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## An Analysis of the Planned Unit Development Concept and its Application in Rhode Island

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AN ANALYSIS  
OF THE PLANNED UNIT DEVELOPMENT CONCEPT  
AND ITS APPLICATION IN RHODE ISLAND

BY  
ANGELA M. PURCELL

A RESEARCH PROJECT SUBMITTED IN  
PARTIAL FULFILLMENT OF THE REQUIREMENTS  
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## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background

The concept of a planned unit development (PUD) is a very unique approach to land development by American standards. Unlike many other countries throughout history, most Americans have an ironclad notion of what an ideal development should be: it consists of single family homes on individually owned lots set apart from other "less desirable" uses such as apartments, commercial developments and industries. Essentially, the single family, 2-car, cat and dog suburb has become a haven towards which many families flock. Once established, they resist any development which might be considered a threat to their newly adopted lifestyle.

Many communities have managed this pattern of land use quite successfully for many years. But in other more rapidly growing areas, the onslaught of single family residential development has not worked very well. It has burdened municipal finances, created overcrowded schools, consumed large areas of open space and in general disrupted the existing character of a community. Particularly in communities outside of major cities, the population and housing growth escalating since the 1950's has induced many towns to seek alternative forms of development:

"On the urban fringe, where the postwar housing boom continued unabated, some planners and developers became disenchanted

with cookie-cutter subdivisions marching to the horizon. This pattern of development they saw, was protected and perpetuated by Euclidian zoning. With flexibility as their war cry, they turned to ordinance drafters and lawyers for help. Soon, cluster provisions and embryonic PUD ordinances began to appear."<sup>1</sup>

The PUD concept attempts to provide an alternative method to land use and development. This is achieved through the relaxation of zoning and subdivision regulations to allow the creative development of a parcel as a single entity. Not only is the land not subdivided into separate development parcels, but a variety of single family and multifamily housing types is encouraged. Oftentimes, nonresidential uses such as convenience stores, restaurants, professional offices and even industrial uses are permitted to create a total community environment. These uses are placed in creative arrangements in order to maximize open space and preserve unique or important natural features within the site. In many ways, the PUD can resemble the new town concept so prevalent in many parts of Europe.

Essentially, the developer is given the opportunity to design his property in more innovative, creative and efficient fashions, using the guidelines of the PUD ordinance. In exchange for this opportunity, however, the town asserts much stronger control over the final product; things such as open space, recreational areas and other amenities can be bargained for during the negotiation which is a key part of the review and approval process. Because much of the creativity is left in the hands of the developer, there can be good PUDs and bad PUDs.

It is essential, therefore, that town officials clearly understand the PUD process and be able to administer and enforce their ordinance to achieve maximum effectiveness.

Because the use of the PUD concept can vary significantly among different communities and different developers, there is no exact definition of what a PUD looks like. Some are large condominium developments built near major access roads while others are designed as second home communities in remote, rural settings. Furthermore, the use of PUD is very responsive to market changes. Although once used commonly for large scale developments, recent economic conditions have forced the reduction of PUD sizes. In addition, the growth of the second home industry and retirement sector has led to developments more tailored to these lifestyles.

Although many aspects of planned unit developments are dependent on market forces, it is important to recognize the role that a PUD ordinance can play in affecting the final development. To begin with, insufficient relaxation of zoning requirements may hinder the feasibility of undertaking a PUD project. On the other hand, too much flexibility without sufficient guidelines can lead to eyesore developments completely out of character with the surrounding community. Such elements as clearly written requirements governing the phasing of construction and the responsibilities of the homeowners association can be essential elements in a PUD ordinance. More important is the integration of the PUD ordinance within a community's comprehensive plan. The role of PUD de-

velopments within an entire land use plan can help ensure their proper location and integration within a community.

Despite this wide acceptance and rather successful use of PUD in many areas of the country, its application in Rhode Island communities has been fairly limited to date. This is not to say the PUD concept has been ignored within the state. On the contrary, over one-third of Rhode Islands thirty-nine cities and towns have adopted PUD provisions within their zoning ordinances. Rather, it is the successful application of the PUD ordinances which has not yet been exhibited; few PUD developments have been proposed and those which have been developed are not good examples of the concept. The explanation for this may be multifaceted. Currently, there is no state enabling legislation authorizing this type of development. Although this has not been an obstacle in other states, it may be a limiting factor in a small state. The difficulties may also be attributable to less public acceptance of the concept, unconducive market forces, and perhaps, ineffective ordinances.

#### 1.2. Objectives and Organization of the Study

The objectives of this study are twofold. First is to clarify some of the issues concerning the PUD concept and to present information on more successful experiences with its application. The second purpose is to examine PUD use in Rhode Island communities, to identify factors which may be limiting its acceptance, and to suggest measures which may be taken to overcome these obstacles. For the purpose of

this study, ten Rhode Island towns were selected for review. Three communities were not included because their PUD provisions were too limited in scope or jurisdiction to allow their comparison.<sup>2</sup> Following is a list of the ten communities selected and the respective name assigned to their PUD district. (They are also indicated on Figure 1).

BRISTOL <sup>3</sup>	RESIDENTIAL OPEN SPACE DEVELOPMENT ZONE/WATERFRONT PUD
COVENTRY	PLANNED DISTRICT
EAST GREENWICH	PLANNED DEVELOPMENT ZONE
EAST PROVIDENCE	PLANNED UNIT DEVELOPMENT
GLOCESTER	PLANNED DISTRICT
JOHNSTON	PLANNED DISTRICT
NORTH SMITHFIELD	PLANNED DEVELOPMENT
SMITHFIELD	PLANNED RESIDENCE/ PLANNED BUSINESS
WARREN	PLANNED UNIT DEVELOPMENT
WESTERLY	PLANNED UNIT DEVELOPMENT

The remainder of the study deals with detailed aspects of the PUD concept and its application. Chapter two presents a historical and conceptual synopsis of the PUD. The origin of the PUD is discussed, including where and how it has developed, and an attempt is made to explain the concept of PUD. Included will be a discussion on the various types of PUD application as well as the differences between PUD and traditional land use controls. Lastly is a description of some of the legal issues surrounding the use of PUD.

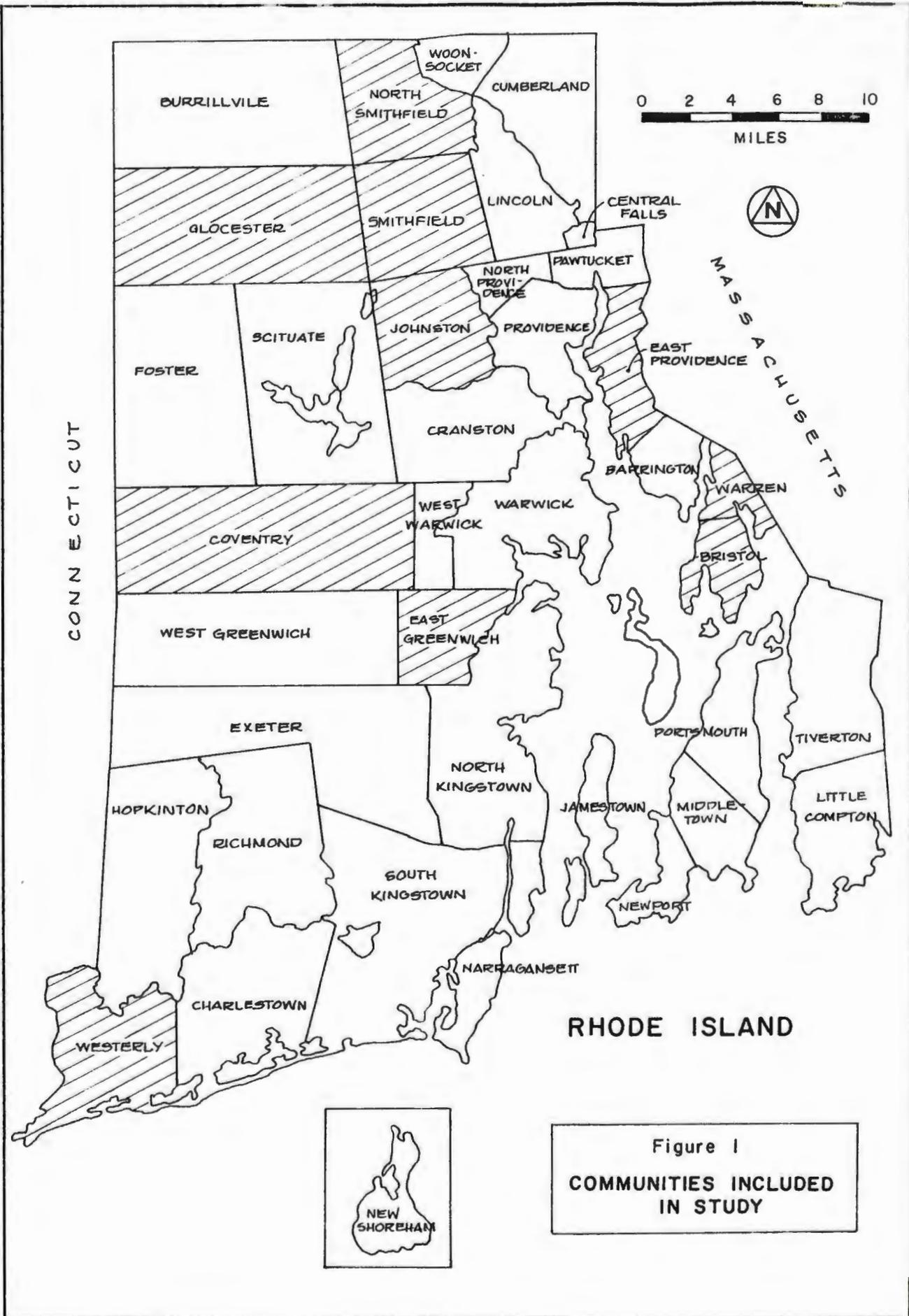


Figure 1  
**COMMUNITIES INCLUDED  
 IN STUDY**

The third chapter deals with the application of these concepts. A review of the experiences of the above mentioned communities is presented to help identify elements which contribute to its success and acceptance. In addition, research on the PUD ordinance is included, again with elements that have been found to be most successful.

The fourth chapter focuses on PUD use in Rhode Island. Although not as widely used as in some areas, there are a number of communities which have incorporated the concept within their zoning ordinances. A review of the varying ordinance types and requirements is made along with an analysis of factors which may be responsible for its limited use.

Finally, the fifth chapter includes a summary of the PUD concept, experiences with Rhode Island PUD ordinances and developments and suggests recommendations for furthering the successful application of the PUD in Rhode Island.

Information for this paper was obtained from literature on planned unit developments, which although limited, is fairly comprehensive. Research on Rhode Island experiences was not only obtained from a review of the state's zoning ordinances, but from numerous interviews with both state and local planning officials, developers and others involved or concerned with the PUD issue.

FOOTNOTES

<sup>1</sup>Burchell, Robert W., Planned Unit Development: New Communities American Style, (New Brunswick, Center for Urban Policy Research, 1972), p. 14.

<sup>2</sup>Cranston, North Kingstown and Warwick were not included because the ordinances in those communities, although containing some elements of PUD, were too limited to be considered a PUD ordinance.

<sup>3</sup>Bristol is the only town having separate PUD provisions for their waterfront area. This waterfront PUD section was proposed as part of a development scheme by a Massachusetts firm; both the ordinance and the proposal were approved.

CHAPTER TWO  
ORIGINS AND ISSUES OF PLANNED UNIT DEVELOPMENT

2.1 Emergence of the Planned Unit Development Concept

As did much of American life, housing underwent a dramatic change following World War II. Both the enormous demand for housing in the 1950s and the expansion of our nation's highway system in the 1960s led to the widely discussed phenomenon known as urban sprawl. With easier access to urban centers of employment, single family suburbs became the popular place to live. To keep pace with the ensuing housing demand, a perfusion of cookie-cutter subdivisions and homogeneous housing developments appeared across the suburban landscape. One only need to drive along the New Jersey Turnpike or the Long Island Expressway to witness a prolific example of this phenomenon.

