

DENSITY ZONING
Organic Zoning for Planned Residential Developments

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East Island

New York City, where the first zoning ordinance was applied in 1916, has obtained a comprehensive set of new zoning regulations effective in December 1961. The new zoning will control the city's density. In recognition of opportunities inherent in large-scale developments (3 to 20 acres), a series of special regulations is proposed which permits flexibility in site planning.

The view shown is a scale model of East Island, a self-contained community providing for residential and community facilities for 70,000 people, planned for the 167-acre Welfare Island which is strategically located in relation to Manhattan. This large-scale residential project was conceived by Frederick W. Richmond and Roger Stevens; planning and architectural design by Victor Gruen.

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by

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St. Louis, Missouri

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TABLE OF CONTENTS

	Page
Foreword	5
SIX TYPES OF ZONING	7
A. Flexible Zoning	7
B. Fixed Zoning	8
THE CHALLENGE OF MODERN HOUSING	9
A. The Need for Accessory Uses to a Planned Residential Development	9
1. Commercial Uses	9
2. Recreation and Open Space	9
B. The Need for Variety in Yard, Height and Lot Size	10
C. The Need for Variety in Housing Types	10
THE CHALLENGE OF PLANNING	11
A. The Need for Rental Housing	11
B. The Need for Improved Standards in Rebuilding	12
THE COMPREHENSIVE PLAN AS A GUIDE FOR DENSITY	13
SUMMARY AND CONCLUSIONS REGARDING ZONING TYPES	15
A SAMPLE DENSITY CONTROL PROVISION FOR PLANNED RESIDENTIAL DEVELOPMENTS	17
EXAMPLES OF DENSITY CONTROL ZONING	18
ILLUSTRATIONS	
Figure 1. First Subdivision Approved Under New City Plan (Manchester, Missouri)	19
Figure 2. An Example of Density Control Zoning (Small Lots and Flat Topography)	20
Figure 3. Another Example of Density Control Zoning (Large Lots and Rough Topography)	21
Figure 4. Scheme A—"Standard" Layout Scheme	22
Scheme B—As revised under "Community Unit Plan Exception"	23
APPENDICES	
A. Zoning for the Planned Community (<i>Urban Land</i> , April 1954)	24
B. Zoning of Planned Residential Development (<i>Urban Land</i> , March 1960)	33

Foreword

Urban growth no longer takes place on a lot by lot basis; it happens area by area. In present day practice new residential areas are built subdivision by subdivision, commercial areas are created through shopping centers, industrial areas are constructed as organized districts. Yet the structure of zoning ordinances has not kept pace with the changed pattern of land development. Testimony keeps appearing about the need for adjusting the framework of the zoning ordinance to the practice in land development while still retaining the purpose of zoning.

In 1954, Urban Land Institute in its April issue of *Urban Land* published "Zoning for the Planned Community." This article by Fred W. Tuemmler, planning consultant of Hyattsville, Maryland, presented a method for instituting a new approach in zoning to provide for and to encourage large-scale housing in neighborhood projects. Through "the planned community unit" device, his suggested innovation also underscored the need for flexibility in zoning specifications as an effective means for obtaining necessary open space for community facilities and for preventing overcrowding—applied to new growth areas.

In March 1960, *Urban Land* reprinted the article, "Zoning of Planned Residential Development," with permission of its original publisher, The Harvard Law Review Association. The authors, Eli Goldston and James H. Scheuer, lawyer and redeveloper, respectively, presented their thesis for the need to apply the area concept in zoning to the planned unit type of development—particularly for the redevelopment project. This treatise reiterated the need for abandoning the single lot concept of zoning where large-scale rebuilding projects are involved and where planned redevelopment achieves new relationships not prevalent in the original platting.

Later, in January 1961, Urban Land Institute published as its Technical Bulletin No. 40, *New Approaches to Residential Land Development*. This report is the published findings of the joint ULI-NAHB study into feasible ways to obtain residential developments that are not stereotyped and sterile. The innovations examined were those "that show promise of satisfying the physical, economic, and aesthetic requirements of modern urban and suburban living within the realistic limits of value and cost." Among the important concepts explored is the matter of instituting greater flexibility in zoning regulations to overcome the uniformity and inefficiency resulting when rigid lot dimensions, existing in most zoning regulations, are applied.

The density control device is one way to apply zoning flexibility on an area-wide basis. By specifying the maximum number of family units or a minimum lot area per dwelling unit in residential districts, the density of development is regulated. With such control, variety may then be allowed in yard, height, lot size, open space, and housing type.

This bulletin presents principles of density control for planned residential developments. Further, it offers a draft for a sample density control provision in a zoning ordinance. It is one more step in documenting the case for flexibility in the development of large-scale projects.

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For convenient reference, the articles mentioned above from past issues of *Urban Land* are appended to this bulletin.

MAX S. WEHRLY

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ELDRIDGE LOVELACE and WILLIAM L. WEISMANTEL

Almost every zoning ordinance in America is grounded on a major premise which has become totally obsolete. The ordinances assume that the urban physical jurisdiction, the very land being regulated, is cut into small lots on which structures will be built or rebuilt singly, by diverse owners, one at a time. In the suburban jurisdiction, zoning ordinances assume that land will first be cut into lots which are then built upon separately, one at a time.

In fact, most contemporary construction does not occur one lot at a time, by diverse owners. Central city urban construction is mostly reconstruction, through the processes of renewal or redevelopment, with a family of structures built and designed as a unit, by a single builder and architect. The suburbs, likewise, are being built one subdivision at a time rather than one house at a time.¹ Large-scale subdivisions and large-scale redevelopment projects are referred to collectively in this article as "planned residential developments."

Correction of this obsolete premise is the first problem facing the draftsman of a modern zoning ordinance.

The other major problem for residential zoning is how to better arrange existing and future housing in relation to other elements of the city. In every city and in every age there have been reasons of various urgency to control residential densities by a predetermined plan. In these times auto mobility and a rising standard of living generally dictate that housing densities in central areas should be rendered less crowded, and in many suburban areas there is a need for increasing densities, all according to a plan. The need to reserve certain areas from pre-emption by housing, as well as the

need to reserve other areas for pre-emption by housing is as strong as ever, as is the need to relate future housing to future transportation or to public recreation, for example. This second major problem of zoning, then, can be rephrased as the classic question of how zoning can be drafted to most effectively implement a comprehensive city or regional plan.

Both zoning problems—the new one of how to regulate entire developments rather than single lots and the old problem of how to implement a comprehensive plan—are treated together in this article lest one be resolved at the expense of the other.

SIX TYPES OF ZONING

Six possible zoning methods for solution of this double-barreled problem will be reviewed briefly. These six types include: three "flexible" or "ad hoc" solutions, wherein it is difficult to predict what kind or whether there will be housing in a specific area until someone proposes to build some form of housing there; and three "fixed" or "mapped" solutions wherein the density and location of housing is determined before the fact. This study is concerned with the sixth type, a zoning method which would bring out the best in a new subdivision or large-scale project by treating the entire proposal as a single unit; and which also is capable of implementing the most subtle or most courageous comprehensive plan.

A. Flexible Zoning

1. *Rezoning*. As much as possible of the zoning jurisdiction is kept under an extremely restrictive control, but the district map is amended whenever or wherever needed to accommodate proposed subdivisions or renewal projects.²

¹ "Before World War II, the majority of homes were built for a known buyer on a 'sold' basis. Today, approximately 85 percent of the new homes are 'manufactured' on a 'for sale' basis. In the course of this fundamental transition, home building has evolved from a craft to an industry." Ralph J. Johnson in "Technological Changes in Residential Construction, 1961-1970," pp. 130-142 in Chapter 2. *Study of Mortgage Credit* (short title), Committee on Banking and Currency, Subcommittee on Housing, United States Senate, 86th Congress 2d Session 1960.

² A New York court recently upheld one of the more fugitive but apparently indestructible forms of rezoning, viz. "zoning by contract," wherein a property owner agrees to conditions not found in the zoning ordinance, such as amount of land coverage, landscaping, etc. in exchange for rezoning to a district that will permit his proposed use. *Church v. Town of Islip* (N.Y. Ct. Appeals), 168 NE 2d 680, 203 N.Y.S. 2d 866, 190 N.Y.S. 2d 866 (1960). This procedure gives

2. *Floating Zones*. The policy demonstrated by the above style of rezoning is further expressed through regulations applying to "floating" districts that are not fixed on the district map until an applicant chooses a site and convinces the governing body that his proposal meets the standards of the floating district regulations, and that the tract should therefore be rezoned to permit the more intensive use he proposes.³

3. *Special Exception*. This is a recent proposal to empower the Board of Adjustment, by ordinance, with discretion to permit large-scale planned residential developments to settle on sites zoned for a fewer number of dwellings and for a more restricted housing type than is included in the planned residential development. Historically, the jurisdiction of such administrative boards has been more limited.⁴

B. Fixed Zoning

1. *Gridiron Zoning or Lot Zoning*. Early ordinances established rigid yards, height, and use for each lot; assumed that development would be by separate owners, one lot at a time; and contained no procedure or standards for allowing those little liberties that the designer of a large-scale residential development deserves, except through the "hardship" clause.⁵

2. *Community Unit Plan*. For at least two decades many ordinances have included a conditional use or special exception for planned residential developments whereby height, yard,

the kind of intimate control needed for planned residential developments, but strains the concept of uniformity throughout each zoning district. For a criticism of this latter practice, see Crolley & Norton, "Zoning by Contract with Property Owner," N. Y. L.J. 4 (1955), and Editorial, *Zoning Bulletin*, New York Regional Plan Association, September 1959.

³ *Rodger v. Tarrytown*, 302 N.Y. 115, 96 N. E. 2d 731 (1951), affirming 276 App. Div. 1019, 96 N. W. S. 2d 58 (1950). (This case upholds "floating" apartment zoning.)

Bartram v. Zoning Commission, 136 Conn. 89, 68 A. 2d 308 (1949). (This apparently upholds "floating" commercial zoning)

⁴ Goldston and Scheuer, "Zoning of Planned Residential Developments," Vol. 73 *Harvard Law Review* pp. 241-267 (1959). Reprinted in *Urban Land*, March 1960. Urban Land Institute. (See Appendix B.)

⁵ *Norwood Heights Improvement Association v. Baltimore*, 191 Md. 155, 60 A. 2d 192 (1948). (A planned residential development in unsuccessful collision with lot zoning.)

Vladeck, "Large-Scale Developments and One House Zoning Controls," Vol. 20 *Law and Contemporary Problems*, p. 255 (1955).

and type of dwelling requirement (single family only, or single family and duplex) could be waived through action of an administrative agency (usually the planning commission), with approval of the governing body, where the proposal *did not include more dwelling units* than the zoning district map would normally permit on that site.⁶

3. *Density Zoning*. This is "organic zoning for planned residential developments," a new style of ordinance listing the large-scale development as a normal, permitted use, with its own standards, just as traditional "Lot Zoning" established standards for the single building on the single lot. Density zoning is an outgrowth of the "Community Unit Plan" method, but is distinguishable from it in that "Density Zoning" treats large-scale developments as the normal thing, while the Community Unit Plan concept

⁶ The St. Louis County, Missouri provision is typical of many. Originally enacted in 1946, it reads as follows:

"*Community Unit Plan*—1. The owner or owners of any tract of land comprising an area of not less than twenty (20) acres may submit to the County Council a plan for the use and development of all of the tract of land for residential purposes. The development plan shall be referred to the County Planning Commission for study and report and for public hearing. If the Commission approves the development plan, the plan, together with the recommendations of the Commission shall be accompanied by a report stating the reasons for approval of the application and specific evidence and facts showing that the proposed community unit plan meets the following conditions:

(a) That property adjacent to the area included in the plan will not be adversely affected.

(b) That the plan is consistent with the intent and purpose of this ordinance to promote public health, safety, morals and general welfare.

(c) That the buildings shall be used only for single-family dwellings, two-family dwellings or multiple dwellings and the usual accessory uses such as garages, storage space and community activities, including churches

(d) *That the average lot area per family contained in the site, exclusive of the area occupied by streets, will be not less than the lot area per family required in the district in which the development is located.*

"If the County Council approves the plan, building permits and certificates of occupancy may be issued even though the use of the land, the location of the buildings to be erected in the area, and the yards and open spaces contemplated by the plan do not conform in all respects to the district regulations of the district in which it is located.

"The County Council may also authorize the repair or remodeling of any existing community development that does not conform with the district regulations of this chapter." Section 1003.270, Revised Ordinances of St. Louis County, Missouri 1958. (Italics added)

considers them as exceptions requiring special handling.⁷

THE CHALLENGE OF MODERN HOUSING

Zoning must adjust to modern housing practices, which deposit an entire subdivision or entire urban renewal project onto the landscape at one time. This method of building, unfortunately, has an incredible capacity for monotony; but it also presents new opportunities for variety, interest, and the inclusion of open space and community facilities.

These large-scale developments present three specific challenges to zoning: (1) they demand a reasonable method of including accessory uses; (2) they require internal variety in yard, height, and lot size; and (3) they need variety in housing types within each development.

Which of the six zoning methods can best cope with these modern housing challenges?

A. The Need for Accessory Uses to a Planned Residential Development

Zoning ordinances list permitted uses, and declare that "accessory uses" to those listed are also permitted.⁸ A detached garage is an accessory use to the single residence. An accessory use to a large subdivision or housing project might be an entire shopping center, churches, a golf course, community center, swimming or tennis club, or parking lot.

1. *Commercial Uses.* A planned residential development would normally include small shopping areas for the convenience of its residents, but conventional zoning districting and ordinances do not permit this because the "intermingling of incompatible uses"⁹ is an old ghost which has stalked the streets ever since the days when each property was developed by a separate owner.

Once it is admitted that large-scale residential developments can be listed as properly per-

mitted uses in residential zoning districts, the problem of how to allow commercial outlets within the project is solved conceptually. The development, or subdivision in the suburban case, replaces the lot as the least count of what is governed. And a certain amount of commercial activity is a normal accessory use to the development, just as a garage is an accessory use to the single-lot dwelling. There are ratios available from even the most rudimentary land use survey to indicate how much commercial acreage or floor area will be required in terms of the number of dwellings in a development.

Cincinnati, Ohio and New Haven, Connecticut ordinances have a straightforward approach in that they permit commercial use as a matter of right, but set an unmistakable numerical limit on the amount of commercial use.¹⁰ The amount of commercial use must not be left to the discretion of the applicant or to a vaguely worded standard. The designer can be freed to concentrate on aesthetics, social composition, and the creating of a community (rather than a mere dormitory or a mere shopping center) *only* if the amount of commercial use, as well as the number of rent-paying dwelling units, is settled beforehand by the district map or the regulation.

But location and form of the commercial activity is within the designer's special competence, subject to review by the planning commission and redevelopment agency, just as subdivisions are reviewed. This follows naturally from a recognition that the large-scale project rather than the single-lot improvement is the thing to be regulated. Large-scale design is done by competent professionals who can be trusted to settle points of form that once had to be spelled out for the individual improvers of separate lots.

2. *Recreation and Open Space.* Suppose a builder controls a 100-acre tract containing a potential 10-acre lake, and the land is subject to Lot Zoning with a minimum lot size of 10,000 square feet. The builder finds that he can cut the land into 348 lots, or 304 lots and one lake.

⁷ Density control ordinances have been adopted during 1960 in Florissant, Missouri; St. Louis County, Missouri; and Manchester, Missouri. See also "Cluster Subdivisions," Planning Advisory Service, American Society of Planning Officials, *Information Report No. 135*, June 1960.

⁸ For traditional lore on "accessory use," see Yokley, *Zoning Law and Practice*, Sec. 64. The Michie Company, Charlottesville, Va. (1948).

⁹ Justice Sutherland reasoned that intermingling of incompatible uses "comes very near to being nuisances," therefore justifying zoning. *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114 (1926).

¹⁰ Cincinnati, Ohio Ordinance 431, Dec. 3, 1958; New Haven, Conn., Zoning Ordinance Sec. 1011-B3 (1958). Quoted at length in Goldston and Scheuer, "Zoning of Planned Residential Developments," Vol. 73 *Harvard Law Review*, p. 241, footnote 97, p. 260 (1959).

If the land were subject instead to a Density Control Zoning Ordinance which stipulated 3.48 dwellings per gross acre, with no lot less than 8,000 square feet in area, the builder could cut the land into 348 lots averaging 10,000 square feet, with no lake, or 348 lots averaging over 8,700 square feet and the lake.

Other recreational uses, such as a community center, a golf course, or a swimming or tennis club should be permitted as an accessory use to a residential development in the same manner as the 10-acre lake in the above example. Caution must be exercised that quasi-commercial uses such as bowling alleys that provide little or no open space do not "creep in" under such provisions.

B. The Need for Variety in Yard, Height, and Lot Size

In a large-scale development the designer might envision some culs-de-sac with buildings near the street having little or no front yard. He might make lots smaller than average where topography is favorable and larger where slopes are extreme. Such variety cannot be tolerated where lots are developed by separate owners, and typical zoning would forbid these differences. But large-scale projects are intolerable without such variety, and this fact is recognized by a Density Zoning Ordinance which imposes yard requirements only around the periphery of the project.

Does the low density requirement of many single-family zoning districts inhibit planned residential developments, on the theory that good residential design can only be accomplished at high densities? Apparently not, viewing the history of American residential design. Much of the better, large-scale community design has been done at low density. Radburn, Greenhills, the Kansas City Country Club District, Long Island Estates, and many examples of golf courses that have been intertwined with subdivisions could be cited.¹¹ Of course, much of

¹¹ Crabtree, "Developing Golf Course Subdivisions," *Urban Land*, Vol. 17, No. 8, September 1958, Urban Land Institute. For a description of twelve classic examples of good residential design, including several low-density developments, see Stein, *Towards New Towns for America*, Reinhold, New York City (1957). Note especially Radburn, N. J. (p. 37); Baldwin Hills Village, Calif., "probably the most spacious urban rental housing ever built in the United States" (p. 209); Greenbelt, Md. (p. 119); Greendale, Wisc. (p. 185); Greenhills, Ohio (p. 178).

our *bad* residential design is also occurring with large-scale, low-density development. These are characterized by a spaghetti system of aimlessly curved streets and long culs-de-sac without adequate traffic arteries, monotony in structures, few community facilities and no permanent open space.¹² But such inferior design is not automatically improved by permitting more of it to occur per acre. Therefore, it would seem that residential design in the suburbs will not be improved simply by the administrative board's approving high-density developments there. But developments at *all densities* stand to be improved by the practice of Density Control Zoning.

