could adopt zoning regulations. Within a year, the commission had a preliminary draft of its proposed

standard act ready to circulate in mimeographed form. And by 1924, the Government Printing Office issued the final version of the Standard Zoning Enabling Act.

Within a year of the issuance of the final draft of the Act, eleven states had passed enabling legislation, modeled to some degree, after the Commissions Act. Many other states were considering similar actions.

Zoning became a powerful land management control, which affected the lives of many people and the structure of many communities. After World War II, a different attitude appeared among older residents of suburban communities. Instead of seeing all growth as good, selling their property for a profit and moving on, as they once would have done, they now tried to use zoning to protect their established pattern of light settlement against developer encroachment.<sup>8</sup> The aim of many suburban residents was to defend their comfortable style of low-density living against a cheaper and more congested style.<sup>9</sup> Accordingly, regulations that limit an entire town to single-family occupancy, or to minimum lot sizes of one, two or even four acres, have been enacted in order to preserve the existing social context of lightly-settled suburbs.<sup>10</sup>

By and large, suburban land controls since the Second World War, have enabled a significant number of well-organized communities to limit their growth by halting or de-

laying development, but the cost is high. These restrictive campaigns have added a new level of anti-social bias to the ordinary life of America. The success of one town in halting development implies an ability to ignore the legitimate needs of its neighboring towns.<sup>11</sup>

The United States witnessed in the period 1960-1970 a population increase within metropolitan areas of 16.6 percent, yet growth within and peripheral to the central cities has been quite uneven. Population within central cities has increased at a rate of 5.3 percent, yet population outside of central cities has increased at a rate of 28.2 percent.<sup>12</sup>

This rapid growth has put considerable stress on many suburban areas. Some of these communities realize that to keep their fiscal budgets healthy, they must restrict developers coming into their community. However, what does this growth mean? Are communities running out of space? Is there no place for growth to go? Often, the case is that little time is spent analyzing the utility of the space which we occupy. Statistics, land use maps, and zoning maps do not present a clear picture of how the land is being used, but rather depict what assets are being used, or overworked.

Richard Saul Wurman<sup>13</sup> advocates that we plan instead for the "quality of space". This means that we must look carefully at our environment and plan for a more efficient use of our buildings and land areas. He writes,

We don't have the drawings or the maps, or the dynamic way of showing how the city is being used. All we can show is the general floor use. That squares of the map is filled with a color that represents an educational facility that means its filled, and you can't conceive of other uses of that area because our minds can't go past that map.<sup>14</sup>

I believe that cluster zoning, when applied in a careful manner, can use land in a more efficient and productive manner, while still meeting the housing needs of a community. Clustering is an attempt to look at any area of land in total, and to examine its physical features and assets and plan accordingly for the best use of these physical features and benefits. The ability to plan for a large piece of land, rather than designing on a lot-by-lot basis, confers the opportunity to provide a greater "quality of space".

#### DEFINING THE CLUSTER

To many people, the process of defining a word or concept is merely the first step when analyzing or presenting a new idea. The cluster concept has suffered from the wide range of definitions which are geared to specific individuals and their purpose. Authors of various literary works have defined cluster developments with respect to their own conceptual beliefs. Cities and towns have adopted cluster zoning ordinances or provisions and have defined "cluster" in terms of their specific goals or motives. These two types of definitions may be categorized as: (a) conceptual or theoretic-

tical definitions, and (b) "working" definitions.

This study will present the variety of definitions which have been given to the cluster process and illustrate the associated problems. The analysis of definitions suggests that there is need to develop a clear definition of "clustering" which provides sufficient description for the layman and enough conceptual background for town officials.

### The Problem

What is a cluster development? This is a common question which is asked for the planner, the town official, and even the developer. For the most part, the word "cluster" implies a certain closeness or grouping together of houses. Unfortunately, for most people, this is the only facet of clustering with which they are familiar. Having such an ambiguous name as "clustering" results in initial obstacles when trying to promote this idea to townspeople, planning commissions, or governing bodies.

Charles Little<sup>15</sup> advocates changing the term "cluster" to "Green Space Development", thus removing any negative aspects which the word "cluster" might have. This is a noble attempt in redefinition, but its practicality is questionable. Instead of renaming the cluster process, it may be worthwhile to describe it more effectively in ordinances and regulations, attempting to eliminate many of the common problems associated with the mechanism of clustering.

Definitions of "cluster" are numerous and vary in relation to the community in which it is present. A detailed definition is given by Katherine Kulmala, "In Cluster Zoning in Massachusetts". She states,

Cluster development, or cluster subdivision, applies to a purely residential subdivision of a tract of land, where instead of subdividing the entire tract into house lots of conventional size, a similar number of housing units may be clustered on lots of reduced dimensions. The remaining land in the tract which has not been built upon is reserved for open space to be held in some form of ownership or easement, which will prevent it from ever being subdivided. The concept could also be applied in districts which permit two-family or multifamily dwellings; or even allow multifamily structures in a single-family district to provide the total number of families to be housed in a given acreage; if it is not increased significantly over what would be allowed in a conventional subdivision.

This definition describes effectively the components of the cluster development. Essentially, there is a reduction of lot divisions, with no increase in density of dwelling units. The final component is open space, and means for its preservation and the variety of housing types which the cluster concepts makes possible.

Short and simple definitions as those described in A Citizens Handbook for Better Land Use by the Harvard Regional Service, may be of harm to a concept which needs sufficient description to provide a positive and clear framework. They state, "Cluster is commonly defined as the reduction in size of individual house lots in a subdivision and the combining of

this conserved land into shared open space for environmental preservation and recreation". This definition gives the reader only a very brief description of the cluster concept and highlights few of the essential elements of the cluster process. Another definition is made by Jon Rosenthal, "Cluster Development" in ASPO, 1966. He states that there are two features which distinguish the concept of a true cluster. The first distinguishing characteristic is the design and site planning in which several houses are grouped together on a tract of land. Each cluster or grouping of houses serves as a module which is set off from others like it by an intervening space that helps give visual definition to each individual group. The second characteristic of the cluster subdivision as it is often proposed, is the presence of undeveloped land that is held for the common enjoyment of the neighboring residents or community at large.

Rosenthal's definition is descriptive and in general promotes the distinctive value of a cluster through the use of site design and open space. However, by describing the open space as "undeveloped", many people envision unusable land and question why they should pay taxes on such a piece of land. Thus, through the ambiguity of one word, an entire concept can suffer. This public confusion may be avoided if the word "undeveloped" was redefined as common land that may serve a variety of uses for the homeowners (and community). That use will depend on the specific land use capabilities inherent in the specific tract of land. This des-

cribes the concept of open space and does not indicate that there are no potential development areas.

It has been suggested that there are three types of clusters: planned unit residential development, cluster subdivision and town house development involve detached and row houses, respectively. Planned unit residential development embraces detached row and multifamily housing and may include commercial housing and industrial uses. The distinction between cluster types tend to be housing type and scale of development, while the unifying element is the need for flexible zoning.<sup>16</sup>

Not only has clustering suffered from confusing definitions, but it has also been incorporated in planned unit developments. PUD is a different concept than clustering, and the two should be distinguished.

Planned unit development is a device which allows a development to be planned and built as a unit which permits variations in many of the traditional controls related to density, land use, setbacks, open space, and other design elements, and the timing and sequencing of development.

Katherine Kulmala also distinguishes the difference between cluster and PUD. Cluster zoning applies to residential development only, and there is little negligible change permitted in the uses normal to that residential district. The density usually defined as the number of dwelling units



per gross acre remains little or unchanges. Planned unit developments also have legal considerations which are more complex, because of the changes content and intensity and the often large-scale of the PUD, may have an impact on the community not foreseen when the basic zoning ordinance was passed.

These descriptions illustrate the variety of meanings which the term "cluster" may have. In summary, the uses of the cluster concept may be under the following variations:

1. Cluster Zoning Ordinance - applies when an applicant wants to change the density of an area, or to construct a housing type not otherwise allowed in this district;

2. Cluster Design - applies when a change in zone is not needed and is merely a plan for development based on cluster design criteria;

3. Cluster, Planned Unit Residential Development/or PUD - involves a cluster arrangement of houses in a larger development scheme;

4. Cluster Subdivision Development - involves cluster design and restrictions enumerated in the subdivision regulations of a community.

CHAPTER : 2

CLUSTER CHARACTERISTICS  
IN  
RHODE ISLAND  
COMMUNITIES

## INTRODUCTION

To date, there are four committees in Rhode Island which employ a cluster zoning ordinance: North Kingstown, South Kingstown, Smithfield, and Coventry.

North Kingstown is the only town that presently has clustered housing in active use. There are 314 approved units for construction since the cluster ordinance was approved in 1972. Coventry has a major cluster in the development stage, and South Kingstown has several cluster subdivisions in the review process.

This chapter will outline the major issues which concern clustering in these four communities. It is essential that local officials, developers, homeowners, and planners realize that a cluster ordinance cannot operate by itself; it relies on the coordination of attentive subdivision regulations and capital budget considerations in the community. The coordination of these three elements will help to insure the success of clustering as a concept and as a reality.

## NORTH KINGSTOWN

In 1972, North Kingstown passed its first cluster zoning ordinance. In 1974, the ordinance was amended and there were changes made to the cluster section. The subdivision

regulations in North Kingstown are unique in the sense that they have become codified; transformed from a regulation to an ordinance.

North Kingstown is also the only town or city in the State to specifically provide for clustering in its town charter. Section 16-4-5.1 states:

For the purpose of this division, a "cluster" development is a division of land into lots used or available for use as building sites where said lots are clustered together into one or more groups separated from adjacent property and other groups of lots by intervening "common open land".

In the event that the land contained within a development is traversed by proposed collector or arterial street shown on the master plan, such development shall be designed in accordance therewith, and the right of way across the development for such collector and arterial streets shall be dedicated to the public.

Section 16-4-5.2 states:

Ownership or tax liability of private open space reservations shall be established in a manner acceptable to the planning commission and made a part of the conditions of the plan approval.

For the purpose of promoting orderly and progressive development, at least fifty percent of the required improvements as shown on any final plan must be installed before final approval can be given on any subsequent enlargement.

Each cluster development proposal submitted to the town for review must file a basic review fee in accordance with the fee schedule of the town and twenty dollars for each acre or part thereof covered by the proposed cluster development project.

Provision may be required to create access at least twenty-five feet wide to each parcel of such common open space from one or more streets in the subdivision, depending on the size of the development and the surrounding land uses as the planning commission may determine.

The town charter provides the authority to administer cluster housing; but without state enabling legislation, there are questions to whether the town is usurping certain legislative powers from the state.

#### Highlights of the North Kingstown Ordinance

The Working Definition. The working definition of the cluster for the town appears in the zoning ordinance. The purpose of this definition is to establish the goals of clustering in a framework for the community.

North Kingstown defines cluster as:

For the purpose of encouraging the preservation of open space and promoting the more efficient use of land in harmony with its natural features and with the general intent of the Zoning Ordinance, an owner or owners of a tract of land, or a duly authorized agent thereof, may seek, in connection with the submission of a subdivision plan for Planning Commission approval under the subdivision of Land Law, approval for a cluster development.

Housing Types. North Kingstown provides for a variety of housing in the cluster ordinance: single family detached dwelling units, two-family dwellings, and single family attached dwelling (townhouse).

Residential Density Calculations. The total number of dwelling units cannot exceed the number of dwelling units derived from dividing the total area of suitable land less the amount which would normally be allowable for streets and easements, by the minimum lot size otherwise permitted in the zoning district or district in which the tract lies.

Open Space. The open space provision in the ordinance provides that no less than 20 percent of the total land area shall be devoted to common open space, used for recreation or conservation purposes, exclusive of that land set aside for the road area.

Homeowners Association. No provisions.

#### SMITHFIELD

In 1972, Smithfield adopted a cluster amendment to their zoning ordinance. To date, there are no cluster developments in the town, and there are no cluster developments being proposed.

#### Highlights of the Smithfield Cluster Ordinance

Working Definitions. The zoning ordinance provides no definition of cluster development.

Housing Types. Single family dwelling units are the only type permitted in the cluster ordinance.

Residential Density. The maximum number of dwelling units cannot exceed the maximum allowed in the zoning district based upon net acreage. Net acreage shall exclude land for rights of way. The cluster subdivision must have a gross parcel area of not less than 20 acres.

Open Space. The minimum open space shall not be less than five acres and preferable in one parcel. The dedication of the open space may be made to the Town of Smithfield, the homeowner association, an Audubon Society, or a Conservation commission.

Homeowner Association. No provisions.

### SOUTH KINGSTOWN

South Kingstown adopted cluster zoning in 1977. It was hoped that with the approval of this new development technique the common sprawl type of subdivisions would be averted. The South Kingstown cluster ordinance appears to be the most adequate of any of the cluster provisions in the State today.

#### Highlights of the South Kingstown Ordinance

Working Definition. South Kingstown defines a cluster as follows:

Residential cluster development: A specified minimum area of contiguous land, developed according to a plan at specified densities as a complex of single family dwellings, duplexes or multi-family dwelling structures, (max. of six

- d.u.) or a combination of such residential structure with one or more common space areas designated to serve the development.

Housing Type. The cluster ordinance provides for single family, two family, and multi-family dwelling units, with a maximum of six dwelling units.

Residential Density. The process for calculating the maximum number of dwelling units is achieved through the following calculation:

$$\frac{\text{proposed tract of land} - \text{unsuitable land}}{\text{minimum lot size}} =$$

maximum no. of dwelling units

The lands which are unsuitable for development include: wetlands, floodplain areas and an area of a fixed percentage depending on the zone, to make allowances for streets or designated area of a right-of-way.

Open Space. The ordinance provides that there shall be no less than 20 percent of the total land area of the development for open space dedication. There is no distinction for the amount of usable open space to be dedicated.

Homeowner Association. No provisions.

Clustering is now in its infancy in South Kingstown. The increased demand for housing in the town, together with the desire to preserve valuable open space will probably make clustering a popular development style in the future. The South



Kingstown zoning ordinance and amended subdivision regulations form a cohesive framework which will hopefully produce efficient cluster housing for the community.

### COVENTRY

In 1973, the Town of Coventry adopted a cluster zoning amendment to their existing ordinance. These provisions provide a general structure for clustering in Coventry. The ordinance is somewhat general in nature and may need more specific guidelines if clustering evolves to become a prominent development alternative in the community.

#### Highlights in the Coventry Ordinance

Working Definition. The town of Coventry defines clustering as follows:

Single family cluster developments may be permitted by the Planning Commission for the purpose of providing attractive, convenient, efficient, neighborhoods and to promote the conservation of open space and valuable natural features.

Housing Types. The cluster ordinance provides for single family dwelling units.

Residential Density Calculations. There are no density calculations specified. The density cannot exceed that which is presently permitted in an existing RR, R-20 and R-10 zone.

Open Space. There are no specifications for the type or amount of open space that is to be allocated in the cluster.

However, the ordinance does state that, "the developer shall provide sufficient recreational facilities and equipment pursuant to nationally recognized standards as related to his project and as approved by the Planning Commission." The most recent standards of the National Recreational and Parks Association shall apply.

Homeowner Association. There are no provisions specified.

Dimensional Regulations. Table 1. illustrates the dimensional requirements which are set forth by the four communities who employ clustering. There appears to be a great variability in the regulations from one community to another. For example, the towns of Coventry and Smithfield have very different requirements in the Rural Residential, (RR), zone. The various regulations permitted demonstrate the flexibility that is afforded through the use of clustering.

### CONCLUSION

The data for cluster zoning ordinances in Rhode Island suggest that some of the ordinances are not specific in addressing all of the guidelines for successful cluster development. The following are suggestions to be considered when an ordinance is being amended or adopted in a community.

1. A statement defining "cluster", which identifies the goals and purposes of the ordinance. The definition

TABLE 1  
DIMENSIONAL REGULATIONS - R.I. CLUSTER ORDINANCES

USE	Minimum Lot Area (ft)	Minimum Lot Width (ft)	Front (ft)	Rear (ft)	Side (ft)	Coverage %	Building Height (ft)
<b>NORTH KINGSTOWN</b>							
Single Family Detached	10,000	80	15	15	15	---	---
Single Family Attached	---	20	15	15	15	---	---
<b>COVENTRY</b>							
Single Family (R-R)	15,000	125	25	25	20	25%	35
Single Family (R-20)	10,000	100	25	25	20	25%	35
Single Family (R-10)	7,000	80	25	25	15	25%	35
<b>SMITHFIELD</b>							
Single Family (R-R)	30,000	150	40	40	20	25%	35
Single Family (R-20A)	12,000	100	25	25	10	25%	35
Single Family (R-30)	15,000	125	30	30	10	25%	35
<b>SOUTH KINGSTOWN</b>							
Single Family Dwelling	Calculated per Site*	80	25	30	15	---	35

TABLE 1  
(continued)

USE	Minimum Lot Area (ft)	Minimum Lot Width (ft)	Front (ft)	Rear (ft)	Side (ft)	Coverage %	Building Height (ft)
NORTH KINGSTOWN Two-Family Detached	20,000	120	15	15	15	---	---
COVENTRY Not Applicable	NA	NA	NA	NA	NA	NA	NA
SMITHFIELD Not Applicable	NA	NA	NA	NA	NA	NA	NA
SOUTH KINGSTOWN Multi-Family Maximum 6 Units	Calculated per Site*	80	50	35	15	20%	35

\*Calculation:  $\frac{\text{proposed tract of land} - \text{unsuitable land}}{\text{minimum lot size}} =$

maximum number of dwelling units

must relate to the provisions which are included in the ordinance.