Although perhaps the easiest way of controlling land development, traditional zoning and subdivision oftentimes yielded undesirable results. These sprawling single family subdivisions were built with no phasing controls, no provision for open space and with little regard for aesthetic or design qualities of the development or preservation of the community's character.

This chapter will review the emergence and development of the PUD concept. Issues leading to its growing use will be discussed along with an examination of PUD features which

distinguish it from traditional residential developments. These differences are reflected in both the PUD ordinance and the design of the planned unit development, each of which can be styled in a variety of ways. The many possible applications of the PUD concept results in several types of PUD developments; these range from cluster single family developments to multi-family/mixed use projects. Because PUD controls can be a considerable departure from standard regulations, the legal issues surrounding its use is discussed. The chapter concludes with an assessment of the PUD concept.

Although its exact origin is not known, the planned unit development concept was first developed in the fifties in reaction to the phenomenon described above and in conjunction with the growing popularity of the garden apartment development. Traditional zoning and subdivision controls were no longer considered adequate to deal with this profusion of housing development and in fact, often blamed for the alarming consumption of land. These critics thought a more creative and flexible alternative to land use control was needed, one which gave developers more flexibility in design and municipal officials more power to control. The basic philosophy of PUD is, 1) to relax rigid zoning and subdivision controls, to encourage the clustering and diversity of housing units; and, 2) to allow the town to negotiate a final development scheme. Consequently, a more efficient, aesthetic and functional development can be designed to meet the needs of both parties.

For several years, the PUD concept was used on a somewhat ad hoc basis with communities adjusting or revising their regulations to accommodate more flexibility. Because of its deviation from standard land use controls, some confusion arose over proper legal control methods. This eventually led to the publication of a Model State Enabling Act in 1965 by the Urban Land Institute and the National Association of homebuilders for planned unit residential developments. The model act defined the PUD concept, the purpose of its regulations and application to the existing zoning code. Furthermore, it established criteria and standards for PUD uses and design as well as procedures for approval.

The publication of this Model Act served two purposes. First, it was used as a guide by some states interested in incorporating PUD provisions in their enabling legislation. The adoption of state enabling legislation based on the model act occurred first in New Jersey the following year and has since been adopted by several other states, including Pennsylvania and Connecticut. Many states, however, have chosen not to adopt special PUD enabling legislation, among them the state of Rhode Island. Reasons for this are uncertain but may be indicative of hesitation to adopt and/or encourage liberal land use policies at the state level.

Secondly, it was used by many municipalities as a reference for developing PUD ordinances in the absence of state

enabling legislation. The publication of the Model Act was able to justify use of PUD regulations and clear up many concerns over its administration. Resultingly, the popularity of the concept increased dramatically following the publication of the Model Act, even in states without special enabling legislation.

## 2.2 Growth of PUD Use

Besides its official recognition through state enabling legislation, there are several other factors which have led to the increasing popularity of the PUD concept. First and foremost is the growing recognition by planners and land use officials that an alternative method to land development was needed. As mentioned earlier, traditional zoning and subdivision controls were found to be ineffective and responsible for the sprawling pattern of housing developments. Although easy to administer, these controls provided no room for either assessing or controlling potential undesirable impacts of this housing and population growth. Moreover, they were of little assistance in providing opportunities for diversified housing needs. The PUD concept was thus regarded by many planners as a possible solution to some of these land use problems.

Second was the rapid growth in the housing market, particularly in the late sixties and early seventies which suddenly made the development of large scale housing projects more desirable and economically feasible. Although it may

take longer for profits to be generated on PUD projects, the cost of development can be considerably lower due to the clustering of units. As a result, a PUD may yield larger profits in the long term.

Lastly, but of great significance, is the growing acceptance by the general public of attached housing and higher density residential developments. Starting with the popularity of the garden apartment concept, the housing consumer has come to accept this as a preferable alternative, particularly couples without children. There is also an increasing acceptance of PUDs within neighborhoods where previously they may have been considered an incompatible and noxious use. This last factor may still be the largest obstacle to overcome in New England and particularly in Rhode Island before PUD development is widely accepted.

### 2.3 General Characteristics of Planned Unit Development

Because the PUD is a novel approach to land development and its use varies from one place to another, it is a method that is often misunderstood. Furthermore, because its application varies with each municipality and each development, it is a concept difficult to define.

When explaining a PUD, it is important to differentiate between the PUD ordinance and the actual proposal or development. Each has its own unique characteristics which separate it from traditional land use controls and developments.

### 2.3a The PUD Ordinance

The PUD ordinance, like zoning and subdivision codes, is a method for regulating the development of land. While the essential element of the latter is that they are designed to be self-administering, therefore having detailed standards and minimal need for exercise of judgement, the PUD ordinance does the opposite. It is intended to provide both a higher level of flexibility in the design process, and an increase in both the level and type of municipal input in the administrative process. The key element of the PUD approval procedure is a negotiation process enabling the developer and municipality to settle on a plan meeting the needs of both.

There are several elements of PUD regulations which distinguish it from traditional controls. First, the PUD ordinance combines the administrative controls of both subdivision and zoning codes within one approval process and by one authority. As such, it encompasses both use, bulk and location elements found in zoning codes with site planning control (measures for streets, sidewalks, utilities) in subdivision regulations. Because it is intended to provide flexibility, these provisions are generally less detailed.

Second, and of key significance, is the development of a parcel as a single entity. Rather than subdividing a parcel into individual lots and building on each separately, the development is planned and approved as one contiguous parcel. This eliminates many dimensional requirements found in zoning

codes, such as minimum areas and setbacks. Some general development standards are included in all PUD ordinances to control density, lot coverage, buffer zones and other requirements. The objective is to set a minimum level of design parameters to ensure harmony with the neighborhood and to avoid potential abuse of this flexibility.

The purpose of the relaxation of design standards is to enable the creative use of each parcel. Buildings and structures can be designed in much more innovative layouts, and can be situated to avoid environmentally sensitive areas. Likewise, unique environmental features such as tree stands or rock outcroppings can be incorporated into the design to create a natural environment. The result can be a more aesthetically pleasing design, both to its residents and the surrounding community.

It is important to note that it is this feature which essentially differentiates a PUD from cluster housing developments. Although the end product of the two may look remarkably similar, cluster subdivisions are planned and approved through the standard control process, although some standards may be waived. As a result, the developer does not have the flexibility in site design nor does the town have the opportunity or authority to control the development to the extent it would under the PUD process.

The third common feature of PUD ordinances is that they are generally treated as a floating zone. As such it is a zone which can be established at some future time by approval

of a zone change by the town council. Until such time, however, the zone "floats" until it is assigned to a particular parcel. For the most part, a floating zone is allowed throughout a community on parcels of a predesignated size and are approved as any other zone change by an amendment to the zoning ordinance.

In addition to these standard features of PUD ordinances, some ordinances further encourage flexibility by allowing a mixture of land uses within one site and by allowing densities higher than that of the underlying zone. The mixture of land uses is not widely used feature, except in very large developments and is often limited to uses servicing the residents of the developments. The purpose for mixture of uses is to disseminate commercial and industrial zones throughout the town in appropriate locations while also helping to offset the municipal costs of servicing the residential portion of the development. This concept, however, is contrary to what many believe to be the foundation of zoning: the separation of incompatible uses. Furthermore, it is feared that the mixture of uses creates an undesirable environment resulting in decreased housing values. Consequently, it has not gained widespread acceptance.

If not controlled through the existing zoning, overall density levels are sometimes increased to provide further incentives for the use of the PUD. Density bonuses are offered in return for the provision of increased amenities

within the development. Like the combination of uses, it is not a feature found in all ordinances.

The combined result of these features is to provide a basis for negotiation between the developer and municipal officials. Not only is the developer given a considerable free hand in the design proposal but the town is given the opportunity to require other provisions in the development. These may include open space or site dedications, landscaping, conservation buffers, and more importantly, phasing of construction. It is through this carrot and stick negotiation process that an optimum plan is agreed upon by both parties.

### 2.3b The PUD Development

The features which distinguish the PUD ordinance also produce developments which are substantially different from traditional ones. Many of these features are reflective of specific requirements of a community's ordinance such as open space or landscaping standards. There are, however, basic similarities found in most PUD's which distinguish it from traditional developments. Following is some of the key elements found in a typical planned unit development.

- 1) creative design layout, generally with small clusters of multi-family condominiums or apartments;
- 2) mixture of diversified dwelling types, designs and architectural styles;
- 3) provision of public and private open space and recreational facilities to serve residents.

As mentioned, the nature of a particular PUD is often dependent on the provisions and restrictions of the PUD ordinance. While some have liberal policies regarding density standards and mixed uses, others use a more conservative approach to regulating these features. The diversity of PUD ordinance features, particularly its permitted uses, results in a variety of potential types of developments. As mentioned, not all towns allow increased densities or encourage housing variety. Furthermore, the ability to combine land uses within the development is not a feature of all ordinances.

These variations result in four basic types of developments which are summarized in Table 2.1. Three would be variations of planned unit residential developments (PURD) with varying densities and housing types. The first type would maintain density levels of the existing zoning and would be limited to single family housing in cluster arrangements. The second type would also maintain density levels of existing zoning but would include both single family and multi-family dwellings within the site. The third variation of a PURD would combine the varied dwelling types of the second type but would also increase density levels. The fourth type not only combines residential types and densities, but would include nonresidential uses as well. This last version could perhaps be considered most similar to the original conception of the planned unit development.

TABLE 2.1

## CLASSIFICATION OF PUD TYPES

Features of the PUD Type

	Developed as one parcel with clustered housing and open space	Mixture of Housing Types	Increased Density	Mixture of Uses
Type 1	X			
Type 2	X	X		
Type 3	X	X	X	
Type 4	X	X	X	X

Source: Robert W. Burchell, Planned Unit Development, New Communities American Style, p. 8.

It is important to remember that the four types of PUDs, although each having different design characteristics, all contain the essential elements of the PUD concept. First, they are designed as an entity and approved through a PUD negotiation process, not through standard subdivision or zoning codes. Secondly, they contain amenities not normally found in standard developments such as open space provisions, landscaping and buffer strips, recreational facilities and creative site design.

#### 2.4 Legal Issues

Research and publication of a report by the American Society of Planning Officials on flexible zoning techniques made this summary statement on the legality of PUD:

"The validity of the basic PUD ordinance as a regulatory tool seldom has been litigated; rather challenges are based on arbitrary standards or abuse of required procedures by official agencies. When, as more commonly occurs, the neighbors challenge PUD actions, they too, focus on specific actions - increasing densities, permitting certain uses, approving a special permit -- rather than the entire ordinance. So, while the case law is of assistance in defining the standards and bounds of PUD provisions, we are left with the reasonable assumption that the concept is valid."<sup>4</sup>

Despite the apparently accepted validity of the PUD concept, there are some legal issues involved with its application and administration. These involve the need for special PUD enabling legislation, the mixing of uses, the use of floating zones, the negotiation process used in the approval procedure, and the need for PUD regulations to be in accordance with a comprehensive plan.

Of concern to some is the need for state enabling legislation to authorize the adoption of PUD ordinances. As mentioned earlier, model enabling legislation was published by the Urban Land Institute in 1965 to provide a legal format for states to incorporate the elements of PUD within their existing legislation. As also mentioned, Rhode Island is one of many states not having adopted special PUD legislation.<sup>5</sup>

Lack of state enabling legislation, however, has not prevented many communities from adopting PUD ordinances, not only in Rhode Island but elsewhere throughout the country. In 1973, research by the American Society of Planning Officials found use of PUD ordinances in eighteen states, with only a handful having supporting state enabling legislation.<sup>6</sup>

A more recent survey by Tomioka in 1984 found the PUD concept being used in thirty-seven states across the country.<sup>7</sup>

In fact, PUD activity was found most frequent in two states without special enabling legislation for PUD, California and Maryland. In California, court cases challenging the validity of PUD as being contradictory to the uniformity clause of zoning enabling legislation was rejected by the California Court of Appeals in Orinda Homeowners Committee v. Board of Supervisors, 11 Cal. App. 3d 768. In response to the argument that the PUD conflicted with Section 65852 of the code requiring uniformity for each use of land throughout each zone, the court said the following:

"We hold that a residential planned unit development (a cluster development) does not conflict with Section 65852 merely by reason of the fact that the units are not uniform, that is, they are not all single family dwellings and perhaps the multi-family units differ among themselves."