C. The Need for Variety in Housing Types

The designer of a planned residential development might want to eliminate side yards between certain dwellings, creating row houses. For vertical interest, he might propose to stack some dwellings into a few multi-story buildings.

Should multiple dwellings be permitted in a planned residential development in a low-density area zoned for single-family dwellings if there is no increase in density? Twenty per cent in multiple dwellings is sufficient to break up a continuous "ranch house" monotony, for example, and would introduce a badly needed housing type into the suburban fringe.

It is unlikely that many residential builders would welcome an opportunity to erect a variety of housing types in the same development. In fact, it is hard to point to a single square mile area of suburban America or redeveloped America containing much of a composition of large estates, modest homes and apartments or row houses within it. The history and trends point the other way, toward family income, housing type and lot size extremely segregated into separate areas, some of which are very large.¹³

Wider American experience with a variety of housing types and income groups at the scale

¹² Miller, "The Slumberous State of Subdivision Planning," *Architectural Forum*, p. 99, Feb. 1959.

¹³ Social-economic status of families by place of residence, observed in concentric circles, tends to increase with distance from the center of the metropolitan area. Much contemporary planning accepts and perpetuates this phenomenon. See, for example, Hamburg and Creighton, "Predicting Chicago's Land Use Pattern," *Journal of the American Institute of Planners*, p. 67, Vol. XXV, No. 2 (May 1959).

of one square mile or more is necessary before there will be much intermingling of housing types within a single, planned residential development.

In the housing boom decade ahead, in the suburbs it will be a rare "planned residential development" if it contains so much as three lot sizes, three floor plans or three pavement textures varied within it. Downtown, the development generally will be thirteen floors with skip-stop elevators for everyone; while in Exurbia the standard portion will be two bathrooms and a Chinese elm. This is too bad, particularly in the richest land on earth, but our zoning regulations merely reflect a deeper problem. They are the result not the cause.¹⁴ This is true because unzoned areas reflect the same residential development pattern.

But good planning and zoning can do this much: It can encourage a variety of lot sizes and housing types rather than calcify the pattern of stratified social-economic status changing in broad bands only as the distance from the urban center increases. It can set aside areas near the metropolitan center where low density (perhaps even single-family dwellings) would be required upon redevelopment. It can designate suburban sites for apartment or small-lot use, near areas of predominantly spacious single-family development. Finally, it can allow a controlled amount of housing type intermingling to occur in the large-scale, single-family developments.

Some progress towards achieving a variety of housing types can be expected through Density Control Zoning, but the greatest need for variety is outside the limits of the planned residential development, and at the community

¹⁴ A serious program to improve this would include (1) training of more civic designers and landscape architects; (2) broadening the scope of curricula in architecture and city planning to include design of residential developments and subdivisions; (3) teaching "environmental appreciation" in high school, just as art and music appreciation are taught; and (4) orienting Federal FHA and HHFA policy towards encouraging and demanding better residential design. (Pentagon officers on one hand complain that American young men grow up ill-equipped physically for service, and U.S. housing officials on the other hand insure thousands of large new subdivisions annually that lack areas for active recreation.) Clarence S. Stein calls present housing form an "obsolete, socially repellent, barren real estate gambler's checkerboard." Stein, *Toward New Towns for America*, p. 217. Reinhold (1957). See also Perloff, *Education for Planning: City, State and Regional*. The Johns Hopkins Press (1957).

or metropolitan scale. The question whether good composition of housing types at that scale can be accomplished best through "fixed" zoning or "flexible" zoning will be treated in later paragraphs.

THE CHALLENGE OF PLANNING

There are three adjustments in the metropolitan residential density pattern that should be made in most large urban centers: (1) small single-family homes and lots must be introduced into the suburbs, complete with schools, parks, streets, shopping, etc., and with a minimum of shock to existing residents and their land; (2) some rental units are also needed at the city's outer edge; and (3) high-density, obsolete dwellings in the center of the city must be replaced with new housing that is better and less crowded.

It is submitted that such adjustments can be made best through a mapped, graphic, rather permanent comprehensive plan, implemented by a Density Control Zoning Ordinance and a Zoning District Map that establishes a future pattern of variety in housing types in some detail and quite specifically.

A. The Need for Rental Housing

In many suburban areas there is an artificial scarcity of vacant land zoned for small lots or apartments,¹⁵ with many applications for preliminary subdivision approval accompanied by a rezoning petition. Land development practice in such a jurisdiction tends to be attractive only to speculators and contingent fee advocates of the appropriate political party. Constant rezoning by even the most fair-minded governing body is a poor substitute for a sound plan for future development, and a district map that

¹⁵ In St. Louis County, Missouri, for example, the 1946 zoning district map for the unincorporated area is still in effect. The county population was then about 300,000 and the zoning district map was designed to operate until a county population of 500,000 was reached. It has not yet been revised, except in a piecemeal fashion, although the present county population is about 700,000. Of the 163,574 acres of vacant and farm land in the residential zoning districts in January 1959, 152,678 acres or 93 per cent were zoned for large lots (15,000 square feet to one acre minimum). About half the residential development in actual acres is nevertheless occurring on lots of less than 15,000 square feet, much of it through piecemeal rezoning to small lots. 1959 *Land Use Inventory*, St. Louis County Planning Commission, Plate 11 (1959); *A General Land Use Plan*, St. Louis County Planning Commission, p. 38 (1960).

provides a place for at least five years of future residential growth. Such a district map establishes certainty, which is a cherished aim of any legal system. In the case of residential zoning, such certainty does not infer monotony when the entire plan and zoning program has been designed to abolish monotony.

There is an unquestioned need for rental and medium density housing in many suburban areas. Furthermore, density can be reduced and subsidy minimized in the clearance of high density, central city slums by building low-rent housing in quantity on relatively low-cost outlying sites.¹⁶ This opportunity is open to any metropolitan area with the political coherence and courage to carry it off.

A popular current practice permits the proponent of a planned residential development of rental housing to buy a suburban site zoned for large lots and to get approval through rezoning for any number of apartments. This furnishes low cost sites, assuming the proponent can purchase land zoned for low-density estates and emerge victorious from a noisy rezoning hearing with permits for medium or high-density buildings. The practice is formalized and made more predictable by a "floating" district for garden apartments, such as the Tarrytown, New York ordinance.¹⁷ That ordinance permits garden apartments on sites of at least ten acres to locate anywhere in the residential districts on the basis of a site plan, a hearing and formal rezoning action by the governing body. It is an expedient method of introducing a few garden apartment developments into Suburbia, especially for a jurisdiction whose plan and district map lag behind its population boom, forcing it to operate ad hoc and listen to a rezoning petition with the typical subdivision application.

But to introduce low-rental housing on a large enough scale in the suburban ring to lessen significantly the density and land value pressure in the central city, is an undertaking that needs the assistance of a metropolitan physical plan

¹⁶ This is common knowledge among housing experts, and is the genius of the British New Towns program. Except for isolated efforts, such as the depression-years Federal Works Agency experiment with federal aid for satellite communities. American renewal housing practice has been to rebuild housing on the site of a cleared slum area.

¹⁷ See footnote 3.

and a district map locating the places where the multiple units will be built. Locating and zoning the sites in advance may result in somewhat higher land costs than allowing promoters to buy land zoned for country estates and use an ad hoc procedure to get building permits for apartments. But there are substantial savings to be made by avoiding the delay, uncertainty and legal costs of an ad hoc hearing for each new project. Agencies or would-be builders of rental housing in the suburbs can learn much from suburban industrial builders, who prefer the certainty of abundant industrial zoning to the questionable economy of buying land or options to land which must be rezoned for industrial use before construction can begin.¹⁸

A metropolitan strategy to introduce a significant amount of multiple housing to the suburbs might choose dispersal, in which case the physical plan and district map would permit or perhaps even *require* some of these dwellings in each large subdivision. Or, if concentrated sites are to be developed, these could be reserved where topography, transportation, local services, and employment opportunities offer the most promising environment for the future occupants. Either of these policies could be drafted into a workable district map and use regulations by keeping in mind simply that large-scale developments rather than single lots are being regulated.

B. The Need for Improved Standards in Rebuilding

Redevelopment of blighted areas into large-scale residential schemes is subsidized by Federal and local monies,¹⁹ but there is an apparent public policy to minimize the subsidy. A cleared acre on which 200 dwelling units can be erected will be sold to a redeveloper for a price as close as possible to the high condemnation cost of the crowded 200 dwelling unit per acre slum use that it replaces. A greater subsidy would be necessary to reduce the crowded

¹⁸ "It is desirable to locate [industrial development] in an area which has already been zoned exclusively for industry, based on a comprehensive land use study of the entire area." *Organized Industrial Districts*, p. 40, U.S. Department of Commerce (1954), U.S. Gov't Printing Office.

¹⁹ For the Federal-local financing of urban renewal, see Note, "Urban Renewal: Problems of Eliminating and Preventing Urban Deterioration," Vol. 72, *Harvard Law Review*, p. 504 (1959).

slum density to 20 dwellings to the acre. These greater subsidies are not made,²⁰ though contemporary living standards and adherence to any reasonable master plan demands such lower density. The prevailing practice is to (a) tear down the slums and (b) replace them with whatever land use or population density will bring the highest resale price or rental income. Historically, was this very practice not responsible for today's slums? Isn't it evident that today's slums are being replaced by tomorrow's?

Since the subsidy is the margin between acquisition cost and price paid by the redeveloper, reduced acquisition costs will do as much to minimize the subsidy as will a higher price paid by a redeveloper. Reduced acquisition cost will work towards lowering the ultimate density, while higher prices paid by the redeveloper can only mean high density. What can government do to lower acquisition cost? Among other things, it can specify and enforce a lower density in the zoning of areas that are too crowded. This will lower acquisition cost, since a major element in the appraisal of urban land is what it can be used for. If a zoning ordinance permits high density construction on a lot-by-lot basis in a city's central area, and the visiting appraiser finds himself in the shadow of high-rise projects built on similar land; appraised value,²¹ and therefore acquisition cost, will be high.

²⁰ One author traces this practice to "that bright idea conceived and applied with such monumental enterprise in New York . . . that the way to do central clearance and redevelopment today, and at the same time help solve the housing shortage, is to double or treble the densities in blighted areas." Catherine Bauer: "Redevelopment: A Misfit in the Fifties," from *The Future of Cities and Urban Redevelopment*, pp. 7, 19, The University of Chicago Press (2d edition 1956). A current example of high-density redevelopment is the proposed Bunker Hill urban renewal project in Los Angeles, which would place 160,000 persons on 136 acres of land.

A quarter-century ago the problem was exposed in Thomas Adams' classic work on housing: "Too often the problem of dealing with blighted areas by means of reconstruction schemes is approached from the point of view of how to obtain sufficient volume or density of new buildings to maintain land prices that are based on past overcrowded uses; whereas the approach should be how to obtain reduction in land prices that is necessary to make a desirable density of building financially practicable." Adams, *Design of Residential Areas*, p. 39. Harvard City Planning Series VI, Harvard University Press (1934).

²¹ "Insofar as existing zoning restrictions circumscribe the available uses to which land may be devoted they unquestionably affect the market value of property and no evidence in support of an enhanced value may be admitted where such enhanced

Ad hoc rezoning is the typical method employed to cut redevelopment housing loose from the density maximums of the zoning district map and comprehensive plan. The proposal to permit the board of adjustment to vary zoning density through "special exceptions" simply delegates this awful business to them. Such solutions will inevitably spiral both density and acquisition costs upwards. This occurs in a side-by-side manner as the redevelopment at high density of one project raises the acquisition cost of nearby blighted land and also occurs on the same piece of real estate through the life cycle of several structures. Forgotten through all these manipulations of high finance are generations of occupants of the land, who would live uncomfortably close together. Defender of these nameless thousands is a sane, rigid density maximum spelled out for each acre of urban land. The designer of a large-scale residential development will more easily keep the welfare of the ultimate rent payers and their families in mind if he is not allowed to determine their number.

THE COMPREHENSIVE PLAN AS THE GUIDE FOR DENSITY

The comprehensive plan checks the tendency of redevelopment housing to spiral density upward by serving as a bridge to unite the zoning ordinance and renewal program. Virtually all state zoning enabling acts²² require that zoning be undertaken "in accordance with a comprehensive plan." At the same time, both federal and state urban renewal laws require the renewal plan to conform to the over-all comprehensive plan. The Federal Housing Act states, for example, that "Contracts for financial aid shall be made only with a duly authorized local

value would be the result of a proscribed use." Nichols: *Eminent Domain*, Vol. 4, S. 12.322 (3d edition 1951).

Here is a British conclusion: "'Market Value' is now largely determined (and this is the strangest perversion of all) by town and country planning. If land is zoned under the development plan as agricultural or greenbelt land, it cannot normally be built on and has only agricultural value. But if it is zoned for industrial, commercial or residential uses, its value is multiplied ten, twenty times or more." MacBeth: "Piccadilly Goldmine," *New Left Review*, Vol. 12, No. 2, March-April 1960.

²² "Such [zoning] regulations shall be made in accordance with a comprehensive plan." Section 89.040 RS Mo. 1949. Also see Haar, "In Accordance with a Comprehensive Plan," Vol. 68 *Harvard Law Review*, p. 1154 (1955).

public agency and shall require that . . . the redevelopment plan conforms to a general plan for the development of the locality as a whole."²³ Euclid's principle that "things equal to the same thing are equal to each other" applies to this situation.

In most of our states there is little question as to what is meant by such terms as "general plan," "comprehensive plan," or "master plan," there being state legislation specifying what these plans are, how they are made, how they are adopted, and what they mean.²⁴ With such legislative specification, there would seem to be certainty as just what both the zoning program and urban renewal projects should conform to.

In general, the comprehensive plan includes estimates of future population growth, plans for the distribution and density of this population, a land use plan setting aside adequate areas for residence, commerce, industry, public uses, etc.; plans for streets and other transportation facilities, sewers, water, parks, schools, police and fire protection, etc., needed to serve the anticipated pattern of land use, population distribution and density. Such plans should be graphic, certain, and permanent; although they must periodically be updated through study, reappraisal, and replanning.²⁵

The comprehensive plan is effective only if the community has success in applying its basic proposals for land use and population density. Even traffic engineers are now convinced that traffic flow is directly related to population density and land use.²⁶ No municipality can plan its streets, its schools, its parks, its sewers, its water facilities effectively unless it can control land use and population density in accordance with its comprehensive plan.

²³ 63 Stat. 416 (1949) 42 U.S.C., Sec. 1455 (a) (iii) (1958).

²⁴ For a discussion of various enabling acts regarding the comprehensive plan, see Haar, "The Master Plan: An Impermanent Constitution," Vol. 20, *Law and Contemporary Problems*, pp. 353-354 (1955).

²⁵ See Lovelace, "The Flexible City Plan Is No City Plan at All," *Journal of the American Institute of Planners*, Vol. XXIV, No. 1, 1958. For a lawyer's analysis of the contents of a comprehensive plan, see Horack & Nolan, *Land Use Controls*, p. 36. West Publishing Co., St. Paul (1955).

²⁶ See Fonoroff, "The Relationship of Zoning to Traffic Generators," Vol. 20, *Law and Contemporary Problems*, p. 238 (1955); Hansen, "How Accessibility Shapes Land Use," *Journal of the American Institute of Planners*, Vol. XXV, No. 2, p. 73, 1959.

The basic question, of course, is how far the master plan should go in establishing standards. Some European and Scandinavian countries in their master planning specify every aspect of community development down to the detailed architectural design of buildings.²⁷ This has not been our custom, nor are we likely to undertake the vast expansion of municipal bureaucracy or the complete upsetting of our traditional practice that would be required. There is no reason, moreover, why a soundly conceived over-all master plan, in establishing general locations of land use, maximum population densities, and reasonable and sensible standards, cannot permit a wide range of flexibility on the part of the developer, redeveloper, and the designer of large-scale projects without necessitating either continuous public uproar over controversial administrative review procedures, on the one hand, or the granting to the large-scale developer of too much freedom, on the other.

Planning and zoning measures have been instituted to correct the evils of ill-advised, speculative building and overbuilding. The fact that a developer is working at a large scale, or that his plans must pass many administrative reviews, will not automatically result in projects in the best interests of the entire community. The large-scale developer should fit his project into the over-all comprehensive plan. A community's basic pattern must not bend to the whims of the developer. This was the practice before zoning, and the result was unsatisfactory.²⁸

The problem is to draft zoning ordinances and subdivision ordinances so that they can better accommodate large-scale projects to the master plan. This can be done by regulating entire developments as a unit, rather than lot-by-lot. It cannot be done by leaving population density and the amount of commercial use permitted in a development to the discretion of the governing body on an ad hoc basis.

²⁷ See Stein, "Stockholm Builds a New Town," *Planning*, pp. 56-61, American Society of Planning Officials (1952); Lewis, *Planning the Modern City*, Vol. 1, p. 255, John Wiley & Sons (1955).

²⁸ American zoning began in New York City in 1916 in response to overcrowding, canyon streets, and chaotic intermingling of incompatible uses. For a description of these conditions, see Bassett, *Zoning*, p. 23, Russell Sage Foundation, New York (2d edition 1940).

SUMMARY AND CONCLUSIONS REGARDING ZONING TYPES

The foregoing discussion suggests the following conclusions regarding the three "ad hoc" or "flexible" and three "fixed" or "mapped" zoning styles:

I. Flexible Zoning

a. *Rezoning.* The obvious method of resolving the collision between the zoning ordinance and district map, on the one hand, and a proposed residential development, on the other, is to amend the zoning district map to the exact shape of the proposed residential development. A multiple dwelling district liberal enough to make the proposal legitimate is created where the development design shows apartments, and that part of the site where commercial uses are desired is rezoned to a commercial classification.