2. The Rhode Island cluster ordinances do not specify a management program for the cluster. The following may be suggested:

A period shall be stated making mandatory that the developer submit the homeowner association agreement or contract. Preferably, this would be in the pre-application stage of the development process. Assurance should be made that the homeowner agreement reflects the proposed cluster--homeowner association agreements should not be transferred from one cluster to another

3. The ordinance shall specify the period in which the developer must transfer the control of development to the homeowners.

4. The ordinance shall distinguish the difference between usable and unusable open space, and provide a process that assures that enough usable open space will be set aside for the needs of the homeowners.

5. The ordinance shall list a set of allowable uses in the open space.

6. The ordinance shall require the developer to give copies of all homeowner agreements to the homeowners at an early stage of the transaction of sale. This may clarify any confusion between the developer and the homeowner that might develop.

The following is a model Residential Cluster ordinance which this study has formulated.

A RESIDENTIAL CLUSTER ZONING ORDINANCE

DEFINITION OF INTENT:

I. The township of ----- has recognized the need for more flexible zoning provisions for residential housing in the community. This goal would be permitted whereby lot restrictions were reduced to provide a compensatory amount of open space. It finds that such cluster development zoning:

1. Can allow development in the most developable land while preserving areas which may have physical properties that would be sensitive to development.

2. Can be designed with a lower per lot cost for streets and utilities, resulting from a reduction in linear feet needed.

3. Can be developed to encourage a separation of vehicular and pedestrian traffic.

4. Can be encouraged to utilize design criteria that enable the cluster to become a unified element in the environment.

5. Can provide a mixture of housing types and price ranges.

**RESIDENTIAL DENSITY CALCULATIONS:**

The maximum number of dwelling units in a residential cluster development shall not exceed the number computed by the following formula:

1. Determine the total area of the tract.
2. Subtract the amount of land which is determined to be unsuitable\*, including streets and easements.
3. The remainder of the land is the tract that shall be divided by the minimum lot size which is applicable to the zoning district or districts in which the tract lies.

\*Unsuitable land is defined by various physical criteria, in different communities, soil types, slope, and vegetation may be types of indicators.

**PERMITTED USES:**

1. Single Family Detached Dwelling;
2. Two Family Dwelling;
3. Single Family Attached Dwelling;
4. Multi Family Dwelling.

#### MANAGEMENT OF THE CLUSTER:

For the successful operation of the cluster, the developer shall submit a preliminary management plan to the Planning Commission during the pre-development stage of development. The plan should recognize and provide for the management needs of the homeowners. The management program should be presented in the form of: Homeowner Association, Trust or Community Association.

II. Submission Requirements. The following documents and provisions are to be required of the developer for final approval of the cluster development plan.

1. The developer is given a 3:1 voting majority in the cluster until 50 percent of the total lots are sold; then all management control is transferred to the homeowner association.

2. The articles of incorporation or other organizational documentation for the non-profit organization.

3. The by-laws of the non-profit organization.

4. A complete listing of all land, buildings, equipment, facilities, and other holdings of the non-profit organization, as such is proposed, and a complete description of each.



5. A copy of the proposed management plan is to be given to the prospective buyers regarding the organization, assessments and fiscal program.

6. A copy of the Deed of Conveyance and Title Certificate, where applicable, for all lands proposed to be conveyed to the Town or other appropriate agency.

OPEN SPACE:

III. Common Open Space. All of the land in a residential cluster development which is not designated as building lots or street rights-of-way shall not be less than 20 percent of the total land area of the development. A majority of this common open space must be usable for the use of the homeowners. The open space shall be used for conservation, outdoor recreational facilities of a non-commercial nature, agriculture, preservation of scenic or historic sites or structures and structures accessory to those uses.

The management plan for the common open space shall be included in both the preliminary and final management plans for the cluster. These plans shall not be limited but shall include the following provisions:

1. It shall give each lot owner the right to use and enjoyment of the common open space and property.

2. It shall place the responsibility of operation and maintenance with the established management property.

3. It shall give each member voting rights with the association having also the right to deprive members of the use of the common area for non-payment of assessment charges.

4. Natural features such as trees, brooks, wetlands, and any unique wildlife or vegetation should be preserved when possible and if possible made a part of the common open space area.

IV. Private Open Space. The management plan shall define acceptable design standards and permitted uses in the private open space of each homeowner.

CHAPTER : 3

OPEN SPACE

## INTRODUCTION

The designation and utility of the open space in a cluster may be considered as one of the most important aspects of a cluster development. It is, however, important to realize that the provisions for open space should be in conjunction with the goals and expectations of the community. For example, in some towns the preservation of specific natural systems such as aquifer areas necessitate conservation provisions to be made in the cluster ordinance. On the other hand, a town may be faced with an increasing population and housing demand and may shape their restrictions to accommodate housing sites on the most developable land areas. In this case, it is also possible to preserve specific natural areas in the cluster.

This chapter will discuss the use and value of open space in the cluster and in addition review the ways in which calculations are made in determining the amount of space to be allocated.

## FEATURES OF OPEN SPACE

It is difficult to enumerate one feature of open space that would be premier to another; this is because open space

has a variety of meanings and values to many people. Some enjoy open space because of its natural beauty and enjoy walking and viewing the natural systems present. Others, however, value open space solely for its recreational value, and consider unusable open space as non-essential.

The following are possible benefits of open space:

1. The preservation of natural features in a community.
2. The assortment of recreational activities available to the homeowners.
3. The open space may be planned in conjunction with the open space plans of the community to provide a contiguous scheme for open space.
4. There are more management and design possibilities with the open space of a cluster.
5. Proper planning of the open space may create a theme or style to enhance the aesthetic value and physical design of a community and positively influence future developments in the same area.

The many uses which can occur in the open space should not be planned indiscriminately. There are sound methodologies which can help both the developer and the planner in the analysis of open space planning.

Ian Mcharg has provided a complete process for analyzing the values of open space.<sup>1</sup> Mcharg's thesis is that natural processes should be the basis on which open space decisions are made, as well as general planning decisions. Acreage is no criteria in itself for determining the amount of land to be set aside in a community. The four general ecological categories which a community should analyze and plan for are: hydrology, slope, soils, woodlands, and prime agricultural land. The study of these components in relation to each other identify suitable areas for various uses of open space, recreation and development.

Mcharg gives us a proposition, a challenge which should stimulate a careful and analytic approach to land use planning and the maintenance of open space.<sup>2</sup>

The area is beautiful and vulnerable; development is inevitable and must be accommodated; uncontrolled growth is inevitably destructive; development must conform to regional goals; observance of conservation principles can avert destruction and ensure enhancement; the area can absorb all growth without despoliation; planned growth is more desirable than uncontrolled growth, and more profitable; public and private powers can be joined in partnership in a process to realize the plan.

Mcharg has proposed the ecological plan and given us a comprehensive methodology which identifies and provides for natural processes based on their inherent capabilities.

## TYPES OF OPEN SPACE

### Common:Private

The open space of a cluster may be categorized as being either private open space, which is directly adjoining the dwelling unit, or common open space, which is accessible to all of the homeowners of the cluster.

The private open space is deeded to the homeowner and is designed to serve his personal needs. The common open space is usually held in joint ownership by all the homeowners in the cluster with each homeowner receiving an equal percentage of the land area. There are alternative means of ownership: deeding the land to the town, donation to a local conservation group or retainment by the developer of all lands in the cluster.

The open space in a cluster can be multi-faceted and include usable space for the enjoyment of the homeowners, and serve a preservation or conservation purpose for the general welfare of the community.

### HOW MUCH OPEN SPACE SHOULD BE DESIGNATED

It is agreed generally that open space is a necessary and important component of a cluster. Therefore, the process of allocating amounts of open space should rest on a sound conceptual and analytic base. Comprehensive and recreational

plans often provide long-range plans and use designations for a community. However, these plans are frequently too general to be used effectively for the planning of open space in a cluster. The responsibility of securing open space is, therefore, shifted to the planners and local officials in a community.

There have been a variety of methodologies used to calculate the amount of open space necessary to sound cluster design. The following is a brief review of some of the techniques. It should be noted that any of these techniques may be used in a community with variations made to suit local needs.

#### Technique I - Acreage Determination

Some towns specify that there should be a fixed amount of open space dedicated to all clusters. Frequently, there are upper and lower limits designated to accommodate the size of the cluster. Another approach popularized by the National Recreation Association advocates that a certain number of acres of open space per thousand people be allocated. The major criticism of this approach is that it has mainly dealt with recreational needs and failed to identify other possible uses.

Marion Clawson, expanded this theory to relate to both the regional and local level. She recommended that there be 78 acres of open space of all kinds and for all purposes for every 1,000 population.



More than half of this amount, 42 acres per thousand, should be open space land that would serve as parks for an entire region. The remainder land, 36 acres per thousand, would serve the local population and be the responsibility of the local government. He further divided the overall amount into three categories: "public, parks, and recreation", 14 acres per thousand: "private recreation", 5 acres per thousand: and "green space", 17 acres per thousand.<sup>3</sup>

#### Technique II - Gross Minimum Calculation

Many communities require a fixed number of acres of open space for a cluster. This is usually specified as a minimum amount and may be expanded to accommodate the magnitude of the development. A common problem with this method is that there are no specifications distinguishing usable versus nonusable land in the common open space. If a majority of the open space area is composed of a wetland, marsh, or other type of critical natural area, there will be specific use limitations levied on the homeowners. Thus, it is imperative to provide a fixed percent of usable open space that will be available for the recreational demands on the residents.<sup>4</sup>

#### OWNERSHIP OF THE OPEN SPACE

The ownership of the common open space in a cluster may either be managed by public or private controls. The public controls involve the deeding of the open space to the town.

This is done when the municipality decides that there is a great value in an area of land and wants to acquire control over it. For example, the areas may be an important aquifer recharge area in the town and the community wants the assurance that they will be able to manage its destiny for years to come. Some communities cannot opt for this alternative because the town may be faced with maintenance and enforcement costs when they take on this responsibility, as well as tax losses.

The more popular approach of ownership of the open space is that of private ownership. This involves the homeowners' accepting the responsibility of the maintenance and design of the open space. There are two options available when this approach is taken. The first proposal would be to extend the lot lines into the common open space and the landowner would then own a given area of the open space. This approach is somewhat contradictory to the intent of the common open space.

The more popular approach of private ownership is the process whereby each homeowner owns a percentage of the open space, and the management is guided by the homeowner association. All homeowners are required to join the association and each resident has a perpetual, and proportionate interest in all of the common open space.

A municipality may also require an open space easement over the common open space. This easement is a negative easement in the sense that it excludes specific uses in the

open space. The assumption here is that the easement will benefit the town through the preservation of natural, recreational, and scenic values of the easement area. The easement may also specify that if the homeowners are deficient in maintaining the open space, the municipality may repair any deficiency and charge the homeowners for any costs thereof.

RHODE ISLAND PROVISIONS FOR SPACE -  
IN CLUSTER ORDINANCES

Smithfield

Smithfield provides that the minimum amount of open space to be dedicated is not to be less than five acres. The ordinance states that it is preferred that the open space be allocated in one parcel, with ownership of the land dedicated to the town of Smithfield, the homeowner association, an Audubon Society, or a Conservation commission.

The Smithfield ordinance does not specify allowable uses in the common open space and provides no requirements for a specific amount of open space to be dedicated.

Coventry

Coventry makes no provisions for open space in their cluster ordinance. It is specified that the developer shall provide sufficient recreational facilities and equipment pursuant to nationally recognized standards of the National Resource and Park Association.

### North Kingstown

The North Kingstown cluster ordinance provides: that no less than 20 percent of the total land area shall be devoted to common open space, used for recreation or conservation purposes, exclusive of land set aside for road area. Open space shall be protected against building development by conveying to the town an open space easement over such open space areas restricting the area against any future building or use, except as is consistent with conservation, recreation or agricultural uses for athletic and recreational satisfaction of the residents.

### South Kingstown

South Kingstown specifies that all land which is not designated as building lots or as street rights-of-way, but in any event, shall not be less than 20 percent of the land area, shall be open space and be used for conservation, outdoor recreational facilities of a non-commercial nature, agriculture, preservation of scenic or historic sites or structures, and structures accessory to their use.

The ordinance also states that, "provisions as to ownership, use and maintenance of such open space land which are required shall be set forth on a written document, acceptable to the planning board and recorded by the town". The South Kingstown provisions appear to be based on a careful review of the cluster experience in Rhode Island.

CHAPTER : 4

MANAGEMENT OF THE  
CLUSTER

## INTRODUCTION

This chapter will identify the possible management control devices available to the developer and homeowner of a cluster. I will describe in detail the homeowner's association process, as it is by far the most common technique used for managing the cluster. I will also identify two other techniques which are less commonly used but are still viable alternatives to some types of developments.

An analysis will be made of the management program used in Rhode Island clusters. This analysis will inventory the management programs that are in operation in the State, and study their management framework as set forth in their association agreements.

## HISTORY OF HOMEOWNER ASSOCIATIONS

Homeowner associations are not new management techniques for residential developments. The idea for homeowner associations originated in England in the seventeenth century when the Earl of Leicester built his London townhouse and laid out Leicester Square in front of it. By 1700 the square was surrounded by buildings, and by 1743, the property owners had employed a legal device to assure the exclusive use and maintenance of the park.<sup>1</sup> The first residential homeowner asso-

ciation in the United States was founded in Boston in 1844. Prototypes of such modern residential private governments emerged in various forms at the turn of the century. Roland Park, in Baltimore, 1891, became one of the first large-scale subdivisions built on the fringe of rapidly-growing metropolitan areas across the country. Developed by Edward H. Barton and designed by Fredrick Law Olmsted, Roland Parks dominated the market for luxurious homesites in Baltimore almost until World War II.<sup>2</sup>

In 1938, the New York court of Appeals gave its unequivocal endorsement to the homeowner association concept,<sup>3</sup> and other courts soon followed suit.<sup>4</sup> Thus the homeowner associations have developed both a firm historical and legal foundation.

#### BENEFITS OF A HOMEOWNER ASSOCIATION

The use of a homeowner association gives the owners of housing in the cluster the opportunity to make their own decisions concerning the open space and the general management of the cluster. The association is, in effect, a residential private government, organized on the basis of certain notions of democratic participation. The government is run by elected officials. Each homeowner has a right to vote, and the majority decision has the power to change or amend the bylaws of the association.<sup>5</sup>

## TYPES OF MANAGEMENT CONTROLS

This section will describe four basic types of management controls: the automatic homeowner association, the non-automatic homeowner association, the cooperative association, and the funded community trust.

### Automatic Homeowner Association

The automatic homeowner association makes mandatory that all of the homeowners are members of the association. The association is incorporated, and the deed binds each owner to the agreement subject to a lien against his property.

### Non-Automatic Homeowner Association

This type of association derives its maintenance funds principally from annual dues, collected from members. These dues are not binding to the homeowners, and no homeowner can be held to a continuing obligation to pay dues if he renounces his right to membership.

### Cooperative Associations

Cooperative associations are primarily associated with multifamily and high-rise structures, where maintenance is provided for indivisible portions of a structure.

The relationship of the homeowners to the cooperative is twofold: the homeowners are the tenants of the cooperative with respect to their homes, and they are the owners of the



cooperative by virtue of their shares in it. The cooperative does not rely on individual financing of each unit or home. Rather it relies on a blanket mortgage covering all of its properties. Every unit or home purchased becomes subject to the blanket mortgage, and the owner agrees in his lease to contribute his share to its amortization and to the interests upon it.

#### FUNDED COMMUNITY TRUST

Trusts have been used either as an alternative to, or in conjunction with, homeowner associations. Under the trust form, common assets are vested with a trustee who is then charged with the management and maintenance of the development on behalf of the beneficiaries of the trust. The trust is not incorporated, but unlike the unincorporated association, its beneficiaries enjoy limited liability. The trust performs many functions that aim at making the development run more effectively and efficiently.

The trust may be responsible with some of the following functions:<sup>6</sup>

Open Space: 1) The trustee is deeded all of the open space, except that which is deeded to single ownership.

Easement: 2) The trustee owns all of the open land and gives to each individual owner an easement over

the surface of all of the open space lands.

The easement restricts both who may use it and the manner in which it may be used.

Maintenance: 3) The trust is responsible for the mowing of the grass, trimming of the bushes, fertilizing, plowing, buying and distributing water, and maintaining the open space.

Financial: 4) The trustee collects operating funds by a charge against each individual unit that is provided for in the trust instrument. Each deed carries on "under and subject" clause subjecting the easement to the right of the trustee making it a servient estate to that extent.

Management: 5) The trustee employs a professional manager who will see to the day-to-day operations of various functions. The job of the manager is to physically operate the trust. He is relieved of all collection and assessment problems.

At the termination of the period called for in the trust agreement, the beneficiaries of the trust, or the owners and occupiers of the land in the development, have the option of continuing the trust "as is" with the trustee, or to create a homeowner association that will control all the functions which the trust had previously managed.