This decision would seem to indicate that special enabling legislation for PUD is not necessary if the court uses a broad interpretation of the zoning enabling act. In states such as Rhode Island, however, where the interpretations of courts are often more conservative, validity of PUD without enabling legislation is uncertain should it ever be challenged.

Beyond this fundamental question, there is differing opinions on the constitutionality of mixing uses within one parcel and the ability to use floating zones to implement the ordinance. Both concepts represent, in many ways, the antithesis of original zoning concepts, as laid out in Euclid

v. Ambler Realty Co., 277 U.S. 365 (1926). Some progressive courts have supported mixed use developments, stating that the arguments of the Euclid case need to be interpreted more broadly given the radical changes in our society.

The same justification is given for use of floating zones. It is argued that rapidly growing communities may not always know in advance the best possible locations for all uses -- therefore greater zoning flexibility is needed. One of the leading cases upholding use of floating zones rejected the argument that floating zones violated property owners vested interest rights because of their inability to know where the floating zone would "sink". In supporting a floating zone for location of multi-family uses, the New York Court of Appeals recognized the need for zoning to change in response to a community's best interests, Rodgers v. Village of Tarrytown, 302 N.Y. 115, 96 N.E. 2d 731, (1951).

"While stability and regularity are undoubtedly essential to the operation of zoning plans, zoning is by no means static. Changed or changing conditions call for changed plans, and persons who own property in a particular zone or use district enjoy no eternally vested right to that classification if the public interest demands otherwise."

Citing this case, use of floating zones was later upheld in Maryland, Huff v. Zoning Board of Appeals, 214 Md. 48, 133 A2d 83 (1957) and in Pennsylvania 3 years later in Eves

V. Zoning Board, 401 Pa. 211, 164 A. 2d 7 (1960).

The third issue is the ability of a municipality to engage in a negotiation process with a developer. Critics argue that this is a form of contract or conditional zoning which is illegal in many states. Despite this concern, the Supreme Court of Pennsylvania in one of the leading cases validating PUD regulations, supported use of negotiation, Cheney v. Village #2 at New Hope, Inc., 429 Pa. 626, 241 A. 2d 81 (1968).

"One of the most attractive features of planned unit development is its flexibility; the chance for the builder and the municipality to sit down together and tailor a development to meet the specific needs of the community and the requirements of the land on which it is to be built."

Questions arise, however, concerning the ability of a town to approve one project but reject another without a clearly stated justification in the ordinance. To avoid this potential problem, some ordinances clearly specify grounds for approval. The model act addressed some of these issues by imposing detailed procedural requirements which treat the approval process as adjudications rather than legislative rulemaking. In so doing, the process is subject to much closer judicial scrutiny.

The last issue of concern is the relationship of PUD regulations to a community's comprehensive plan. As a floating zone, the location of a PUD is not known until it is proposed on a particular site. This obviously can lead

to arguments that the use is tantamount to spot zoning and therefore not in accordance with a comprehensive plan. Prior discussion on the floating zone technique suggested that many courts do not agree with this contention. The Pennsylvania decision in Cheney v. Village #2 at New Hope, Inc., 429 Pa. 626, 241 A2d 81 (1968), again used a broad interpretation of this requirement in support of PUD regulations:

"The fallacy in the (lower) courts reasoning lies in its mistaken belief that a comprehensive plan once established is forever binding on the municipality and can never be amended ..."

In general, however, the approval of a PUD must adhere to the requirement of all zoning in that is in accordance with some sort of master plan. A review of case law on this subject indicates that this requirement is often loosely interpreted, depending on the definition used for a comprehensive plan:

"... courts have not interpreted this language to require that a community have adopted a specific document called the comprehensive plan prior to enacting a zoning ordinance or subsequent amendments. Instead, the comprehensive plan has been perceived from the ordinance itself, the zoning map, any studies or reports commissioned by the municipality which deal with its present and future land use and development needs." <sup>8</sup>

Because of potential variation in the interpretation of zoning legislation from state to state, it is difficult to define the validity of specific PUD provisions. As discussed, courts using broad interpretations have allowed considerable flexibility in the administration of a PUD ordin-

ance. On the other hand, some courts may invalidate any provision of the ordinance not adhering to zoning enabling legislation. It appears, however, that the basic validity of PUD regulations as a land use technique is upheld by most courts. As for specific provisions, the best guideline to follow in developing PUD regulations is that they be designed in accordance with the general health, welfare and morals of the community and that the standards which are used are neither arbitrary or capricious.

## 2.5 An Assessment of the PUD Concept

As with any new or innovative concept, there are inherent advantages over existing methods which obviously led to its adoption, but there are also complications which evolve when the theoretical concept is put into practice.

Most of the advantages of the PUD ordinance and development have been discussed earlier. Following is a summary of some of the advantages the PUD can present over the traditional methods of developing land:

1. Creative layout maximizing harmony with natural land features;
2. Variation in the types of housing provided and their architectural styles;
3. More efficient and reduced street layouts and accompanying utility facilities;
4. Preservation of open space, whether it be unique environmental features or areas set aside for recreational use;
5. More aesthetically pleasing development with use of landscaping and buffer areas;

6. Ability of the town to receive amenities such as site dedications and to require phasing of the development to minimize impact on town resources.

In actual application, however, the PUD concept can develop difficulties for two main reasons. First, it is a fairly novel technique in most communities. Thus, its application may be difficult to understand and implement, both by municipal officials and developers. This may result in the improper use of the PUD ordinance. Second, in many ways its successful implementation is dependent on the imaginative abilities of the designer to create a development adhering to the goals of the ordinance. This is where many fear that flexibility is a two-edged sword. Should a developer be either unconcerned with the quality of the development or less than reputable, it is possible that full advantage may be taken of the ordinance's flexibility without compensating amenities. It is in this case that careful site plan review and a strong planning board can be crucial to ensure adherence to the objectives and standards of the ordinance.

Furthermore, because approval of a PUD zone change is in essence approval of the submitted proposal, enforcement of the site plan provisions is essential. Without a strong enforcement arm, problems such as improper phasing, inadequate landscaping, incompleteness of recreational facilities and failure to maintain open space can potentially develop. For this reason, many ordinances delineate strict procedures for the placement of bonds to cover each phase of construction.

The following is a summary of some of the potential problems encountered in the PUD process, both by developers and municipalities:

1. Potential abuse of design flexibility;
2. Lack of strict adherence to the development proposal, particularly with regard to the provision of amenities;
3. Difficulties in understanding the requirements of the ordinance;
4. Lack of professional capacity on review bodies creating difficulties in assessing design proposals;
5. Abuse of the negotiation process, with either side not abiding by the specified regulations;
6. Lengthy and detailed approval process burdening other functions of the review body and adding to front end costs of the developer;
7. Difficulties with maintaining open space and recreational facilities should the homeowners' association not function properly.

Many of these problems have been foreseen or encountered by towns who have tried to mitigate them through more detailed ordinances. As this occurs, however, the ordinance begins to lose its flexibility and becomes a lengthy and often confusing document to interpret and implement. It is advisable, therefore, to have professional staff capable of conducting the review process and a strong approval body capable of enforcing the ordinance during the negotiation process.

As this chapter has discussed, the concept of a planned unit development was originated to present an alternative form of development. With numerous problems associated with the onslaught of traditional subdivisions, the PUD concept

was developed not only to give developers greater design flexibility, but to give municipalities greater control over the final design and greater input in the approval process. The popularity of the idea increased with the publication of the Model Act in 1965; communities across the nation in thirty-seven states have adopted PUD provisions within their ordinances.

These features of both the PUD ordinance and development have contributed to this popularity -- The ordinance allows the development of a parcel as one entity, thereby relaxing many design standards and allowing greater flexibility in site layout and permitted uses. Furthermore, the landscaped open space, buffer zones and preserved natural features can create much more aesthetically pleasing environments. The control given to the town to phase development construction enables them to carefully assess the impacts of PUD and schedule phases accordingly.

The provisions for permitted uses and restrictions within an ordinance can vary considerably from one community to the next. Accordingly, there are a number of development types which can result. These range from more traditional single family cluster arrangements to designs incorporating both a variety of housing types and a mixture of uses. While this flexibility and efficient layout can be a significant advantage to both the developer and community, there are potential disadvantages with the PUD process. These lie mostly with the abuse of increased flexibility or the inability of a

community to properly implement or administer their ordinance.

Many communities are concerned with the legal issues surrounding the PUD process. Because the controls used in regulation of a PUD differ considerably from standard requirements, there are some questions concerning the proper procedural requirements or legality of an ordinance. Ironically, the publication of a Model Act seemed to calm many of these fears, although few states have incorporated its provisions within their enabling legislation.

#### Chapter 2 - Footnotes

- 4 Michael J. Meshenberg, "The Administration of Flexible Zoning Techniques," PAS Report 318 (Chicago: American Society of Planning Officials), p. 20
- 5 Several unsuccessful attempts have been made to revise the Rhode Island zoning enabling legislation to include provisions for PUD regulations among many other changes. Such proposed revisions are currently before the state assembly again; the approval of the bill is uncertain.
- 6 Frank S. So, et al, "Planned Unit Development Ordinances", PAS Report 219 (Chicago: American Society of Planning Officials), p. 47
- 7 Seishiro Tomioka and Ellen Miller Tomioka, Planned Unit Development: Design and Regional Impact, (New York: John Wiley & Sons, 1984), p. 139
- 8 Frank S. So, et al, p. 48

CHAPTER THREE  
PUD CONCEPT IN PRACTICE

With the growing acceptance of the PUD concept and the publishing of the Model Act, PUD activity grew considerably. Application of the PUD concept varied from state to state and from urban to rural areas. Likewise, the success of the PUD varied with each application and within each environment.

A review of the various changing applications of the PUD concept will be examined in this chapter. This will include a review of various forms of development which have been conceived in addition to an examination of factors which have contributed to their success. Finally will be a review of elements of the PUD ordinance which have proved to be most effective in the successful application of the PUD concept.

3.1 Forms of PUD Design and Application

As mentioned earlier, a PUD is more than a type of development; it is a method of regulating and developing land. It is often referred to as a land use technique. Consequently, rather than specifying detailed criteria which must be adhered to, the objective of the PUD concept is to set a minimum of design parameters to afford as much flexibility as possible in its application. Resultingly, a vast array of designs and developments have been produced. In addition, the use of the PUD concept has changed over time, re-

flecting changes in the economic, political and social environment.

Perhaps the earliest widespread use of the PUD concept was for the design of large-scale developments in suburban communities. The tremendous housing boom in the 1960's, fueled by a strong economy and highway construction, fostered the construction of such large-scale developments. The advantages of these projects were apparent.

"Potential benefits included economies of scale in construction, increased efficiency in public service and infrastructure costs, variety and innovation in housing type, and, for the consumer, a higher-quality living environment resulting from increased control, better planning and better design as well as the availability of amenities." <sup>9</sup>

Examples of these types of developments include Boca-West, a 1400 acre, 7800 unit resort community in Palm Beach County, Florida and Lincoln Village West in Stockton, California with 3000 units on 773 acres.<sup>10</sup> An even further extent of this form are the "new towns" of Columbia, Maryland and Reston, Virginia, which have integrated the mixed use concept within an entire community setting. More recently, the PUD concept was used in Roosevelt Island in New York City, converting a 147 acre wasteland to a successful experiment in urban living. Once the site of a prison insane asylum, the island now houses over 5,000 people in a diverse setting which integrates low and high-income units with recreational, educational and commercial facilities in a pedestrian-oriented environment. Long waiting lists for apartment

rentals testifies to its popularity and success.

Since the early seventies, however, several factors have limited the feasibility of large-scale developments. Most important among these was the economic recession of that period which shrank the housing market considerably. Furthermore, the rise in interest rates and soaring land prices not only stifled housing demand but curtailed the ability of developers to make the long-term financial investments which are necessary with large projects. For example, between 1970 and 1974, the prime rate changed sixty-five times as opposed to sixteen changes between 1960 and 1969.<sup>11</sup>

With a poor and unpredictable economic environment, the risks involved in undertaking a staged development were too great for most investors. Although this situation has recently improved to some extent as the economy has stabilized, it is difficult to predict the effect this may have on future development decisions.