But a rather basic tenet of jurisprudence holds that the thing governed should conform to the law. And it is basic to city planning that development conform to the plan and its implementing ordinance. Therefore, this method is exactly backwards and has been criticized so universally that a now familiar phrase has been coined to describe the method, viz. "spot zoning."²⁹ In the suburban situation, ad hoc rezoning introduces surprise, distrust, and physical chaos. Ironically, the results of this "dynamic"³⁰ method of developing land can be incredibly monotonous in appearance.

b. *Floating Zones.* This method is somewhat better than a simple rezoning, since the floating district regulations manifest a *policy* of rezoning and usually include standards applicable to entire developments rather than single lots. This method of zoning may be a valid emergency measure in a suburban jurisdiction whose growth is ahead of its planning process, but "floating" districts are no substitute for the order and certainty possible with a graphic comprehensive plan and a fixed zoning district map.

c. *Special Exception.* "Flexible" zoning was shown to be inferior to "fixed" zoning, and the least desirable form of "flexible" zoning would

seem to be the special exception method. Its use would breed uncertainty, and it is especially dangerous in the hands of those who would "save" urban renewal money by building each new project to a higher density than the housing it replaces.

There is some question whether a governing body can delegate to the Board of Adjustment the power to approve residential developments of a higher density than the district map calls for. The Standard Enabling Act, followed by most states, gives the Zoning Board of Appeals jurisdiction over (a) appeals from an interpretation given by the administrative official, (b) power "to hear and decide *special exceptions* to the terms of the ordinance upon which such board is required to pass under such ordinance," and (c) power to vary the ordinance to alleviate hardship.³¹ Goldston and Scheuer would lodge their proposed addition to the zoning board's jurisdiction among its "special exception" powers. But special exceptions "are intended as an effective method of exercising control over certain exceptional or unusual uses of land and buildings."³² Since planned developments are no longer "exceptional or unusual uses of land" but have become the standard method of residential construction, they should not be listed as special exceptions. A study of special exceptions in Illinois concluded that the Board of Zoning Appeals is a superior forum to the governing body for hearing and ruling on such cases, because of the Board's quasi-judicial character. But that study recommended narrowing the scope of variations and special uses, presumably excluding power to permit an increase in density.³³

The Goldston and Scheuer special exception proposal would confer power on the Board of Zoning Appeals to permit an unlimited increase in density over what is prescribed by the zoning district map for the sites of the proposed planned residential development.³⁴

³¹ U.S. Department of Commerce, *A Standard State Zoning Enabling Act* (rev. ed. 1926); Sec. 64.120 (2) Mo. Rev. Stat. (1949); Cal. Gov. Code Sec. 65853 (Deering 1958); N.Y. *General City Law*, Sec. 81 (1950).

³² Rees, "Discretionary Powers of the Board of Zoning Appeals," Vol. 20, *Law and Contemporary Problems*, pp. 280-289 (1955).

³³ Dallstream and Hunt, "Variations, Exceptions and Special Uses," *Law Forum*, pp. 280-289, University of Illinois (1954).

³⁴ Goldston and Scheuer. See footnote 4.

²⁹ See "Spot Zoning and the Comprehensive Plan," Vol. 10, *Syracuse Law Review*, p. 303 (1959).

³⁰ For an early formulation of "Dynamic Zoning," see Fagin, "Problems of Suburban Communities," *Planning*, pp. 63-68, American Society of Planning Officials (1951).

2. Fixed Zoning

a. *Lot Zoning.* That zoning needs overhauling regarding large residential developments is as true in the older parts of the city, where most new residential construction is in large redevelopment projects, as it is true in the suburbs, where most new residential construction is in large subdivisions. Zoning ordinances, when written for the single structure built on the single lot, miss the point of typical new construction today. Conventional height, bulk, and yard requirements, and to some extent the separation of housing types (single-family, duplex, multiple dwellings), and strait-laced rules prohibiting accessory uses such as small retail outlets in large residential developments, are as archaic as the practice of building one house at a time.

Of course, zoning ordinances must recognize that *some* construction will be single buildings on separate lots and should control this type of building through Lot Zoning.

b. *Community Unit Plan.* This device is a much more traditional special exception than the one discussed previously which permits the administrative board to approve projects which increase density. The first zoning ordinances written gave the zoning administrative board power to permit certain utility uses to be erected in residential districts. Contemporary ordinances have a long list of uses that can be erected only after granting a special exception. Airports, cemeteries, and even service stations and trailer parks are typically listed as "special exceptions," permitted only after a hearing and action by the appropriate agency.³⁵

Although the special exception method is abused when the list becomes too long and standards too short or too vague, the community unit plan would be a legitimate special exception when its standards are properly drafted, except that the planned residential development is coming to represent universal practice and, in all honesty, is no longer a *special exception*. Unlike many special exceptions, the community

unit plan does not purport to introduce controversial non-residential uses into residential districts, and it does not seek to introduce more dwellings per acre into the residential district than the applicant could erect on the basis of conventional building permits handed to him across the counter by a city hall clerk.

Unfortunately, the community unit "special exception" method has not been popular because heated public meetings followed by delays beset applicants who go this route. The procedure faces the proponents of better residential designs to show cause publicly why they have not followed a routine concept while, in contrast, the stereotyped layouts get a quick administrative blessing.³⁶

c. *Density Control.* This type of zoning welcomes large-scale projects by permitting conveniences such as a small shopping area to be built along with the dwellings as an accessory use, and by allowing variety in yard, height, lot size, type of open space, and housing type. Since these developments will be designed by professionals and reviewed individually by a public agency, the regulations need not be as cautious and specific regarding the shape of the buildings as when each was improved separately, by anyone who could hammer.

A Density Control ordinance should contain several districts, each with different requirements regarding accessory uses, variety, open space, and density. The latter element is the important distinction between districts. This gradient enables Density Control Zoning to introduce whatever density is needed for each residential tract in the urban community, all according to a comprehensive plan. Its principles apply as well to a spacious subdivision of ranch houses on one-acre lots as to a high-density urban renewal development. The triad of urban renewal statutes, the comprehensive plan, and a density control zoning ordinance can reduce central city densities in the change from dilapidated to new housing, with Density Control Zoning making welcome the best efforts of the person who designs the new environment.

³⁵ The 1923 Chicago Zoning Ordinance listed nine special exceptions: community center, park, railroad or station, bus terminal, hospital, institution, parking lot, telephone exchange, electric substation. Sec. 24 *Chicago Zoning Ordinance*, April 15, 1923. The 1951 Los Angeles County Ordinance lists 73 special uses, including drive-in theatres. *Ord. No. 1494 Zoning Ordinance of County of Los Angeles* (1951).

³⁶ In St. Louis County, Missouri, in most of the larger suburban cities as well as in the unincorporated portion, the community unit special exemption has been available for about twenty years. During this period only four subdivisions totalling about 1,000 dwelling units used the device, while over 100,000 dwelling units were approved in the routine manner.

A SAMPLE DENSITY CONTROL PROVISION FOR PLANNED RESIDENTIAL DEVELOPMENTS

A guide to drafting a density control zoning ordinance is set out below. It is only a guide, since each ordinance and district regulation must draw heavily on the jurisdiction's enabling act, subdivision control ordinance, comprehensive plan, and the unique form and character of housing desired.

A ZONING PROVISION FOR PLANNED RESIDENTIAL DEVELOPMENTS

Planned Developments

A subdivision or planned development for residential purposes occupying twenty acres³⁷ or more shall be a permitted use in any residence district. The housing type, minimum lot area, yard, height, and accessory uses, shall be determined by the requirements and procedure set out below, which shall prevail over conflicting requirements of this ordinance or the ordinance governing the subdivision of land.

Recorded Plat Required³⁸

The proposed development shall follow all applicable procedures, standards and requirements of the ordinance governing the subdivision of land. The proposed development plan shall be prepared by and have the seal of an architect, civil engineer, or landscape architect duly registered to practice in this state. No building permit shall be issued until a final plat of the proposed development is approved and recorded.

Review Standards

The plan commission shall review the conformity of the proposed development with the standards of the official comprehensive plan, and recognized principles of civic design, land use planning and land-

³⁷ This is a local variable, depending on building practices and typical size of developments. Generally in more suburban areas twenty acres is an appropriate minimum, in congested areas it can be smaller.

³⁸ This indicates a need to carefully coordinate, if not fully integrate, a community's subdivision and zoning ordinances. The subdivision ordinance of Florissant, Missouri accomplishes some measure of density control with no support from the zoning ordinance. Key provisions are these:

"In order that potential dwellings displaced by parks or open space can be accommodated in the subdivision, the yard, height and lot size established by the zoning ordinance for that tract or parcel can be waived by the Commission. The Commission shall waive these requirements only when it finds that the proposed subdivision makes good use of topography and natural features, provides needed open space and contributes variety and interest to the character of its neighborhood without adversely affecting adjacent property. Requirements such as for side or rear yard, replacing those that are waived under this provision, shall be included in the subdivision plat or restrictions, and subsequent replacement and extension of buildings shall be controlled by such plat or restrictions." Ord. 1095, Florissant, Missouri, Sec. V (a)2.

scape architecture. The minimum yard and maximum height requirements of the zoning district in which the development is located shall not apply except that minimum yards shall be provided around the boundaries of the area being developed. The commission may impose conditions regarding the layout, circulation, and performance of the proposed development and may require that appropriate deed restrictions be filed enforceable by the commission for a period of twenty years from date of filing. The commission shall review the location of proposed multiple dwelling or commercial use where such are allowed but shall have no power to reduce the amount of such uses below the maximum established by this section unless such uses create immediate conflicts along project boundary lines. A plat of development shall be recorded regardless of whether a subdivision is proposed and such plat shall show building lines, common land, streets, easements and other applicable features required by the ordinance regulating the subdivision of land.

Dwelling Units Permitted

The number of dwelling units permitted shall be determined by dividing the net development area by the minimum lot area per family required by the district or districts in which the area is located. Net development area shall be determined by subtracting the area set aside for churches, schools or commercial use from the gross development area and deducting fifteen per cent of the remainder for streets,³⁹ regardless of the amount of land actually required for streets. The area of land set aside for common, open space or recreational use shall be included in determining the number of dwelling units permitted. Where an area of 50 acres or more is being developed a maximum of 20 per cent⁴⁰ of the dwellings located within an area included in a single-family residence district may be multiple dwellings.

Lot Area and Frontage

The minimum lot area and minimum lot frontage of single-family dwelling lots established within the development shall not be less than two-thirds of the normal minimum lot area and minimum lot frontage of the single-family district in which the lot is located. In no case shall a single-family lot be

³⁹ The amount deducted for streets should vary somewhat with density. An ordinance similar to the subject one recently adopted by the County Council of St. Louis County, Missouri established this scale for the per cent to be deducted for streets:

Average Lot Size	Deduct for Streets
1 Acre—30,000 sq. ft.	15 per cent
20,000 sq. ft.	20
15,000—12,000 sq. ft.	25
10,000— 7,500 sq. ft.	30

Ord. No. 1946 St. Louis County, Missouri (1960).

⁴⁰ Many city councils would react against this and prefer that multiple dwellings be permitted in low-density developments only after a public hearing.

created with an area of less than 6,000 square feet or a frontage of less than sixty feet.⁴¹

Commercial Use

For each one hundred dwelling units in the development plan, one acre may be set aside for commercial use. Commercial uses shall conform with the use and parking requirements of the Neighborhood Retail District.

Other Requirements

Off-street parking shall be provided according to the minimum requirements of the zoning ordinance. Layout and improvement of parking lots and garages shall also conform with the zoning ordinance and other applicable ordinances. Design, arrangement, and improvement of streets and driveways shall conform with the ordinance regulating the subdivision of land.

Guarantee of Completion

Before approval of a development plan the commission may require a contract with safeguards satisfactory to the city attorney guaranteeing completion of the development plan in a period to be specified by the commission but which period shall not exceed five years unless extended by the commission for due cause shown.

EXAMPLES OF DENSITY CONTROL ZONING

An example of a zoning ordinance that regulates entire subdivisions rather than separate lots is seen in the City Plan for Manchester, Missouri, adopted in July 1960. Manchester is a suburban city of 900 dwellings, with half of its area still undeveloped. The plan calls for a tripling of the city's area, and for an additional 3,400 dwelling units. Needed was a street system to hold the future subdivisions together, with predetermined school, park, church, and commercial sites to give the community substance.

A plan was drawn containing all these elements, including continuous open space and the designation of the high, flat, spectacular sites for future schools and churches. The plan is shown in Figure 1, page 19.

Such a plan would be difficult to implement through conventional zoning. One developer might find 3 per cent of his land in proposed open space and 20 per cent in proposed street right-of-way, while no permanent open space

⁴¹ This minimum would vary depending on topography and the density of the zoning district. For example, where the average lot size is to be 15,000 square feet, particular lots as small as 10,000 square feet with 80-foot frontages might be allowed.

and only 10 per cent in streets would be demanded by the plan from the adjacent developer. A zoning ordinance declaring that each can build on lots no smaller than, for example, 15,000 square feet in area, would penalize one developer to the extent of allowing him 13 per cent fewer lots than his neighbor.

The Manchester ordinance avoids this difficulty by furnishing a density formula permitting both developers to build the same number of dwellings per gross acre of the total land he controls.

Lots would have a nominal minimum area of 15,000 square feet, but could be reduced to as little as 10,000 square feet in area to accommodate the necessary, continuous open space into the subdivision. The open space would belong to the lot owners of the subdivision, hence it is not confiscatory to require the developer to *subdivide around* such open space. Existing, natural groves of oak trees along stream beds were chosen for continuous open space. It would greatly enhance the future value of the dwellings to retain these features undisturbed, especially since the plan has an entire network of such greenways leading to school sites and small parks.

The carefully located future school and church sites on the Manchester plan are reserved by prohibiting construction on such sites for one year after the subdivision is recorded, giving the school and church authorities time to act. This is accomplished through the subdivision ordinance.

The Manchester plan shown in Figure 1 was adopted as an ordinance, supplementing the written subdivision ordinance just as a zoning district map supplements the written zoning ordinance. The zoning ordinance permits the size of lots, rather than the number of lots, to be reduced to make space for the parks shown on the city plan.

Two examples of how subdivisions would develop under conventional controls compared to how the same tracts of land could be developed under density rule zoning are shown in Figures 2 and 3, pages 20 and 21. These illustrations presuppose a community plan less detailed than the Manchester Plan, one that encourages but does not require or delineate common open space. Figure 2 demonstrates



FIGURE 1

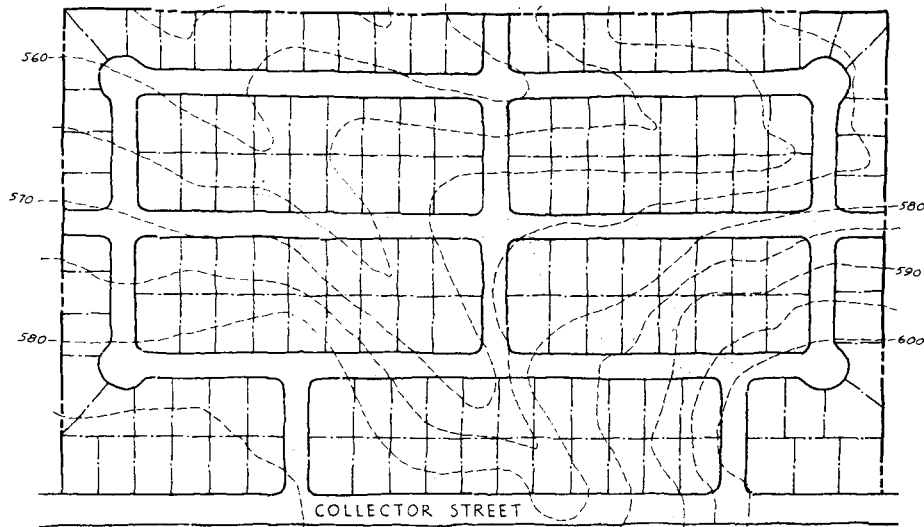
An example of a city plan to which is related a zoning ordinance that regulates entire subdivisions rather than separate lots

the principle, using relatively small lots and a flat topography. Figure 3 involves a more rugged piece of land having existing tree growth. It is shown subdivided into fairly large lots and points up how density zoning permits the building sites to be sculptured into

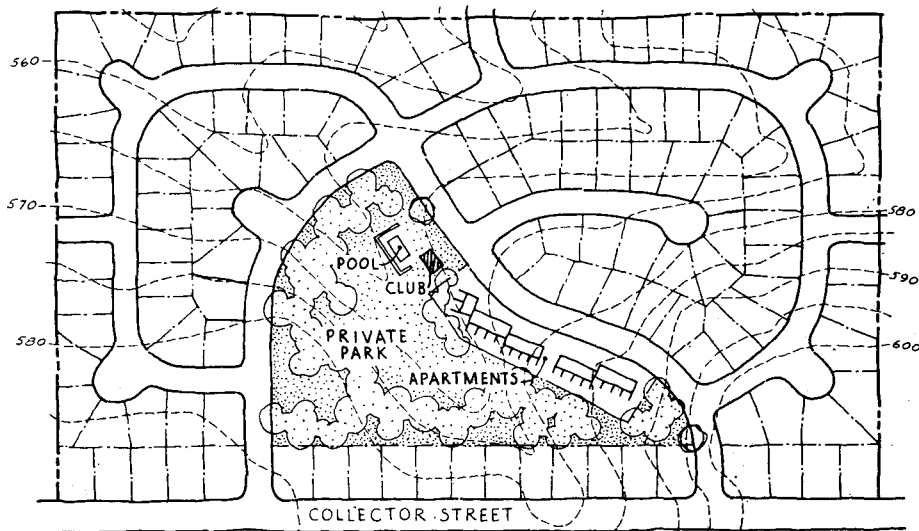
the topography, respecting natural features, minimizing grading, and providing variety and interest.