### CONTROL OF THE HOMEOWNER ASSOCIATION

It has become common practice for the developer to maintain control of the development until a fixed number of dwelling units are sold in the cluster. The developer assumes control by enjoying a majority vote in the homeowner association and has the discretionary powers over the entire development.

Federally-sponsored new towns have adopted a somewhat different scheme. According to HUD's guidelines, the right to vote in the association must be granted to the owners and the renters alike.<sup>7</sup> Perhaps fearful that a system which does not endorse the principle of "one man, one vote" might be held unconstitutional;<sup>8</sup> HUD also insisted that the developer have only one vote in the private organization.

#### Why Does the Developer Want to Keep Control

There are several strong reasons for the developer to desire complete control over the cluster, while the majority of the dwelling units are sold. One reason is that a considerable investment has been made by the developer in the purchase of the land, materials, contractors, engineers, lawyers, architects, and other consultants. The developer wants to be able to exert his complete influence until the development is nearly completed. It would be very difficult for the developer to supervise the development if he did not have control. Again, the developer relinquishes his control when a majority of the dwelling units are sold.

However, attention must be given to homeowners who have bought a lot and house, and are living in the cluster while parts of the development are yet under completion. This homeowner is in a difficult position because he is uncertain of when the control of the development reverts to him and to other homeowners. This period of the anticipation of the transfer of management control can precipitate many anxieties between the homeowner and the developer, resulting in severe communication problems that hamper the effectiveness of the cluster. A hypothetical example may serve to help illustrate this problem.

Buck and Bess Dearmin are one of the original homeowners in the Skyview Cluster development. They have lived in the cluster for seven months, and the development is incomplete. Summer is approaching, and there are many visual problems associated with the landscape in the vicinity of their dwelling unit, (few trees have been planted, landscaping is unfinished, building materials are scattered in some areas, etc.). The developer explains that Buck and Bess were informed that the development was not to be finished for two years and asks their patience. The Dearmin's are beginning to have second thoughts about this cluster concept; they were sold an idea that in-

cluded gracious living, and a community management system that would operate the cluster. They have found, however, a system which does not allow them to voice their opinions, despite the fact that a majority of the dwelling units have not been sold, and the physical benefits are not completed. What has evolved is a major confrontation between the homeowner and the developer. Each time after these two parties meet, the homeowner is disillusioned and upset and seeks recourse in town government. Usually, the planning office becomes involved as a middle party, and must try not to become an adversary for either the developer or the homeowner. Is there a solution to this complex problem?

A quick analysis of the issues resolves that the developer and the homeowner both have legitimate requests. The developer's immediate goal is to complete the cluster, yet at the same time, keep his reputation. The homeowner wants the benefits which he envisioned when investing in the cluster. However, it is impossible to satisfy both the developer's and the homeowner's requests because of the time constraints involved. Experience in Rhode Island and elsewhere suggests that there needs to be an advisory board in the city or town to hear the complaints and issues of both the homeowner and

the developer. Although this board would be purely advisory to the planning commission, it would serve an important function for all. Hopefully, this board would resolve problems in their infancy, preventing them from becoming emotional battles between the homeowner and the developer. This board would serve a cluster until the homeowners are granted complete control over the cluster by the developer.

### LIABILITY

Homeowners should be aware that when they agree to become members of a homeowner association that they accept different liabilities than single ownership. The liability depends on whether the homeowner association is incorporated and non-profit or unincorporated. I would like to briefly outline the differences between the incorporated and unincorporated homeowner association and suggest that this concern be made obvious to all prospective homeowners.<sup>9</sup>

My discussion will focus on the following:

- I) The Guiding Law;
- II) Ability to Contract;
- III) Title Insurance;
- IV) Contractual and Tort Liability.

### Guiding Law

The unincorporated association is a creature of an agreement between each of its members and delegates certain powers

and responsibilities to a governing body. On the other hand, an incorporated association is created when members comply with certain statutory requirements.<sup>10</sup> Only recently have some courts begun to recognize that unincorporated associations constitute legal entities, separate and apart from their members.<sup>11</sup> Accordingly, the significant body of statutory and case law which has evolved over the years, setting forth the legal bases and guidelines for corporate operations, has generally been unavailable to unincorporated associations. The unincorporated association does not have the number of examples and court cases as do corporated associations making their standing at times questionable.

#### Ability to Control

The importance of statutory power becomes evident when the homeowner association attempts to obtain insurance for the property and prepare an effective management plan for their land. The charter documents of the homeowner association must authorize and empower the association to carry out certain contractual functions.

#### Title Insurance

Regardless of the agency powers conferred upon the governing board, and unincorporated association may experience problems not experienced by corporations, when applying for title insurance on any real property which it owns. In other words,

the "insured parties" may be deemed to be the individual members of the unincorporated association at the time that the policy of the title insurance was issued.

### Contractual Liability

What are the differences in liability when comparing an unincorporated homeowner association and corporated homeowner association? Being a member in an unincorporated association generally imposes no personal liability for the debts contracted by the association. However, a member could be charged with personal liability if it could be shown that he actually or constructively assented to, or ratified, the contract on which the liability was based.

It has been suggested that purchasing property subject to a recorded declaration of covenants, conditions and restrictions, may constitute a sufficient, implied authorization to hold a member of an unincorporated association personally liable for debts incurred within the scope of the declaration.

Non-profit corporations have been granted the general power to enter into contracts. Furthermore, the officers, directors, and members of such a corporation are generally not personally liable for the debts and liabilities incurred by the corporation. However, in an unincorporated association there is not only an element of risk or personal liabilities for a person serving on the government board, there is also a similar risk for one who is only a member of such an association.



### Tort Liability

The common law provides that since each member of an unincorporated association is engaged in a joint enterprise, the negligence of each member is ascribed to each and every other member. Consequently, a member who is injured cannot sue the association which injured the member, and each member is personally liable to other injured parties for the negligent acts of their fellow members. But, non-profit corporations, by their very nature, are deemed to be separate entities apart from their members. Thus, the incorporated associations may be sued separately, and generally neither the members nor the directors can be personally liable for a tort of the member who was acting on behalf of the corporation.<sup>12</sup>

### PROPERTY RIGHTS

Clustering does more than promote new ideas for designs of housing; it develops an organizational framework that helps control and manage the cluster and its space.

It is important to note that when the cluster concept and homeowner association processes are used together, the traditional notions of property rights change.<sup>13</sup>

Ureil Reichman in, "Residential Private Governments" discusses a few of the instances where a common property right is not allowed because of specific guidelines set forth by the homeowner association. For example,

1. Architectural controls may be imposed to make sure any or additional construction is in harmony with the rest of the cluster.

2. In some instances the right to use common facilities may be suspended by the homeowner association if the board decides that the homeowner in question has violated the regulations.

3. The homeowner association has the right to embody rules by popular majority. However, it is interesting to note that very few substantive criteria are included to limit any future legislation in the association. This is direct contrast to a local municipality which is restricted by Federal and State laws, constitutional standards and administrative norms.

#### HOMEOWNER ASSOCIATIONS IN RHODE ISLAND

This study has examined all of the by-law agreements of cluster developments that are in operation in Rhode Island today. This analysis has identified the components of the by-law agreement is essential for the success of the homeowner association.

The sequence of events which climax in the purchasing of a lot by the homeowner may evolve over many years depending on a variety of factors. The question arises as to the appropriate time in the development process to include the by-laws of the homeowner association. This study advocates that the by-laws be prepared before and presented for approval at the final application stage of the development process. These by-laws should be representative of the proposed cluster and not be a prototype of a previous development.

The following sequence of events illustrates the possible steps in the development of a cluster. These steps may be modified or changed depending on the characteristics of the proposed cluster development. However, it is essential that provisions are made for the preparation of a management program.

1. A developer purchases a piece of land and contemplates a design and marketability plan.
2. An inventory is made of the physical features of the land. Areas are designated as developable and undevelopable areas depending on local regulations.
3. A preliminary plan is proposed to the municipality, and a general framework and plan is developed for the homeowner association management plan.

4. Conferences occur between the developer and planner, eventually (in some cases), arriving on a final plan for development.

5. A final development plan and management plan approved, building permits acquired, and development begins.

6. The sale of lots begins until all lots are sold.

A review of the cluster by-laws reveal the following categories on which the agreements are structured:

1. Name and Purpose;
2. Membership;
3. Meetings;
4. Voting;
5. Officers;
6. Executive Committee;
7. Assessments;
8. Amendments of By-Laws;
9. Dissolution;
10. Obligation of Homeowners;
11. Execution of Instruments;
12. Records of Management;
13. Continued Maintenance;
14. Initial Operation.

These categories provide the general framework of the provisions for the homeowner association. In review of the by-laws of Rhode Island clusters, there seems to have been insufficient consideration in including provisions for a transfer of control from developer to homeowners.

Only one development to date provides this information in the by-law agreement. It provides that the developer has control of the following functions until 85 percent of the house lots are sold.

1. The ability to make amendments to the by-laws.
2. The discretion to make appointment of officers.
3. To establish a voting rights ratio of three votes of the developer to one vote of the homeowner.

The following is a sample of a by-law agreement for a cluster homeowner association. It provides a majority of the essential components necessary for a successful management plan.

BY-LAWS OF OCEAN STATE CLUSTER

ARTICLE I - NAME: PURPOSES

The name of the corporation shall be the Ocean State Development Association. The purposes of the corporations are to hold title to land for the private use and enjoyment of members as a conservation and recreational area; to supervise the use and maintenance of said land and of access thereto and egress therefrom and to pay the costs thereof (including but not limited to personal property and real estate taxes and like municipal charges and all reasonable expenses of organization and operation) and any other corporate expenses out of assessments levied upon the members. The corporation shall be operated for the benefit, pleasure and enjoyment of its members and their families, and for the enhancement of the numbered lots, and may engage in such activities as are reasonably consistent with and permitted by its Articles of Incorporation. The corporation is not organized for business purposes and shall not be operated for profit.

ARTICLE II - MEMBERS

1. Definition. Each person, firm, or corporation who is or becomes an owner (or hereinafter defined) of a numbered lot (which lots are sometimes hereafter singly called a

"numbered lot" and collectively called "the numbered lots") laid out and delineated on that certain plat entitled the Ocean State Cluster owned by John Doe, Engineer, and recorded in the Records of Land Evidence of the Town of -----, Rhode Island, shall be a member of the corporation. The word "owner" as used above shall include only those persons, firms or corporations who, either alone or as joint tenants, tenants by the entirety, or tenants in common, hold record title to a numbered lot either in fee simple absolute or as a recorded legal life estate. In determining whether any person is a holder of such record title, the Records of Land Evidence in the Town of -----, Rhode Island, shall be conclusive, and the corporation and all other parties in interest may rely thereon. Owners of interests other than those described above shall not be members. By way of illustration and not limitation, owners of easements, licenses, term of years, inchoate dower, curtesy initiate, mortgages and equitable interests, shall not be members.

2. Non-Assignability. Membership in the corporation is not transferable or assignable in any way, except to a successor in title to the numbered lot. Such succession shall be automatic, by operation of law, effective upon the recording of the conveyance in question; but such succession shall not relieve the member becoming so ineligible for membership of the obligation to pay any assessments or other charges there-

tofore accrued and unpaid, nor shall such succession affect the validity of any lien imposed, then or thereafter, upon the numbered lot in accordance with the provisions of Article VII, §3 hereof (but a certificate from the Vice President/Treasurer that all such assessments and charges have been paid, and waiving any rights of lien, shall be binding upon the corporation and may be relied upon by any third party).

3. Notices to Members. Any notices of meetings or assessments or other communications may be given to the members by regular mail addressed in care of the street address of the member's numbered lot, unless some other address be furnished to the corporation.

#### ARTICLE III - MEETINGS

1. Annual Meeting. The annual meetings of the corporation shall be held on the third Saturday of January in each year at such time and place in the State of Rhode Island as shall be fixed in the notice or waiver of notice of the meeting. In the event of the failure to hold such meeting at any time or for any cause, any and a-l business which might have been transacted at such meeting may be transacted at the next succeeding meeting, whether special or annual.

2. Special Meeting. Special meetings of the corporation may be held at any time or place in the State of Rhode Island upon the call of the President or any two members of the Executive Committee, or any five members of the corporation.



3. Notice. The Secretary, or any other officer, if the Secretary be absent or refuses or is unable to act, shall send notice of all meetings at least five (5) days before such meeting by post card or letter mailed in the State of Rhode Island. Notice may be waived in writing and will be waived with respect to a member by his or her attendance at such meeting, either in person or by proxy.

4. Quorum. Members representing a majority of the numbered lots shall constitute a quorum but any lesser number may adjourn from time to time.

#### ARTICLE IV - VOTING

1. Persons Entitled to Vote. There shall be one (1) full vote for each whole numbered lot owned, which shall be cast by the member owning the lot in fee simple absolute or owning the legal life estate therein, or which shall be divided among members who are co-owners as set forth below.

2. Co-ownership. If any member shall own a legal estate less than fee simple in a numbered lot, such member shall be entitled to a fractional vote in the same ratio as his legal interest bears to the whole legal interest. If the ownership of a numbered lot be divided between a life tenant and tenants in remainder or reversion, the life tenant shall be a member as defined above, and shall be entitled to vote as if said life tenant were the owner in fee simple of said lot.

3. Proxies. A member may vote in person or by written proxy at any meeting but may not otherwise assign his vote. Written proxies may be granted only to other members or to the developer or to the developer's designee.

4. Voting. Any person entitled to a fractional vote hereunder may cast his vote individually of the other owners or co-owners of the numbered lot involved. Fractional votes may be used to establish the percentage vote necessary for corporate action. Except when otherwise provided by-law or by these by-laws, a majority of the total votes, both whole and fractional, present at any meeting in person or by proxy, shall be sufficient to authorize any corporate action.

5. Definition of "Total Member Vote Outstanding". The phrase "total member vote outstanding" (at the time of any corporate action) as used herein shall refer to the sum of all fractional votes to which the members of the corporation are entitled at that time and shall equal the total numbered lots, the owners of which are entitled to participate in the corporation as members at that time.

#### ARTICLE V - OFFICERS

1. Enumeration. The officers of the corporation shall be a President, Vice President/Treasurer and Secretary.

2. Powers and Duties. The several officers shall have respectively the powers and shall perform the duties customarily appertaining to their respective offices and shall have such further powers and perform such other duties as shall be from time to time assigned by them by the Executive Committee, or by vote of the members.

3. Officers to be Members. To qualify for office each officer must be a member in his own right or a partner in a firm or an officer or employee of a corporation which is a member; provided, however, that until the corporation acquires five (5) members, non-members may qualify for office.

4. Execution of Documents. All checks, drafts, orders and obligations of the corporation for the payment of money, notes, contracts, deeds, mortgages, leases, bonds and other corporate instruments may be signed by any two officers or in such manner as the Executive Committee may from time to time provide.

5. Election. Officers shall be elected at each annual meeting to serve until the next annual meeting or until their successors are duly elected, unless they shall earlier resign or be removed.

6. Vacancies. Any vacancies occurring in any office, or in the Executive Committee because of death, resignation, ineligibility, removal, disqualification or otherwise, shall be filled by the remaining members of the Executive Committee

appointing an eligible person (as defined herein) to the unexpired portion of the term so vacated.

#### ARTICLE VI - EXECUTIVE COMMITTEE

1. Compensation. The property and affairs of the corporation shall be managed by an Executive Committee comprising of five (5) in number, which shall consist of the officers and two other persons who are members or are partners in a firm or officers or employees of a corporation holding membership; provided, however, that until the corporation has five (5) members, non-members may serve. The two members of the Executive Committee who are not officers shall be elected at each annual meeting to serve until the next annual meeting, or until their successors are duly elected, unless they shall earlier resign or be removed.

2. Powers and Duties. The Executive Committee shall be empowered to collect assessments as hereinafter provided; to authorize the expenditures of money and the execution of contracts, deeds and other corporate instruments; to engage attorneys, accountants and the like; to hire and remove employees; to pay taxes and valid municipal charges; to establish rules and regulations for the beautification, enhancement, use and maintenance of the corporation's property consistent with the corporate purposes; and generally to conduct all the affairs of the corporation and to exercise all of those powers except such as by the Articles of Association or by these by-

laws are reserved to the members. Officers and other members of the Executive Committee shall be entitled to no compensation unless specifically voted by a majority of the total member vote outstanding; provided, however, that the Treasurer shall be entitled to reasonable compensation, not to exceed One Hundred Twenty-Five Dollars (\$125.00) per year, for keeping the books and financial records of the corporation.

3. Meetings. The members of the Executive Committee shall meet after the meeting at which they are elected and at such other times and places as they shall by vote from time to time determine. Special meetings may be called by any member, notice of the time and place to be given by the Secretary, or in the event of his absence, inability or failure to act, by the member calling the meeting, in writing at least two (2) days prior to the meeting. Notice may be waived in writing or will be deemed to have been waived by attendance at such meeting.

4. Quorum. A majority of the members of the Executive Committee holding office shall constitute a quorum for the transaction of all business, but less than a quorum may adjourn a meeting from time to time.

5. Action Without Formal Notice. Any vote, resolution or other form of action which shall be in writing and signed by all the members of the Executive Committee shall constitute corporate action without any meeting of the Executive Committee.