In addition to economic factors, the changing planning and political environment of more recent years has discouraged larger developments. Responding to the unprecedented growth of their communities, planning boards became more sophisticated and their role more extensive as they began to exert more control over the development process. Likewise, the residential population became more concerned of the effects of large developments on their neighborhood. Their concern was cultural and economic:

"On a basic level, the PUD concept conflicts with the notion of private ownership of small parcels, the notion which had drawn many residents to the suburbs in the 1950's and 1960's. By the time PUDs were being proposed in the late 1960's and early 1970's, these residents have a substantial stake in the community and feared the possibility of lowered property values resulting from higher-density development." 12

The influence of both these factions, the local government and community residents, added to the difficulties in undertaking large developments.

More recent applications of PUD, therefore, are on more limited scale developments. Smaller developments shorten both the design and review process, lessen the impact on a community and minimize the financial risks on the investor. Research by the ULI found that almost 60% of the communities surveyed had witnessed a decline in the size of PUD development throughout the 1970's.<sup>13</sup>

It also appears that PUDs are being used in more limited settings; particularly in environments more conducive to their application and acceptance. Common application of PUD occurs on sites which have unique environmental characteristics or environmental constraints. An example is Lincoln Ridge in Lincoln, Massachusetts where 150 units were clustered on 85 acres to maximize preservation of the forested area and a large pond bordering the site. In Tempe, Arizona, extensive PUD activity is anticipated to increase further as much of the remaining land is difficult to develop conventionally. Likewise, the City of Colorado Springs has

found that the flexibility of the PUD encourages preservation of many natural features such as rock outcroppings and trees.<sup>14</sup>

A second frequent use of the PUD is as a second-home community. In addition to their location in more aesthetic environments, the provision of extensive recreational facilities and reduced maintenance is an attractive enticement for future retirement. An example of this is Mariner Sands in Martin County, Florida.<sup>15</sup> A total of 976 single-family and condominium units were clustered on 720 acres which included golf and tennis facilities, a swimming pool, a country club, and several lakes. Fifty percent of the area has remained as open space. Most residents use their units for winter vacations and eventually as retirement homes.

The changing use of the PUD not only reflects those of the economic and political environment, but has strongly been influenced by social elements. Once regarded as undesirable living arrangements, condominiums and attached housing is becoming more acceptable. Particularly for young couples without children and older couples reaching retirement age, the attractiveness of increased recreational opportunities and reduced maintenance overcomes the resistance to higher density developments. As a consequence of these changing public attitudes, planned communities are gradually becoming a more accepted form of development throughout the United States.

Reflecting on the trends of PUD use over the last three decades, it becomes apparent that developers have responded to changing public needs and adapted to changing development climates. When large-scale developments became feasible in the 1960's, entire communities were designed to capture the expanding housing market. Later, development sizes were reduced during the economic recession and more recently have been tailored to meet the needs of the growing second home and empty-nestor market. Concurrently, public attitudes towards higher density developments have changed, and consequently public resistance has substantially been reduced. Given these conditions, the future for PUD use looks quite promising.

### 3.2. Elements of Successful PUD Projects

As already discussed, the PUD is a land use technique or a development process. There are several types of potential products which can result, ranging from apartment complexes to multi-use developments. Their specific design is focused on the potential market, whether it be first-time home buyers or empty-nestors.

Despite the extreme variation in design concepts, there are several elements which are characteristic of the more successful PUDs. These elements consist of both design considerations as well as management and financing techniques. The determination of these elements is based on the close examination of numerous PUDs throughout the country by sev-

eral studies on this subject. Success is often difficult to define in general terms as it relates to such a diversified subject.<sup>16</sup> However, factors such as long-term stability, integration with the surrounding community and consumer satisfaction are good barometers of a project's success.

On this basis, the following elements were found to affect the level of success of a typical PUD project. Three are design related: site selection, layout and orientation of housing units and architectural design, and three are management related: premarketing studies, financing strategies and organization of homeowner's associations.

### 3.2a. Site Selection

As one objective of the PUD alternative is to create more aesthetically beautiful environments, it is only logical that a site with natural amenities would lend considerable advantages to any development. Such features as rolling topography, wooded vegetation, and lakes and streams can enable a natural, rural environment to be created amidst an otherwise urban housing arrangement. This serves not only to attract potential residents, but may stifle potential resistance from neighborhood groups to a high density development. Furthermore, use of existing natural features minimizes the need for extensive landscaping or creation of aesthetic environments.

In addition to favorable on-site features, the accessi-

bility of a site to commercial and employment centers can contribute to its appeal. Close proximity to major access routes are a prime drawing card for working couples, particularly if combined with a rural setting. Accessibility may be particularly important to potential residents who may be used to such conveniences in urban environments.

### 3.2b Housing Unit Layout

Correlated with an aesthetic natural environment is the layout and orientation of the housing units themselves. It is important to remember that the advantages offered by the PUD process is flexibility; the better designs use maximum advantage of this tool. Such features as curvilinear roads, clustering of units within natural settings, view maximization and southern orientation can create a much more attractive development.

For towns interested in preserving their rural character and residents seeking aesthetic living environments, better layout design can be very important.

### 3.2c Architectural Design

Creative architectural design of the development can be a key factor in its success. Mundane, repetitive designs may replicate urban developments and be insensitive to the surrounding community. On the other hand, creative designs which complement the neighborhood can create a more attractive development. As a result, the aesthetic objectives of

the PUD concept are realized and public opposition is minimized.

### 3.2d Premarketing Studies

Because one of the potential obstacles to PUD acceptance is public ignorance of the concept, it can be extremely helpful to address this issue by conducting premarketing studies. Through either door-to-door canvassing or public meetings, a developer can present the proposed development in its earliest concepts in a non-threatening forum. The proposal can be discussed with potential opponents and clients, through which innovative or practical ideas may be presented. The developer can then refine the concept to meet the needs of the potential market. This tactic was used by developers of two PUDs in Lincoln and Lexington, Massachusetts. Their efforts resulted in sales of most of their units before they were even constructed.<sup>17</sup>

### 3.2e Financing Strategies

Financing is a key element of PUD projects because of the lengthy approval periods, extensive design, and phasing of construction which is normally required. Most important is the length of time required to acquire approval for the project. During this lengthy period, considerable expenses are accrued for engineering and architectural design, which can also be quite higher because of the flexibility of the PUD.

Meanwhile, a developer pays interest on funds borrowed to finance the project. Furthermore, the amenities often required or provided in PUD projects increase total project costs. Because sales of units are restricted with phasing requirements and market demand, recovery of these expenses may be slow.

Although some financial factors involved in PUD projects cannot be controlled, such as the time required to gain approval, interest rates or housing demand, there are some strategies which can be used to help lower the financial risks. One would be the securing of adequate financing through a lender who can afford a long-term commitment to the project. As the length of project construction and project sales depend on uncertain factors, a strong commitment is needed to carry the project through difficult periods. Second, the timing strategies of construction can be crucial. The construction of the various residential, recreational and infrastructural elements should be carefully planned to avoid high front end investment and cash-flow problems. For example, expensive recreational facilities should be developed as required for early sales with additional facilities added as the development progresses. Lastly, the premarketing strategies undertaken in the early planning should be followed up with effective marketing to promote the development concept. This can encourage early sales and can help inform consumers as to the many benefits of PUD environments.

### 3.2f Homeowner's Association

Perhaps one of the most critical and controversial issues related to the long-term success of a PUD is the function of the homeowner's association (HOA). Often required by the PUD ordinance, the homeowner's association is comprised of mandatory membership by all residents. Their duties depend on the type of development and amount of open space. For the most part, however, the HOA is responsible for the ownership and maintenance of all open areas and recreational facilities.

The potential problems resulting from the lack of responsibility of the HOA are clear. Residents would suffer from lack of maintenance, and the surrounding community would be plagued with a poorly kept neighborhood and lowering of housing value.

Aware of this potential problem, the ULI Model Act laid out strict guidelines for the creation and functioning of a HOA. The establishment of a HOA by the developer is required with provisions for municipal takeover of maintenance responsibilities should the HOA fail to do so. The cost of any municipal expenditures would be passed onto residents through a tax assessment or tax lien.

A successful PUD, therefore, must also have a well-functioning HOA to oversee the long-term maintenance of all facilities within its ownership. Often this responsibility is contracted to a management service or a subsidiary of the development firm.<sup>18</sup> In this way, potential conflicts can be

minimized and left in the hands of professionals. In any case, it may be necessary for the town to monitor the maintenance activities to ensure that it is being handled adequately.

Although not easy to define because of many diverse elements, a successful PUD combines many of the above elements in a well-designed and functioning community. Unfortunately, it is not always possible to dictate optimum or desirable features to a developer, particularly when the goal of the PUD process is to encourage flexibility through a minimum of requirements. For the most part, this initiative is assumed by developers interested in creating quality developments.

There are some ways the PUD ordinance can influence or affect the successful use of the concept. These will be discussed in the following section.

### 3.3 Elements of Successful PUD Ordinances

The PUD ordinance serves as the tool which implements the theories of land use development discussed in Chapter two. It can either encourage PUD use and provide maximum flexibility or limit its practical application through strict standards and arduous requirements. In many ways, the PUD ordinance reflects the attitudes of the town and planning board toward development in general and PUDS in particular.

This chapter will review some important elements of the PUD Ordinance. First will be a discussion of its relation-

ship with a community's master plan, in particular, its housing policies. Second will be an examination of elements which have contributed to the more effective use of PUD ordinances.

### 3.3a Relationship with Master Plan

The PUD ordinance, like other regulatory techniques, can be used as a tool to implement the planning policies outlined in the community master plan. The flexibility in developing a PUD ordinance and regulating its use is particularly adaptable to this task. For example, if a town should desire dispersion of nonresidential uses, their ordinance and planning board can encourage this concept by offering incentives such as increased density. On the other hand, should environmental protection be a key concern, the ordinance can specify measures to avoid environmentally sensitive areas or to protect unique environmental features. Similarly, the town can require open space areas or large buffer zones if preservation of rural character is a town policy. In addition to being incorporated in the goals and requirements of the PUD ordinance, the approval process gives another opportunity to implement planning policies. Rather than rubber-stamping plans that adhere to ordinance requirements, the town can review proposals to ensure their compliance with the stated policies. Desired changes can be requested during the negotiation of a final plan with the developer.

Another important use of this concept pertains to a

community's housing policy. The variety of housing styles which can be incorporated within a development can accommodate residents of several economic and social classes. Such a development might include a combination of single family homes, condominium townhouses and multi-story rental units. Additionally, the provision of lower income housing can be encouraged using density bonuses or other negotiable criteria. A few communities nationwide actually require inclusion of a specified number of lower income units. These include Fairfax County, Virginia; Montgomery County, Maryland; Los Angeles, California; Cherry Hill, New Jersey and Lewisboro, New York.<sup>19</sup> In New Jersey, an important and far-reaching decision of the State Supreme Court stated that growing communities "must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. More specifically, presumptively it cannot foreclose the opportunity of the classes of people mentioned for low and moderate-income housing and in its regulations must affirmatively afford that opportunity".<sup>20</sup> The PUD can easily be used by a community to provide such affirmative opportunities.

In order to maximize effective use of the PUD ordinance in carrying out community goals, it is essential that these policies be clearly stated and supported. Obviously, towns having outdated master plans or policy documents which have never been read will not be able to achieve this coordination. Likewise, unless the goals of the community are recognized

and supported by the town government, their implementation may be ignored during the PUD negotiation and approval process. The American Society of Planning Officials (ASPO) had this comment on PUD and planning:

"Far too many suburban jurisdictions are simply reacting to PUD developments without any clear idea of how these proposals relate to the community's comprehensive plan ... this is a sorry state of affairs in a technical sense."<sup>21</sup>

Therefore, it is essential that a workable, well-supported set of policies be developed. Not only should these be used as a guidance for all community decisions, but their use in the PUD process can be a crucial element. Without such clear goals relating to a community's master plan, growth can be undirected and misguided. The ASPO went on further to espouse the benefits of relating PUD to planning:

"When these communities review PUDs, of whatever size or density, they have a relatively good grasp of how land-use intensities and population densities fit into existed and planned systems ... Moreover, it provides us with a greater sense of confidence in public officials who must engage in a considerable amount of discretionary decision making in the PUD process."<sup>22</sup>

### 3.3b Criteria for Effective Ordinances

Each community must develop an ordinance that best meets their community needs and growth policies. Some may seek alternate housing styles, others may prefer clustering of single family housing and preservation of open space. Similarly, their ordinances are as unique as the developments which result.