Density zoning as a method of including common open space into subdivisions is demonstrated in both cases. Small parks are essen-

AN EXAMPLE OF DENSITY CONTROL ZONING



THIS TRACT OF LAND CONTAINS 40 ACRES AND IS ZONED 8500 SQ. FT. SINGLE FAMILY LOTS. MAXIMUM USE OF LAND YIELDS 143 LOTS.



THIS IS THE SAME TRACT OF LAND WITH 125 SINGLE FAMILY HOMES ON LOTS WITH A MINIMUM AREA OF 7500 SQ. FT., 18 UNITS IN APARTMENTS (ROW HOUSES) AND 4.5 ACRES OF COMMUNITY PARK.

FIGURE 2

An example of Density Control Zoning applied to relatively small lots and a flat topography

tial, just as streets and utilities. It is simple enough to require that every lot be served by a paved street and utilities in an ordinance that treats the individual lot as the thing being regulated. Small parks, conceptually, are a necessary service to an entire subdivision rather than a single lot; hence, it is incongruous to require them in an ordinance regulating the individual lot. It is even difficult in such an ordinance to permit minimum lot sizes to be reduced to make way for common open space.

But an ordinance or section applying to entire subdivisions can handle the matter of permissive or obligatory inclusion of open space with simplicity and directness.

Two schemes, A and B, that were designed for the development of a tract of land located in a single-family zoning district are shown in Figure 4, pages 22-23. Scheme A shows a "standard" layout conforming to a single-family zoning district. Scheme B relied on the Community Unit Plan exception for the

AN EXAMPLE OF DENSITY CONTROL ZONING

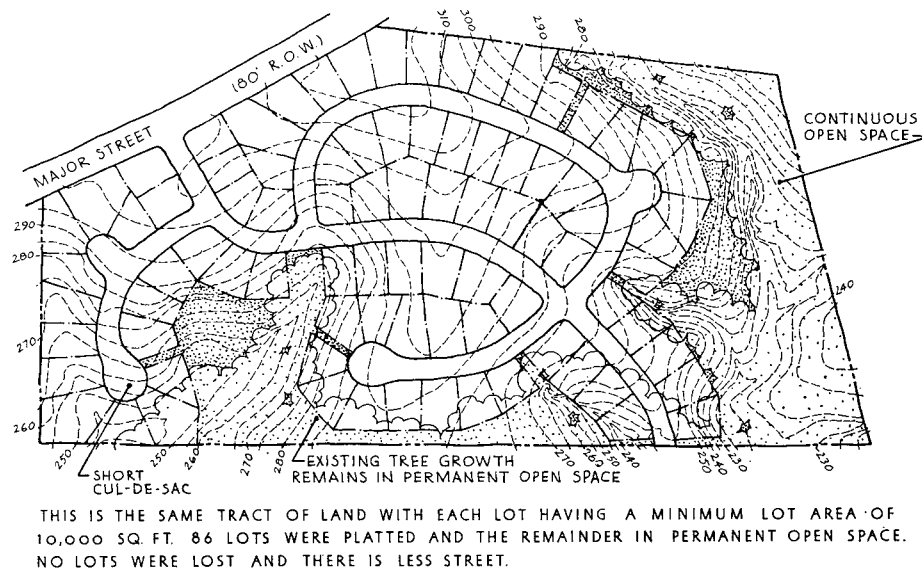
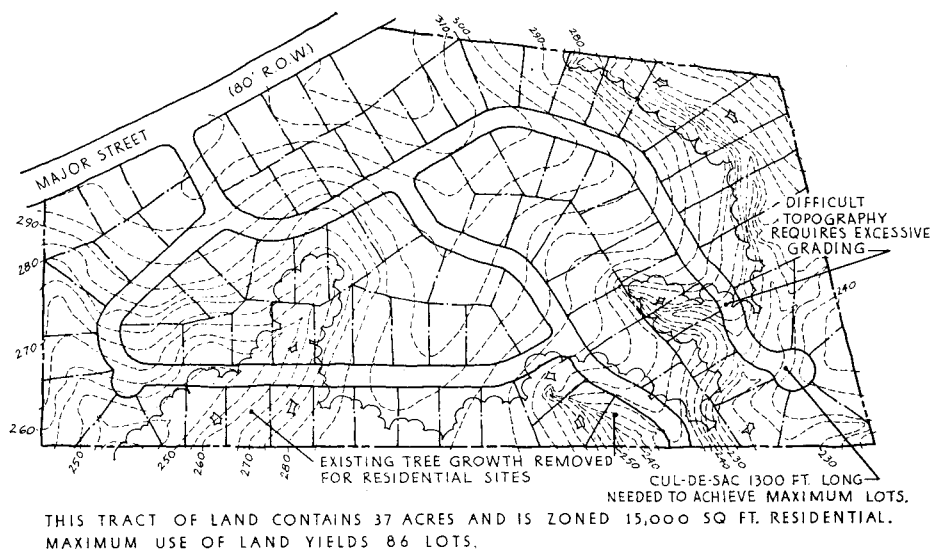


FIGURE 3

An example of Density Control Zoning applied to large lots and a rugged piece of land having existing tree growth worthy of preservation

privilege of erecting two-family and multiple dwellings. Every zoning ordinance should permit Scheme B to be developed, using special procedures. There will be some zoning ordinances drafted, as in a city partial both to Density Zoning and to multiple dwellings, which will allow Scheme B as a routine permitted use in a nominally single-family residence district, without special procedure.

CONCLUSION

Density Control Zoning provisions are needed in all zoning ordinances in addition to a community unit clause for the exceptional development. The community unit clause should be the standard one which permits no increase in density. Then, at long last, we may have zoning, urban renewal, and large-scale building all "in accordance with a comprehensive plan."

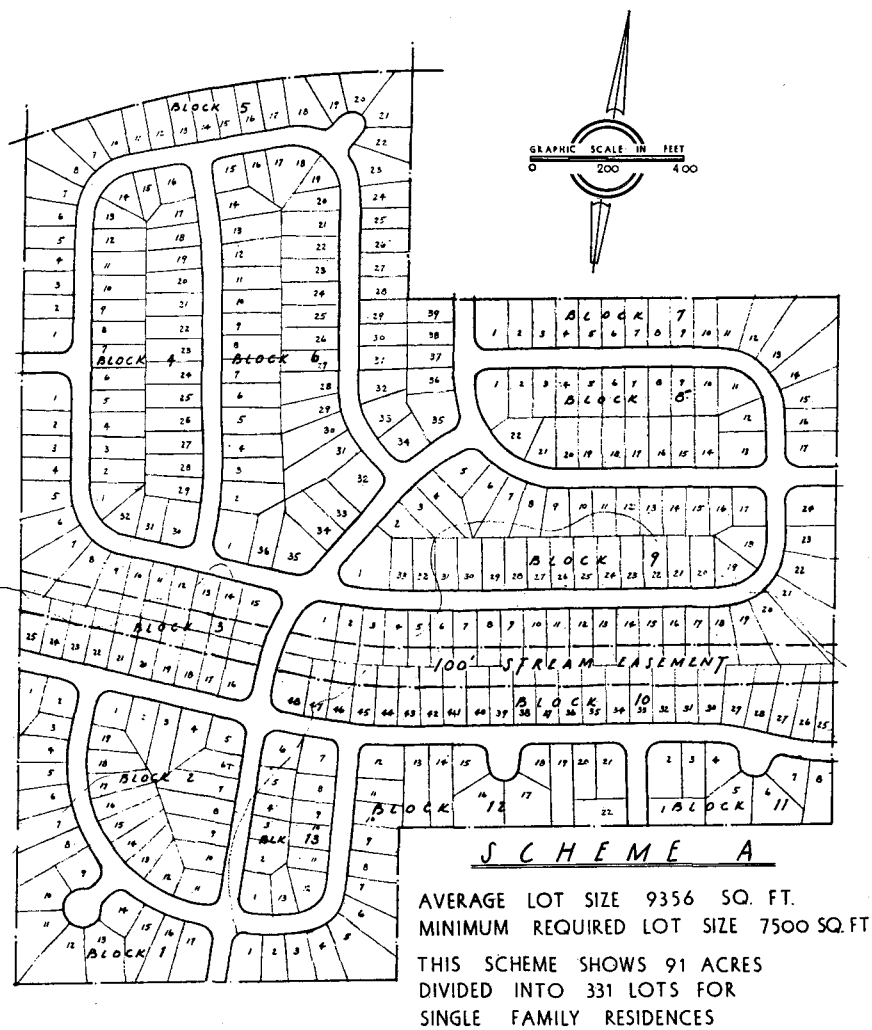


FIGURE 4—SCHEME A

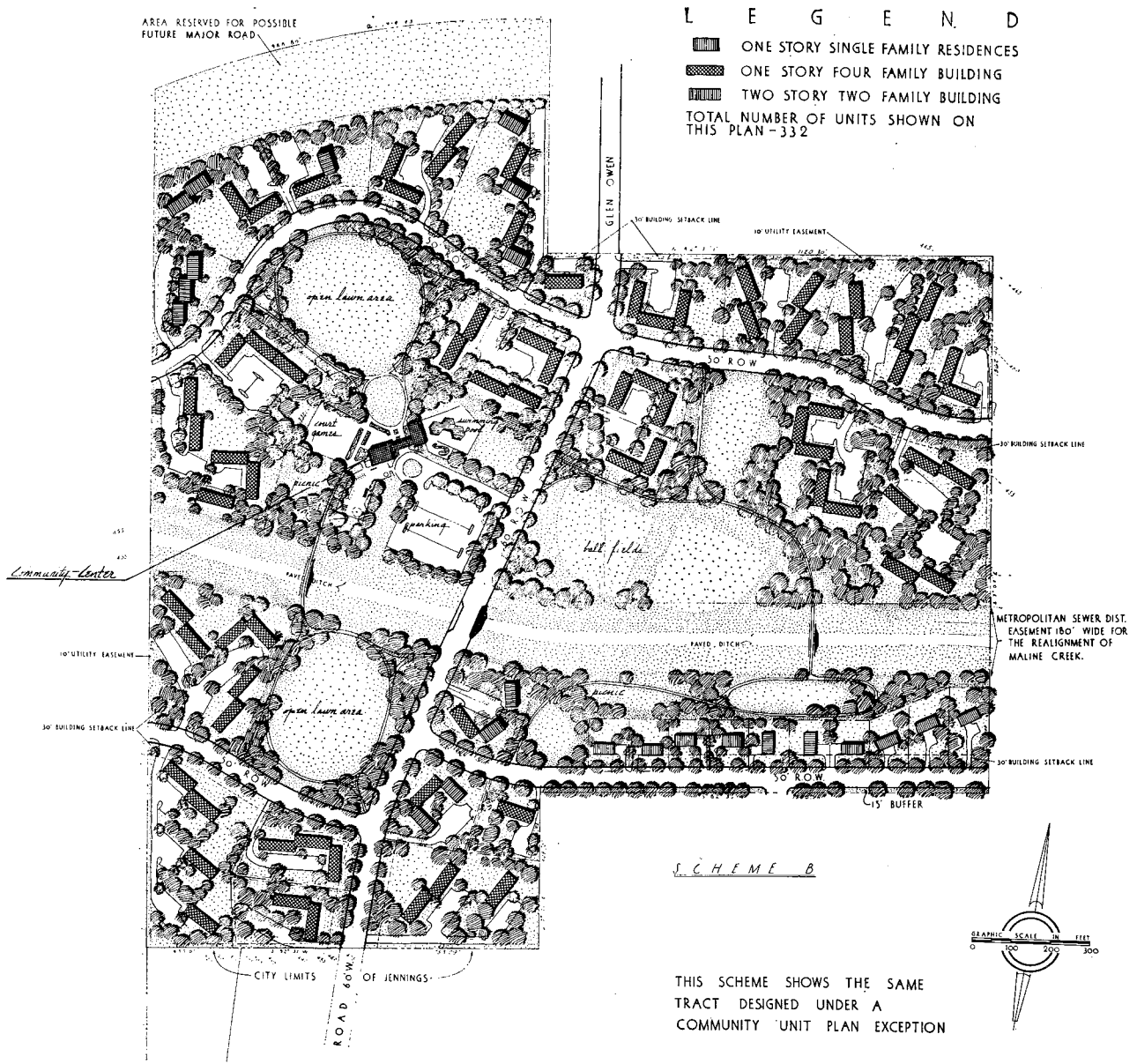


FIGURE 4—SCHEME B

APPENDIX A

ZONING FOR THE PLANNED COMMUNITY

By Fred W. Tuemmler

(From URBAN LAND, April 1954)

EDITOR'S NOTE

In a few short years the concept of residential land development has changed. An integrated community instead of the individual lot has become a unit for planning. This community concept includes homes, apartments and shopping centers, as a unified development, together with the needed school and recreational facilities for completeness.

Yet in most places, the zoning regulations are not geared to this new concept of development. The zoning is still based on the single lot interpretation. Where zoning has not recognized the broadened concept, it has acted as an impediment to good community development.

The author of this article has had considerable experience in the community development field; first, as a planning technician faced with this problem; and, second, as one who found a workable solution.

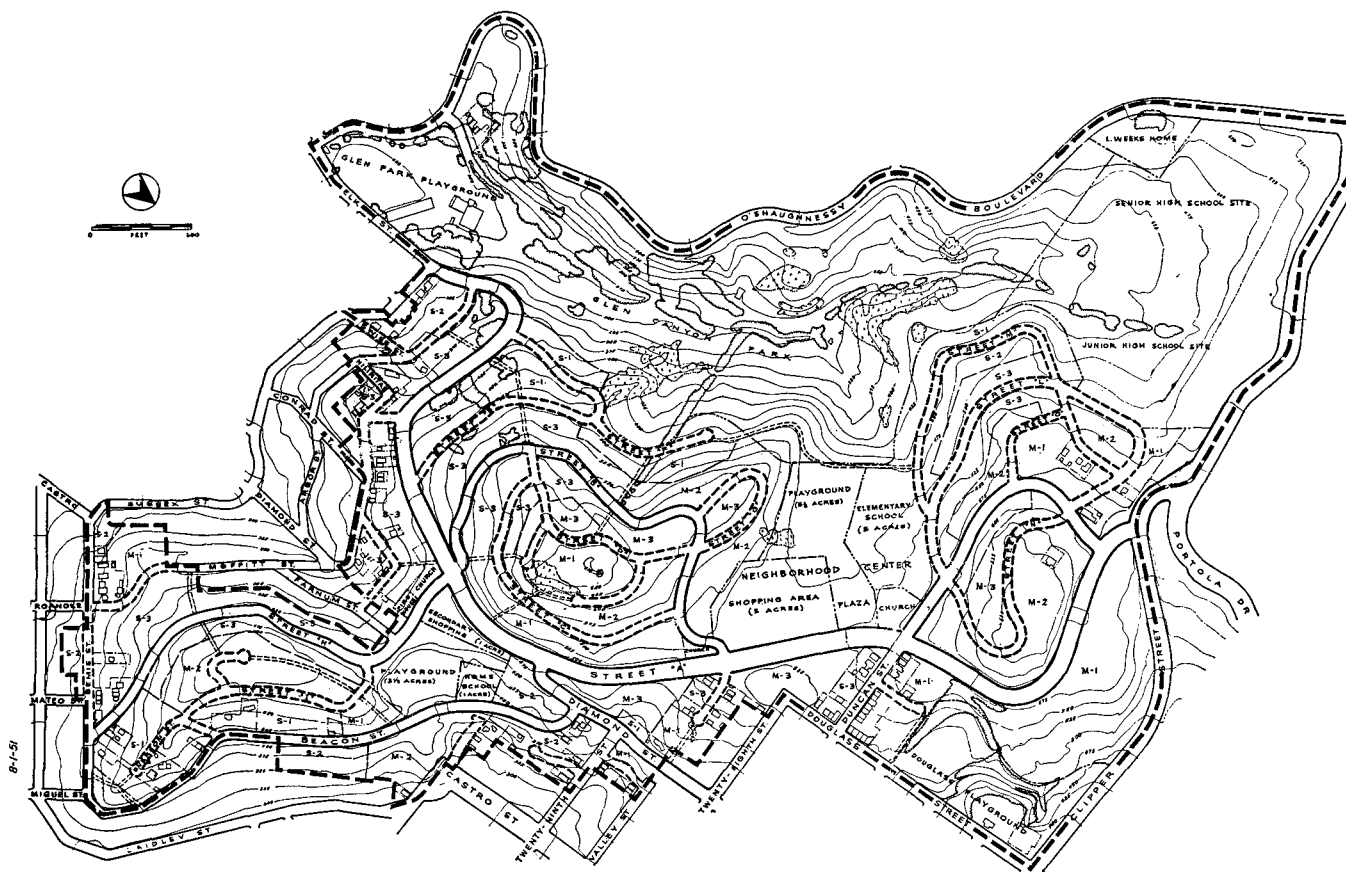
Mr. Tuemmler began his planning career with the New York City Planning Commission. Later he was

Director of Planning for eleven years with the Maryland-National Capital Park and Planning Commission, which has planning and zoning jurisdiction over portions of Montgomery and Prince George's Counties, Maryland, adjacent to the District of Columbia. Since January, 1953, he has headed his own firm of community planning and development consultants in Hyattsville, Maryland.

A number of recently enacted or amended zoning ordinances and several under consideration contain provisions for the encouragement and control of large scale housing or neighborhood projects.

This innovation stems from the urgent need for more effective, positive controls of land use and to provide an additional means for reserving or obtaining the necessary open space for community facilities and to prevent overcrowding.

The need for a new zoning approach to the control of land use became evident to many planners and architects during the early years of World War II. Confronted with the task of preparing plans for whole



DIAMOND HEIGHTS COMMUNITY PROJECT, SAN FRANCISCO

communities to house workers in expanded war plants these designers¹ often found that existing zoning regulations thwarted their efforts making it impossible, in many instances, to achieve a satisfactory design or to provide within the community the different types of residence required to meet the needs of families of varying size and circumstance.