ARTICLE VII - ASSESSMENTS

1. Right to Levy. The Executive Committee shall have the right to assess as of January first of each year and collect thereafter from the owner or co-owners of each numbered lot during each calendar year such sums as shall be necessary to defray the anticipated or budgeted annual expenses of the corporation. Assessments shall be equal as among the numbered lots. Special assessments may be made and collected, if and as necessary, only upon affirmative vote of a majority of the numbered lots had and obtained at a meeting of the members.

2. Use. Assessments shall be made and collected for the use of the corporation in defraying corporation expenses, including, but without limiting the foregoing generality, for taxes, maintenance, policing, insurance, filing fees, incorporation expenses, landscaping, gardening, water, postage, stationery, salaries, lighting, attorneys' and accountants' fees, and the like.

3. Liens. Subject to the following limitations, any annual assessment which has not been paid on or before the first day of April in the assessment year shall become a lien upon the numbered lot against which it is made. Any such lien shall automatically be extinguished and terminated if the corporation does not file in the Records of Land Evidence for the Town of -----, Rhode Island, a notice of its intention to claim such lien on or before the 31st

day of December in the year in which said assessment is made. Liens arising hereunder shall be subordinate to any first mortgage on the numbered lot involved.

4. Co-ownership. If two or more persons shall own a numbered lot as joint tenants, tenants by the entirety or tenants in common, such persons shall jointly and severally share and bear the burden of assessment.

#### ARTICLE VIII - AMENDMENT OF BY-LAWS

These by-laws may be amended by the vote required to authorize corporate action; provided, however, that the notice of said meeting shall have stated that a proposal to amend the by-laws is to be acted upon at the meeting; provided, further, however, that the provisions of Article II, Article IV, Article VII and Article VIII hereof may be amended only upon affirmative vote equal to or exceeding two-thirds (2/3) of the total member vote outstanding. A certified copy of any amendment to these by-laws shall be recorded in the Records of Land Evidence for the Town of -----, Rhode Island.

#### ARTICLE IX - INITIAL OPERATION

Notwithstanding any other provision of these by-laws, initially and for so long thereafter as the developer, John Doe, Ocean State Development Association, shall own no less than fifteen percent (15%) of the numbered lots, the following rules shall prevail:

a. These by-laws may be amended or changed by the developer with the concurrence of a majority of members present and voting at a regular or special meeting of the corporation.

b. All officers (not including at-large members of the Executive Committee) of the corporation shall be elected by the developer, acting alone.

c. A quorum (Article III, §4) shall consist of a duly designated representative of the developer.

d. The developer shall, at any regular or special meeting of the corporation, be entitled to cast three (3) full votes for each numbered lot owned by it.

#### ARTICLE X - DISSOLUTION

The corporation may be dissolved and its affairs wound up in accordance with the laws of the State of Rhode Island; provided, however, that any corporate dissolution based on the actions of the members must be approved by a two-thirds (2/3) of the total member vote outstanding. Dissolution of the corporation shall automatically terminate the easements appurtenant to all numbered lots to use the corporation's land for conservation and recreational purposes. In the event of such dissolution the members shall be entitled to share in



the assets of the corporation, or in the profits of any sale thereof, after all corporate debts have been paid, in the same proportion that they are entitled to vote. Notice of such dissolution of the Association shall be given to the Town Clerk of the Town of ----- no less than ninety (90) days prior to the proposed effective date of such dissolution.

A true copy,

ATTEST:

---

Secretary

(Corporate Seal)

CHAPTER : 5

LEGAL ANALYSIS

## INTRODUCTION

The State of Rhode Island does not specifically provide for cluster developments in its present zoning enabling legislation. It does, however, enable the cities and towns in the State to divide the municipality into districts of numbers, shapes and areas, and within such districts, regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.<sup>1</sup>

A general reading of this legislation would give one an impression that a cluster zone would be permitted in a town or city in the State, if it complies with the goals of the legislation. However, a major area of ambiguity is centered on the requirement that "all such regulations shall be uniform for each class of buildings throughout each district".

Because clustering normally reduces the lot dimensions required, it gives the impression to many that there is a change in density. This misconception about the size of the cluster has given suspicion to whether the cluster would be in conformance with the uniformity guidelines of the existing legislation.

North Kingstown, South Kingstown, Smithfield, and Coventry have zoning provisions for clusters. North Kingstown, however, is the only town to provide for clustering in its town charter.<sup>2</sup>

The advantage of having the authority to cluster at the town level is questionable, since all cities and towns are the creatures of the State, and they have only the authority conferred upon them by the State. The question arises as to whether or not preemption by the town is involved, as the town is delegating an authority which is not delegated by the State. The cities and towns have been given constitutional authority to adopt regulatory measures, but only if the local measures do not conflict with the general laws of the State.

To date, there are no court cases in Rhode Island challenging the validity of cluster housing and development, hence the following is a review of the legal literature and cases concerning clustering in other states. The majority of these cases deal with planned unit developments which have many of the same problems as clusters. A review of this literature provides clarification of specific issues which are likely to become important in Rhode Island as clustering becomes a more widely used development alternative.

Since clusters were first adopted, there have been many court cases challenging their legitimacy. The common complaint centers on which administrative or legislative body in a

community has the power to grant approval of a cluster. The argument is made that the planning commission does not have the power to approve a cluster, because it would be a legislative function and thus being apart from their administrative role. This role is to be reserved for the zoning board. The distinction should be made that in these situations the case law is concerned with a planning commission approving a zoning change rather than approving a proposed cluster which conforms to existing zoning standards. This distinction is important to note because even when there is a designated cluster zone, there tends to be misconceptions on the part of local officials and homeowners that the approval of the cluster automatically increases the density in that zone. The ambiguity which arises illustrates that there are major conceptual problems associated with the approval process of clustering.

#### STATUTORY LIMITATIONS

The area of most interest in the broad scope of statutory limitations is the separation of powers doctrine as applied to State and local powers. The common contention is that a planning commission or board is given legislative powers in approving a zone change in a locality.

This argument is based on the premise that giving an administrative body (planning commission) legislative powers is

in violation of the constitutional provisions which maintain that legislative powers shall reside in the legislative branch of government.

In 1925, Bassett et al. prepared a model planning law, that provided for planned unit residential development (Section 12), and permitted the local legislative body to extend to its planning board the power to approve subdivision plans "indicating lots where group houses, apartments, local shops, are proposed to be built". Section 12 went on to make clear that "such plan if approved by the planning board, shall modify, change or supplement the zoning regulations of the land shown on the plat". Two general standards were provided for the guidance of the board. First, "there shall be no greater average density of population or cover of the land with buildings than is permitted in the district wherein such land lies". Second, no such plan shall be approved by the board, "unless in its judgement the appropriate use of adjoining land is reasonably safeguarded and such plan is consistent with public welfare".

Section 12 of the Basset model received its first test in Hiscox vs. Levine, 31 Misc. 2d, 151,216, NY S 2d 801 (Sup. Ct., 1961), as follows:

The developer presented to the planning board a subdivision plat under which he proposed to cluster single family detached homes already allowed in the

district on lots of one-half acre, rather than on lots of one acre as required by existing district regulations. Six years previous to the developer's application, the legislative body authorized the planning board to exercise powers under Section 281 of the town law. The developer proposed to dedicate the balance of the tract for a public park. The planning board approve the developer's plan, but the action was challenged by the neighbors. There appears to be support from the density calculations for the neighbors' argument that the number of dwelling units proposed exceeded the number which could have been built had the one acre minimum been preserved. However, this was not the issue upon which the court based its decision. Rather, the court decided that the action of the board allowing a reduction in the prescribed lot size on so large a tract (100 acres) encroaches on the legislative authority to make a zoning change. The analysis of this case has raised the question to whether the court's decision, that the planning commission had no power, under town law 281 to "change" the regulations on so large an area, rested on a point of statutory interpretation or whether the court was laboring

under the belief that town Law 281 would likely be unconstitutional if the planning commission made such a change.

The case of Chirinko vs. So. Brunswick T P Planning Board 77 N.J. Super. 594,187 2d, 221, focused on the powers granted to the planning commission. Although the state zoning law does not specifically empower municipalities to provide an option to developers for clusters or density zoning, such an ordinance reasonably advances the legislative purposes of securing open spaces, preventing overcrowding and undue concentration of populations. Nor is it an objection that uniformity of regulation is required within a zoning district, N.J. S.A. 40:55-31. Such a legislative technique accomplishes uniformity because the option cluster is open to all developers within a district and escapes the conclusion that it is compulsory.

In Midtown Properties Inc., vs. Madison, T.P. 68 N.J. Super. 197,210, 172 A 2d Fed. 40 (Law Div., 1961), the reasoning in the case is as follows:

The plaintiffs contend that the cluster provision or open space ordinance was enacted for the special benefit of the owner, Yenom Corporation. The defendants maintained that they responded with reasonable legislation, general in effect, to the problem of a large subdivision without land areas



available for schools, recreation, and green spaces. The Superior Court, law division, Furman, J.S.C. held that enactment of ordinances which permitted reduced lot sizes and frontages in subdivisions upon deeding of land for park, school, and other public purposes was in good faith; was in accordance with legislative objectives in zoning; and granted only incidental benefits to individual subdivision developers, whose benefits other than savings in street construction costs, were obscure while the municipality obtained more land for public use; additionally, the township planning board had given adequate consideration of cluster or density zoning.

In Hiscox, the Superior Court held that the state or local statute allowing town boards to empower planning boards to make reasonable changes in zoning ordinances (regulations) limits the authority of a planning board to make administrative changes and does not confer power to amend zoning regulations, rezoning large tracts of land. Accordingly, a planning board has no authority to grant a developer the right to build homes on 63 acres of land zoned for one acre in accordance with regulations applied to one-half acre. The case illustrates the need for sufficient standards to guide the administrative agency in the exercise of

its powers. Considerable attention must be given to the discretionary powers of the administrative agency; its actions can have tremendous effects on a municipality.

The issue is additionally addressed in Gore vs. Hicks, Sup. 115 NYS 2d 187, where the court held that the provisions of village law purporting to authorize trustees of the village to delegate to such board the power to approve or disapprove a subdivision map were constitutional.

The case of P.B. Lutz vs. City of Longview, Washington Rpt. 2d, 83, 1973-1974, 566, illustrates the problems when a planning commission is given legislative powers. The first issue addressed in the case is, "What is the legal nature and effect of the act of imposing a PUD on a specific parcel of land?" To this issue, the court responded, "We hold it is an act of rezoning which must be done by the city council because the council's zoning powers come from the statute and that is what the statute requires". It is emphasized that a change in a permitted use is a rezone or amendment of the zoning ordinance.

In Milbrae Ass'n. for Res. Survival vs. Milbrae 262 Cal. App. 2d 222.69 Cal. Repr. 251 (1958), the court recognized that the city commission had no inherent power to delegate this legislative authority to the planning commission. In State ex Re Bowen vs. Krueger, 67, Wn. 2d 673,409, P 2d 458 (1968), the petitioner contested that the actions of the plan-

ning commission constitutes illegal spot zoning. While in Smith vs. Skagit County 75 Wn 2d 715,743, 453, P 2d 382 (1969), the petitioners argue that action taken by the planning commission constitutes spot zoning since the approval of the PUD was not in accordance with the comprehensive plan. "A comprehensive plan is not a regulatory measure but is a blueprint which suggests various regulatory measures." In State ex Rel. Standard Mining and Development Co. vs. Auburn, 82 Wn. 2d 34 510 P 2d, the court recognized the principles that zoning ordinances constitute, in principle, a valid exercise of the police power and will be upheld if there is a substantial relation to the public health, safety, morals or general welfare. In Swimming River Golf and County Club, Inc. vs. Borough of New Shrewsbury, 30 N.J. 132,152, A 2d 135 (1959), the court suggests that the power to grant reductions in lot sizes, though limited to a definite schedule set forth in the governing of the ordinance, is a "special exception" power which cannot be given to the planning board but belongs exclusively to the board of adjustment.

Whereas, in Orinda Homeowner vs. Board of Supervisors 11 Cal. App. 3d 768,90, Cal. Rptr. 88,43 ALR 3d 880, the court defined cluster housing as "distinct from PUD as a device for grouping dwellings to increase dwelling densities on some portions of the development area in order to have other portions free of buildings".

It is clear from these cases that a planning commission does not have the authority to make a zoning change to accommodate a cluster proposal. However, it is evident that when application is made for a cluster; and there is no density change the planning commission has the authority to approve the cluster.

#### CONSTITUTIONAL LIMITATIONS

Jan Krasnowiecki<sup>3</sup> illustrates the confusion when comparing constitutional and statutory cases affecting cluster developments. The statutory cases which this study has reviewed hold that planning boards have no power to rezone. Krasnowiecki, maintains that the positions of the cases have been stated with such vehemence that one can be misled into thinking that the court's objection was of a constitutional rather than statutory nature. The statutory cases are based on interpretations of existing zoning and enabling statutes.

Constitutional challenges may also arise in the case where the cluster is located in a special use district and there are mandatory controls specified. These controls must satisfy two constitutional requirements: substantive due process and equal protection. The due process clause is the yardstick against which all social and economic legislation is measured to determine "reasonableness". In the specific field of land use controls, the reasonableness of any legislative

enactment depends heavily on the criteria set forth in a plan.<sup>4</sup>

If a particular use or an arrangement of buildings is likely to be harmful to the development of surrounding land uses, there is likely to be no due process objection to its regulation or even its total prohibition.<sup>5</sup> However, if mandatory controls are used to implement the plan for a special district, and the harm being attacked by the plan is not the typical nuisance case presented in Hadacheck vs. Sebastian<sup>6</sup> or Miller vs. Schoene<sup>7</sup>, the reasonableness of the plan is put at issue.<sup>8</sup>

This legal analysis has been able to identify one case which approaches a constitutional issue concerning planned unit developments. The case is Mann vs. City of Ft. Thomas, Ky., 437, SW 2d (P 1968). The facts of the case are as follows:

The appellants made application for a special permit for a planned unit development in a residence B zone. The planning commission held a hearing and then denied the permit on the grounds that the proposed development would not promote the health, safety and welfare of the public, and would not be compatible with the character of the zone in which it was to be located.

The appellants brought suit in the circuit court alleging that the provisions of the amended ordinance establishing the conditions and procedures upon by which a permit could be granted were unconstitutional on the grounds that they granted arbitrary power to the planning commission. The circuit court held the amended ordinance constitutional and found that the planning commission had not acted arbitrarily. Thus, the facts of this case seem to imply that the planning commission does in fact have the power to approve and deny a special permit for a PUD development.

The court held that:

The appellants did not have standing to attack the constitutionality of the provisions of the ordinance for the granting of permits for PUD because the appellants could not obtain the ultimate relief they sought even if the provisions were held constitutional.

The reason is that if the provisions of the ordinance for granting of permits were held unconstitutional there would remain no authority at all for construction of a PUD in a Residential B zone. The original ordinance in 1958 specified no provisions for PUD in 1964, and an amendment was passed which provided a special permit for PUD with approval by the planning

commission. If the authority given to the planning commission was held invalid on the grounds that it is a grant of arbitrary power, then the entire 1964 amendment would have to fall as the remaining provisions of the amendment are wholly dependent on the permit provisions.

CHAPTER : 6

COST ANALYSIS



## INTRODUCTION

One of the most important benefits of clustering is the increased attention given to site planning. The developer should make careful analysis of the physical features of the site and propose a development in accordance with specific natural limitations of the site. The analysis contributes in the long-run to savings in development costs; because the most developable land is allocated for construction avoiding areas where building may be permissible but not favorable.

This chapter will examine preliminary cost data from Rhode Island clusters. This study realizes that a more extensive cost analysis is needed to evaluate the savings from clustering.

## CLUSTER THE BENEFIT OF PLANNED GROWTH

The cluster development approach formulates an inclusive planning process which will hopefully assure a better planned community.

The Council on Environmental Quality, issued a major report, The Costs of Sprawl,<sup>1</sup> which analyzed the costs and benefits of various types of developments. The study was in depth in its analysis of the variable affecting sprawl today and also comprehensive in its literature search of re-

levant materials. It is important to review the conclusions of the study as they give credence to the effort of establishing planned communities.<sup>2</sup>

The major conclusions can be summarized as follows:

1. Planned growth of all densities is less costly to create and operate than sprawl in terms of environmental, economic and personal costs, and energy consumption.

2. Economic and environmental costs are likely to be less, at higher densities to house and serve a given population.

3. Planning results in savings; however, density is a much more influential cost determinant. The greatest cost advantages occur when the higher density planned developments are contrasted with low density sprawl.

This study reinforces the idea that clustering can become a useful development alternative for communities that want to accommodate growth and preserve natural amenities that are valuable to the total community.

#### CLUSTER SAVINGS

A major benefit of clustering are the cost reductions accrued during project construction. These cost savings are made possible by the reduction in lot sizes and a decrease

in the distances required between houses. The construction savings may be significant, thus making the cluster an appealing venture to both developers and communities. Prices in most phases of construction have escalated as shown in Table 2.