Having been in use now for over twenty-five years, there has been recent research and literature on aspects of

all PUD ordinances which have proved to be more successful.<sup>23</sup> Success of an ordinance may be defined in terms of its overall use and the adherence of proposals to its stated goals and objectives. Elements found to help achieve this level of success are found in both the ordinance requirements and administration. The following summarizes criteria which were found to influence ordinance effectiveness.

#### Simply Written and Easily Understood

A PUD ordinance often contains complex elements relating to permitted uses, design requirements and review procedures. Sometimes these elements are poorly organized and written, making interpretation difficult. This can discourage potential developers, or perhaps worse, result in its improper application or administration. It is important, therefore, that the ordinance minimize confusion as much as possible. Not only will a simple, clearly written ordinance be easier for developers to understand and implement but will facilitate proper administration by town officials.

#### Flexible Standards

In an attempt to avoid abuse of PUD flexibility, many ordinances become burdened with detailed requirements and standards. The resulting ordinance often inhibits the creativity it was designed to encourage. On the other hand, too much ambiguity or vagueness can mislead developers and result in undesirable developments.

Each ordinance must strive to achieve a balance between design flexibility left to the discretion of the developer

and the specification of minimum standards. Probably the most effective method would be to coordinate clearly stated policies with the goals of the ordinance without burdensome detail. For example, if the goal of an ordinance is to maximize environmental protection, a design policy may be to encourage innovative layout which preserves natural features. The task is then left to the designer to achieve this goal rather than by following detailed requirements in the ordinance which may minimize design flexibility. It is through the site plan review process that the adherence to ordinance policies can be examined.

This recommendation may be qualified with consideration of the review capacity of the planning staff. Should limited professional ability be available, it may be advisable to increase the detail of standards. Planning boards not able to effectively review complex development schemes would only be burdened with ordinance flexibility. The next criterium emphasizes the need for such professional assistance.

#### Development Standards

Having espoused on the need for relaxation of ordinance requirements to encourage flexibility, this recommendation will be tempered with some necessary standards. These specific guidelines are important because of the potential complexity of PUD projects. Their use should not restrict flexibility but will minimize adverse impacts on the development itself and on the community.

## 1. Requirements for Homeowner's Association

The important role of the HOA was discussed earlier in this chapter. The town can take measures to avoid potential failures by placing safeguards within the PUD ordinance itself.

First of all, the ordinance must address this issue within the ordinance guidelines. Many ordinances do not mention the HOA or only briefly discuss its role. Secondly, the specific requirements of the HOA should be spelled out within the ordinance so that their responsibilities are clearly understood. These requirements should be incorporated in covenants which are submitted and approved by the town before final PUD acceptance. Thirdly, guidelines for town assumption of maintenance responsibilities should be clearly stated with procedures for recovery of expenses through tax liens.

## 2. Phasing Requirements

Depending on the size of a PUD project, it may be necessary to phase in a development in stages which the town feels it can handle adequately. It is at this point where the need for coordination with the master plan is most crucial. If a community is aware of their

fiscal and growth needs, the phasing of a development can occur with minimum disruption to town services.

The phasing of a development is one of the real advantages of PUDs over traditional development. The town should take maximum advantage of this opportunity and include the involvement of the public works, finance and planning boards to evaluate the proposal. With specific criteria, the town is better prepared to enter the negotiation process with the developer so that a mutual agreement can be reached.

#### 4. Posting of Bonds

The posting of bonds to cover construction costs is normally required of most developments. This issue obviously becomes more crucial with PUD projects because of the scale of development and the amount of amenities provided. Of key concern is the potential for proposed amenities not to be constructed should funding be limited. Through cooperation between town departments and the developer, an agreeable and fair schedule can be devised to ensure sufficient financing and project completion.

#### Input from Planning Board and Professional Staff

Considerable input from a strong planning board and pro-

fessional staff is important for two reasons. First, it is essential that a community is able to carefully analyze all aspects of the development plan. A lay planning board may not be able to accomplish this task thoroughly. Second, a strong planning board is needed throughout the negotiation process to ensure that their goals are effectively achieved. Without either of these capabilities, a sophisticated developer has a better chance of ramrodding a proposal through without proper review.

#### Streamlined Review Process

The length and complexity of the PUD review process often unnecessarily discourages potential developers. Particularly inhibiting are ordinances which do not have clearly stated review period limits. Lack of clear procedural guidelines not only frustrates potential developers, but certainly complicates the administration of the ordinances by lay planning boards. Moreover, without any guidelines as to the anticipated time for approval, a developer can be forced to extend financing for long periods of time.

To encourage the use of PUDs it is therefore helpful to not only specify time limits for review but to keep their length at reasonable levels. Certainly enough time must be allowed for adequate examination of the proposal, but attempts should be made to streamline the process wherever possible.

## Public Participation

As with all planning projects, the input from community residents is essential. This is particularly important for developments which may have significant impacts on a neighborhood such as PUD projects. Public participation, particularly at early stages, can serve to resolve potential conflicts before significant investment is made. As with pre-marketing, neighborhood feedback can be used to make constructive improvements on the project design.

Therefore, public participation in the PUD process serves three purposes. First, it provides a forum for citizen involvement where issues can be openly discussed and objections can be voiced. Secondly, public discussion apprises town officials of neighborhood concern. However, the extent and validity of this concern needs to be properly evaluated and distinguished from emotional issues so often intertwined with developments. Thirdly, public meetings give the developer an opportunity to present his proposals to the neighborhood. If valid concerns are raised, the proposal can be revised to accommodate local needs.

The role of public involvement can enhance the PUD process if two guidelines are followed. First, it should occur at an early stage in order to have an impact on the initial planning process. This would probably be most effective following the preapplication conference between the developer and professional staff. Second, the role of the public should

be clearly stated in the ordinance. Not only is the public apprised of their potential involvement, but the developer has full knowledge of this participation in advance.

### Enforcement

No public document can be effectively implemented if specific requirements are not in place for its enforcement. The PUD ordinance is no exception.

Enforcement is needed at all stages of the PUD process. In the approval stage, proper review is necessary to ensure compliance with ordinance standards. In the final stage, it is important to make sure all plans and legal documents are in order. Obviously, it is also critical that careful inspection is made of the project construction to ensure compliance with approved plans, posting of bonds and development schedules. Following construction, it may be necessary to periodically inspect the open space and recreational facilities and institute proper action to correct problems.

The enforcement arm of an ordinance can be critical to its long-term success. Unfortunately, limited space prevents complete coverage of this topic. The ASPO report on Planned Unit Development Ordinances may be consulted for more complete recommendations. <sup>24</sup>

This chapter has reviewed the application of PUD concept to development forms throughout the country. The flexibility of this land use tool can be used to create luxury resort communities or high density suburban housing projects.

The success of these developments, in terms of long-term functioning and viability, has been a topic of recent research. Several factors are believed to enhance the potential success of a PUD. This includes careful site selection, housing layout, architectural design, premarketing studies and financing.

Likewise, the PUD ordinance can be instrumental in influencing the effectiveness of the PUD. It is important that the ordinance allow enough flexibility for creative design while ensuring minimum safeguards such as performance bonds and maintenance of open space. It is also essential that the ordinance be clearly related to the goals of the community as stated in their master plan. A clearly organized review process which involves public participation at early stages can further address the community's concerns. Moreover, it is essential that provisions are made for adequate enforcement of each step of the PUD process, from initial planning to post-construction maintenance.

### Chapter 3 - Footnotes

<sup>9</sup> Colleen Grogan Moore and Cheryl Siskin, PUDs in Practice, (Washington, D.C.: Urban Land Institute, 1985) p.7

<sup>10</sup> For examples of PUD case studies, see Moore, PUDs in Practice and Tomioka, Planned Unit Developments. Both give detailed examples of several constructed PUD projects.

<sup>11</sup> Ibid., p. 9.

- <sup>12</sup>ibid., p. 10.
- <sup>13</sup>ibid., p. 11.
- <sup>14</sup>Seishiro Tomioka and Ellen Miller Tomioka, Planned Unit Developments (New York: John Wiley & Sons, 1985) p.148
- <sup>15</sup>Moore, p. 81.
- <sup>16</sup>See Tomioka Planned Unit Developments, Chapter 2 and Moore, PUDs in Practice, Chapter 5.
- <sup>17</sup>Tomioka, p. 12
- <sup>18</sup>ibid., p. 166
- <sup>19</sup>Michael J. Meshenberg, "The Administration of Flexible Zoning Techniques", Planning Advisory Service Report No. 318, (Chicago: American Society of Planning Officials, 1976), p. 24.
- <sup>20</sup>Southern Burlington Co. NAACP v. Twp. of Mount Laurel. 67 N.J. 151, 336 A. 2d 713.
- <sup>21</sup>So, Mosena and Bangs, "Planned Unit Development Ordinances", p. 57.
- <sup>22</sup>ibid., p. 57.
- <sup>23</sup>See Tomioka, chapter 7 and Moore, pp. 15-28
- <sup>24</sup>See So, Mosena and Bangs, pp. 22-24

## CHAPTER FOUR

### PUD USE IN RHODE ISLAND

The purpose of this chapter is to examine the application of the PUD concept in ten Rhode Island communities. Previous chapters have reviewed the issues and use of PUD in communities throughout the United States. The intent here is to relate these issues to localized conditions and situations.

Although there is no specific mention of planned unit developments within the current Rhode Island zoning enabling legislation, there are a number of communities which have incorporated provisions for planned developments within their zoning ordinance. The first community to do so was the Town of Glocester which adopted PUD provisions in 1962 with the encouragement of state planning assistance. Over the last three decades, several other communities have followed in Glocester's footsteps. Some use the PUD concept in very limited applications; others have incorporated the PUD in its fullest meaning. In whatever form, the existence of these provisions indicate a movement towards greater flexibility in land use control in Rhode Island.

Despite these efforts by many Rhode Island communities, research has indicated that PUD use has been fairly limited. This situation not only pertains to the number of PUD projects, but in the extent to which innovative concepts have been developed. Reasons for this appear to be multi-faceted. Not

only is the development climate not conducive, but public acceptance of the PUD concept may not be as widespread as in other areas.

Examination of this issue will therefore be threefold. First will be a review of the PUD ordinances which currently exist in the states, as well as a discussion of the different techniques employed. The second part will present information on the experiences of communities which have had PUD proposals. The last section will focus on the inactivity of PUD use in Rhode Island and discuss factors which may be responsible for this situation.

#### 4.1 Comparison of PUD Ordinances in Rhode Island: Types and Requirements

For the purpose of this study, the zoning ordinances of all thirty-nine cities and towns were reviewed to identify those having PUD provisions within their codes. This task was complicated by the fact that these provisions often appear in varying sections of the zoning codes under an array of headings. However, following an examination of each ordinance, ten communities were selected for this project. The PUD provisions in these towns were determined to be sufficient enough to warrant their analysis.

Names assigned to PUD developments vary from one community to the next. Some cannot really be considered PUDs in the truest sense of the concept. However, they all represent a departure from traditional land use control, and in-

corporate some of the flexibility aspects of the PUD concept.

As has been discussed earlier, PUD ordinance requirements can also vary significantly from one community to the next. The ordinance may be affected by community goals, development climate and the role of the planning board of the existence of professional planning staff. As a result of these variable conditions, the requirements and mechanics of each ordinance differ. The ordinances of each of the ten towns was examined to determine these differences. This information is presented in Table 4.1; some of these elements are discussed below.