Others^{2&3} have noted the inadequacies of the traditional zoning ordinance in promoting the most desirable community pattern, and have pointed the way toward correcting this deficiency by providing more flexible zoning controls or through other types of public participation to achieve sound neighborhood development.

Since this type of zoning control is new and experimental, its form, as found in a number of ordinances, is varied. Some regulations relating to groups of dwellings in a single project are confined to multi-family developments mostly of the so-called "garden-apartment" type (Fairfax County Virginia and Cincinnati, Ohio). Several provide controls for combinations of single, two, row or group and multi-family dwellings (Hartford, Connecticut and Cleveland, Ohio).⁴

Generally, the regulations governing group developments, recognizing (as one ordinance states it) that the arrangement "makes it impractical to apply the requirements of this ordinance to individual building units in the group", waive the specific requirements regarding use, height and area applicable in conventional zones and rely instead upon approval by the planning commission or zoning board of the site or general development plan which may be accepted if it is in accord with the general or comprehensive plan for the community. Density control is sometimes employed and in most cases a minimum project area is established and single ownership required. But in too many cases absence of adequate standards or guiding principles invite arbitrary or inconsistent decisions. Furthermore, the developer is without specific or tangible provisions in the regulations so that he may be guided in keeping his proposals within acceptable limits.

Prince George's County, Md.

In a zoning ordinance for the Maryland-Washington Regional District in Prince George's County, Maryland enacted by the County Commissioners in 1949, detailed provisions, standards and guiding principles are set forth. A new zone, appropriately designed an R.P.C. (Planned Community) Zone,

¹ See "Zoning—an Impediment to Good Design?" by Arthur C. Holden, F.A.I.A. Progressive Architecture (Pencil Points) November 1946.

² See Zoning and Civic Development, Construction and Civic Development Department, Chamber of Commerce of the United States, Washington 6, D. C.

³ See "Housing Design, Part 1", Central Mortgage and Housing Corporation, Ottawa, Ontario, Canada, 1952.

⁴ See Information Report No. 27, June 1951, "Zoning for Group House Developments", published by American Society of Planning Officials, 1313 East 60th Street, Chicago 37, Illinois.

permits the development of a large tract as a complete neighborhood unit having a range of dwelling types, the necessary local shopping facilities and off-street parking areas, parks, playgrounds, school sites and other community facilities. It is required that the area shall be adaptable to complete community development, being bounded by major thoroughfares, railroads or other external barriers and shall have within or through it no physical barrier that will tend to impair the integrity of the community.

Population density is limited to eight families per gross acre, all of the area up to the centerline of bounding streets being included except large regional parks, flood, swamp or marsh land and areas devoted to non-residential use.

The areas proposed as a planned community must be in one ownership, or if in several, the owners must file jointly, and the tract must be of sufficient size to provide housing accommodations for a minimum of about 500 families at the permissible gross density when the area is fully developed.

Along with the application for zoning map amendment an overall general development plan and other data must be submitted to the planning commission which must consider all aspects of the plan including its relationship to other areas and its suitability for the proposed use.

If the plan is approved and the zoning map amendment granted by the County Commissioners, the developers before proceeding with actual building must submit to the planning commission a final plan to which they certify by formal agreement their willingness (binding upon their heirs and assigns) to comply. This plan upon adoption by the Commission becomes an Official Plan, amendable only by the procedures set forth for the original plan.⁵

San Francisco

In contrast to the detailed provisions of the Prince George's County, Maryland regulations, the proposed zoning ordinance for the City and County of San Francisco provides a more flexible envelope for governing the planned community. Described as a "Planned Unit Development" in the San Francisco proposals, such a development will be permitted as a conditional use in residential and commercial districts. Authorizations for a conditional use may be granted by the Planning Commission after public hearing. The Commission may authorize the "Planned Unit Development" as submitted or may modify, adjust or amend it before acceptance.

As in the Prince George's Ordinance, a general development plan and other significant data must accompany the application. The tract may be in single or joint ownership or may be all or part of a redevelopment project area, and at least 3 acres in area.⁶

⁵ For detailed provisions of Prince George's County, Maryland R.P.C. (Planned Community) Zone, see page 8.

⁶ For detailed provisions of San Francisco's proposed regulations for a Planned Unit Development, see page 7.

Alexandria, Va.

Alexandria, Virginia, in an amendment enacted in 1952 (Ordinance 759—Article VIII of Chapter XXVIII City Code) provided for a "Community Unit Plan". The intent of the amendment is to provide for planned development as an integral unit of residential areas of at least 25 acres in area (or at least 10 acres if in a single zone) with particular attention to community facilities, flexible placing of buildings, grouping of open space and accessory facilities, and inclusion of neighborhood shopping area; providing such land is not detrimental to general character of neighborhood. The adopted Community Unit Plan need not conform in all respects to regulations contained in other sections of the regulations relating to the use of land or structure or the location thereof or to the area of open space. The Community Unit Plan runs with the land (like a covenant or deed restriction) until the plan is amended or revoked.

The total number of dwelling units permitted in any Community Unit Plan may not exceed "the sum total of dwelling units permitted under Article III, as applied to the zone or zones embraced in the development". Areas dedicated to parks and playgrounds and those dedicated or reserved for schools or other public structures are included in computing allowable number of families in any zone, but areas dedicated for streets and alleys are excluded from such computation.

The gross floor area of all buildings is limited to the "sum total of the allowable floor area of buildings permitted under Article III, within 300 feet of the boundary of project" in any single family zone which is part of a multi-zone development, the permissible total number of dwelling units per acre ranges from 4 to 16, but the Council may require land in the development contiguous to other lands (outside) to conform to the requirements of the adjacent zone.

The amendment provides in lengthy and complicated detail for hearings both upon a preliminary plan and later, after a report on the preliminary plan, the developer may file an application for formal adoption of the Community Unit Plan. Additional hearings are then held and ample safeguards in the requirement of a three-fourths majority are provided to prevent hastily or ill-conceived plans from being approved.

Despite these apparent safeguards developers have been accused of "loading" big projects with apartment units and not building as many single family dwellings as desired by the Planning Commission. Adjacent property owners have protested the use of the "weighted density provision" by which apartments have been allowed in single family zones. As a consequence of the somewhat indefinite aspects of the regulations and public dissatisfaction with the developments in several instances, the City Council in recent action suspended consideration of new projects under the Community Unit Plan, pending the outcome of a restudy of the matter to be undertaken by the Planning Commission.

Pittsburgh

The City of Pittsburgh, now in the midst of extensive zoning ordinance revision, added to its existing regulations in 1950 provisions under Use Districts exceptions relating to "large scale neighborhood housing projects".

This section (Article IV-A, Section 17A-D, incl.) permits in any district, except heavy industrial, a housing project comprising any kind or class of dwelling which may also exceed the established height limitations provided the total area involved is at least 35 acres of which not less than 12 acres are to be used for dwelling lots. Border lots must be developed in conformity with regulations imposed on adjoining or opposite properties. Minimum distances between main buildings in the project are set up to a height-distance ratio.

No provision, however, is made for schools, playgrounds or other community facilities, these being designated in the Master Plan within "residential improvements districts" which may include single and multi-family dwellings and neighborhood shopping centers.

Canada

Recognition of the importance of neighborhood unit or planned community regulation providing a range of dwelling types has strong backing in Canada. A recent publication⁷ says: "Supported by provincial legislation for community planning a considerable number of Canadian municipalities are now in the process of planning their future residential development. Many of these plans are based on the conception of the neighborhood as a self-contained community unit. This provides a framework within which a housing project may form either the whole or a part of a neighborhood. A municipality is entitled to set out the general scheme of neighborhood design by virtue of its powers to plan the street system, to acquire public open space, to locate public buildings to provide municipal service, to control the uses of land. Opportunities for planning residential areas by more direct action have now been provided by Section 35 of the National Housing Act through which the Federal and Provincial governments may jointly acquire and develop land for residential use.

"The examples illustrated here⁷ are projects of neighborhood design carried out by single developers, either public or private. To impose a scheme of neighborhood design upon a number of independent landowners and housebuilders is obviously a more difficult task. This is, however, the normal condition and we cannot depend upon the rare opportunities for large-scale single-ownership development. For this reason the progress of housing design depends very much upon the capacity of municipal planning staffs to use in an understanding way the powers and techniques that are at their disposal under provincial legislation. Particularly must the powers of land-use control, through zoning bylaws, be

⁷ "Housing Design, Part 1," Central Mortgage and Housing Corporation, Ottawa, Ontario, 1952.

applied so as to bring about an organic arrangement of the component parts of a neighborhood; land must be set aside for shopping centers and open spaces, provision must be made for the various types of housing that are required within a well-balanced neighborhood community. *Zoning which segregates each type of housing into large uniform districts may actually defeat the aims of neighborhood planning and good housing design.* (Italics by author)

Undoubtedly some zoning authorities who are adherents to the traditional forms may question the validity of a planned community zone which permits a range of dwelling types, therefore seeming to negate the whole concept of zoning which calls for separation of uses by districts in which regulations are uniform. But as Dr. Samuel Johnson said, "Nothing will ever be attempted if all possible objections must first be overcome." Zoning which segregates each type of housing into large districts may actually defeat the aims of neighborhood planning and good housing design.

Edmonton is one of the Canadian cities where the principles of neighborhood planning and zoning have been successfully applied. Recognizing the fact that it is not always possible to await the private development of large tracts as integrated neighborhood units, the town planning department defines neighborhood areas so that their development is planned, approved and serviced in an orderly progression. The opportunity to carry out this detailed planning scheme was made possible in part, through ownership of a large number of lots that had reverted to the city some years ago. A portion of the land in each neighborhood has been converted through zoning from single family dwelling use to use for apartments, duplex and row housing, thereby considerably increasing the population supported by

public investment in municipal services and creating better balanced neighborhoods.⁸

It must be recognized, too, as we are reminded by Zoning and Civic Development⁹ that "The police power is a flexible instrument, which, through due legislative action and, to some extent, judicial determination, can be adjusted and expanded to meet the new and changing conditions of society at any given time; always, however, within the limit of reasonableness. This point is very important. From it stems the capacity to adjust and improve zoning regulations to meet the increasing complexity of urban life. If this were not so, zoning—or for that matter—any regulation under the police power, might cease to be of public benefit and become, instead, a block to progress."

Do They Work?

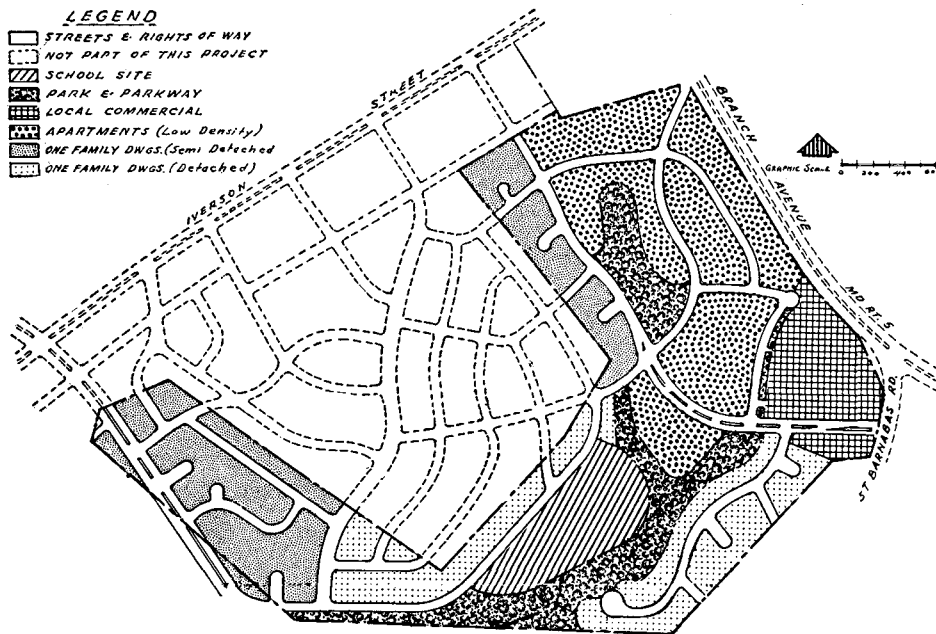
Perhaps the best test for determining the value of the "planned community", "community unit" or "planned unit development" one package type of zone is—how has it worked?

In Prince George's County, Maryland several large scale neighborhood projects have been planned and are developed or under construction. Two of these illustrated have been planned since the adoption of the new zoning ordinance and meet all the planned community requirements imposed by the regulations.

In the Marlow Heights Project, now under construction, an irregularly shaped 177 acre tract, adjacent to an existing community, was planned for 1,268 families at a gross density of 7.6 families or 26 persons per acre. A 12 acre school site located adjacent to a 16 acre stream valley parkway is

⁸ See "Housing Design, Part 2," General Mortgage and Housing Corporation, Ottawa, Ontario, 1953.

⁹ See footnote 2, page 3.



MARLOW HEIGHTS, SPALDING DISTRICT, PRINCE GEORGES COUNTY, MARYLAND

provided and an additional 6½ acre park is located centrally in the area devoted to multi-family use. Garden type apartment dwellings, one family semi-detached and one family detached dwellings comprise the housing. A neighborhood shopping center is situated at the intersection of the main access street and a bordering major highway. Another boundary road is an express highway to which there is no direct access from the project.

The land uses are compatible with those in the adjacent subdivision, the adjoining areas being devoted to the same type of housing as planned for the project.

In the Palmer Park project, a 450 acre tract was proposed for development and approved in the summer of 1953. Actual development has just begun. Here housing is provided for 2,756 families at a gross density of 6.7 families or 23 persons per acre. Fifty-four acres have been reserved for park purposes and will be donated to the Park and Planning Commission as areas are developed. Two school sites, one of 16 acres for an elementary-junior high school, the other a 12-acre site for an elementary school will provide adequately for the 1,650 children of school age expected in the community. A small (6.7 acre) neighborhood shopping area is centrally located in the tract near other community facilities, church sites and a fire department site. The western portion of the tract, comprising 33.7 acres, is near adjacent industrial and second commercial development. It has been reserved for general commercial use to be developed eventually as a large shopping center. The entire tract is bounded by major thoroughfares. The internal street system is laid out to discourage through traffic.

Adjoining parcels not part of the project were included in the layout so that eventually when they are developed they, too, will form an integral part of the planned community.

Turning our attention now to a project across the continent we find in the Diamond Heights Redevel-

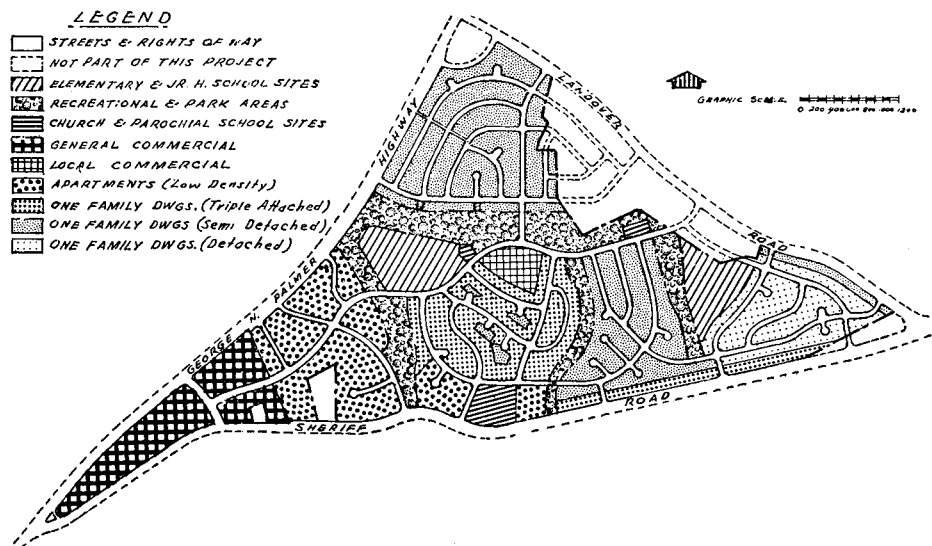
opment Project an application of the "Planned Unit Development" principle as embodied in the proposed San Francisco Zoning Ordinance. The tentative plan (page 1) for the redevelopment of Diamond Heights was prepared jointly by the San Francisco Redevelopment Agency and the Department of City Planning.¹⁰ Diamond Heights, a rugged, centrally situated section of the city was laid out years ago in the conventional gridiron pattern which completely ignored the terrain. Because of the street layout, the numerous ownerships of lots and parcels and the lack of utilities the area has remained virtually undeveloped, only 158 houses having been built in the 325 acre area. Other sections of the city, and indeed the entire Bay area have nearly encompassed it.

The tract, designated a redevelopment area in 1950, has been redesigned into a model community with up-to-date neighborhood and community facilities and sites for 2,300 dwelling units to house an estimated 7,500 persons. (Gross density 23 persons or 7 families per acre).

The plan, which is in accord with the City's Master Plan, provides generously for parks, playgrounds and schools. Streets are laid out to make the various facilities and dwelling areas readily accessible but discourage through traffic. Because of the nature of the terrain, streets are supplemented by pedestrian paths and stairways connecting different levels of the project area and providing access to informal observation points atop the three promontories.

A variety of dwellings is proposed. Areas for single family homes, in close proximity to the elementary school are mainly in the gentle hill side slopes overlooking Glen Canyon. Steeper sites are reserved for multi-family dwellings. Areas between

¹⁰ Diamond Heights, a report on the tentative redevelopment plan, The San Francisco Redevelopment Agency in cooperation with the Department of City Planning, 1951.



PALMER PARK, KENT DISTRICT, PRINCE GEORGES COUNTY, MARYLAND

those devoted to single and multi-family units are to be used for semi-detached and row houses, providing a gradual transition in housing types. A neighborhood center designed to be the focal point of community activity is conveniently located along the principal access street. Here, grouped around a central plaza, will be found the retail shops, the library and churches.

A Canadian project embodying the planned community principle is Manor Park, Ottawa, a residential development begun in 1946 which contains three types of housing accommodations.

