

## BOOK REVIEW

***Common interest communities: Private governments and the public interest.* Edited by Stephen E. Barton and Carol Silverman. Institute of Governmental Studies Press, Berkeley, CA, 1994.**

Over the past 25 years, the creation of 150,000 new common interest communities has made 30,000,000 Americans members of "private governments." The spread of these common interest developments has created a quiet revolution in the structure of neighbor relations, local government, and land-use control. Stephen E. Barton's and Carol Silverman's, *Common interest communities: Private governments and the public interest*, offers us one of the first books addressing the complex nature of these increasingly widely-used institutions.

Common interest communities include condominiums, planned unit developments (PUDs), and housing cooperatives. Common interest developments all have common ownership of residential property, mandatory membership of all owners in an association that governs the use of the common property, and governing documents that provide a "constitution" by which the association and its members are governed. Common interest developments take the form of single family houses, townhouses, and apartments, ranging in size from two to thousands of units, housing people from all stages of the life cycle and almost all income levels. Twenty percent of the units are occupied by renters. Management of common property, such as open space, parking, swimming pools, and roads, is funded by monthly assessments. Rules in the form of conditions, covenants, and restrictions incorporated into the property govern such things as pets, antennas, basketball hoops, and the procedures of the homeowners associations.

The book examines common interest communities through multifaceted research, building on Barton's and Silverman's 1987 study of California common interest homeowners associations. Silverman and Barton contribute five of the chapters, covering the history and structure of common interest developments, private government and the public interest, community and conflict, neighboring style in managing interdependence (including a two case comparison), and public life and private property. Their work is complemented and enriched by two legal chapters, three on international perspectives, analysis of a resident attitude survey, and

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a three episode case study. The book also contains Stanley Scott's prescient 1967 article, "The homes association: Will 'private government' serve the public interest?" Barton and Silverman provide introductions to each section, which make their already lucid treatment still more so.

The book's core thesis is that common interest developments fail as democratic communities because their private property character predominates and obscures their public role and functions. Common property ownership makes the residents financially and otherwise interdependent, yet they see the neighborhood as private. One neighbor's rights to freedom from certain land use interferes with another's freedom to use property as desired. Disagreements over assessments and violations of regulations abound. Private property ownership does not reduce, but intensifies conflicts within the community as people assert their property rights against each other.

If common interest developments are undemocratic, and 84% of prospective homebuyers are not looking for them (Silverman, Barton, Hillmer, and Ramos 1989), why are they so prevalent? The answer: they serve all the stakeholders' economic self-interests. They benefit homebuyers, developers, local government, and planners. Their lower purchase costs allow some households to enter homeownership who otherwise would not be able to afford it. Developers benefit because the costs of infrastructure are lower when it is privately owned (incorporated into the property cost), rather than if public, because public standards are higher. Local government prefers common interest developments because they privatize infrastructure and thus reduce public costs. Planners like common interest developments because they can be designed to be land efficient, preserve open space, and serve other planning goals. In combination these benefits foster a large and growing number of common interest developments.

Academics have viewed judicial enforcement of covenants as acceptable on the grounds that homebuyers make the choice to buy into common interest developments. In reality, however, homebuyers have little choice. Restrictions are incorporated into the property before sales, and the developer retains control over them for a long time. Also, if homebuyers want a condominium or a house in many suburbs, they may find that virtually all of the available units are in common interest developments. Moreover, less than 10 percent of homebuyers read the association rules before closing on their home.

Restrictions are seen as invasive and are widely violated. The rules restrict not only land uses, but ages, childbearing, religious practices, political speech, and aesthetics. Rule violations are widespread, mostly concerning parking, late payment of

assessments, and pets. Associations in economic decline (which also house more renters), those with people of different ages, and those with children tend to experience more violations. There are fewer violations in associations characterized by member participation, self management, and more social activities.

Common interest development associations look like neighborhood governments rather than voluntary associations: they tax, make and enforce rules, own property, provide public services, and hold elections. They differ from small town government in three ways: (1) no separation of powers between the people who make and enforce the laws and determine both guilt and punishment, (2) representation based on ownership, not residence, and (3) the governing board members are neighbors and so cannot physically separate. Board members are perceived as people inappropriately interfering with individuals' rights, and therefore the legitimacy of public life is undermined.