TABLE 2  
INCREASE IN MATERIAL COSTS, 1973-PRESENT<sup>3</sup>

<u>Item</u>	<u>1973</u>	<u>Present</u>	<u>Difference</u>
Binder Stone	\$1.30/L.F.	\$ 4.85	+ 3.53
Finish Coarse	\$1.70/L.F.	\$ 6.05	+ 4.35
Highway Layout	\$0.10	\$ 2.00	+ 1.90
Fire Hydrants	\$650.00	\$950.00	+350.00

L.F. - linear foot

#### CLUSTER vs CONVENTIONAL DEVELOPMENT - COST ANALYSIS

The following will be a comparison of estimated costs for a new cluster development in North Kingstown, Porter Estates, and an existing single-family development, Heritage Hills. (See Table 3.)

The cost comparison of development modes illustrated in Table 4 indicates a lower cost for site development through clustering. However, the highway and water costs are considerably less in the cluster style on a per acre basis. It must be realized that the ranges of savings available depend to a great extent on the design criteria of the development. The quality and standards of the development play a major role

TABLE 3  
COST COMPARISON OF CONVENTIONAL CLUSTER SUBDIVISION<sup>4</sup>

	<u>Conventional</u>	<u>Cluster</u>
	<u>Heritage Hills</u>	<u>Porter Estates</u>
Total Acres:	27.10	76.63-54 acres housing
Total Lots:	36	109
Average Lot Size:	3/4 acre	1/4 acre
<u>Calculation of Average Construction Costs/Acre</u>		
Highway:	\$2.06/acre	\$1.12/acre
Water:	\$797./acre	\$492./acre
Survey:	\$78./acre	\$320./acre
Drainage:	\$374./acre	\$300./acre

in comparing the overall savings in a development.

The Land Design Research group has compared in detail the costs of a conventional and cluster subdivision.<sup>5</sup> The conventional plan arranged housing in a rectangular manner, while the cluster plan placed the houses in carefully planned groups in order to maximize the amount of open space. The following are the site characteristics of both types of development (see Table 5).

TABLE 4  
SITE DESIGN OF A CONVENTIONAL vs CLUSTER DEVELOPMENT

A

Conventional Neighborhood Plan

Major Land Use

Residential	156.59 acres*	94% of 166 acres
Open Space	9.41 acres**	6% of 166 acres

\*Approximately 7 acres of the residential land is used as buffer strip along the perimeter roads.

\*\*The 9.41 acres include the minimum requirement for the flood plain. An additional 0.81 acres were allocated for storm water management.

Residential Program

Single-family detached -- minimum lot size 8,000 S.F.  
472 dwelling units on 156.59 acres  
Average Net Density -- 3.01 DU/AC

Street Standards

Collector/Subcollector: 60' R.O.W.\* 36' Pavement  
Minor Streets/Cul-de-sac 50' R.O.W. 30' Pavement  
Curbs and gutters

\*A portion of the collector street (1040 L.F.) is shown as a 70' R.O.W. w/44' pavement.

Total Roads	25,781 L.F.
L.F. Road/DU	55 L.F.
Total Curb/Gutter	48,208 L.F.
L.F. Curb/Gutter/DU	102 L.F.
Total Road Pavement	837,970 S.F.
S.F. Pavement/DU	1,775 S.F.
Total Storm Sewer	15,250 L.F.
L.F. Storm Sewer/DU	32 L.F.
Total Water	31,688 L.F.
L.F. Water/DU	67 L.F.
Total Sanitary Sewer	40,755 L.F.
L.F. Sanitary/DU	86 L.F.

TABLE 4  
(continued)

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B

Cluster Neighborhood Plan

Major Land Use

Residential	131.4 acres*	79.2% of 166 acres
Commercial	1.0 acres	0.6% of 166 acres
Open Space	33.6 acres**	20.2% of 166 acres

\*Approximately 6.6 acres of the residential land will be used to provide a buffer strip along perimeter roads.

\*\*The 33.6 acres include the minimum requirement for the flood plain, recreational facilities (swimming pool and tennis courts are illustrated), pedestrian circulation, and additional land for storm water detention and channelization).

Residential Program

Unit Type	(Minimum Lot Size - 4,000 S.F.)	Acres	Units	Net Density
2.75	Single-family Detached	33.05*	80	2.42
4.00	Single-family Detached	39.57*	147	3.71
5.00	Single-family Patio	19.62	93	4.74
5.00	Single-family Duplex	23.69*	100	4.22
7.25	Single-family Duplex	8.21	52	6.33
		124.14	472	3.80
	Collector/Subcollector Streets	7.26	Avg. Net	
	Total Acres	131.40	Density	3.59

\*Residential acres include 50' buffer strip which totals 6.66 acres.

Street Standards

Collector/Subcollector Streets	40' R.O.W.**	26' Pavement
Minor Streets/Cul-de-sacs	28' R.O.W.	20' Pavement
No curbs and gutters		

\*Small segment of collector street (600'+) at 60' R.O.W., 44' pavement.

Source: Cost Effective Site Planning, Land Design Research, Inc. 1976, p. 114, 116.

TABLE 5  
SUMMARY OF SITE DEVELOPMENT COSTS

	CONVENTIONAL		CLUSTER	
	<u>Total Costs</u>	<u>Costs/DU</u>	<u>Total Costs</u>	<u>Costs/DU</u>
Street Pavement	\$ 392,379	\$ 831	\$ 246,048	\$ 521
Curbs and Gutters	\$ 351,918	\$ 746	---	---
Street Trees	\$ 206,248	\$ 437	\$ 187,320	\$ 397
Driveways	\$ 330,400	\$ 700	\$ 254,540	\$ 539
Storm Drainage	\$ 310,950	\$ 659	\$ 179,950	\$ 381
Water Distribution	\$ 293,208	\$ 621	\$ 244,694	\$ 518
Sanitary Sewer	\$ 459,462	\$ 973	\$ 403,419	\$ 855
Grading	\$ 258,986	\$ 549	\$ 167,740	\$ 355
Clearing and Grubbing	\$ 118,200	\$ 250	\$ 82,800	\$ 175
Sidewalks	\$ 124,000	\$ 263	\$ 117,200	\$ 248
Subtotal	\$2,845,751	\$6,029	\$1,883,711	\$3,991
Engineering Fees (5.6%)	\$ 159,362	\$ 338	(5.8%) \$ 109,255	\$ 231
TOTAL	\$3,005,113	\$6,367	\$1,992,966	\$4,222
Actual Difference on a Per Lot Basis			\$2145	
% of Conventional Lot Cost		100%		66%

Source: Cost Effective Site Planning, Land Design Research, Inc., 1976, p. 119.

It is important to note that the overall density is the same for both of these development plants. The cost comparison in Table 6 illustrates that there are considerable savings when the cluster alternative is chosen.

#### OTHER COSTS

The cost of sewerage becomes a major factor in estimating the impact of developments. Under the conventional plat development communities are faced with somewhat of a dilemma. If the community services the area with sewers, it increases the probability that the area will be developed. If there are no sewers, subdivisions will occur but utilizing septic tanks and leaching fields. In either event, the developer will do much of the installation; but the extra costs, however, will be passed on to the public.<sup>6</sup>

A cluster development situated in the suburban fringe can cope with septic tanks economically. Proper site design and analysis of the physical properties of the soil can insure that the cost will be less than in a conventional development.

Storm sewerage is another cost which may be reduced with the development of a cluster. Because of the reduced lot dimensions and narrower frontages, the cluster needs less linear feet of road than do the conventional subdivisions. This reduction also accrues considerable savings in the amount of storm sewers, curbs, and widths of roads needed.<sup>7</sup>



CLUSTER HOUSING COSTS

Presently, the only clusters which are in active use are located in North Kingstown. Coventry and Smithfield may soon have cluster housing available to its residents as there are clusters presently proposed for both of the communities.

The cost of cluster housing is an important factor to recognize. A survey of the active clusters in North Kingstown reveal the following:<sup>8</sup>

TABLE 6  
CLUSTER HOUSING COMPARISON

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Single Family - Average Purchase Price

Annaquatucket	- \$68,300
Edgebrook	- \$57,800
Oak Hill Heights	- \$47,416
Porter Estates	- \$40,000

Townhouses - Average Purchase Price

Hamilton Gate	- \$60,000
Cedarhurst	- \$50,764

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These figures represent the average purchase prices calculated from the units sold at the beginning of the development to the present; and may not truly represent the present market value in the town. Thus, it can be assumed that these prices are now higher than shown.

### CALCULATION OF BENEFITS AND ASSOCIATED PROBLEMS

The calculation of financial benefits from a cluster may be difficult to calculate because of two processes which often arise. The first deals with the length of time it requires to develop the cluster. In this situation the cluster may take many years to reach final completion because of the multi-phases of the development plan. During this time period, the developer may be confronted with a rising inflation rate which may add a variety of costs to the price of the cluster. There are very few communities which make tax or compensatory provisions for this situation.

The second case deals with the ownership of the cluster before the lots are sold. There are two situations which commonly occur in the development of a cluster. Firstly, a developer may retain complete control over the cluster until all the lots are sold. This means that he administers both the construction and coordination of the cluster. Alternatively, the developer may sell the individual lots to various builders thus transferring the net benefits to another party. The exchange in initial ownership of the cluster in the pre-development stage may be reflective of cash flow considerations taken by the developer in lieu of the multi-phases of the development.

Jan Krasnowiecki<sup>9</sup> provides an interesting discussion of costs in a planned residential development. The issues he raises are relevant to the cluster development process.

The following discussion is based on a hypothetical example in which a developer proposes a residential development in the township of Tredyfrin, New Jersey.

The following is Section 1608 of the Tredyfrin ordinance which provides for planned residential development:

A. THE SIMPLE CLUSTER - STEP BY STEP

The following is Section 1608 of the Zoning Ordinance of Tredyfrin Township, Pennsylvania (as revised to date, March, 1968):

§1608. Special Provision for Planned Residential Development.

In order to permit a better and more attractive pattern of residential development than is possible under the usual district zoning requirements geared to the individual lot, the lot area requirements of R 1/2 and R-1 Residence Districts may be modified in the case of a plan for residential development which complies with the requirements of this Section. Among the objectives of this planned development provision are: (1) a more varied, efficient, imaginative and economical development pattern in terms of such things as increased flexibility in the location and arrangement of homes and reduced length of street and utility improvements, (2) development of sound residential communities, and (3) a more attractive and usable pattern of open space.

1. Any plan for development under this Section shall be in accordance with Township subdivision procedures and shall comply with all other pertinent zoning requirements.

2. The area of the tract of land for which a plan is submitted shall be not less than 30 acres in size.

3. In the case of a plan which is approved in accordance with the requirements of this Section:

a. The minimum lot area requirements applicable to an individual lot may be reduced as follows, provided that the average lot area for the entire tract or subdivision shall not be reduced to less than that required in the District:

1) In an R 1/2 Residence District, to a lot area of not less than 40,000 square feet.

2) In an R-1 Residence District, to a lot area of not less than 20,000 square feet.

b. Except for the lot area per family requirements, all requirements of the District shall apply.

4. The tract of land to be developed shall be in one ownership, or shall be the subject of an application filed jointly by the owners of the entire tract, and it shall be agreed that the tract will be developed within a reasonable time under single direction and in the manner approved.

5. In order to comply with the average lot area requirement for the tract, required in paragraph 3a above, sufficient area within the proposed development shall be set aside for common open space purposes and/or a certain percentage of oversized lots shall be included in the plan. Street area shall be excluded in computing the average. In no case shall the number of dwellings permitted on a tract of land exceed the number which would have been permitted were the district regulations not modified.

6. Any areas to be set aside or reserved for park, woodlands, conservation, playground, or other open space purposes, such as the preservation of natural features or historical areas, shall (a) be suitable for the designated purpose, (b) be not less than six acres in size, (c) be consistent with the plan and policy for future land use for the Township and (d) contain no structure other than a structure related to outdoor recreational use.

7. Areas for common open-space use may be reserved for private use, or they may be dedicated to the Township. Areas which subsequently are to be dedicated to the Township shall be acceptable to the Township, and satisfactory written agreements or other arrangements, acceptable to the Township, shall be made for the perpetual preservation and maintenance of all common areas to be set aside and reserved for private use. No land of such size as to be capable of further subdivision under the District regulations shall be included in determining the average lot area, unless the possibility of such further subdivision is eliminated by a deed restriction or agreement in form acceptable to the Township Solicitor and duly recorded in the office for the Recorder of Deeds of Chester County, by transfer of development rights to the Township, or by dedication for park or other open space purpose to the Township.

8. Each dwelling shall be served by public water supply and by public sanitary sewers or by sewer facilities approved by the Township which will assure adequate disposal.

9. The application for development shall be accompanied by a plan or plans for the entire tract, which plan or plans also shall comply with all requirements of the Tredyfrin Township Subdivision Ordinance and other applicable ordinances. The plan shall clearly designate the proposed use of each area of the tract, including areas which are to be devoted to park, playground or similar use.

This is a hypothetical example which illustrates some of the factors to be considered in the calculation of costs in a cluster.

A developer discovers 54 acres of land in the R-1 district in Tredyfrin which is for sale at \$240,000. The owner is willing to sell the land in 18 acre parcels for \$80,000. each, but those are his immediate cash terms. The developer has the option to buy the whole tract, pay cash for the 18 acres, mortgage the remaining 36 acres or take an option for development. The price will go up if the option on the interest on the mortgage is selected, so the developer ends up in roughly the same position as if he had bought the 54 acres for \$240,000. parcel or \$80,000. cash and financed the balance at 8 percent per annum.

Let us assume that the developer builds 20 houses on the 18 acres and plans to make \$2,500. per house. This \$2,500. must be viewed in perspective to the \$80,000. which he has already invested in the land. It is important to note that in this example we assume that all of the costs will turn over within one year. This is not the reality of the situation, because of the many problems the developer may have in marketing, and escalation in construction costs.

If the developer is forced to carry the land into the future, he is able to offset his costs by having the land ready for development or by charging higher prices for the

houses in the next year. Another way of achieving the same result would be to say that the developer's houses will not sell at an average price of \$24,000. unless he offers more in the way of a "community" than is evidenced by his 20 homes.

CHAPTER : 7

VISUAL ANALYSIS



INTRODUCTION: VISUAL ANALYSIS - I

The first part of this Chapter will illustrate the most common types of cluster housing in Rhode Island today. Considerable focus will be given to Cedarhurst I, on Wickford Harbor, North Kingstown; visually this cluster can illustrate many of the components which form a "cluster". The analysis will also inventory other types of clusters which are in use today.

#1

CEDARHURST I  
on Wickford Harbor  
North Kingstown  
RI



Approach:



- #2 Approaching Cedarhurst from Wickford Harbor or from land gives the impression that this development is truly, "clustered". The dwelling units are grouped close together, and there is considerable open space in plain view.



#3



Cedarhurst, on Wickford Harbor, uses the townhouse style of housing; these units are two-story, and combine a cohesive visual appearance and the necessary individual private areas.

The individual units feature private entrances and private open space which directly adjoins the dwelling unit.

#3a



Housing Style:

Visually, the cohesiveness of the building design preserves the private and scenic nature of the open space.

#3b



Open Space:

The preservation of undeveloped open space insures that an area will be undisturbed; enabling it to mature and provide the necessary habitat for many wildlife species.

#4



Open Space:

101

Cedarhurst provides both a swimming pool area, and tennis courts for the enjoyment of the homeowners. The facilities are within a few minute's walk from any of the townhouses.

#4a



Adjoining each dwelling unit is an enclosed private, open space which is designed to serve the private functions of the homeowner.

#4b



Transportation Access  
and  
Parking:

The main road in Cedarhurst provides direct access to the cluster units. A pleasant visual scene is accomplished through the use of underground utilities.

#5



All homeowners have a designated off-street parking space area, which is numbered. A band of evergreens provide a useful buffer, separating parked cars from direct view of the dwelling units.

#5a





Transportation Access  
and  
Parking:

Guest and temporary space are designated as on-street parking throughout the cluster.

#5b





#6

Hamilton Gate is a small cluster which utilizes a combination of private open space and common open space effectively. A community clubhouse is located on the common area, and serves as a meeting place for cluster business, and various recreational activities.

The houses are attached single-family dwelling units with the garage wall providing the common link.

#6a



Transitional Cluster - North Kingstown, RI:

#7



Single family houses similar to those found in a "typical" subdivision are popular in many clusters. These houses are located on large or medium size lots and frequently are set back off the road.

The transitional cluster does not utilize the advantage of grouping houses closer together; but rather constructs on the most desirable area and saves the remainder for open space.



#7a

PORTER ESTATES - North Kingstown, RI

#8



Porter Estates is situated in the background of a large, residential compound in the rolling hills of Slocum.

This stage of the cluster has single family units located in a cluster arrangement, with considerable open space adjoining the houses.



#8a

PORTER ESTATES - North Kingstown, RI

This field will serve a variety of recreational activities for the homeowners. An extensive hardwood forest in the background, when properly managed can supply both fuel and a variety of wildlife species for the enjoyment of the residents.

#8b



## VISUAL ANALYSIS - II

This section will illustrate cluster design alternatives for four land types: hardwood forest, coastal ecosystem, upland wetland, and an area with slope and geologic constraints.

The cluster concept enables a variety of development to take place in natural environments, with careful site design and planning. It becomes important to communicate to the homeowners that they are purchasing more than a home on a single lot; in essence, they are receiving a natural habitat with distinct features which must be identified and maintained.

The first drawing for each Habitat type will illustrate an aerial view of the cluster while the second will give the reader a ground perspective.