The planning and construction of the main area were carried out by private developers, with NHA loans on about 450 bungalows, 1½ story and 2 story houses. To this have been added a row housing group of 204 units and a group of 500 apartments. All are conveniently related with the central school site and shopping center. The neighborhood is protected on the south by Federal District Commission Parklands and on the west by the larger private properties of Rockcliffe Park Village.¹¹

The Integrated Community

All of these plans, it will be noted, possess certain characteristics in common. Each is a neighborhood complete with schools, parks, churches and other community or cultural buildings. Each has a range of dwelling types so that families having different requirements can find appropriate housing in the neighborhood. Each neighborhood is laid out so that through traffic is discouraged, providing a factor of safety for children, absent in instances where children must cross busy highways to get to school. Shopping areas are limited and not strung along the highway.

Compare this type of integrated community with much of the development that has taken place, especially in our suburban areas during the past 10 years. Many communities reveal, as far as the eye can see, an unending procession of little uniform houses, on little uniform lots, all set back equally from the street like well-drilled soldiers in a row, with no variation in roof line or height. The whole depressing aspect is enhanced by the fact that trees, if any, are ridiculous, spindly replacements of majestic predecessors who fell victim to the blade and the bulldozer as the developer compounded the crimes in his weary enterprise by substituting, through area grading, a flat uniformity of contour in contrast to the more interesting variations in terrain provided by nature.

The years since World War II have seen much of this kind of development. Tract after tract has been subdivided and built in a never ending pattern and all too often without adequate provision for open space in the form of parks, playgrounds, school sites or just plain unspoiled wooded land. Sir Raymond Unwin, who described the same thing in his native England 45 years ago said, ". . . governing bodies have looked on helplessly while estate after estate around their towns has been covered with buildings

without any provision having been made for open spaces, school sites, or any other public needs. The owner's main interest, too often his only one, has been to produce the maximum increase of value or of ground rent possible for himself by crowding upon the land as much building as it would hold. The community, through its representative bodies, having watched the value of land forced up to its utmost limit, has been obliged to come in at this stage and purchase at these ruinous values such scraps of land as may have been left, in order to satisfy in an indifferent manner important public needs."¹²

Sir Raymond was writing about the difficulties of English communities near the turn of the century, lacking the regulatory machinery to promote sound development. It might have been written today and, sadly enough, our American communities in which this uninspired development has occurred, more often than not, have regulations for the subdivision of land and zoning ordinances, the major administrative tools employed by planners in shaping the pattern of the community.

What Has Been Lacking?

In some instances undoubtedly there has been lack of advance planning to provide an intelligent guide for community needs; in other cases growth came so rapidly and at a rate so far exceeding expectations that it was well nigh impossible to plan for, reserve, or acquire necessary areas for public use in advance of need.

But the negative aspects of most zoning ordinances has been a factor, too. Most zoning ordinances, bound by tradition, have a tendency to become straight-jacketed molds which guide community development along quite inflexible lines.

The segregation of residential uses, the establishment of minimum lot sizes, yards, building restriction lines, building height limitations, and other minimum requirements have inclined many developers, and, indeed, even the officials administering the regulations to regard these requirements as standards. Forward looking developers are aware of the need for a different approach to community development.

At last year's (1953) National Association of Home Builders Convention, a panel of homebuilders, architects, planners, bankers and realtors agreed that people buy neighborhoods, and builders to stay in competition will have to sell house and community in one well-designed package.

House and Home Magazine (May 1953) reporting on this Convention says "'Planned communities' is a phrase with pulling power. But it takes more than a phrase to sell a neighborhood that hasn't yet been built, to convince a prospect that a model house and a raw stretch of potato field will grow into a neighborhood that he will be happy to live in."

Yes, prospective home purchasers are increasingly aware that in buying a house they are investing in more than a structure on a lot. They have seen their

¹¹ From "Housing Design, Part 1".

¹² "Town Planning in Practice" by Raymond Unwin, T. Fisher Unwin, Adelphi Terrace, London, 1909.

friends who bought when anything would sell, fight for schools, for playgrounds, and against the intrusion of unwarranted zoning changes in uphill efforts to create and protect neighborhood values and stability. The days of selling a house on the basis of its gadgets of dish-washing machines, chromium plated fixtures, door chimes and pseudo picture windows that look out on a dreary vista are drawing to a close. It is up to everyone who has a stake in the future of American communities to work toward the achievement of better neighborhood design and control.

The Neighborhood Unit, expounded by Clarence Arthur Perry¹³ nearly a quarter century ago still provides the guiding principles of sound community design. What is needed—and has been for too long a time—is an awakening on the part of planning and zoning bodies to the possibilities of effectuating, at least in part, the Neighborhood Unit through a bolder and broader application of the zoning powers, the objectives of the planned community.

NEIGHBORHOOD PROVISIONS IN SELECTED ZONING ORDINANCES

San Francisco (Proposed)

SEC. 204. **CONDITIONAL USES.** The Planning Commission shall hear and make determinations regarding applications for the authorizations of the Conditional Uses listed in the district regulations of this ordinance. The procedure in such cases shall be as hereinafter specified.

A. Application. An application verified by the owner, or authorized agent of the owner, of the property involved shall be filed in the office of the Department of City Planning upon a form prescribed therefor, which shall contain or be accompanied by all information required as provided in Section 206.

B. Public Hearing. Upon receipt of such verified application, the Zoning Administrator shall make necessary investigations and studies for a report upon the facts related thereto, which report shall be submitted at the public hearing. The Zoning Administrator shall set a reasonable time and place for the public hearing thereon by the Planning Commission and shall give notice of the time, place and purpose of each such hearing in the same manner as provided for hearings on the reclassification of property in Section 205. A record of pertinent information presented at the public hearing shall be made and maintained as part of the permanent record relative to the application.

C. Determination. After the public hearing thereon, the Planning Commission may authorize a conditional use to be located within any district in which the particular conditional use is permitted by the use regulations of this ordinance, if the evidence presented at the hearing is such as to establish beyond reasonable doubt:

1. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community, and
2. That such use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity, and

3. That the proposed use will comply with the regulations and conditions specified in this ordinance for such use.

D. Conditions. When authorizing a conditional use as provided herein, the Planning Commission shall prescribe such additional conditions as are in its opinion necessary to secure the objectives of this ordinance. The violation of any condition so imposed shall constitute a violation of this ordinance.

E. Delegation. The Planning Commission may delegate to a committee of one or more of its members, or to the Zoning Administrator, the holding of the hearing required by Paragraph B of this section. The delegate or delegates shall submit to the Commission a record of the hearing, together with a report of findings and recommendations relative thereto, for the consideration of the Commission in acting upon the authorization of the conditional use.

F. Planned Unit Development. The authorization of a Planned Unit Development as described herein, shall be subject to the following additional conditions. The Planning Commission may authorize the development as submitted or may modify, alter, adjust or amend the plan before authorization, and in authorizing it may prescribe other conditions as provided in Paragraph D. The Development as authorized shall be subject to all conditions so imposed, and shall be excepted from other provisions of this ordinance only to the extent specified in the authorization.

(1) The application must be accompanied by an over-all development plan showing the use or uses, dimensions and locations of proposed structures, of parking spaces, and of areas, if any, to be reserved for streets, parks, playgrounds, school sites and other open spaces, with such other pertinent information as may be necessary to a determination that the contemplated arrangement or use make it desirable to apply regulations and requirements differing from those ordinarily applicable under this ordinance.

(2) The tract or parcel of land involved must be either in one ownership or the subject of an application filed jointly by the owners of all the property included or by the Redevelopment Agency of the City. It must constitute all or part of a Redevelopment Project Area, or if not must either include an area of at least three acres or be bounded on all sides by streets, public open spaces or the boundary lines of less restrictive use districts.

(3) The proposed development must be designed to produce an environment of stable and desirable character, and must provide standards of open space and permanently reserved areas for off-street parking adequate for the occupancy proposed, and at least equivalent to those required by the terms of this ordinance for such occupancy in the zoning district. It must include provision for recreation areas to meet the needs of the anticipated population, or as specified in the Master Plan.

(4) A conditional use of this category may contain, as an integral part of a residential development, a shopping center for service to the residents, if designed as a unit of limited size and controlled by more restrictive and specific regulations than would result from a reclassification of the area so used to a C district.

(5) No commercial use of any Planned Unit Development in any R district shall be authorized except as provided in item 4, and except an office building or buildings to be occupied primarily by administrative, clerical, accounting or business research organizations, where the principal use does not involve any of the following:

(a) The handling or display on the premises of any merchandise, or the rendering of any merchan-

¹³ Vol. 7, Monograph #1, Neighborhood and Community Planning, Regional Survey of New York and its Environs, Regional Plan Association, 1929.

dising services except as permitted as an accessory use for the accommodation of the occupants.

(b) Frequent personal visits of clients, members or customers or other persons not employed on the premises.

(c) Show windows or exterior display advertising of any kind.

G. Change in Conditions. The Planning Commission may receive applications, subject to the same regulations and procedures as those which apply to new conditional uses, to modify or waive any condition imposed by it in authorizing a conditional use, or set forth in a prior stipulation continued in effect by the provisions of Section 19. After the public hearing, it may modify or waive any such condition, and any covenant relative thereto, if it finds that such change or waiver is necessary for the preservation of a substantial property right of the applicant or to avoid practical difficulties or unnecessary hardship, and would be consistent with the purposes of this ordinance.

Prince George's County, Md. (1949)

19.0 The following regulations shall apply in all R-P-C Zones:

19.1 Application

In areas where large-scale complete community development is planned, the owner or owners may file applications for inclusion of the area within the R-P-C Zone. Such applications shall be accepted for consideration under the following conditions:

19.2 Conditions, General

19.21 The area proposed shall be in one (1) ownership or, if in several ownerships, the proposal for zoning map amendment shall be filed jointly by all of the owners of the properties included in the plan.

19.22 The area shall be large enough to permit the development of a complete community or neighborhood having a range of dwelling types; necessary local shopping facilities, and off-street parking compounds; parks, playgrounds, or reservation of area therefor; and reservation for education facilities, wherever these are deemed necessary, and for business and industry to provide local employment opportunities, if appropriately located and in harmony with the General Plan.

19.23 The area shall be adaptable to complete community development, being bounded by major thoroughfares, streets, railroads, or other external barriers and, as far as possible, shall have within or through it no major thoroughfare or other physical feature which will tend to destroy the neighborhood or community cohesiveness.

19.3 Data to Accompany Application

Together with the application for zoning reclassification of the area, there shall be submitted a tentative, over-all development plan which shall show:

- (a) Topography
- (b) Proposed street system
- (c) Proposed lot layout
- (d) Proposed reservations for parks, parkways, playgrounds, school sites, and other open spaces
- (e) Proposed location of neighborhood business area and off-street parking space

(f) Types of dwellings and portions of the area proposed therefor

(g) Proposed location of dwellings, garages and/or parking spaces

(h) A tabulation of the total number of acres in the proposed project and the percentage thereof designated for each of the proposed dwelling types, neighborhood retail business, other non-residential uses, off-street parking, streets, parks, schools, and other reservations

(i) A tabulation of over-all density per gross acre

(j) Preliminary plans and elevations of the several dwelling types.

19.4 Specific Requirements

Large-scale community developments shall be subject to the following requirements:

(a) The over-all density shall not exceed eight (8) dwelling units per gross acre.

(b) The area proposed for development shall be of sufficient size to provide living space for a minimum of approximately five hundred (500) families at the permissible gross density when fully developed.

19.41 For the purposes of this section, the gross area shall include all land within the area intended for use for residence, residential parking space, reservation for community recreational and educational facilities, interior streets and to the center line of bounding streets but not over fifty (50) feet from the property lines abutting such streets.

Areas used or reserved for large regional parks or parkways, land subject to recurring flood, swamp or marsh land and non-residential uses shall be excluded in computing the gross area.

19.5 Commission Consideration

19.51 Upon receipt of application for zoning map amendment and accompanying plan meeting the foregoing requirements, the same shall be taken under consideration by the Commission. The Commission shall consider the general plan for the community, the location, arrangement, and size of lots, parks, school sites, and other reservations of open space; the location, width, and grade of streets; the location and arrangement of parking spaces; the location, arrangement, and height of buildings; the location, arrangement, and design of neighborhood business areas and accessory parking spaces; the gross densities proposed for the entire area; and such other features as will contribute to the orderly and harmonious development of the area, with due regard to the character of the neighborhood and its peculiar suitability for any one or more of the proposed uses.

19.52 The Commission may approve the tentative plan as submitted, or before approval, may require that the applicant modify, alter, adjust, or amend the plan.

19.53 Upon approval of a tentative plan, the Commission shall transmit the same, together with the application for Zoning Map Amendment, to the Clerk of the District Council, who shall, in accordance with the provisions of Section 30.0, advertise the proposed amendment for public hearing.

- 19.54 If the proposed amendment is approved by the District Council and the land placed in the R-P-C Zone, the owner or owners, before beginning development, shall submit a final plan to the Commission.
- 19.55 The final plan, after adoption by the Commission, shall be deemed an Official Plan. The Official Plan shall be signed by the Commission's Chairman and Secretary-Treasurer and by the property owner, who by formal agreement shall certify to the District Council his willingness to abide by the conditions and terms of the adopted plan. The Commission shall file with the District Council a certified copy of the Official Plan for each development included in an R-P-C Zone.
- 19.56 An Official Plan for an area included in the R-P-C Zone may be amended, the procedure therefor to be the same as in the case of the original plan (See Sections 19.1 to 19.55, inclusive).
- 19.6 Uses Permitted—No building, structure, or land shall be used; and no building or structure shall be hereafter erected, structurally altered, enlarged, or maintained, except for one or more of the following uses:
- 19.61 All uses permitted in the R-R, R-55, R-35, R-20, R-18, R-10, C-1, C-2, I-1, and I-2 Zones, subject to the regulations set forth for the Zone in which such uses are permitted and in accordance with any additional regulations and restrictions imposed by this Section.
- 19.7 Area, Height, and Other Requirements
As specified for the Zones in which such uses are permitted and in accordance with any additional regulations imposed by this Section.

Author's Comment

Certain modifications might be made in the Prince George's regulations to make it more flexible so that

it would be in harmony with the density limits in adjacent areas. For example, instead of applying, throughout the jurisdiction, the gross density figure of eight families per acre, a sliding scale might be used so that in outlying areas the over-all density would be compatible with the low residential densities. In the inlying areas where higher densities prevail, the scale could be adjusted upward and smaller units of land could be adapted to planned community use. Another modification might be a limitation on the percentage of residential area to be devoted to multiple-family use. As written in the original draft of the ordinance, this section limited to 25% of the gross area the land to be devoted to multiple-family use. Such a limitation becomes particularly important when a larger than normal percentage of area is devoted to open space since, to achieve the gross density permitted in the regulations, it is necessary to overload the remaining area with multiple-family dwellings.

For an excellent treatise on the determination of appropriate standards for residential density consult "Planning the Neighborhood", prepared in 1948 by the American Public Health Association, Committee on Housing.¹ Another excellent publication showing comparative layouts of mixed developments at various densities is a British publication by the Ministry of Housing and Local Government entitled "The Density of Residential Areas".²

¹Public Administration Service, 1313 East 16th Street, Chicago, Illinois. For data on neighborhood densities see also the "Community Builders Handbook", prepared by the Community Builders Council of the Urban Land Institute, Rev. Ed. 1954.

²London, 1952, Her Majesty's Stationery Office, obtainable from British Information Service, 30 Rockefeller Plaza, New York 30, New York. See also "Modern Requirements of Residential Development" by S. L. G. Beaufoy, C.B.E., M.T.P.I. (F), Director of Technical Services, Ministry of Town and Country Planning, in the July 1948 issue of the Journal of the Royal Institute of British Architecture.

APPENDIX B

ZONING OF PLANNED RESIDENTIAL DEVELOPMENT

By Eli Goldston and James H. Scheuer

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EDITOR'S NOTE

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Zoning, as constitutionally established, deals with the individual lot and the structure on that lot in relation to adjacent structures. Only occasionally is the single lot concept relaxed enough to provide for large-scale land development projects. In 1954, URBAN LAND presented an article, "Zoning for the Planned Community" (see Appendix A). In that article the author detailed a zoning device to allow for flexibility in the single lot concept necessitated by large-scale projects for the residential development of several hundred acres of raw suburban land as communities complete with houses, apartments, shopping centers, schools and recreational facilities.

Now a similar type of development activity has come into prominence—the urban renewal project in central city areas. As with the planned community in the suburbs, the urban redevelopment project does not conform to the "single lot zoning envelope." As these projects move from their planning stages into construction, zoning ordinance difficulties are being encountered by the urban redeveloper. Delays and confusion are compounded in accommodating plans for redevelopment areas to the provisions of the zoning ordinance. The authors of this article, as counsel and redeveloper, respectively, have personally faced such difficulties in several cities.

The authors first examine the traditional zoning concepts and techniques. They conclude, as did Fred Tuemmler in the 1954 article that the customary concepts are inadequate to deal with large-scale residential developments. They suggest a model provision for incorporation into existing municipal zoning ordinances. They employ this model as a vehicle for the discussion of the issues involved in drafting such zoning provisions. The issues are whether redevelopment will produce exciting new in-town living areas, or whether we will perpetuate the old, sterile patterns.

Very few municipal zoning ordinances contain adequate provisions for the regulation of large residential developments. Only half of the larger cities have any special provisions for large developments. The other half attempt to regulate large developments with the traditional "single lot zoning envelope," which specifies building dimensions and locations by

small individual lots. As the vast urban redevelopment program initiated by the Housing Act of 1949 has moved out of the planning and into the execution stage, zoning-ordinance inadequacies have caused difficulties in almost every city in which a project is well advanced. It has already become apparent that urban redevelopment will have a chance to produce the exciting new in-town living which its supporters predict, rather than the sterile boredom of design which its critics foresee, only if our municipal zoning ordinances are revised to permit free use of the best of modern city-planning tools in redevelopment areas.