#### Type of District

As is most common, the majority of the ten ordinances permit PUD developments as a floating zone. This technique allows a community to specify criteria required for PUD zones rather than delineating PUD districts in advance. For example, a PUD zone could be permitted townwide on parcels greater than twenty-five acres if the site conditions are suitable for such use and the PUD is deemed appropriate for the neighborhood. The criteria can either be explicit or general; the floating zones are used because a community may feel such developments are appropriate anywhere in the town under the right conditions. Because many of these conditions are site specific, it is difficult to determine these areas in advance. Therefore, the zone is allowed to "float" until it is requested as a zone change and is assigned to a parti-

**TABLE 4.1  
REVIEW OF PUD ORDINANCE ELEMENTS**

	BRISTOL	COVENTRY	EAST GREENWICH	EAST PROVIDENCE	GLOUCESTER	
DISTRICT NAME	Residential PUD	Waterfront PUD	Planned District	Planned Development Zone	PUD	Planned or P-District
TYPE OF DISTRICT	Floating	Overlay	Floating	Floating	Overlay in R-5 & C-1 Districts	Floating
MINIMUM PARCEL SIZE	20 acres	None Specified	1 acre	1 acre	20 acres	25 acres
USE RESTRICTIONS	Residential, Personal Services, Offices	Residential Commercial Offices	Residential Commercial	Residential Limited Commercial	Residential Commercial Offices	Mixed Use
DENSITY REQUIREMENTS	2500 s.f./ dwelling unit	Established by town council	Land-Use Intensity Rating	Compatible with existing	Multifamily housing standards	May be increased
OPEN SPACE REQUIREMENTS	Maximum 30% building coverage	Established by town council	Minimum 40% open space	2 s.f. open space per 1 s.f. building floor area	8% density bonus given for each acre of open space	Not Specified
DEVELOPMENT <sup>1</sup> STANDARDS	Separate Standards Established	Established by town council	Separate Standards Established	Existing zone/ may be waived	Existing Standards (may be waived)	Existing Standards (may be waived)
VARIETY IN HOUSING TYPE	Permitted	Permitted	Encouraged	No Single Family Dwellings	Permitted	Encouraged
REVIEW TIME PERIOD	Not Specified	Not Specified	60 days	60 days	60 days	Not Specified
HOMEOWNERS ASSOCIATION	No Requirement	No Requirement	Required/ Documents must be approved	No Requirement	Required for private open space Documents must be approved	No Requirement
TIMING OF DEVELOPMENT	No Requirement	No Requirement	Set by Planning Commission	No Requirement	Optional	Controlled by town council

<sup>1</sup> Refers to height, bulk and dimensional requirements. Ordinances reviewed either (a) followed standards of underlying zone, (b) established separate standards for PUDs or (c) allowed standards to be set by Town Council at time of application

**TABLE 4.1 (Cont'd)  
REVIEW OF PUD ORDINANCE ELEMENTS**

	JOHNSTON	NORTH SMITHFIELD	SMITHFIELD		WARREN	WESTERLY
<b>DISTRICT NAME</b>	Planned District	Planned Development	Planned Residence	Planned Business	PUD	PUD
<b>TYPE OF DISTRICT</b>	Special Exception	Floating	Floating	Floating	Floating	Floating
<b>MINIMUM PARCEL SIZE</b>	No Requirement	No Requirement	20 acres	No Requirement	100 acres	5 acres
<b>USE RESTRICTIONS</b>	Residential Commercial Offices	Mixed	Residential	Residential Business	Mixed	Mixed
<b>DENSITY REQUIREMENTS</b>	6 - 10 units/acre	Not Specified	2 units/acre	Not Specified	8500 s.f. dwelling unit	4 - 12 units/acre
<b>OPEN SPACE REQUIREMENTS</b>	20% of land area	Not Specified	5 acres	Not Specified	20% of land area	20% of buildable area
<b>DEVELOPMENT STANDARDS</b> <sup>1</sup>	Separate Standards Established	May be waived	Separate Standards Established	Business Zone	Separate Standards Established	Separate Standards Established
<b>VARIETY IN HOUSING TYPE</b>	Encouraged	Encouraged	Permitted	Permitted	No Single Family Units	Encouraged
<b>REVIEW TIME PERIOD</b>	30 days	Not Specified	45 days	45 days	Not Specified	Preliminary 30 days Final 45 days
<b>HOMEOWNERS ASSOCIATION</b>	Optional/ Documents must be approved	No Requirement	No Requirement	No Requirement	No Requirement	No Requirement
<b>TIMING OF DEVELOPMENT</b>	No Requirement	No Requirement	No Requirement	No Requirement	Controlled through issuance of building permits	May be Required

cular parcel upon approval. As such, a proposal for a PUD development must request a zone change from the town council as part of project approval. As with any zone change, the burden is put on the applicant to justify the change.

An alternate approach used by North Smithfield is to permit PUDs as a special exception in all areas of the community except their low-density residential district. Essentially, the concept is the same; the specific delineation of a PUD district does not occur until after a project is approved. However, the mechanics for approval are slightly different with a special exception in that application is made to the zoning board rather than the town council.

#### Minimum Parcel Size

Restrictions on parcel size is one device often used to limit the parcels acceptable for PUD development. It more often reflects the objectives of the ordinance in regulating development. For example, if the intention of the ordinance is to control all multi-family projects or to allow maximum use of the ordinance, minimum acreage is either not stated or set at a low figure such as one acre. On the other hand, should only larger developments be desired, minimum parcel size is set at twenty to twenty-five acres or higher.

Four of the communities have low or no minimum parcel size: Coventry, East Greenwich, Johnston and North Smithfield. Westerly's requirement is set at a moderate level of

five acres. The remaining five towns have large acreage requirements; the smallest being Smithfield with twenty acres and the largest being Warren at one hundred acres.

### Permitted Use

As discussed in Chapter 2, there are several classifications of PUDs depending on the uses which exist. These uses range from single family dwellings to a mixture of residential types, commercial uses and industrial activities.

There is considerable variation in the types and uses permitted in Rhode Island's ordinances. North Smithfield stands alone in allowing residential uses within their planned developments. Commercial uses are added to the ordinances of Coventry and East Greenwich. Smithfield allows both residential and business developments in separate provisions but they may be combined within one development with special application. Four towns -- Bristol, Warren, Johnston and East Providence -- further extend permitted uses to include professional offices. Only Glocester and Westerly permit industrial activities within their PUD districts.

### Allowable Density

In an attempt to encourage use of PUD and to serve as an incentive for other desired features, density provisions for PUDs are often increased over the existing zoning.

The standards for density levels in many of Rhode Island's

communities are not related to the underlying zoning requirements. Furthermore, density requirements are based on different criteria from one town to the next and are difficult to compare. For example, Bristol bases density on square footage of land area; Johnston's is in part based on the type of residential unit and Coventry relies on a land use intensity system. For the most part, however, it appears that density provisions are more flexible than would otherwise be allowed. The ordinances of East Greenwich and East Providence are exceptions to this -- requiring densities in accordance with existing zoning. The density provisions for Gloucester and North Smithfield are not clearly specified.

#### Open Space Requirements

As with density provisions, requirements for open space are based on different criteria from one ordinance to the next. As a result they are difficult to compare. In general, approximately twenty percent of the land area is required to be left as open space.

Neither Smithfield or North Smithfield specify requirements for open space. On the other hand, Gloucester and East Providence give density bonuses for increased levels of open space.

#### Waiver of Development Standards

In many ways, the extent to which development standards are waived and flexibility encouraged is the essence of the PUD concept.

For the most part, this flexibility is provided in all ten ordinances that were reviewed. Generally, a separate set of development standards for planned unit developments are incorporated within the PUD ordinance. The extent of these standards vary; however, they usually include minimum height and bulk requirements.

There are three exceptions to this situation. East Greenwich uses the underlying zoning dimensional requirements for PUD projects. The development standards in North Smithfield are not clearly stated. In East Providence, normal standards are followed but may be waived by request to the City Council.

#### Variety in Housing Type

All ten communities either specifically encourage or permit a variety of housing types within PUDs. The Town of Warren is the only community which limits housing types to townhouses and condominiums.

There is some question as to whether the encouragement of housing variety actually influences the PUD product. It is felt that developers will respond more to market needs than community desires. The comment of one consultant was that "while the ordinance can permit and encourage variety, only the market and the developer determine if something new is tried."<sup>25</sup>

## Homeowner's Association (HOA)

The role of the homeowner's association has been discussed earlier in this report. With potentially significant amounts of open space and recreational facilities in a PUD, a well-functioning HOA can be essential. It is often suggested that a PUD ordinance can help to make this possible with requirements for HOA organization and management.

Johnston is the only town which requires open space area to be deeded to a private association. Most other ordinances leave ownership of open space by an HOA optional or allow such areas to be deeded to the town. Three communities -- East Greenwich, North Smithfield and Westerly actually require that portions of the open space be conveyed to the town for recreational purposes.

Coventry, East Providence and Johnston contain specific provisions within their PUD ordinances for town maintenance of open space should the private association fail to do so. The Town of Bristol makes no clear mention of open space ownership or responsibilities.

## Timing of Development

For very large projects that may have significant impacts on town services, it is advisable to require construction in stages. In this way, a town can control development so excessive demands are not placed on municipal facilities. This is often considered a real advantage of PUD over traditional

developments, whose timing may not always be regulated.

There are few Rhode Island communities who have taken advantage of this tool. Only four of the ordinances mention development phasing. In Coventry and Warren, the timing of development is regulated through the issuance of building permits. A schedule of dwelling units per year is determined which will minimize adverse impacts. The PUD ordinances in East Providence and Westerly do not require phasing but should such an option be taken by the developer, the construction schedule must be approved. None of the other seven ordinances contain provisions for development phasing.

#### Review Process

In all ten communities, review of the proposed PUD project is made by the Planning Board and approval issued by the Town Council following a public hearing. This procedure is required of all zone changes by state law.

The detail of the procedures for review and approval, however, are not consistent in their requirements. Several towns simply require review of the proposed plan by the Planning Board so that their comments may be submitted to the Town Council. Other towns, such as East Greenwich, require review by other Town commissions such as the fire and police departments, traffic commission and zoning board. Limitations on the length of review period are specified in the ordinances of six of the communities -- Coventry, East

Greenwich, East Providence, Johnston, Smithfield and Westerly. Generally, thirty to sixty days is given for review of the proposal and submission of recommendations to the town council. East Greenwich is the only town which also limits the time period for final town council approval.

#### Professional Staff

Of the ten communities having PUD ordinances, only three have full-time professional planning staff. These are Coventry, East Greenwich and East Providence. Except for the Town of Warren, the other towns receive part-time planning assistance from the Statewide Planning Local Assistance Program. As mentioned earlier, the lack of professional review capacity may limit the ability of a town to thoroughly evaluate a PUD proposal.

#### 4.2 Application and Use of PUD Ordinances in Rhode Island

Despite efforts by towns in Rhode Island to provide flexibility through use of planned developments, the application of PUD ordinances has been limited to date. Basically, the ordinances have either not been used at all or have been used in a way not utilizing the design flexibility of the PUD concept as it was intended. This issue will be discussed throughout this section.

As mentioned earlier, the PUD has been used throughout the United States for developing both large and small scale projects. In Rhode Island, however, the story is different.

Unlike other areas of the country, there have been no large scale PUDs either constructed or proposed within the state. To date, PUD developments have been small and scattered, mostly consisting of multi-family apartment complexes or condominiums. Few planning boards have had sufficient experience with the implementation of their ordinance to either better understand the PUD process or develop proficiency in its administration. The PUD ordinance has not been used at all in a few communities.

Following is a review of the experience of each of the ten communities in the application of their PUD ordinance: (This information is summarized on Table 4.2.)

#### BRISTOL

Bristol has two separate PUD provisions, one is called a residential open space development zone and the other a waterfront planned use development. The former was proposed by the state local assistance planner and adopted in 1975. It has never been used. The waterfront PUD ordinance was developed in conjunction with a proposed waterfront development in 1980.

This development was eventually approved and constructed. It combines residential condominiums with limited commercial and marine-related recreational activities and is located within a high-priced residential area. The development has been functioning as an integral part of the waterfront since its completion.