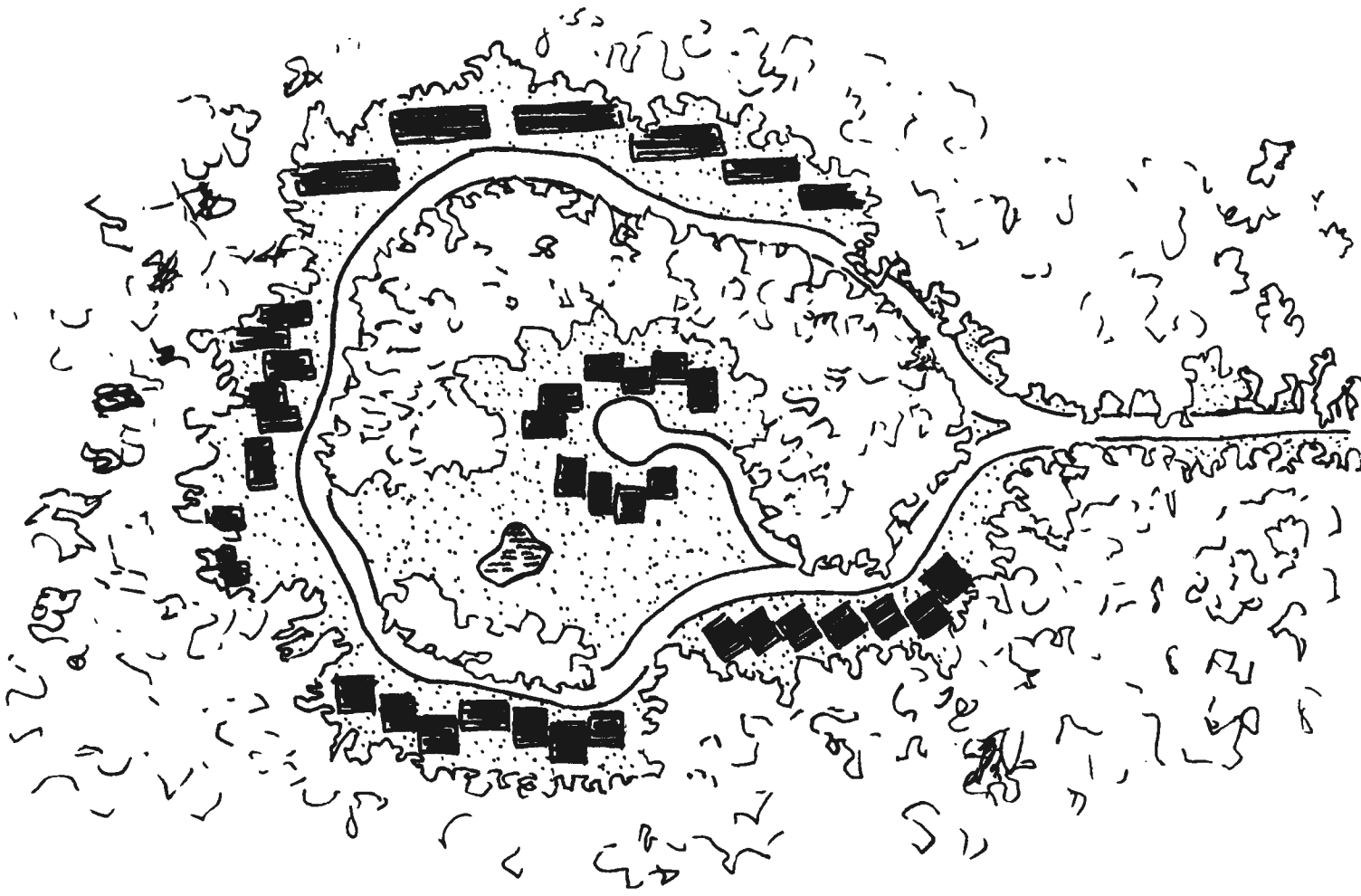
#9

## Natural Habitat - I

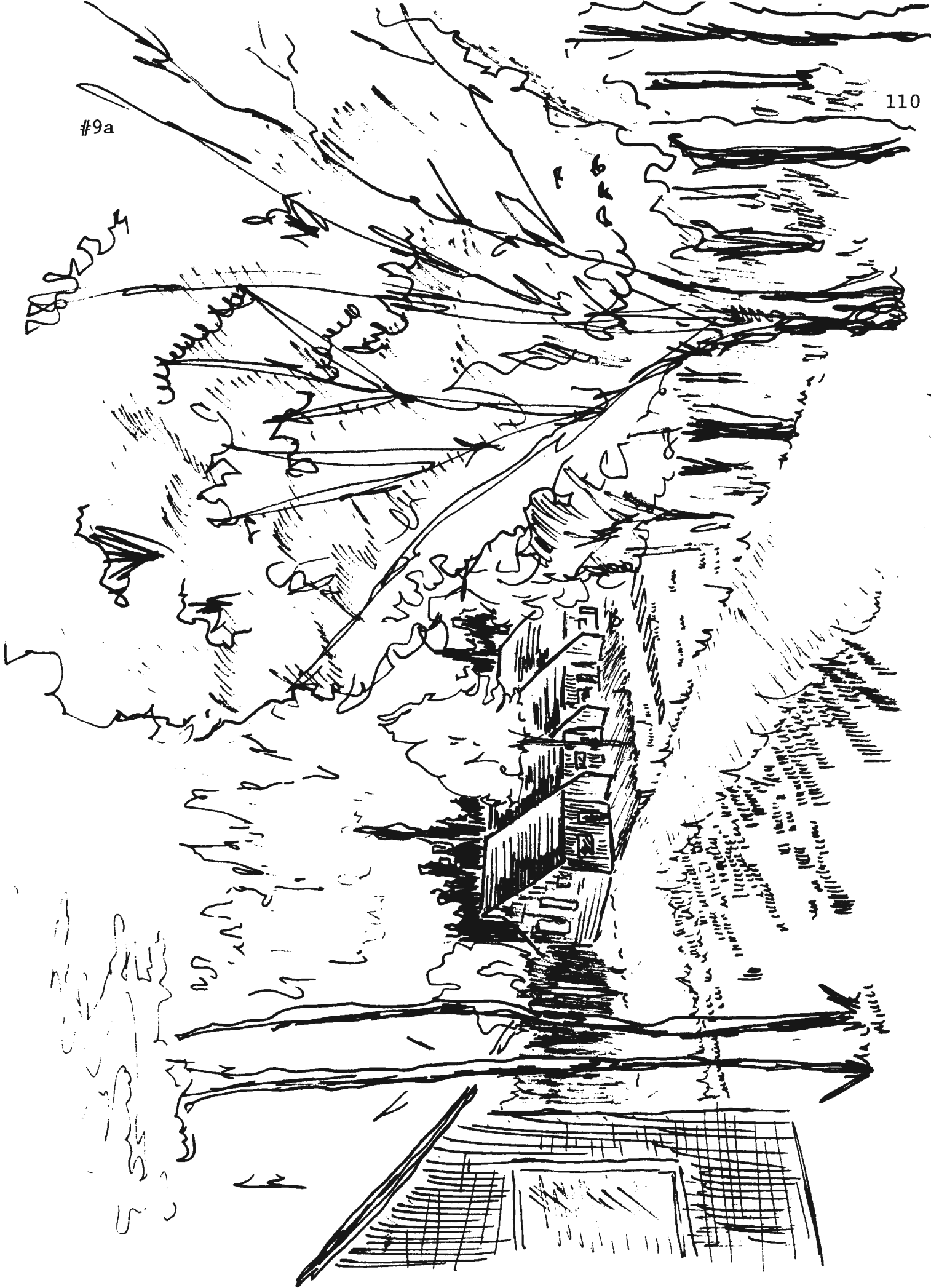
HARDWOOD FOREST

The forest is a biological community of great complexity; there are many factors which contribute to the diversity and uniqueness of this ecosystem.

Cluster housing can be used to preserve a majority of the forest vegetation by grouping the houses in distinctive "clusters". Homeowners benefit from well-planned housing and the amenities derived from a woodland ecosystem.



#9a



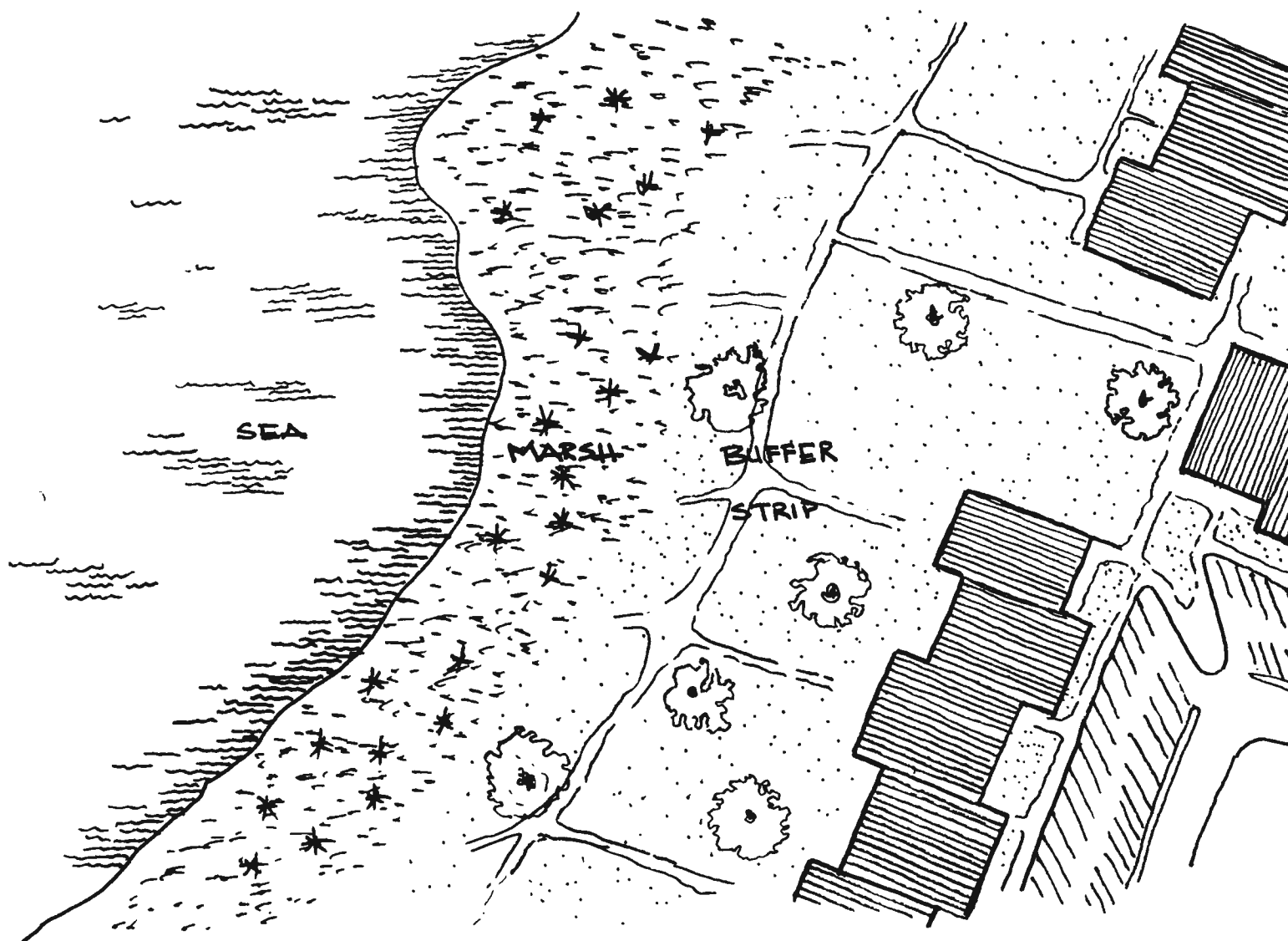


#10

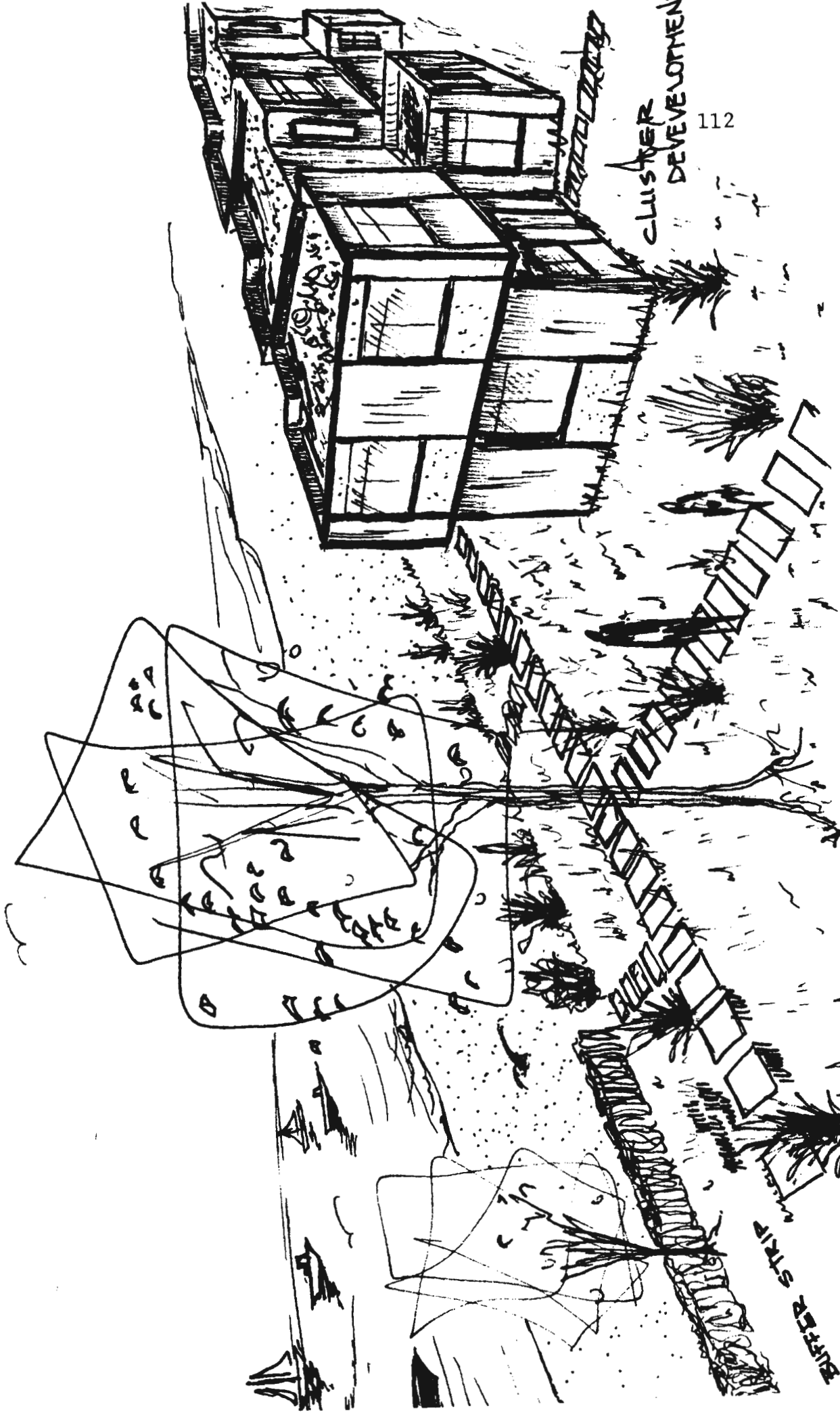
Natural Habitat - II

COASTAL ECOSYSTEM

The homeowners of the coastal cluster are able to enjoy unlimited visual benefits from this type of ecosystem. The constant activity of the ocean provides an attraction to many homeowners. In order to preserve the integrity of this system, the access to the sea via the salt marsh must be planned for carefully. The use of a wide buffer strip with designated access points will help to achieve this control. However, when there are dune complexes present, the buffer strip should be used to limit access in this area.