I. Conventional Zoning Techniques

A. Bulk Zoning Provisions

The traditional "single lot zoning envelope" was originally developed to preserve light and air where the land was divided into many small lots, each of which would probably be developed by a different owner or builder. The length, width and height of the envelope are defined for each lot by detailed rules which typically cover setback requirements, side-and rear-yard specifications, lot coverage or floor area ratios, open space, spacing of more than one building on a single lot, and height limitations. These restrictions do keep some open space and orderliness in the city, but the Procrustean rules offer little chance for imaginative architecture and planning. What little opportunity for creativity remains is eliminated when builders believe, as many presently do, that rising land prices require them to obtain the maximum internal space by "filling the zoning envelope." Some builders and lenders assert that in reality the zoning ordinance, rather than the architect, designs the building. Furthermore, the placing or grouping of buildings in relation to each other is restricted. Thus, with building contour and placement arbitrarily limited, the outlines of the space not occupied by structure are beyond the control of the designer. As a matter of aesthetics, architects today view this void space with as much concern as they do the building itself.

Despite the use of the single lot as the unit of control, and even with different ownership of each lot, planning for large districts can be accomplished. This is done by restricting lots to certain minimum sizes and minimum street frontages, along with careful variation of the zoning-envelope controls. Such so-called "bulk zoning" was the ideal of many early planning and zoning officials who hoped to control density of population and percentage of ground coverage for a whole area by establishing a

nicely uniform grid of streets dividing the area into uniform city blocks, with each block in turn divided into rectangular lots of uniform size. But contemporary city planners are no longer primarily preoccupied with the plane geometry of the street grid, the solid geometry of the single-lot zoning envelope, and the algebra of area planning through single-lot controls. Progressive city planners today concern themselves with aesthetics, sociology, economics, engineering, and, in general with creating a level of amenity in urban life which they hope will produce a revival, or at least the survival, of our central cities as dwelling areas. Planners are manifesting a growing interest in the impact of architecture upon group activities, which reflects in part the disappointing lack of community structure found in the new suburbia and in many of the new urban housing projects. Today's forward-looking city planner thinks in terms of relatively large land areas rather than in terms of building lots. His thinking begins with the region and the city and then works down to communities, neighborhoods, and subneighborhoods, before turning to the problems of the small project, or the small land holding, and the lots within them. One of his common motifs is the "superblock," which combines a number of city blocks into a planning unit divorced internally from the traditional street grid.

B. Residential Subdistricting Provisions

The conventional zoning ordinance maps the city into separate residential, commercial and industrial districts. It then divides the residential sections into single-family, two-family, and multiple-dwelling subdistricts, segregating these different types of residential structures. Many contemporary plans for large-scale residential developments, however, are deliberate compositions of a variety of different kinds of buildings, in part for aesthetic reasons and in part to develop a community with a balanced or representative cross-section of income levels, vocational and cultural backgrounds, and family types and sizes. It is thought that the visually stimulating interplay of structural types will be accompanied by increased variety, vitality, and structure in the community. Such a composition, unless built in the least restricted residential districts, will usually conflict with conventional residential subdistricting; the typical zoning ordinance not only segregates detached single-family homes and two-family units from multiple dwellings, but its density and height requirements may prevent the use of garden apartments in the same development with high-rise (i.e., elevator) buildings.

Such a composition of building types can usually be built in a district zoned for high-rise buildings since garden apartments, and even detached houses, are often allowed in elevator-apartment districts, but this solution is not available in the many communities which have allocated insufficient land for high-rise buildings. Since garden apartments commonly house families with children and high-rise buildings are best for single people and for newly married and older couples, segregating these types of buildings

tends to produce unrepresentative cross-sections of family types and sizes. It also means that a family cannot find appropriate quarters in the same neighborhood as it passes through the usual stages of development.

C. Use-Zoning Provisions

Use-zoning rules attempt to classify occupancy into appropriate groupings and to segregate incompatible groups. In Mr. Justice Sutherland's famous phrase in the landmark zoning case, use zoning assures us that we will not have "a right thing in the wrong place,—like a pig in the parlor instead of the barnyard." Until recently, no better example of a pig in a parlor could be cited by courts or planners than a commercial enterprise in an exclusively residential neighborhood.

The conventional goal of a large residential area entirely devoid of retail stores has only recently been achieved through the use of condemnation to assemble large metropolitan tracts for residential redevelopment. For example, 1,100 stores have vanished in the course of rehousing 50,000 people in New York City. Having lost by demolition the right to continue as nonconforming commercial uses in areas zoned residential, these neighborhood stores are not being rebuilt in the new developments. The "social deadness" of the resulting communities has caused some planners to reappraise the goal of exclusively residential areas. Indeed, on reappraisal, some planners have concluded that corner stores need not be treated as unfortunate nonconforming uses to be obliterated at the first opportunity but rather as "complicated creatures which . . . help make an urban neighborhood a community instead of a mere dormitory."

Typical current zoning ordinances do, of course, permit some nondwelling uses in residential districts. In addition to schools, churches, hospitals, and other buildings for public activities, with some restrictions the ordinance often will permit professional people to practice in part of the apartment in which they reside. Such provisions are not particularly useful in the planning of moderate-income housing projects because the professional person practicing in such a neighborhood will usually have a higher income than the tenants and will often not wish to reside there. Some zoning ordinances do permit medical and dental offices separate from the residence of the physician or dentist, often only in lower floors of multiple dwellings because of the desirability of easily accessible medical and dental facilities, particularly for pediatric care.

Other uses commonly permitted in some publicly used buildings in residential districts are restaurants, newsstands, and barber shops. These uses however, usually are permitted only in hotel buildings or if contained in a main building, with not less than a specific number of sleeping rooms. This latter type of restriction is often construed as intended to limit the uses to buildings designed for hotel use. Other common restrictions are that access to the commercial area can be had only from the lobby, and that no exterior entrances, show windows, or advertising

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For convenient reference, the articles mentioned above from past issues of *Urban Land* are appended to this bulletin.

MAX S. WEHRLY

of various legal and architectural fictions; (2) the misuses of variance and exception procedures; or (3) reliance upon special provisions in many ordinances for larger developments often called "Community Unit Plans" or "Planned Housing Developments."

The zoning fictions, although transparent, have become standardized among architects and are in common use. Twenty-seven buildings which were linked at the corners into a continuous chain have been held to be a single building for the tests of sideyard zoning and forty-five suites in nine garden apartments linked at the corners into three groups have been held to be three "apartments." In cities in which two buildings of low-fire-resistant materials cannot be closer than twenty feet to prevent fire from leaping the gap between the buildings, it is possible to link the corners of the two buildings or to hook two buildings together with breezeways—thereby creating a single building but also bridging the fire gap. Similarly, arbitrary restrictions intended to ensure open space can be met sometimes only by fictions which reduce the actual open space. A large project, even though under unified management and planning, by fictionally complying with zoning rules based on control by single lots may thus become in actual design and plan worse than if it lacked any overall control.

A second approach is to present the overall plan for a large-scale project as a mere variance or exception under the hardship provisions of the zoning ordinance. If no standards for testing the project have been established in advance and no procedures for planning review and public hearing are provided, the resulting decision is likely to be compelled by political pressure rather than sound community planning. This is unsatisfactory not only to the planning officials, but also to the redeveloper and his architect, who are left with no objective guides as to what will be acceptable. This procedure may also be open to attack as spot zoning. Even though the "spot" is so large as to comprise an almost self-sustaining neighborhood, adjacent property owners have an interest which courts will protect, and, furthermore, the general community has an interest in seeing that health, safety, appearance, and other standards of livability be maintained lest the development soon deteriorate into a problem area.

A refinement of the hardship procedure is to outline in the zoning ordinance certain planning requirements for large-scale projects and to establish a review procedure for granting exceptions to projects which meet these requirements. About one-half of the larger cities in the United States have some such provisions in their zoning ordinances. These provisions (hereinafter referred to as "planned-development provisions") appear in the zoning ordinances of various cities under a number of different captions, the most common being "Community Unit Plan," "Dwelling Groups," "Group Housing," "Planned Residential Development," and "Planned Building Groups." The substantive provisions vary as much as the captions, although the legislative draftsman's

tendency toward imitation becomes evident when the provisions for many cities are compared. Several cities which are presently revising their zoning ordinances plan to introduce planned-development provisions into their new ordinances, and several cities in recent years have adopted such provisions as amendments to existing ordinances.

III. A Model Planned-Development Provision

After analyzing the planned-development provisions now in effect in seventy-eight cities and three additional provisions currently proposed for adoption, the authors have prepared a model provision which appears as an appendix at the end of this article. The purpose of the model is not to supply a standard form for busy planners but to facilitate the following discussion of the issues to be considered in drafting such a provision.

A. Procedure

First, it should be noted that the model provision is drafted to fit into a general zoning ordinance as just another one of the various express "exceptions" or "conditional uses" which in most cities are allowed only after application and administrative or legislative approval. Thus, no unique procedure is established for the final decision on a particular planned development. It is assumed that whatever discretion the community has been willing to grant to its board of zoning appeals or planning commission, and whatever procedural safeguards it has established in the way of public hearings and written administrative determinations for other common conditional uses, such as hospitals or private schools in residential districts and animal clinics or automobile lots in more restricted business districts, should be sufficient for the final decision on planned developments. If, however, there are inadequate safeguards in the general ordinance, or it is felt that large-scale residential projects because of their impact on neighboring land should be approved less readily than the common conditional uses, special procedural safeguards might be incorporated into the planned-development provision. Certainly, it should be required that the planning commission review and report on planned developments whether or not it routinely participates in permitting other conditional uses. Because of the relationship between a large planned development and such aspects of the community's master plan as traffic movement, utilities, and timing of expansion, the board of zoning appeals is not likely to have an adequate technical staff to review in detail the planned-development application or to consider the consistency of a particular proposal with the city's master plan.

Most planned-development provisions have been added to existing ordinances without any attempt to make use of the general procedural sections of the ordinances. The special procedure most frequently contained in planned-development provisions is that a recommendation be made by the planning commission and approved by the board of zoning appeals or the city council. A majority of the present ordi-

nances require public notice (in some instances including notice of the hearing posted on the property in question) and a hearing by the planning commission, the board of zoning appeals, or the city council. In a few instances two hearings are required, the mayor must concur, or public recordation of the approved plan is necessary. Aside from constitutional requirements, in situation in which broad discretion is granted to administrative bodies there are sound reasons for permitting a public review of the proposed action and for providing some opportunity for interested parties to express their opinions. Often some slight modification of the original plan will result in public acceptance in place of controversy, and, in any event, some catharsis of emotional opposition may be achieved.

B. Constitutional Problems

An all-important legal consideration in selecting the procedure to be used is the certainty of its constitutionality. Supreme Court decisions have been favorable to planning programs and there are few federal constitutional problems with zoning procedures. State courts, however, have frequently invalidated zoning procedures on state constitutional grounds of substantive due process, equal protection of the laws, separation of powers, and delegation of legislative power. Particularly if final ratification by the city council is not called for by the ordinance, the last of these issues may prove troublesome. More comprehensive and specific standards than those in the model ordinance may be necessary where the government body empowered to grant the exception does not constitutionally have legislative powers. The state enabling statute and local case law will, of course, determine in each instance the limits within which the draftsman must work. The validity of planned-development provisions and action taken under them has rarely been litigated. In the reported cases, the constitutional issues do not seem to have been raised or considered.

C. Proper Applicant

The model draft permits one or more legal owners or optionees, or the redevelopment agency, to apply for authorization of a planned development. Government agencies are expressly made eligible applicants to remove any doubts as to the eligibility of public-housing projects for planned-development zoning. Many ordinances refer to a "single owner" when the appropriate test should be single planning control. The ownership test creates difficulties when two or more private redevelopers are selected for one project unless the minimum acreage in the ordinance is low enough for each to qualify separately. A single redeveloper who plans to use several "mortgage parcels," each owned by a separate corporation under FHA mortgage-insurance procedures, will also have difficulty meeting a requirement of single ownership. This problem has been met in one instance by an amendment providing that "property shall be considered in a single ownership even though parts of it are owned by different corpora-

tions . . . of which 51% or more of the stock is owned by the same person or persons."

Permitting the redevelopment agency to be a proper applicant will facilitate the redevelopment program in cities in which the private redeveloper is selected and expected to commence the planning of the project well ahead of the commencement of the agency's land acquisition program. In circumstances in which the redevelopment might increase the condemnation award if authorized before trial, however, the agency might be unwilling to apply until most of the land had been acquired. Nevertheless, the provision would be desirable if, as often happens, only a few parcels remain untaken pending appeals. Further, the rezoning might tend to decrease the condemnation award in certain instances—for example, when a commercial building becomes a nonconforming use.

The selected redeveloper as well as the agency would qualify as an applicant under the model provision, although some might feel that so remotely interested a party as the redeveloper should not qualify to seek rezoning of land he has conditionally agreed to purchase from a redevelopment agency which has not yet obtained title. Any rezoning in redevelopment areas prior to completion of condemnation creates serious problems for present owners and mortgagees in the event that land acquisition is not finished. To some extent this problem is mitigated by the provision in the model ordinance that the planned-development zoning shall terminate and the original zoning be reinstated in the event that the project is not commenced within three years.

A few ordinances require "incumbrancers" to join in the application. It would seem more appropriate that mortgagees and others who are not owners but are interested in the property receive notice of the proposal and participate in the proceedings in the same manner as adjoining owners rather than as applicants. Local banks and large insurance companies, as a matter of public relations, prefer to participate in zoning squabbles as innocent bystanders rather than as moving parties.

D. Project-Design Characteristics

1. *Subsequent Division.*—A recurrent concern of planners, judges, and legislators is the effect of subsequent fragmentation of project ownership. Most ordinances make no provision for this. One requires that the project "shall not be designed so as to permit subsequent subdivisions . . ." This is in direct conflict with the FHA preference for several mortgage units each of which must be designed to be self-sustaining. Another ordinance makes authorization "subject to the property remaining in one . . . ownership . . ." This does free the designer from the former's requirement of planning for indivisibility, but the ordinance seems unrealistic in view of the already common practice of splitting up large-scale projects into individual ownerships. The model ordinance permits a plan for subsequent fragmentation of the project to be approved at the time the whole project is reviewed. This method will facilitate

FHA financing in several mortgage units without taking control of planning away from the appropriate municipal authorities. It will also prevent builders from abusing planned-development provisions by such stratagems as obtaining a permit for a small group of two-family houses in a single-family-house district and selling each two-family house to a different owner.

2. *Minimum Area.*—Two acres was selected as the minimum area in the model ordinance in order to set the threshold for qualification low enough so that the whole of a typical city block would qualify. Even with densities of forty-five families per acre, on less than a two-acre tract there could not ordinarily be the type of self-sustaining neighborhood which can justifiably be given special treatment. Consequently, special treatment for areas smaller than two acres seems hard to justify as being “in accordance with a comprehensive plan” which enabling acts require and which courts recognize as a defense to claims of spot zoning. The present ordinances which do use minimum areas set them from less than one-quarter of an acre to fifty acres, with ten acres being the most common figure. Some cities establish the minimum by number of buildings or dwelling units, and several cities set no minimum at all. It seems desirable to have some minimum in order to discourage use of the exception for planned developments as a substitute for a hardship variance for odd-shaped areas or as just another device to reduce the effectiveness of zoning through leakage. The provision in the model ordinance, applying it to areas smaller than two acres if they are segregated by roads and other natural borders, permits special planning for small isolated tracts; it becomes of greater significance as the minimum area is increased above two acres.

3. *Nonresidential Uses.*—The model ordinance expressly permits commercial uses in the residential districts as do several of the current ordinances. Two ordinances have been amended to permit commercial uses in redevelopment areas which has been zoned residential, but severe and detailed restrictions were imposed. The model ordinance, without setting such rigid requirements of floor space, location, and exterior signs, limits nonresidential uses to those made “an integral part of a residential development” and planned to serve only residents of the development and nonresidential persons employed there. It also requires a planning review of the essentiality of the proposed nonresidential uses. This is much more restricted, however, than many existing ordinances, some of which may not have been originally intended to be as broad as they can be interpreted. For example, one city’s planned-development provision was used to permit a comprehensive light-industrial development in an area zoned residential.

4. *Location.*—The model ordinance permits a planned development in any residential zoning district. Several of the existing ordinances either exclude planned developments from the most restricted residential districts or, by requiring a population

density equal to that of the district where located, as a practical matter exclude planned developments from the lower density residential neighborhoods. There is an increasing percentage of elderly people in our communities with adequate finances for independent living. They create a growing demand for rental housing in the single-family dwelling neighborhoods where they formerly lived. For this reason, the model ordinance omits the very common requirement in existing ordinances that the large-scale project meet the area-per-family restrictions of the district in which it is located. The appropriateness of a particular large-scale development for a particular residential district appears to be a planning decision which should be based on the detailed facts of the case under a general requirement, such as is included in the model ordinance, that harmony with surrounding property be considered.

5. *Extent of Discretion Granted.*—The model does not include the detailed specifications found in many existing planned-development provisions as to height, front and side yards, setbacks, building orientation, coverage, use, parking, nearness to streets, and fire hydrants, uninterrupted frontages, signs, lights, distance between buildings, screening, and floor-area ratios. Instead, the model ordinance permits approval of the design only after various city departments have had an opportunity to suggest, criticize, or oppose features with which each is concerned. This permits the applicant to work out with the fire department, for example, a plan acceptable to it, but avoids the legislation of such detailed restrictions as appear in one ordinance, i.e., that “fire hydrants shall be located not more than eight . . . feet from a roadway capable of supporting any fire apparatus of the fire department” of the city. The ordinances of Fresno, California; Denver, Colorado; and Saginaw, Michigan, offer good examples for those who prefer very detailed restrictions or who require them in order to avoid the problems which may arise under local law if legislative power is delegated without detailed standards. These three ordinances have only recently been adopted, so it is not yet possible to judge their soundness on the basis of administrative experience. However, it seems preferable to avoid such detailed standards by providing for city-council ratification by special ordinance. There is little point in setting up an area of special planning discretion if it is then hedged in by a rigid set of comprehensive restrictions. In addition, strict construction of the restrictions may destroy the usefulness of the planned-development provisions.