TABLE 4.2  
PUD ACTIVITY IN RHODE ISLAND

TOWN	PUD DISTRICT NAME	PUD ACTIVITY		
		No. of Proposals	No. of Approvals	No. Constructed
Bristol	Residential Open Space Development Zone	0	-	-
	Waterfront PUD	1	1	1
Coventry	Planned District	2	1	1
East Greenwich	Planned Development Zone	5	2	2
East Providence	Planned Unit Development	0	-	-
Glocester	Planned District	2	0	0
Johnston	Planned District	0	-	-
North Smithfield	Planned Development	0	-	-
Smithfield	Planned Residence/ Planned Business	0	-	-
Warren	Planned Unit Development	0	-	-
Westerly	Planned Unit Development	4	2	2

## COVENTRY

As experienced in Bristol, the PUD ordinance in Coventry was developed in response to a specific development proposal. This proposal, which was eventually constructed and remains as the only PUD within Coventry, combines low and moderate priced apartments with a separate nursing home facility. The complex includes no recreational facilities and a limited amount of open space.

The ordinance was rewritten by the Town's first planner in an attempt to increase its effectiveness. One proposal has been submitted under the revised ordinance. However, significant concerns with potential traffic and sewer impacts created strong public opposition and forced the developer to withdraw the proposal at preliminary stages. The Town is in the process of updating their master plan; it is felt that more clearly specified criteria for PUD locations will help to increase the use and effectiveness of the PUD.

Recent experience in administering the ordinance by the planning board has proved to be cumbersome because of complexities in the review procedure. The assistance of the Town Planner, however, has helped to minimize these problems.

## EAST GREENWICH

PUD activity in East Greenwich has been the most active of all ten communities, although the developments have been small-scale.<sup>26</sup> The application of the PUD ordinance has been

used for a variety of projects. Two of the projects (one constructed, one under construction) are located along the rehabilitated waterfront area. Both were residential condominiums for which there is currently high market demand.

One current proposal is for an 8-unit condominium project in conjunction with an existing golf course. The units would be clustered in one corner of the parcel and the remainder of the area, the golf course, would remain as open space. The renovation of the three existing residential buildings into multi-family apartments was another proposal which received approval but was never constructed.

There has been no major problems in the administration of the ordinance so far. A good working relationship between the Planning Board, Town Council and Public Works Department has facilitated review and evaluation of the proposals. Some concern was expressed that the advisory opinions made at the preapplication stage have not been taken seriously enough by the developer.

#### EAST PROVIDENCE

To date, the PUD ordinance has not been used.

#### GLOCESTER

Although in existence since 1962, only two proposals have been made under Gloucester's PUD ordinance -- one in 1980 which was denied and one which is currently before the Planning Board.

The 1980 proposal "Acote Hill Village" was for twenty-eight townhouse condominiums on a twenty-acre parcel. The Town, however, is still a small community and has not experienced much growth. No municipal water or sewers are available, minimum residential zoning is two-acre parcels, and non-residential uses are not encouraged. The public opposition to this condominium project was largely responsible for its denial although its approval was recommended unanimously by the Planning Board. The current proposal is for a mixture of condominiums and elderly housing on a two hundred and ten acre parcel and is still at early planning stages. Its future is uncertain.

The PUD ordinance was adopted by the Town largely at the encouragement of their State Assistance Planner. Apparently, officials were attracted to the concept of flexibility and negotiations with the developer. The Planning Board was able to successfully administer the ordinance and negotiate the details of the "Acote Hill Village" proposal. It appears, however, that the anti-development mentality of the town may be an obstacle in further application of the ordinance.

#### JOHNSTON

To date, the PUD ordinance in Johnston has not been used.

#### NORTH SMITHFIELD

To date, the PUD ordinance in North Smithfield has not been used.

## SMITHFIELD

To date, the PUD ordinance in Smithfield has not been used.

## WARREN

The PUD ordinance in Warren was only recently adopted. To date, it has not been used.

## WESTERLY

The use of the PUD ordinance in Westerly has been considerably active and also very controversial. To date, two proposals have been approved; one has been constructed, and one is currently under construction. Two proposals have been denied.

The two approved PUD projects are small multi-family apartment and condominium projects located in medium density residential neighborhoods. Although permitted in the PUD ordinance, neither development includes commercial or industrial uses. There are also no recreational facilities within either project.

A recent proposal for a condominium project under the PUD ordinance, however, met significant public resistance and brought many issues relating to planned unit developments to public debate. Concern over the use and effectiveness of the ordinance contributed to a temporary moratorium on PUD proposals.

The actual proposal was not significantly different

from the other two which had been approved; in fact, a more innovative design concept was used which included more open space and recreational facilities. There is not ample space here to address all the issues surrounding this controversy. The following briefly highlights some of the elements which may have contributed to the situation:

- The proposed PUD was located in an area with higher property values and lower density than the other two; some of the neighbors did not feel the PUD was in character with the existing neighborhood and organized citizen opposition groups. The other two PUDS which were approved did not receive significant opposition;
- Extension of the municipal sewer to service the development allegedly did not follow proper procedural requirements and was not desired by the neighborhood;
- Alleged deficiencies in the PUD application led to a mistrust of the out-of-state developer and fueled opposition efforts;
- Difficulties in understanding the ordinance requirements led to confusion in its application;
- Lack of specific enabling legislation to create a PUD zone aroused concerns by opponents as to the ability to require long-term adherence to the PUD plan should it be approved.

These issues in addition to many others were hotly contended for several weeks before the Town Council vote on the

PUD approval. It is felt that this strong public opposition was responsible for the denial of the application at that meeting.

The concerns that were raised in Westerly may reflect more general attitudes toward PUD development elsewhere in the state. It certainly appears that use of the PUD concept has not progressed nearly as far in Rhode Island as it has elsewhere in New England and the United States. After over two decades of existence, only a handful of PUDs have reached construction stage throughout the state. None have truly applied the full concepts of innovation and creativity within their design.

Use of PUD in Rhode Island is really at its infancy stage. Unfortunately its progression is not occurring very rapidly. It is only through experience with the ordinance and its administration that planning boards can create more effective ordinances and perhaps induce more effective PUDs.

The potential reasons for this PUD inactivity will be discussed in the following section:

#### 4.3 Factors Responsible for PUD Inactivity in Rhode Island

Without conducting an in-depth analysis of the development climate in Rhode Island, it is difficult to determine definitive answers to explain PUD activity. Research which has been done, however, has identified some elements which may be hampering utilization of the PUD concept. These elements involve social, economic and political factors which,

combined, have created an environment uncondusive to PUD use.

Perhaps the development mentality of much of the population is the most significant stumbling block preventing use of PUD. As identified in the Town of Gloucester, a small-town, anti-growth attitude pervades many areas. Not only is any intensive development fought, but particularly objectionable is higher density uses which are perceived as a threat to their small town character. The common attitude of wanting to be the last newcomer in town is typical, and so is the neighborhood resistance to their perception of PUD:

"It is not the 'concept' of PUD the neighbors object to; just the apartments a particular proposal will locate next to their single-family subdivision." <sup>27</sup>

This attitude affects the PUD process in two ways. First, resistance to growth influences the decisions of planning boards, both directly and indirectly. Inevitably, factions possessing these growth philosophies will be represented on the board membership. Moreover, organized public opposition to proposed developments will often dominate public hearings and sway the board's decisions. Second, the growth attitudes of the public in many small communities can result in a less positive development climate. The time and expenses required for the development of a PUD proposal may simply not be worth the risk if such opposition is faced. Not only are the chances for approval more uncertain, but public opposition can create lengthy delays which incur greater ex-

penses. Experiences such as occurred in Westerly with the last PUD proposal are not encouraging to others considering a PUD option.

This is not to negate the desires of small town residents to resist growth or express these opinions publicly. Certainly, a community should be able to determine its character. It is this mentality, however, which has perhaps influenced potential development proposals or PUD approvals.

It is possible that some of the negative attitudes toward the PUD concept have been influenced by the lack of innovative examples of the PUD concept. Planned unit developments which have been constructed have not used the full potential of the concept. Many resemble typical apartment or condominium complexes. Perhaps if more creative examples of the PUD were visible, public endorsement would be greater.

In addition to the mentality of some of the communities, the absence of infrastructure to support intensive development is another factor uncondusive to PUD use. Only one of the ten communities, East Providence, has municipal sewers and water servicing the entire city. Ironically, it is also the only town with very limited amounts of available land. The other nine towns have only limited water and sewer capacity. Such restrictions create limitations on the location of large developments and also the extent to which clustering can be used if on-site sewage disposal is required. An example of this situation can be found in the Town of East

Greenwich. Limits on their sewage treatment facility has forced a virtual moratorium on all large sewer users.

It is also possible that some political factors have discouraged the use of PUD in Rhode Island. Foremost among these might be the lack of state enabling legislation authorizing the PUD concept. Without any clear directive to institute more flexible land use controls, towns often attempt to "fit" the PUD provisions within their existing codes. This certainly seemed to be the case in many ordinances which were reviewed; the lack of clear guidelines and procedures rendered the provisions virtually useless.

Interestingly enough, this problem has not affected many other states. In fact, research by the American Society of Planning Officials in 1973 discerned "no direct relationship between the number of ordinances received from a given state and the presence (or lack of it) of PUD enabling legislation".<sup>28</sup> Despite this situation elsewhere, planners interviewed in Rhode Island felt that state enabling legislation would have a significant positive effect on Rhode Island communities. Perhaps the small size of Rhode Island and the close physical and political relationships between state and local governments are responsible for this phenomenon.

Whether it is affected by the absence of state PUD legislation or not, the inconsistency and complexity of Rhode Island PUD ordinances may also contribute to their ineffective use. The broad range of allowable uses, density requirements and construction standards were discussed earlier in

this chapter. This inconsistency is reflected in the length of the PUD ordinances themselves. In Bristol, PUD provisions cover less than five pages; in Westerly, they extend to over fifteen. Difficulties in understanding the requirements and review processes make their use not only difficult for developers but their administration cumbersome for planning officials. For example, nine of the fifteen pages of Westerly's ordinance focus on procedural requirements.

Problems with PUD ordinances, however, are apparently not unique to Rhode Island communities. In fact, a survey by the American Society of Planning Officials in 1973 of innovative land use provisions discovered a consistent lack of well-thought out PUD provisions. As may be the case in Rhode Island, it was their opinion that this situation may contribute to less effective use of PUD. Their disappointment with the review of PUD provisions is clear:

"Undoubtedly, these observations are not startling to anyone who has had much experience with planned development regulations. However, they do seem to indicate that most communities have failed to take advantage of the opportunities which planned development process offers for innovation and flexibility; remember these provisions were received in response to a request for innovative regulations. One is left with the impression that many of these provisions were adopted simply because 'all of the better communities in the area have PUD'. Furthermore, few of the provisions offered much that would encourage developers to take the planned development route. In fact, the extra requirements which most of them imposed regarding the preparation of multiple copies of maps, attendance at numerous conferences and hearings, etc., might well serve to discourage many developers."<sup>29</sup>

The potential complexity of PUD ordinances leads to another factor which may be inhibiting PUD use in Rhode Island; lack of professional planning capacity. The assistance of such trained staff may facilitate PUD use in three ways. First, better knowledge of the PUD concept and its application can enable a planner to encourage its use on a more consistent basis. Second, professional review capacity not only eliminates this responsibility from lay boards, but ensures more thorough examination of development proposals. Lastly, the existence of a full-time planner can serve as the enforcement arm of a PUD ordinance. This effort can be important to the proper implementation of the PUD ordinance and is one that part-time boards may not have time to oversee.

Lastly, PUD inactivity may possibly be attributed to the relative availability of land at moderate prices in most Rhode Island communities. Although some of the ten towns have been experiencing rapid growth, there is still sufficient land to accommodate traditional single family subdivisions. The combination of intense growth pressure and high land prices (because of limited availability) has not yet reached the point which is conducive to PUD growth.