#10a



CLUSTER DEVELOPMENTEN 112

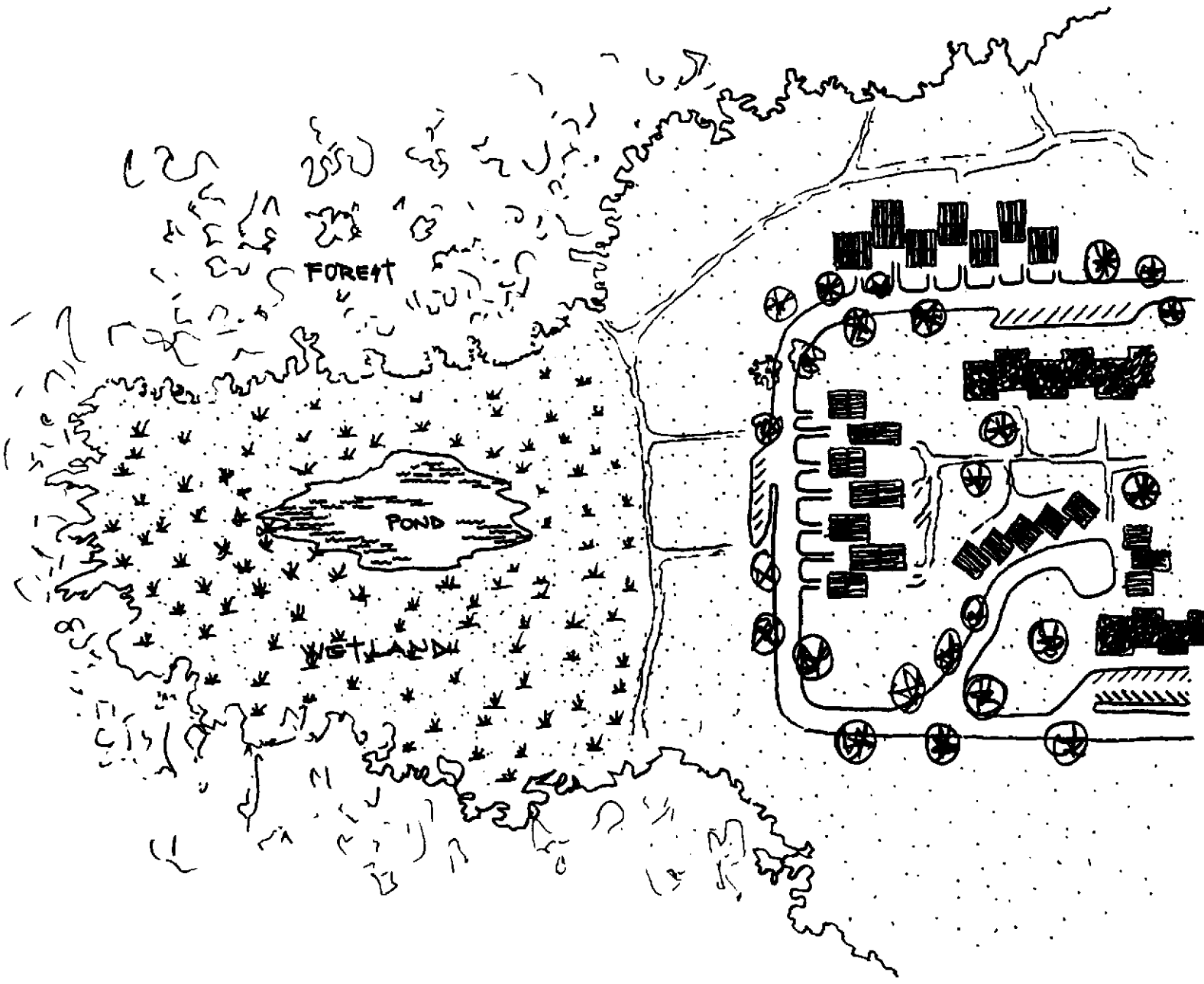
BUFFER STRIP MATERIAL

#11

## Natural Habitat - III

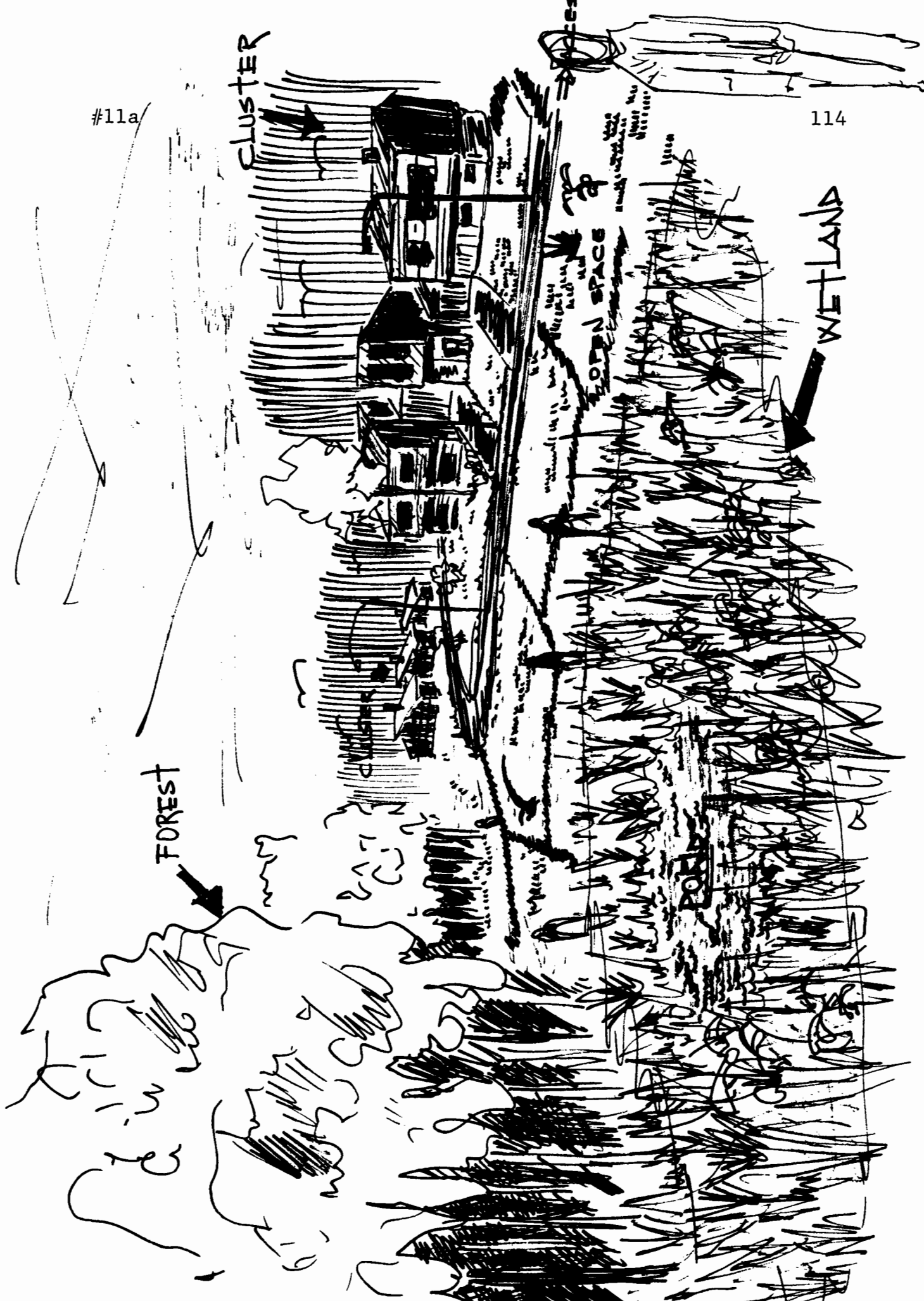
UPLAND WETLAND

The woodland ecosystem combines a hardwood forest and fresh-water wetlands to form an important environment for both aquatic and terrestrial systems. The cluster development is carefully positioned to ensure the preservation of this system. The homeowners are able to enjoy jogging, walking, birding, picnicking, and other passive activities when appropriate land-use planning is used.



#11a/

114



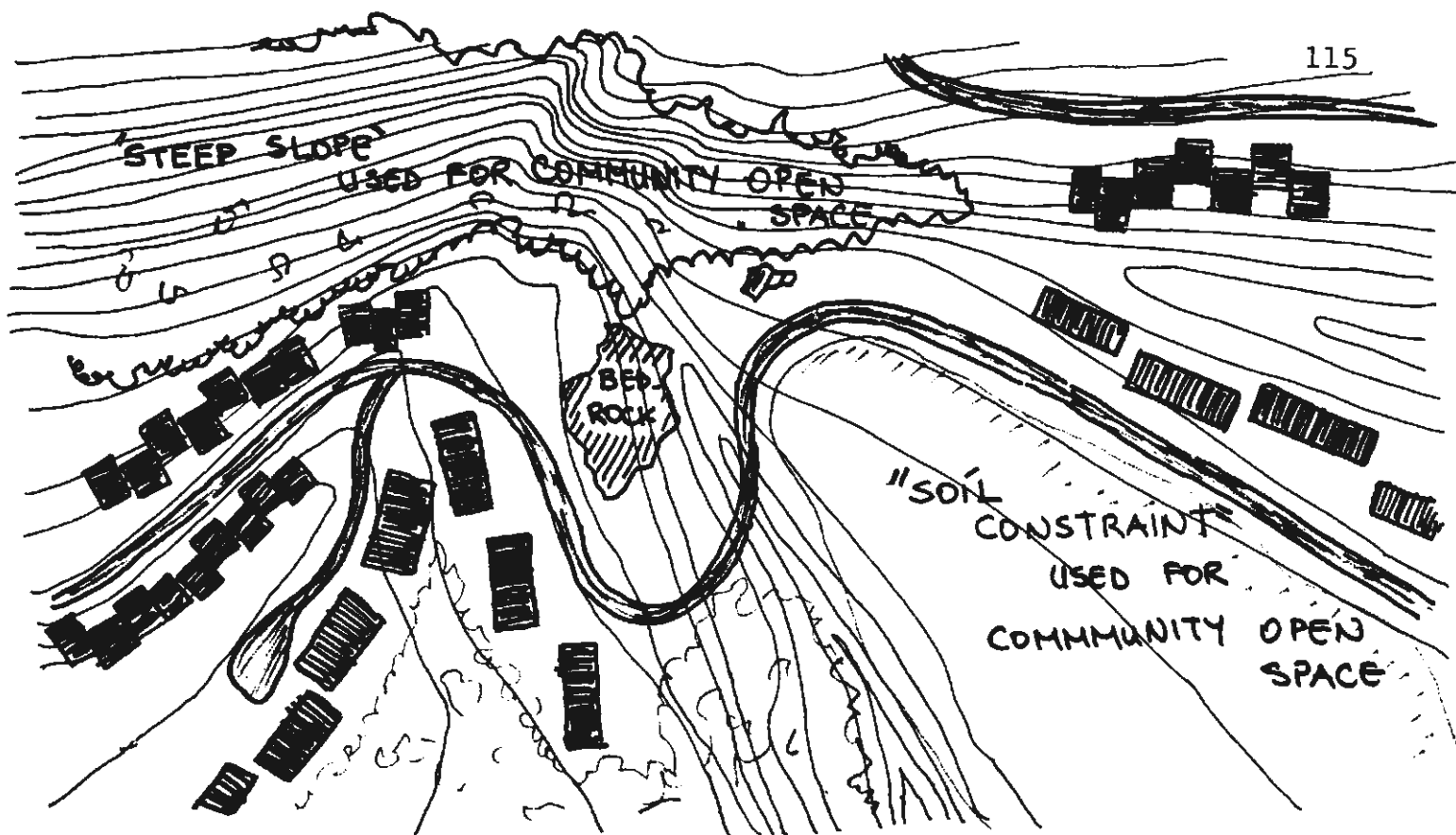
CLUSTER

FOREST

OPEN SPACE

WETLAND

ROADS



#12

Natural Habitat - IV

SLOPE AND GEOLOGICAL CONSTRAINTS

Cluster housing is able to accommodate slope and geologic constraints by locating the buildings on the most developable land. It is then conceivable to plan recreational uses on areas which are not able to withstand the impact of housing development. This type of habitat necessitates careful site design and preparation to ensure a successful "cluster".

#12a

116



CHAPTER : 8

CONCLUSIONS

## CONCLUSION

This study emphasizes the need for creating a definition of clustering that is clear and inclusive for use at the community level. This means that the terminology and intent of the definition should be related to the goals and expectations of the residents in the community, and not be merely a literary definition which has limited relevance to the conditions which must be faced. This is the first step in preparing a sound cluster development process.

It appears that after careful review of the cluster provisions in the Rhode Island communities, there should be guarantees made to insure continuity between the cluster zoning ordinance and the subdivision regulations.

Management controls become an important mechanism in the operation of the cluster. The responsibility should be taken by the town to assure that there are standards to be met by developers in the submission and preparation of a cluster management program.

Communities must be aware that because there are no State enabling provisions and a scarcity of Rhode Island case law addressing the cluster concept; that any cluster litigation may cause an important cluster precedent to be set. Thus, because of a lack of legal assurances in the State,



communities should be sensitive in formulating cluster provisions and make certain that their determination is based on a sound analytic base.

A positive benefit to developers are cost reductions which can be accrued during the construction of the cluster development. By relaxing certain dimension requirements, the cluster can accomodate equivalent housing needs, as compared to conventional developments.

Site analysis and preparation is essential for successful cluster development. The realization that different land areas have individual capabilities require that the design of the cluster be related to the physical features of the tract of land. The recognition of these limitations help to make the cluster a part of the environment in which it is placed.

Clustering can be an effective land development alternative for Rhode Island communities. It can help a town preserve remaining open space areas, while at the same time satisfy its housing demand. However, without sound planning and effective guidelines, clustering can be destructive to both ecological and fiscal systems of a community.

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## APPENDIX

NORTH KINGSTOWN  
CLUSTER ORDINANCE

SECTION 11. SPECIAL APPROVAL FOR A CLUSTER DEVELOPMENT

A. DEFINITION OF INTENT. For the purpose of encouraging the preservation of open space and promoting the more efficient use of land in harmony with its natural features and with the general intent of the Zoning Ordinance, an owner or owners of a tract of land, or a duly authorized agent thereof, may seek, in connection with the submission of a subdivision plan for Planning Commission approval under the Subdivision of Land Law, approval for a cluster development.

B. PERMITTED USES:

1. Single-Family Detached Dwelling
2. Two Family Dwelling
3. Single-Family Attached Dwelling (Townhouse)

C. MINIMUM REQUIREMENTS.

1. Residential Density

The total number of dwelling units in the development cannot exceed the number of dwelling units derived from dividing the total area of suitable land for development as defined in the ordinance, less that amount which would normally be allowable for streets and easements, by the minimum lot size otherwise permitted in the zoning districts in which the tract lies. Deduction for street allowance shall be 20% in the Village Residential District, 10% in the Neighborhood Residential District and 5% in the Rural Residential District.

When farmland, steep slopes and/or riverbanks will be preserved by clustering, the Planning Commission may allow part or all of the unsuitable land area to be used as a basis upon which the project density can be based.

## 2. Dimensions for Lots

Type Unit	Size Sq.Ft.	Width Ft.	Yards Ft.
Single-family, detached	10,000	80	15
Two-family, detached	20,000	120	15
Single-family, attached	-	20	15
1 Story Accessory	-	-	10
2 Story Accessory	-	-	15

## 3. Townhouse Criteria

- a) Not more than four (4) contiguous townhouses shall be built in a row with the same or approximately the same front line, and not more than eight (8) townhouses shall be contiguous.
- b) Each townhouse shall have on its own lot one yard containing not less than 400 feet, reasonably secluded from view from streets or from neighboring property. Such yards shall not be used for off-street parking or for any accessory building.
- c) Separation Requirements - The minimum distance between any two (2) rows of townhouse buildings, substantially parallel to each other shall be sixty (60) feet.  
The minimum distance between two (2) abutting ends of townhouse buildings in the same general plane or row shall be twenty-five (25) feet, provided such walls contain no windows to serve habitable rooms.

## 4. Open Spaces

Within a cluster development no less than 20% of the total land area shall be devoted to common open space, used for recreation or conservation purposes, exclusive of land set aside for road area. Open space shall be protected against building development by conveying to the Town an open space easement over such open areas restricting the area against any future buildings or use, except as is consistent with conservation, recreation or agricultural uses for the aesthetic and recreational satisfaction of the residents.

## SECTION 12. SETBACK AND CORNER CLEARANCE

- A. SETBACK: All structures shall be set back from the access road by the following distances:

25' from the front lot line on a subdivision road  
35' from the front lot line on a collector road  
50' from the front lot line on an arterial road  
200' from the front lot line on a limited access  
or divided highway

A structure on a corner lot shall maintain the required setback from the property line on both streets.

- B. FRONT LINES: Along a street in a residential district in which the predominant setback of the buildings on the same side of the street within 500' of the site in both directions are set back less than the required setback, the front line for a building hereafter erected may extend to the alignment of such existing buildings except that no building shall have a front yard of less than 5 feet in depth.
- C. VISION CLEARANCE: On any corner lot on which a front yard is required, no wall, fence or other structures shall be erected and no hedge, tree, shrub, or other growth shall be maintained in such location within such required front yard space as to cause danger to traffic by obstructing the view.

COVENTRY

CLUSTER ORDINANCE

ARTICLE XXI - SINGLE-FAMILY CLUSTER DEVELOPMENTS

Section 1. INTENT

Single-family cluster developments may be permitted by the Planning Commission for the purpose of providing attractive, convenient, efficient "neighborhoods" and to promote the conservation of open space and valuable natural features.

Section 2. GENERAL PROVISIONS

- A. The minimum gross land area (excluding swamps, ponds, streams, etc.) for a single-family cluster development shall be 3 acres.
- B. A single-family cluster development may be allowed only after a site plan for the development shall have been approved by the Planning Commission. A site plan approved by the Commission shall be recorded in the Office of the Town Clerk prior to the issuance of a building permit by the building inspector of the Town of Coventry.
- C. The Planning Commission shall approve site plans only if the Commission determines that the proposed development is consistent with the intent and purposes of the Comprehensive Community Plan and if the development complies with this Article and with the Subdivision Regulations of the Town of Coventry.
- D. Single-family cluster developments may be permitted only if the Rhode Island Department of Health approves the water system and the waste disposal system to serve such development.
- E. In considering any site plan for a single-family cluster development, the Planning Commission shall assure the safety of traffic movement both within the area covered by the plan and in relation to access streets, and shall assure that the development will promote harmonious and beneficial relationships with adjacent and nearby areas.