To help meet a popular distrust of the administrative officials to whom this planning discretion would be granted, it has been suggested that in reviewing plans for urban-redevelopment areas the planning commission or board of zoning appeals should “appoint an ad hoc committee of architects and city planners whose findings in respect to the location and design of all buildings, structures and open spaces shall become part of the Commission’s report on the project, whether favorable or unfavorable.” For larger planned developments, this should

help not only to guide the officials who must pass on the plan but also to force public justification when for reasons of expediency or economy an inferior plan is selected.

IV. Exclusion of Redevelopment Areas from the Zoning Ordinance

It has been proposed that redevelopment areas be treated as unique and excluded from the general zoning provisions, and that reliance be placed instead on the controls inserted by the redevelopment agency in its deeds, land-disposition agreement, and redevelopment plan. This has been done in part, in Washington, D. C., where the new comprehensive zoning plan does not apply to areas designated for redevelopment or urban renewal. Such treatment of redevelopment areas may be subject to constitutional infirmities, and seems hard to justify as being "in accordance with a comprehensive plan." The appropriateness of empowering the redevelopment agency to zone its own lands is questionable, particularly in cities in which the agency is not a branch of the municipal government and may not have a jurisdiction coextensive with the city boundaries. Some private redevelopers have objected to proposals of zoning by the redevelopment agency because of the extended negotiation, all with federal approval, which would be required. Other practical objections are that redevelopment plans have expiration dates and deed restrictions are difficult to change, so neither is an appropriate device for long-term land-use control.

It is arguable that a city in adopting a redevelopment plan thereby amends its zoning ordinance for the redevelopment area so that any construction or use in that area consistent with the redevelopment plan is not violative of the zoning ordinance. It is also arguable that the city, when it enters a "Cooperation Agreement" with the local redevelopment agency in which it agrees to help accomplish the redevelopment plan, has thereby contracted to amend its zoning ordinances to conform to the redevelopment plan. The typical redevelopment plan and cooperation agreement, however, are drawn in very general terms and numerous legal issues have yet to be resolved as to their enforceability by either the parties or the beneficiaries. Until such issues have been clearly resolved, private redevelopers will not be able to rely on these arguments to prove zoning compliance to mortgagees and mortgage guarantors, and will prefer to require the redevelopment agency to secure rezoning in accordance with the redevelopment plan. The model contract for use by the redevelopment agencies gives the redeveloper the right to require this. Further, since the federal government intends to encourage better municipal planning as part of the national urban-renewal program, cities should be required to modernize zoning provisions for all large-scale projects and not be permitted to avoid the issue for the rest of the city merely by excluding redevelopment areas from the general municipal zoning provisions.

V. Conclusion

The federal government has played a very active part in popularizing and encouraging land-control legislation by the cities since its early role in drafting the Standard State Zoning Enabling Act. Today its "workable program" requirement is encouraging improved community planning, including the adoption of zoning ordinances in the few larger cities which lack them. The generalized requirement that the city have as part of its workable program a "Comprehensive Community Plan" including a zoning ordinance is not sufficiently exacting. Although the survey undertaken by the authors indicates that the problem of large-scale residential development has yet been troublesome in relatively few cities, the reason is that there have as yet been few such developments privately owned and located in the central city. A significant number of the planning and zoning officials in the cities which responded expressed concern as to the adequacy of their existing zoning ordinances to cope with the growing number of privately owned projects and, in particular, with the very large projects they expected to see built in urban-renewal areas. Several cities are presently preparing new zoning ordinances which will include some form of planned-development provision.

It might be thought that the modernized zoning ordinances with their more flexible bulk controls would eliminate the need for special planned-development provisions. Even the newest ordinances, however, deal primarily with single-lot units, since most of the city is still so divided. Thus Denver and Pittsburgh, in their very modern ordinances, and San Francisco, in its proposed ordinance, still find it desirable to make special provisions for large-scale projects. There is a fundamental reason for this: In older areas in which many buildings were constructed before the area was planned, zoning can only be the negative tool of a plan which has been conceived too late to dominate the development of the area. In this situation, zoning is used only as an expedient or as a corrective when damage has already occurred or may come about for lack of a plan. In redevelopment areas, or in other open areas for which the planning precedes the construction, zoning can arise from and be integrated with the planning and many zoning goals can be achieved without the rigid rules needed when individual lots are separately owned and under no general planning control.

There is increasing recognition that the concept of general welfare is broad enough to include a public interest in community appearance and that planning laws can properly include beauty along with the traditional objectives of safety, health, and morals. Law cannot, of course, compel community beauty; it should not, on the other hand, produce ugliness. It is particularly important that the earlier redevelopment projects be permitted to be made attractive enough to draw middle-income families back to the central city. Adequate planned-development zoning provisions will help accomplish this by permitting

the planners of these redevelopment projects to use the best of modern city-planning concepts.

Model Draft of a Planned-Development Zoning Provision

VII. Conditional Uses.

(a) Procedure to be Used -----

(b) Review -----

(c) Types of Conditional Uses.

(i) Hospitals, schools, and public institutions in R-1 districts

(ii) Animal clinics in C-1 and C-2 districts

(iii) Automobile lots in C-1 and C-2 districts

(iv) -----

(v) -----

(vi) -----

(vii) Planned Developments. The authorization of a Planned Development, as described herein, shall be subject to the following additional conditions. Application shall be made to the Board of Zoning Appeals through the Planning Commission which may disapprove, recommend the development as submitted, or may modify, alter, adjust, or amend the plan before recommendation, and in recommending it may propose the prescribing of other conditions as provided in (a). The report of the Planning Commission to the Board of Zoning Appeals shall be in writing and shall include a finding as to whether the proposed development is consistent with the master plan. The applicant may be required to dedicate land for street or park purposes and, by appropriate covenants, to restrict areas perpetually (or for the duration of the Planned Development) as open space for common use. The development as authorized shall be subject to all conditions so imposed, and shall be excepted from other provisions of this ordinance only to the extent specified in the authorization.

1. The application must be accompanied by an over-all development plan showing the use or uses, dimensions and locations of proposed streets, parks, playgrounds, school sites, and other open spaces, with such other pertinent information as may be necessary to a determination that the contemplated arrangement or use makes it desirable to apply regulations and requirements differing from those ordinarily applicable under this ordinance. The applicant shall obtain written comments on the proposed development plan from the Postmaster, Fire Department, Health Department, Utility Department, Building

Inspector, and Recreation Department and submit these with the application.

2. The tract or parcel of land involved must be either in one ownership or the subject of an application filed jointly by the owners of all the property included (the holder of a written option to purchase land and a redeveloper under contract with the Redevelopment Agency to acquire land by purchase or lease shall for purposes of such application be deemed to be an owner of such land) or by any governmental agency including the Redevelopment Agency of the City. It must constitute an area of at least two acres or be bounded on all sides by streets, public open spaces, or the boundary lines of less restrictive use districts. The application may include a proposed subsequent division of the tract or parcel of land involved into one or more separately owned and operated units. Such proposed subsequent division, if approved along with the Planned Development shall be permissible without further approval; otherwise, subsequent division of a Planned Development shall be permitted only upon application to the Board of Zoning Appeals through the Planning Commission as provided in this section.

3. The proposed development must be designed to produce an environment of stable and desirable character not out of harmony with its surrounding neighborhood, and must provide standards of open space and areas for parking adequate for the occupancy proposed. It must include provision for recreation areas to meet the needs of the anticipated population or as specified in the master plan.

4. A conditional use of this category may contain commercial and professional uses as an integral part of a residential development; but such uses shall be planned and gauged primarily for the service and convenience of residents and people working within, although not residents of, the Planned Development, and shall be authorized only to the extent that such uses are not available to the residents in reasonable proximity.

5. Upon the abandonment of a particular project authorized under this section or upon the expiration of three years from the authorization hereunder of a Planned Development which has not by then been completed (or commenced and an extension of time for completion granted), the authorization shall expire and the land and the structures thereon may be used without such approval for any other lawful purpose permissible within the use, height, and area districts in which the Planned Development is located.

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FOOTNOTES

TO

ORGANIC ZONING FOR PLANNED RESIDENTIAL DEVELOPMENTS

By

Lovelace and Weismantel

1. The St. Louis County, Missouri provision is typical of many. It was enacted in 1946:

"COMMUNITY UNIT PLAN - 1. The owner or owners of any tract of land comprising an area of not less than twenty (20) acres may submit to the County Council a plan for the use and development of all of the tract of land for residential purposes. The development plan shall be referred to the County Planning Commission for study and report and for public hearing. If the Commission approves the development plan, the plan, together with the recommendations of the Commission shall be accompanied by a report stating the reasons for approval of the application and specific evidence and facts showing that the proposed community unit plan meets the following conditions:

- (a) That property adjacent to the area included in the plan will not be adversely affected.
- (b) That the plan is consistent with the intent and purpose of this ordinance to promote public health, safety, morals and general welfare.
- (c) That the buildings shall be used only for single-family dwellings, two-family dwellings or multiple dwellings and the usual accessory uses such as garages, storage space and community activities, including churches.

"(d) That the average lot area per family contained in the site, exclusive of the area occupied by streets, will be not less than the lot area per family required in the district in which the development is located.

"If the County Council approves the plan, building permits and certificates of occupancy may be issued even though the use of the land, the location of the buildings to be erected in the area, and the yards and open spaces contemplated by the plan do not conform in all respects to the district regulations of the district in which it is located.

"The County Council may also authorize the repair or remodeling of any existing community development that does not conform with the district regulations of this chapter." Section 1003.270, Revised Ordinances of St. Louis County, Missouri. (1958) (Italics added)

2. The Standard Enabling Act, followed by a majority of the states, gives the zoning board of appeals jurisdiction over (a) appeals from an interpretation given by the administrative official, (b) power "to hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance", and (c) power to vary the ordinance to alleviate hardship. U. S. Department of Commerce, A STANDARD STATE ZONING ENABLING ACT (rev. ed. 1938). Goldston and Scheuer would lodge their proposed addition to the zoning board's jurisdiction among its "special exception" powers. But special exceptions "are intended as an effective method of exercising control over certain exceptional or unusual uses of land and buildings". Reps, Discretionary Powers of the Board of Zoning Appeals, 20 Law and Contemporary Problems 280, 289 (1955).

It will be shown that planned developments are no longer "exceptional or unusual uses of land" but have become the standard method of residential construction, hence should not be listed as special exceptions.

3. "Such zoning regulations shall be made in accordance with a comprehensive plan." Section 89.040 RS No. 1949, See Haar, In accordance with a Comprehensive Plan, 66 Harvard Law Review, 1154 (1955).
4. 63 Stat. 416 (1949) 42 U.S.C., Sec. 1455 (a) (111) (1958).
5. For a discussion of various enabling acts regarding the comprehensive plan, see Haar, "The Master Plan: An Impermanent Constitution", 20 Law and Contemporary Problems 353, 354 (1955).
6. "Flexible" is intended in a most limited sense. See Lovelace, "3. The Flexible City Plan is No City Plan at All", Journal of the American Institute of Planners, Vol. XXIV, No. 1, 1958/1. For a lawyer's analysis of the contents of a comprehensive plan, see Horack & Nolan, "Land Use Controls", 36, (1955).
7. See Fenoreff, "The Relationship of Zoning to Traffic Generators", 20 Law and Contemporary Problems 238 (1955); Hansen, "How Accessibility Shapes Land Use", Journal of the American Institute of Planners, 73 Vol. XXV, No. 2, 1959.
8. See Stein, "Stockholm Builds a New Town", Planning 56, 61 (Proceedings of the American Society of Planning Officials), (1952); Lewis, "Planning the Modern City", 255 Vol. 1 (1955).
9. American zoning began in New York City in 1916 in response to overcrowding, canyon streets and chaotic intermingling of incompatible uses. For a description of these conditions, see Bassett, "Zoning" 23 (2d edition 1940).

10. Goldston and Scheuer, "Zoning of Planned Residential Developments", 73 Harvard Law Review 241, 267 (1959).
11. Goldston and Scheuer, *op cit* 254 (footnote 61).
12. For the Federal-local financing of urban renewal, see Note, "Urban Renewal: Problems of Eliminating and Preventing Urban Deterioration"; 72 Harvard Law Review 504 (1959).
13. "Insofar as existing zoning restrictions circumscribe the available uses to which land may be devoted they unquestionably affect the market value of property and no evidence in support of an enhanced value may be admitted where such enhanced value would be the result of a prescribed use." Nichols, "Eminent Domain", Vol. 4, §. 12.322 (3d edition 1951).
Here is a British conclusion: " 'Market Value' is now largely determined (and this is the strangest perversion of all), by town and country planning. If land is zoned under the development plan as agricultural or greenbelt land, it cannot normally be built on and has only agricultural value. But if it is zoned for industrial, commercial or residential uses, its value is multiplied ten, twenty times or more", MacBeth, "Piccadilly Goldmine", New Left Review 12, No. 2 Mar-Apr 1960.
14. In St. Louis County, Missouri, in most of the larger suburban cities as well as in the unincorporated portion, the community unit special exception has been available for about twenty years. During this period only four subdivisions totaling about 1,000 dwelling units used the device, while over 100,000 dwelling units were approved in the routine manner.

15. In St. Louis County, Missouri, for example, the 1948 zoning district map for the unincorporated area is still in effect. The county population was then about 300,000 and the zoning district map was designed to operate until a county population of 500,000 was reached. It has not yet been revised, except in a piecemeal fashion, although the present county population is about 700,000. Of the 163,574 acres of vacant and farm land in the residential zoning districts in January 1959, 152,678 acres or 93 percent were zoned for large lots (15,000 square feet to one acre minimum). About half the residential development in actual acres is nevertheless occurring on lots of less than 15,000 square feet, much of it through piecemeal rezoning to small lots. 1959 Land Use Inventory, St. Louis County Planning Commission, Plate 11 (1959); A General Land Use Plan, St. Louis County Planning Commission, 38 (1950).
16. A study of special exceptions in Illinois concluded that the Board of Zoning Appeals is a superior forum to the governing body for hearing and ruling on such cases, because of the board's quasi-judicial character. But that study recommended narrowing the scope of variations and special uses, presumably excluding power to permit an increase in density. Dallstream and Hunt, "Variations, Exceptions and Special Uses", 1954, U. of Illinois Law Forum 313, 241.
17. This is common knowledge among housing experts, and is the genius of the British New Towns program. Except for isolated efforts, such as the depression-years Federal Works Agency experiment with federal aid for satellite communities, American renewal housing practice has followed "that bright idea conceived and applied with such monumental enterprise in New York.....that

the way to do central clearance and redevelopment today, and at the same time help solve the housing shortage, is to double or treble the densities in blighted areas". Catherine Bauer, "Redevelopment: A Misfit in the Fifties", from "The Future of Cities and Urban Redevelopment" 7, 19 (2d edition 1956).

A current example of high-density redevelopment is the proposed Bunker Hill urban renewal project in Los Angeles, which would place 160,000 persons on 136 acres of land.

18. 302 N.Y. 115, 96 N.E.2d 731 (1951), affirming 276 App. Div. 1019, 96 N.Y. S. 2d 58 (1950).
19. "It is desirable to locate Industrial development in an area which has already been zoned exclusively for industry, based on a comprehensive land use study of the entire area." "Organized Industrial Districts", U. S. Department of Commerce 40, (1954).
20. Goldstein and Scheuer, op. cit. supra, 245.
21. Id. at 266.
22. 63 Stat. 417 (1949), 42 U.S.C. Sec. 1455 d (1958), e.g. Mo. Rev. Stat. Sec. 99.430 (9) (Supp. 1957), Pa. Stat. Ann. Title 35, Sec. 1710 (g), (h), (j) (Supp. 1957).
23. Social-economic status of families by place of residence, observed in concentric circles, tends to increase with distance from the center of the metropolitan area. Much contemporary planning accepts and perpetuates this phenomena. See, for example, Hamburg and Creighton, "Predicting Chicago's Land Use Pattern", Journal of the American Institute of Planners 67, Vol. XXV (May 1959).

24. A serious program to improve this would include (1) training of more civic designers and landscape architects, (2) broadening the scope of curricula in architecture and city planning to include design of residential developments and subdivisions, (3) teaching "environmental appreciation" in high school, just as art and music appreciation are taught, and (4) orienting Federal FHA and HEFA policy towards encouraging and demanding better residential design. Clarence S. Stein calls present housing form an "obsolete, socially repellent, barrier real estate gambler's checkerboard". Stein: "Toward New Towns for America", 217 (Reinhold 1957). See also Perloff: "Education for Planning: City, State and Regional" (1957).
25. Goldston and Scheuer, op. cit., Supra, 245.
26. See footnote 2, supra, for community unit provision of type found in modern ordinances.
27. Goldston and Scheuer, op. cit., Supra, 260.
28. Crabtree, "Developing Golf Course Subdivisions", Urban Land, Vol. 17, No. 8, September 1958. For a description of twelve classic examples of good residential design, including several low-density developments, see Stein: "Towards New Towns for America (1957)". Note especially Radburn, N. J., (page 37); Baldwin Hills Village, Calif., "probably the most spacious urban rental housing ever built in the United States", (page 209); Greenbelt, Md., (page 119); Greendale, Wis., (page 185); Greenhills, Ohio, (page 178).
29. Miller, "The Slumberous State of Subdivision Planning", Architectural Forum 99, Feb. 1959.

30. Goldston and Scheuer, op. cit. supra, 260, ft. 97.
31. Id. 267.
32. This is a local variable, depending on building practices and typical size of developments. Generally in more suburban areas twenty acres is an appropriate minimum, in congested areas it can be smaller.
33. This indicates a need to carefully coordinate, if not fully integrate, a community's subdivision and zoning ordinances.
34. Many city councils would react against this and prefer that multiple dwellings be permitted in low-density developments only after a public hearing.
35. This minimum would vary depending on topography and the density of the zoning district. For example where the average lot size is to be 15,000 square feet, particular lots as small as 10,000 square feet with 30 foot frontages might be allowed.