

The Planned Unit Development Process

How Arbitrary Planning Process Restricts Supply and Raises Housing Prices

The City of Pleasanton's Housing Element Update Task Force recommended that residential projects have density "by right". But, the City staff recommends against establishing baseline density for any landowners, instead preferring a "discretionary review process with the flexibility of a PUD."

The Housing Element Update Task force got it right. Density guarantees are essential to good planning. The PUD process as practiced in Pleasanton and many Bay Area cities has effectively destroyed predictable planning outcomes based upon adopted plans and standards. The PUD process should be substantially reformed, both locally and statewide.

The planned unit development concept was invented in the 1960's as a design idea. The planned unit development (PUD) concept was invented to allow clustering of homes and open spaces as an alternative to conventional cookie cutter subdivisions, particularly in settings with unique topography. But, in Pleasanton and the Bay Area, the PUD concept has evolved into a bureaucratic control device which maximizes government discretion over land use by minimizing the landowner's right to any baseline density or use.

Problems with the PUD Process

Pleasanton's PUD practices illustrate some of the ways the PUD process is used to undermine stable planning outcomes and stable property rights:

First, in Pleasanton, the mere designation of a property as "PUD Medium Density Residential" effectively strips the property of any entitlement to density or use until a "PUD Development Plan" has been adopted by ordinance of the City Council. The PUD Development Plan process typically takes a year or more, is completely discretionary with the City Council, and requires massive up-front expenditures by the landowner for engineering, geotechnical, environmental, and design studies and for project processing. The landowner has to incur these enormous transaction costs with no assurance that any design or density will ever be permitted on that property. The uncertainty and delay created by the PUD process grants monopoly power in the new home market to the few properties which have run the gauntlet of the PUD process.

Second, the range within which politicians and planners reserve the (potentially arbitrary) discretion permitted by the PUD process is typically too broad. For example, within the Pleasanton General Plan Medium Density Designation, the permitted density range is 2 units to 8 units per acre, providing a huge 400% range within which political discretion (and thus landowner

uncertainty) is maximized. It was not always so in Pleasanton. Before 1986, a General Plan designation of Medium Density Residential gave the landowner a right of up to 8 units per acre, with a density incentive of up to 25% (to 10 units per acre) for landowners who would avail themselves of the Planned Unit Development process.

Third, the supposed “flexibility” of the PUD process disappears for the landowner in the City of Pleasanton’s standard first condition of approval, which reads as follows:

“Permitted uses and development standards shall be those of the R-1-_____ (Single Family District). . . .”

Typically, the first condition of approval is followed by 50 to 150 ad hoc conditions of approval, in which the City uses the flexibility of the PUD district to impose a variety of requirements not addressed in the applicable zoning district.

Fourth, for the government and anti-housing groups, maximizing uncertainty as to project approval and permitted density maximizes the efficiency of the PUD as an exaction extraction device. A related point is that the uncertainty of the PUD process renders any use of incentives illusory and non-existent. Without a baseline density from which the landowner can negotiate, the City has no need to make trade-offs for any desired public benefit. Why would a king negotiate with his serf? The City is empowered by the PUD process (in Pleasanton) to simply order whatever amenities it so chooses, without granting any offsetting trade offs to the landowner and without regard to the costs imposed. In fact, the unfettered discretion of the PUD process encourages many planners and politicians to gouge the landowner for as many “public benefits” as feasible. The planners and local politicians who do the gouging either do not understand or do not care that whatever mitigations they extract from landowners are extracted from housing consumers in the form of higher housing prices.

Real Life Story

The Nolan Farms PUD is typical of the erratic results from the PUD process. The project density was held at the lower end of the general plan density range. Nevertheless, a last minute PUD condition was added requiring the developer to give away five homes at heavily subsidized prices. In addition, the City even charged an affordable housing fee on all the market rate units. This last minute condition roughly increased the cost basis of each saleable home by \$43,000. Nolan Farms PUD was not an isolated incident. Similar erratic delays and cost increases have occurred with the New Cities PUD in Happy Valley, the Passport Homes PUD off Dublin Canyon Road, the Vineyard Corridor PUD, the Merrit property PUD, and the Busch property PUD, just to name a few.

The PUD was intended to provide a better quality of life for people. But when the business of providing shelter for humans is subjected irrational uncertainty, delay, and exactions, the PUD has failed in its basic mission. The result of all this bad local government planning in the Bay Area is

the highest cost housing in the nation and a declining standard of living.

Illegal Process

The PUD process, as used by Pleasanton and many Bay Area cities, appears to violate State Planning Statutes. Government Code Section 65860 requires that zoning be consistent with the adopted general plan. Then, the general plan statutes require that the adopted housing element of the general plan shall:

. . . identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, Where the inventory of sites, . . . , does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low and low-income households. For purposes of this paragraph, the phrase "use by right" shall mean the use does not require a conditional use permit, except when the proposed project is a mixed-use project involving both commercial and residential uses. . . .

From Government Code Section 65583 (c) (1) -underlining added

In Pleasanton, because of PUD zoning, there are virtually no parcels with "zoning that permits use by right". In substance and in form, the PUD and the conditional use permit are functionally equivalent in that each process inserts a discretionary political decision with extensive transaction costs between the pretended general plan density and actual right to use the land consistent with that general plan designation. Pleasanton's PUD ordinance should be reformed to provide certainty as to permitted density, or else struck down as a violation of Government Code Sections 65860 and 65583 (c).

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