While this chapter has dwelled on the inactivity of PUD in Rhode Island, it is important to note that this state is not alone in this regard. In fact, a nationwide survey of planning agencies indicated that this is not the case.<sup>30</sup> The results of that survey found PUD use to be most prevalent in urbanized areas of the northeast and west coast, with almost

no PUD activity in the midwest. Reasons cited for this in-activity were often similar to those mentioned in Rhode Island. Consider, for example, this quote from the planning commission of Hendricks County, Indiana:

"Public acceptance of the (PUD) project by the community has been a problem. There is friction between the developer and residents of the project ... the question we had was whether the developer had too much flexibility under PUD approval. This conflict showed us that we had difficulty understanding the overall PUD concept ..." 31

Perhaps a better way to view the environment for PUD use is that certain development criteria must already exist for the adoption of the concept. In other words, widespread use of the PUD concept will not occur unless a positive development climate is in place. Such factors would be the opposite of those existing in Rhode Island: public acceptance of high density developments, sophisticated planning boards having the assistance of professional staff and higher land costs conducive to higher density developments. Repeating the opinion of a consultant in regard to encouraging housing variety, "only the market and the developer determine if something new is tried." 32

#### Chapter 4 - Footnotes

- 25 Colleen Grogan Moore, PUDs in Practice, (Washington: Urban Land Institute, 1985) p. 15.
- 26 It is possible that current problems with the wastewater treatment facility is limiting the scale of PUD projects.
- 27 Robert W. Burchel, ed., Frontiers of Planned Unit Development: A Synthesis of Expert Opinion (New Brunswick: Center for Urban Policy Research, 1973) p. 30

- 28 Ibid, p. 29
- 29 American Society of Planning Officials, Survey of Innovative Land Use Provisions (1973), p. 93
- 30 See Tomioka, Planned Unit Developments, Chapter 6.
- 31 Ibid, p. 145
- 32 Moore, p. 15

## CHAPTER FIVE

### CONCLUSIONS AND POLICY RECOMMENDATIONS

#### 5.1 Findings of the Study

Beseiged by massive growth levels and an alarming consumption of land in the 1960s, many suburban communities became disenchanted with the traditional single family subdivision and the cookie-cutter imprint it left on their communities. Most prevalent were concerns that these land use techniques heavily burdened municipal services without providing any amenities to the neighborhood such as open space or recreational facilities. Furthermore, as long as the subdivision adhered to the standards of their ordinances, there was little that could be done legally to improve the proposal.

This concern eventually led to the widespread use of the planned unit development concept. The PUD was welcomed in many towns as a technique much more sensitive to community needs. The theory of PUD land use was a considerable alternative to traditional land use controls:

"The basic philosophy ... is to substitute flexibility, creativity and variety for the inflexibility and lack of variety which conventional zoning often imposes on the developer".<sup>33</sup>

Several factors contributed to the growing acceptance and application of the PUD concept. One was the creation of a Model Enabling Act for planned unit development ordinances in 1965 by the Urban Land Institute. The publication of this act established the legal framework for incorporation of PUD

into municipal ordinances. Even though few states adopted PUD legislation, the presence of the act helped to foster the concept and eliminate many legal concerns.

The rapid growth in the housing market and increased public acceptance of attached housing also contributed to increased PUD activity. Particularly in suburban metropolitan areas, the demand for housing made large scale housing projects economically feasible. Reduced construction costs of the PUD attracted many developers to utilize this concept. More recently, the growing second home market and rising popularity of condominiums has changed the use of PUD. Many of these developments are now being located in resort-oriented communities where a higher level of amenities attract vacationers and retirees.

The concept of the PUD is distinguishable from traditional land use controls in several ways. First, the ordinance itself removes much of the rigidity of zoning and subdivision codes in order to encourage innovative land use and creative design. In return for this greater flexibility, the municipality has much greater input in the approval process. The proposal is reviewed to determine its positive contribution to the community and its potential adverse impacts. These elements are negotiated with the developer to develop a final plan suitable to both parties. Unlike many subdivision ordinances, aesthetic and environmental features can be requested in a negotiating process with the developer.

The PUD development is unique in that the parcel is designed as a single entity. Using a minimum set of design standards, the developer is able to situate buildings to take advantage of unique environmental features or to create more aesthetically pleasing arrangements. In return for this asset, the PUD developer provides recreational and open space amenities which are not normally required.

Now in use for over twenty-five years, sufficient experience has been acquired to identify elements that contribute to effective PUD ordinances and successful developments. Factors attributed to successful PUD projects include the selection of attractive and accessible sites, innovative layout of housing units, creative architectural design, pre-marketing studies and adequate financing strategies.

Effective ordinances are more difficult to describe. They should be closely coordinated with an updated master plan which encourages PUD use. Furthermore, community goals should be well-defined and clearly stated in both the master plan and PUD ordinance. In this way, PUDs can become an integral part of a community's growth policies.

More specific factors contributing to effective PUD ordinances are:

- language which is simply written and easy to understand
- design standards which provide both flexibility and clear guidelines

- input from the planning board and professional staff during the review process
- streamlined review process
- public participation, particularly at early planning stages
- development standards regulating the homeowner's association, phasing of development, and posting of performance bonds
- adequate enforcement arm to ensure compliance with ordinance requirements

The PUD concept has been adopted in about one-third of Rhode Island's municipalities despite lack of state enabling legislation. The Town of Glocester was the first to adopt a PUD ordinance in 1962; since then about a dozen other communities have added PUD provisions to their zoning codes. Of these, ten communities were selected for review and analysis for this study. Comparisons were made of both their ordinance requirements and application.

For the most part, the ordinances reviewed were similar to those commonly adopted. The PUD district is treated as a floating zone; therefore, any PUD application requires zone change approval from the town council in accordance with state law. The PUD ordinance is used as a device to encourage more careful land use and more efficient development combining a mixture of uses. Density levels are often increased over the underlying zoning.

Several weaknesses were detected in some PUD ordinances. Few ordinances spelled out clear requirements for ownership and maintenance of open space facilities. Responsibility for

this can be essential in planned unit developments providing large tracts of open space and recreational facilities. Phasing of development construction was also not clearly stated; an important consideration for large developments. Finally, the review procedure for PUD applications could be more clearly defined, preferably with the assistance of professional planning staff.

Despite the adoption of these ordinances, but perhaps because of their weaknesses, PUD activity has been fairly limited within the state. Of the ten communities examined, only a handful have had much experience with its application; five have had no use of PUD. Developments which have been approved and constructed are small condominium and apartment complexes. Few have significant open space or recreational facilities; none provides other than residential uses.

Reasons for this phenomenon seem to be attributable to the lack of full acceptance of the PUD concept. First, without state enabling legislation permitting and endorsing PUD, some towns have incorporated partial PUD provisions within their existing zoning ordinances. Second, the combination of the anti-growth mentality of many small town planning boards, and the lack of innovative examples of PUD within the state has not helped to foster its popularity. Lastly are difficulties with public acceptance of higher density developments in non-urban areas, particularly if they should combine different uses.

In addition to these "negative" factors, the lack of positive inducements to PUD growth has hindered its use. Neither population growth, land availability, open space limitations or land costs have reached the point where PUD has become economically feasible or necessary.

Given this situation, the question may be asked whether it is possible to bring about changes to create an environment more conducive to planned unit development activity. This issue is addressed in the following section.

#### 5.2 Recommendations for More Effective Use of PUD Concept in Rhode Island

As has been discussed earlier in this paper, the concept of planned unit developments has been adopted and used successfully in many parts of the country. Enthusiastic comments from planning commissions in states such as Maryland, California and New Jersey attest to its popularity.<sup>34</sup>

Rhode Island falls among the category of states which have had less positive experiences. While many of the factors attributed to this phenomenon are difficult to alter, for example, public acceptance, there are some measures which can be taken to improve this situation. These changes need to be made at both the state and local level.

Before these recommendations are made, it is important to emphasize the need for a desire to increase PUD activity. If a community prefers only to make the PUD alternative available to developers, without necessarily encouraging its use, then the present policies need not be changed. Some

town and planning officials interviewed seem to prefer a "laissez-faire" attitude towards development which left these decisions to market determinations.

However, should there be a desire to promote the use of planned unit developments, the following measures should be considered. They are intended to create an environment more conducive to the effective use of PUD.

1. Adoption of statewide PUD enabling legislation

Authorization of PUD use at the state level will not only "legalize" its adoption at the local level, but give the state an opportunity to encourage the concept. In particular, this effort may induce more communities to adopt PUD ordinances or may eliminate the fears of court challenges questioning the validity of existing ordinances. Both may spur increased awareness and popularity of the concept.

Current legislation before the General Assembly (84-S 424) entitled "An Act Relating to Zoning" includes such authorization. The provisions for "planned developments", as they are referred to, are very limited but at least set the groundwork for validity of the concept. It should, therefore, be actively supported by all municipalities.

## 2. Coordination of Local Planning Assistance Efforts at the state level

As mentioned in Chapter 3, the adoption of PUD ordinances in many small communities has been strongly influenced by local assistance planners provided by the state. The local assistance planner works on a part-time basis, providing zoning and planning advice to towns not having professional planning staff. Although not directly involved in policy-making, these planners can encourage such concepts as PUD to their communities. Six of the ten communities studied used the services of local assistance planners.

At the present time, there is no coordinated effort or active communication in regard to PUD policies among local assistance planners. It is basically up to each planner to guide their community's planning efforts as they so choose. Furthermore, there seems to be little communication among the planners concerning their efforts.

A more active, coordinated effort to promote PUD use by local assistance planners could foster its effective use and application.

## 3. Stronger Local Efforts to Promote Effective Use

Local policies are perhaps the most influential in guiding PUD use. Efforts should be made not only to encourage planned unit development but to ensure that the ordinance is not misused. This can be accomplished in two ways:

First, PUD ordinances should be carefully reviewed by

town officials to make sure it can be clearly understood by those who have to use and administer it. Policies, design standards and review procedures should be simplified and streamlined as much as possible. Chapter 2 contains more detailed information on effective ordinances.

Secondly, efforts should be made to use professional assistance for review and enforcement of PUD proposals. If professional planners are not available, attempts should be made to appoint one or two professionals to planning boards. Furthermore, in-house assistance can be obtained from the town engineer or public works director. It is preferable to receive as much input as possible in the review of PUD applications.

It is only through the cooperative effort of town officials and PUD developers that its use will be most successful. While there is a limit to which a town can encourage planned unit developments, the above measures can help to effectuate more successful use of the PUD concept.

#### 4. Education of Public and Town Officials

As has been mentioned throughout this study, the lack of knowledge of the advantages of the PUD concept can hinder its acceptance by the public and its promotion by town officials. Efforts to overcome this ignorance may help to eliminate fears of PUD projects and facilitate more effective administration of PUD ordinances.

Education of public officials can be most effective if it is an effort undertaken by the officials themselves. The bibliography for this study contains a number of excellent references; of particular help to a municipality is the PAS Report entitled "Planned Unit Development Ordinances". Furthermore, communication with other towns having more successful experiences can provide information on more effective policies.

Educating the public may be a more complicated task. Because it is often difficult to arouse concern for an issue before it affects people's lives, it may be more effective to inform the public with each PUD proposal. A suggested strategy is to encourage or require a developer to present his proposal at an informal public meeting prior to or concurrent with submission of the proposal to the town. Even more effective may be the presentation of the proposal to the surrounding neighborhood on a door-to-door basis. This strategy gives the developer the opportunity to present the positive features of the development and allows discussion of the proposal in a non-threatening forum. Whichever strategy is chosen, the intent is to educate the public on a concept which is unfamiliar to them before emotional issues arise and opinions have been formed.

The importance of proper educational strategies cannot be stressed enough. Particularly in rural areas, the entrenched notions of land development may be the largest ob-

stacle to overcome before the PUD can be used successfully. Implementation of these ideas may be the most crucial effort, therefore, to promote effective use of the concept.

The policies which have been outlined represent a joint effort by planners and developers to overcome some of the inhibiting factors limiting effective use of PUD in Rhode Island. The effort must come from both sides in order for the policies to be successful. It is only with the good intentions of a developer to use the concept effectively, and the cooperation of the town to administer the ordinance fairly can the concept of PUD work successfully within any community.

#### Chapter 5 - Footnotes

<sup>33</sup> "Planned Unit Development" (35 Mo. L. Rev. 27/1970)

<sup>34</sup> See Tomioka, Planned Unit Developments, Chapter 6, for results of a nationwide survey on PUD use.

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