Although conditions favor participation (e.g., the self interest of homeowners and the fact that most residents are from the middle class) and exit is not viable, researchers found residents to be disappointed and apathetic. Most saw the benefit of the association not as the practice of self-government, but as "keeping up property values." Most had not attended a board meeting or even knew who was on the board or what issues were before it.

Common interest communities fail as participatory democracy in six respects. First, and perhaps most flagrant, renters, who make up a significant minority (20%), have no vote. Second, the "constitution" governing the restrictions and the eventual association managing the common property is written by the developer, who maintains control until most of the properties are sold. Third, this set of rules is almost impossible to amend. Fourth, association board members both monitor violations and judge them. Fifth, as this procedural injustice combines with invasive restrictions, the regulating is much resented and results in a great deal of litigation (rather than negotiation, or adjusting rules through a political process). Sixth, perhaps as a consequence, residents are apathetic about participation.

The authors consider common interest communities' structure and culture to cause their failure as democratic institutions. The book's case studies and neat international comparison studies suggest that structure influences public life a great deal. Three episodes in a limited equity cooperative show true community and democratic decision-making. In contrast to the residents of common interest developments, residents in the limited equity cooperative have almost no property value in the cooperative and view the property as collectively owned, and all have voting rights. In Israel, where 75

percent of the population lives in condominiums, there are no restrictions on tenants or the appearance of property. Moreover, disputes are settled through local government, leaving the building association responsible only for physical maintenance. In contrast to residents of U.S. common interest developments, 92 percent of Israel's condominium population is satisfied with their building committees. The Netherlands has structured conversion to condominiums in such a way that it helps low income renters, the opposite effect condominium conversion has in the U.S.

The evidence on the role of culture in creating contentious, but apathetic, common interest communities is mixed. On the one hand, national culture appears to have no effect. Residents of condominiums in Israel,<sup>1</sup> Japan, and the Netherlands all have disagreements on maintenance and repairs, as do their U.S. counterparts. In particular, Japan, with a very different culture from that of the U.S., has the same problems between developers and owners, and owners and associations. Japan is startlingly like the U.S., even in particular issues, such as the role of renters and management associations, poor maintenance, and restrictions over pets and parking.

On the other hand, community culture may have some effect on the quality of public life. The chapter comparing two types of neighboring style found that, when faced with similar conflicts, an association with a "private," friendship-based neighboring style ended up in the courts, whereas the members of an association with a "public," all-inclusive neighboring style used political channels to resolve their differences. Another chapter concluded that regular, social, interactive, fun events (e.g., dinners, dances) could build a more participatory, democratic public life.

The intellectual conclusion of this work is so clear and incisive about the relations between private property and public life, and the need to distinguish public and private sectors (government or nongovernment ownership) from the public and private domains of life that it should be must reading for political scientists, sociologists, planners, and city managers.

The plannerly conclusion to the book is weaker. Now that we know all this, what should we **do** to remedy the deficiencies in public life in common interest communities? Suggestions are scattered throughout the book, and others are implied by the critiques. The following are explicitly proposed. Common interest developments should incorporate as nonprofit mutual benefit corporations (most are already) and then mutual benefit corporation law should be amended to strengthen the rights of homeowners to control the corporation, and to encourage mediation for conflicts. A federation model of

## **Berkeley Planning Journal**

association is proposed, whereby subgroups could modify some restrictions, through face-to-face negotiation, with the master association responsible for neutral record keeping and maintenance. Barton and Silverman propose two votes per unit: owner and user. Beyond this, we may not yet know quite what to do. Therefore I suggest another study which compares common interest communities of similar size and income levels, but different structures, varying limited equity versus full, kind and locus of dispute resolution, powers and checks on the boards, and kinds and degrees of restrictions.

To conclude this review, *Common interest communities* is an excellent book on a significant, new, and growing institution. I encourage readers of the *Berkeley Planning Journal* to read it.

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### **NOTE**

<sup>1</sup> The chapter on Israel provides other very interesting findings which are tangential to the private property-public life argument. It asks the question whether condominiums can work across religion, class, ethnic, and family life cycle barriers. The research answers, yes, if they have the same income-socio-economic status. Moreover, owning and living together in the same building changed mental pictures these groups had of one another to more realistic and humane views.