Section 3. PERMITTED USES

Use regulations are the same as specified for R-R, R-20 and R-10 districts in Article VI of this Ordinance.

Section 4. SITE PLAN CONTENTS

A site plan for the proposed development shall be prepared by a registered professional engineer and shall show all applicable items specified in Article XVIII, Section 4, of this Ordinance.

Section 5. SUBMISSION PROCEDURE

The submission procedure shall be as outlined in the Subdivision Regulations of the Town of Coventry.

Section 6. INTENSITY REGULATIONS

- A. The maximum number of dwelling units shall not exceed the maximum allowed in the zone in which the development is to be constructed.
- B. The schedule of intensity for uses in a single-family cluster development is as follows:

USE	Minimum Lot Area (ft)	Minimum Lot Width (ft)	Yards			Coverage %	Building Height (ft)
			Front (ft)	Rear (ft)	Side (ft)		
Single-family dwelling (R-R)	15,000	125	25	25	20	25	35
Single-family dwelling (R-20)	10,000	100	25	25	20	25	35
Single-family dwelling (R-10)	7,000	80	25	25	15	25	35

Intensity regulations for all other uses permitted in residence districts shall be as specified in Article IX of this Ordinance.

- C. The intensity regulations for minimum front, rear and side yards in Article IX shall not be reduced under this article when such yards adjoin parcels not developed under provisions for PRD, PUD or single-family cluster developments.



Section 7. DESIGN STANDARDS

- A. All developments constructed as single-family cluster developments shall comply with the design standards set forth in Section IV of the Subdivision Regulations of the Town of Coventry.
- B. Construction improvements installed in single-family cluster developments shall comply with the requirements set forth in Section V of the Subdivision Regulations of the Town of Coventry.

Section 8. SPECIAL REGULATIONS

- A. Streets servicing single-family cluster developments must be developed according to the standards set forth in the Subdivision Regulations as specified in Section 7 of this Article, but such streets may be private if suitable provisions are made for the maintenance of such streets and if adequate access for emergency vehicles is provided. Arrangements for retention of street ownership by the developer or deeding of streets to a plat association or trust shall be reviewed by the Town solicitor of the Town of Coventry. If, in the opinion of the Director of Public Works, such streets shall not be adequately maintained, the joint or individual owners of such streets shall be charged for said maintenance.
- B. The posting of a bond or other security shall be required for private streets in the same manner that such security is required for public streets in accordance with the Subdivision Regulations of the Town of Coventry.
- C. A perpetual easement for ingress and egress of municipal and emergency vehicles shall be granted to the town by the developer.
- D. Public utilities in single-family cluster developments may be placed in roadways, subject to the granting of easements to repair, replace and maintain appurtenances and equipment installed in connection with the use of said utilities, whether said roadways be public or private.

- E. The developer shall provide sufficient recreational facilities and equipment pursuant to nationally recognized standards as related to his project as approved by the Planning Commission. The most recent standards of the National Recreational and Parks Association shall apply.
- F. School sites and sites for municipal services shall be deeded to the Town of Coventry.
- G. The timing of the development shall be controlled through the issuance of building permits, and shall be scheduled at a rate, in dwelling units per year, which would not create excessive demands on municipal facilities and services, including sewer and water facilities, roads and storm drains.

#### Section 9. INCONSISTENCY

Any part or portion of this amendment which shall be inconsistent with any part or portion of any other Town Ordinance regulating land use and land development, or otherwise, shall supersede such inconsistency contained in any other ordinance. The development, planning and programming of Single-family Cluster District being expressly exempted therefrom.

#### Section 10. SEVERABILITY

In the event any court of competent jurisdiction shall determine that any part or portion of this Single-family Cluster District amendment be unlawful or unconstitutional then the part or portion so determined to be unlawful and unconstitutional shall be deleted therefrom, but the remainder of the amendment shall remain in full force and effect exclusive of the portion so severed.

SOUTH KINGSTOWN  
CLUSTER ORDINANCE

SECTION III - A. RESIDENTIAL CLUSTER DEVELOPMENT

Regulations.

1. Residential Cluster Development shall meet all policies, procedures and improvement requirements contained in this and all other sections of these Regulations, except those contained in Section III and those specifically waived by the Planning Board.
2. The required open space may comprise of one or more parcels of land. Access to each such parcel shall be provided to all residents within the Residential Cluster Development.
3. The required open space may be owned by a private homeowner's association, be retained in ownership by the developer, or may be held in common ownership by the landowners within the plat. The Final Plat shall be accompanied by a detailed statement, including covenants, agreements and other documents showing the proposed ownership and methods of maintenance and utilization of the open space.

The aforesaid statement, covenant, agreements and other documents shall be in a form satisfactory to the Planning Board, recorded in the Land Evidence Records of the Town at the time the approved plat of the Residential Cluster Development is recorded and there shall be set forth on said plat a reference to such recorded documents.

4. In reviewing a Residential Cluster Development proposal, the Planning Board may require such additional material or information as deemed necessary.

The Town Council of the Town of South Kingstown hereby ordains as follows:

The Zoning Ordinance of the Town of South Kingstown adopted March 29, 1976, as amended, is further amended as follows:

1 Article 2, Section 220 is amended by adding the following:

SCHEDULE OF DISTRICT REGULATIONS - USES AND DISTRICTS

Use	RR80	R40	R40A	R30	R20	R10	RM	C1	C2	C3	C4	CW	M1	M2	HFD
RESIDENTIAL CLUSTER DEVELOPMENT - Single family dwelling, two family dwelling or duplex, and multi-family dwelling structure (Maximum 6 dwelling units)	P	P	P	P	P	P	P	N	N	N	N	N	N	N	N

COMMENTS: See Article 2, Section 231

11 Article 2 is amended by adding the following:

Section 231 - Residential Cluster Development - Dimensional Regulations

Except as specifically provided in Section 250 of this Article the dimensional regulations provided in Section 230 of this Article shall not be applicable to building lots and structures developed in a Residential Cluster Development. Building lots and structures developed in a Residential Cluster Development in any zoning district in which such Development is permitted, shall comply with the following dimensional regulations:

RESIDENTIAL CLUSTER DEVELOPMENT

Dimensional Regulations

Use	Minimum Building Lot Area	Maximum % of Building Lot to be Occupied by Principal & Accessory Buildings	Maximum Height of Building		Minimum Yard Dimensions - Principal Building				Minimum Yard Dimensions-Accessory Buildings			Minimum Lot Width of Building Lot
			Principal Building	Accessory Building	Front Yard	Rear Yard	Side Yard	Corner Side Yard	Front Yard	Rear Side Yard	Side Yard	
RESIDENTIAL CLUSTER DEVELOPMENT	SEE SECTION 250											
Single family dwelling, two family dwelling, or duplex and		20%	35'	15'	25'	30'	15'	20'	25'	10'	10'	80'
Multi-family dwelling structure (maximum 6 dwelling units)	SEE SECTION 250	20%	35'	15'	50'	35'	15'	35'	50'	20'	10'	80'

III Article 2 is amended by adding the following:

Section 250 - Residential Cluster Development - Regulations  
Applicable to:

1. Minimum Size of Development:

The tract of land proposed for a Residential Cluster Development shall have the minimal capacity for six (6) dwelling units computed in accordance with paragraph 2 of this Section.

2. Maximum Number of Dwelling Units in Development:

The maximum number of dwelling units in a Residential Cluster Development shall not exceed the number computed by the following formula:

- a. Land which is unsuitable for development, as hereinafter defined, shall first be deducted from the tract proposed for development.
- b. The remaining land in the tract shall be divided by the minimum lot size as provided in Section 230 which is applicable to the Zoning District or Districts in which the tract of land lies.

$$\begin{array}{rcccl} \text{Proposed tract} & - & \text{Unsuitable} & \div & \text{Minimum} & = & \text{Maximum Number of} \\ \text{of land} & & \text{land} & & \text{Lot Size} & & \text{Dwelling Units} \end{array}$$

3. Land Unsuitable for Development Shall Include:

- a. Wetlands as defined in Title 2, Chapter 1 of the General Laws of Rhode Island and Intertidal Salt Marshes as defined by Title 46, Chapter 23 of said General Laws as the same is or may be from time to time amended and in any rules or regulations adopted pursuant thereto. For the purpose of delineating suitable land for the computation of the maximum number of dwelling units land encompassed by any setback requirement or banks, as set forth in Title 2, Chapter 1 and Title 46, Chapter 23 of the General Laws, need not be excluded from consideration.

- b. Land located within Zones A and V as shown on those Maps entitled "Department of Housing and Urban Development, Federal Insurance Administration, Flood Hazard Boundry Map H-01-32 and Flood Insurance Map 1-01-22, revised February 4, 1977" copies of which are on file in the office of the Town Clerk.
  - c. An area of the tract proposed to be developed equal to 20% of that portion of the tract which is located in an R10 or R20 Zoning District, 10% of that portion of the tract which is located in an R30 or R40 Zoning District and 5% of the portion of the tract which is located in an RR80 Zoning District as an allowance for streets or in the alternative the area of any street rights-of-way actually designed for the proposed Residential Cluster Development in accordance with applicable Subdivision Regulations.
4. Restrictions on Location of Structures:
- a. If any part of a single family dwelling or accessory building in a Residential Cluster Development is proposed to be located within 100 feet of the perimeter of such Development, such building shall be located so as to comply with the minimum yard dimensions for principal and accessory buildings contained in Article 2, Section 230 which are applicable to single family dwellings and accessory buildings in the zoning district in which such buildings are proposed to be located.
  - b. If any part of a two-family dwelling or a duplex or accessory building in a Residential Cluster Development is proposed to be located within 100 feet of the perimeter of such Development, such building shall be located so as to comply with one and one-half the minimum yard dimensions for principal and accessory buildings contained in Article 2, Section 230 which are applicable to two-family dwellings or duplexes and accessory buildings in the zoning district in which such buildings are proposed to be located.
  - c. No part of a multi-family dwelling structure or any building accessory thereto in a Residential Cluster Development shall be located within 200 feet of the perimeter of such Development.

5. Requirements of Public Water or Sewer Systems:
  - a. Multi-family dwelling structures shall be permitted in Residential Cluster Developments only where public water and public sewer systems are connected to such structures.
  - b. Two-family dwellings or duplexes shall be permitted in Residential Cluster Developments only where either a public water or a public sewer system or both such systems are connected to such structures.
  - c. Single family dwellings shall be permitted in Residential Cluster Developments whether or not a public water or public sewer system is connected to such structures.
6. Minimum Building Lot Area:
  - a. Where a public water and a public sewer system is connected to each principal structure in a Residential Cluster Development, the minimum area of each building lot shall be as follows:
    1. 10,000 sq.ft. for a single family dwelling.
    2. 20,000 sq.ft. for a two-family dwelling or complex.
    3. 40,000 sq.ft. for a multi-family dwelling structure (maximum 6 dwelling units).
  - b. Where either a public water or public sewer system is connected to each principal structure in a Residential Cluster Development, the minimum area of each building lot shall be as follows:
    1. 10,000 sq.ft. for a single family dwelling.
    2. 20,000 sq.ft. for a two-family dwelling or duplex.
  - c. Where neither a public water nor a public sewer system is connected to each principal structure in a Residential Cluster Development, the minimum building lot area for a single family dwelling shall be 20,000 sq.ft.
7. Limitations Applicable to Multi-Family Dwelling Structures, Two-Family Dwellings or Duplexes:



- a. No multi-family dwelling structure in a Residential Cluster Development shall contain more than six (6) dwelling units. The total number of dwelling units contained in multi-family dwelling structures shall not exceed 25% of the maximum number of dwelling units permitted in a Residential Cluster Development as computed under the provisions of Sub-Section 2 of this Section.
- b. The total number of dwelling units contained in two-family dwellings or duplexes shall not exceed 50% of the maximum number of dwelling units permitted in a Residential Cluster Development as computed under the provisions of Sub-Section 2 of this Section.

8. Open Space:

- a. All of the land in a Residential Cluster Development which is not designated as building lots or as street rights-of-way, but in any event no less than 20% of the total land area of such Development shall be open space land and shall be used for conservation, outdoor recreational facilities of a non-commercial nature, agriculture, preservation of scenic or historic sites or structures, and structures accessory to these uses.
- b. Provisions as to ownership, use and maintenance of such open space land which are required by the Planning Board to assure the preservation of such land for the above mentioned purposes shall be set forth on the approved plat of the Residential Cluster Development, or shall be set forth in a written document acceptable to the Planning Board which shall be recorded in records of Land Evidence of the Town at the time the approved plat of such Development is recorded and reference to which document shall be set forth on said plat.

9. Subdivision Approval Required:

No part of the construction of a Residential Cluster Development shall begin until the plan of such Development has been submitted to and been granted final approval by the Planning Board of the Town in accordance with the Subdivision Regulations applicable to such Development.

IV Article 15, Section 1510 (A) is amended in its entirety to read as follows:

A. Multi-Family Dwelling Structures

Multi-family dwelling structures are small, single structure multi-family residential buildings designed to provide multiple residential occupancy. Such structures shall contain only multi-family residential uses and uses accessory thereto in a single structure not to exceed six (6) dwelling units per structure in zoning districts where permitted under Article 2, Section 220, except that such structure may contain a maximum of twelve (12) units per structure by special exception in C2 and C3 Zoning Districts as set forth in Article 2, Section 220. No more than one (1) multi-family dwelling structure shall be permitted on a lot or building lot.

V Article 15, Section 1540 (C) is amended by deleting the same in its entirety.

VI Article 17 is amended by adding the following:

- 1749 Residential Cluster Development - A specified minimum area of contiguous land, developed according to a plan at specified densities as a complex of single family dwellings, two-family dwellings, duplexes, or multi-family dwelling structures (maximum of six dwelling units) or a combination of such residential structures with one or more common open space areas designated to serve the Development.
- 1750 Building Lot - A lot which is occupied or designated for occupancy by a residential structure and its accessory structure in a Residential Cluster Development.
- 1751 Street Right-of-Way - The land lying between opposite street lines which is used or designated for street use.

SMITHFIELD

CLUSTER ORDINANCE

ARTICLE V - CLUSTER DEVELOPMENT FOR RESIDENTIAL SINGLE FAMILY DWELLINGS

Section 1.18. GENERALLY

Cluster development of residential single family dwellings shall be permitted in the RR, R-30 and R-20A districts provided that the following requirements are made:

- a) Site plan for the proposed development must be submitted to the Smithfield Planning Board for approval. The developer must follow the procedure of the Smithfield Subdivision Regulations.
- b) Developers wishing to use the cluster development procedure for a subdivision development must have a gross parcel area of not less than 20 acres.
- c) The maximum number of dwelling units shall not exceed the maximum allowed in the Zoning District based upon net acreage. Net acreage shall exclude land for rights-of-way.
- d) Open space can either be dedicated to the Town of Smithfield, Plat Association, an Audobon Society or a Conservation Commission. Minimum open space so dedicated shall not be less than five acres. Open space area preferably to be in one parcel.
- e) Cluster development to be permitted only if an approved public water system is to serve the proposed development.
- f) The intensity regulations for minimum front, rear, side yards and minimum building height as enumerated in Section 1.11 shall not be reduced for yards abutting adjoining parcels.
- g) The intensity regulations for cluster development for single family units may be reduced based upon the following:

	District		
	RR	R-30	R-20A
Minimum Lot Area (per single-family unit)	30,000 sq. ft.	15,000 sq. ft.	12,000 sq. ft.
Minimum Lot Width (per single-family unit)	150 ft.	125 ft.	100 ft.
Minimum Yards			
Front	40 ft.	30 ft.	25 ft.
Rear	40 ft.	30 ft.	25 ft.
Side (each side)	20 ft.	10 ft.	10 ft.
Maximum Lot Coverage	25%	25%	25%
Maximum Building Height	35 ft.	35 ft.	35 ft.

## ARTICLE VI - SUPPLEMENTARY REGULATIONS

### Section 1.19. PROHIBITED USES

The following uses shall not be permitted within the Town of Smithfield:

- a) Acid manufacture;
- b) Amusement park;
- c) Asphalt manufacture or refining;
- d) Brewery or distillery;
- e) Cement, lime, gypsum or plaster of paris manufacture;
- f) Chlorine manufacture;
- g) Coal distillation and derivation of coal products;
- h) Creosote manufacture or treatment;
- i) Distillation of bones;
- j) Explosive manufacture or treatment;
- k) Fertilizer manufacture;
- l) Gas manufactured from coal;
- m) Glue manufacture;
- n) Gutta percha manufacture or treatment;
- o) Trailers, trailer parks, mobile home, mobile home park, and camping areas;
- p) Junk yards;
- q) Offal or dead animal reduction or dumping;
- r) Open cesspool or cesspool dumping station;
- s) Outdoor movie theater;
- t) Petroleum refining
- u) Private dumps or disposal areas;
- v) Processing of vinegar or yeast;

- w) Race track;
- x) Rendering or refining of fats or oils;
- y) Slaughter house;
- z) Smelting of tin, copper, zinc or iron ore including  
blast furnace or blooming mill
- aa) Tanning or curing of raw hides;
- bb) Tar distillation.