

Innovative Planned Unit Redevelopment: A Legal Review

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Abstract

Examined is the regulation and execution of urban/ suburban redevelopment in the planned unit form, a PUR ordinance template, the varied means to formulate and implement the PUR through innovative forms of cooperation among land owners as well as regulated compensation for windfalls and wipeouts, and a review of case studies.

There is a compelling need for new regulatory instruments to address the demands of urban and now suburban renewal, and the emerging market demand for mixed-use, infill redevelopment. Here redevelopment preserves existing uses and repurposes others in a planned manner that adds value to the redeveloper[s] and mitigates existing zoning hindrances.

This new form is with challenges, addressed through various techniques of land value capture and compensation, including tax/ subsidies, consumer/ investor-based cooperatives, and the incorporation of a neighborhood site/ re-platted plan into zoning. Indeed, this incorporation into zoning accommodates redevelopment flexibility while making obsolete the redeveloper and promoting individual builders and investors.

Regarding PUD's/ PUR's legal review the issue of the constitutionality of regulatory form-based manuals and parcel-specific distinctions as to land use. Such challenges can be withstood if they adhere to the jurisprudential standard of the rightful use of legislative power or its delegation to an administrative agency/ official and if not constitutionally vague and, thus, a condition for substantive due process.

The PUR overcomes legal challenges of spot zoning and nonconforming, pre-existing uses, as well as the contentious politics of neighborhood renewal, and presents a positive economics for all. While the performance of case studies is evaluated, the form presented here is novel and has yet to be tried.

Keywords Planned Unit Redevelopment, Planned Unit Development, urban redevelopment, suburban redevelopment, land use controls, mixed-use development, infill development, windfalls for/ and wipeouts, consortium agreements, transfer development rights, consumer/ investor-based cooperatives, spot zoning, form-based regulation, substantive due process.

1. Introduction

1.1 Land Development Controls

Land development controls make a fundamental choice between [a] planned and [b] unplanned developments, and between a [a] comprehensive and coherent design and review and [b] piecemeal and uniform zoning and subdivision standards of height, bulk, set-back, open space and parking metrics as well as Euclidean¹ separated land uses. The history of developments, particularly residential and ensuing the Second World War in the 1950's and 1960's has embraced the latter [b]².

This land use control and real estate development traditions are largely anti-urban in that they reject mixed uses and lead to the sameness in “cookie-cutter” residential and commercial subdivisions. Simply and up to the innovation of PUD's, “urban” is what preceded land development controls by local government. At best, these regulations were suited to a time when the nuclear family³ dominated the demographic profile of growing suburban communities.

¹ *Ambler Realty v. Village of Euclid*,

² Daniel Mandelker, Unit Developments, APA Planning Advisory Service Report # 545, 2007

³ 3.37 children per household with both parents, [Mandelker 2007]

The Standard Zoning Enabling Act⁴ as adopted by most states ignores any statutory authority to regulate a planned unit development. In a sense, traditional land development controls, spearheaded by the legal, not planning, community, preferred highly regulated while unplanned developments over planned ones. If the premise accepted is that a planned development adds value, there is opportunity value lost in traditional zoning and subdivision controls.

In recognition, the Urban Land Institute [ULI] in 1965 published⁵ a model statute for a planned unit development, but proved too rigid and was not adopted. So, the American Society of Planning Officials [ASPO and later known American Planning Association, APA] commissioned Daniel Mandelker over the period 1966-1984 to prepare a PUD model ordinance and assess its performance in practice, and which it published⁶. Mainly, these provided for residential cluster developments, with attendant open space, either through subdivision controls or as conditional uses in zoning. Essentially, these introduced discretionary and comprehensive site/ subdivision plan review by the plan commission and BZA.

Thus, the early PUD was limited to the suburban form of residential, single-family land use and jeopardized by the exercise of discretion by both the regulator and regulated. Developers at times obtained in negotiation excessive concessions and renege of developer commitments, such as

⁴ Standard State Zoning Enabling Act, 1921 and with 2nd printing 1926, U.S. Department of Commerce. The American Planning Association wrote that the SZE Act with the Standard City Planning Enabling Act of 1927 "laid the basic foundation for land development controls in the U.S." Sources: *Advisory Committee on Zoning (1926), A Standard State Zoning Enabling Act: Under which municipalities may adopt zoning regulations (PDF) (Revised (1926) ed.), Washington: U.S. Government Printing Office; Meck, Stuart, ed. (January 2002). Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change (2002 ed.). Chicago, Illinois: American Planning Association. OCLC 275187048*

⁵ Richard Babcock and David McBride, "The Model State Statute," *University of Pennsylvania Law Review* 114, No.1: 140-170. See also, Babcock, *Legal Aspects of Planned Unit Residential Development*, Washington, DC, Urban Land Institute, 1965

⁶ Daniel Mandelker, *Controlling Planned Unit Development*, Chicago, IL, American Society of Planning Officials, 1966; also Mandelker, "Reflections on the American System of Planning Controls: A response to Professor Krasnowiecki," *University of Pennsylvania Law Review* 114, No.1: 98-105. See also, Collen Moore and Cheryl Siskin, *PUD'S in Practice*, Washington, DC, Urban Land Institute, 1984

amenities, and the plan commission exacted design features that rendered the development insufficiently profitable. Discretion clears the way for abuse, comparing unfavorably with the simplistic fairness of standard zoning.

1.2 Advent of the PUD

Commencing in the 1940's is model of urban renewal, following the pattern of land acquisition by a redevelopment authority, demolition, and offering to private redevelopers. Urban renewal is a planned unit development typically at war with the neighborhood. It entails displacement and dispels stakeholder involvement, and has resulted in both failures and successes. Further, much of this resulted in suburban-style developments [single use blocks with periphery surface parking] or vacant blocks that endured. The assumption is that redevelopment required this strategy, and the PUR challenges this as the only method.

Commencing in the 1980's there has emerged a plethora of modern PUD's and spurred by the neo-traditional design, or traditional neighborhood development [TND] movement and, with notable exceptions, an acceptance of sprawl⁷. In 1981 Robert Davis developed the 80-acre Gulf coast town of Seaside, Florida. Almost a decade later in 1989 Joseph Alfandre and the Chevy Chase Bank developed Kentlands on 352 acres in Gaithersburg, Maryland. These early projects had their design and financial challenges, including Alfandre's deed in lieu of foreclosure to his lender, but today there are more than 350 built TND's nationwide.

⁷ This despite the claim of the Sustainable Cities Institute of the National League of Cities: "Traditional Neighborhood Developments seek to remedy the most pressing problems associated with sprawl - low-density, auto-oriented development, single-use developments lacking context and distinctiveness." The Congress of New Urbanism used to tally TND's nationwide, resulting in 2006 in 350 such developments, but apparently has ceased this practice. The CNU notes "TNDs can be built anywhere — in cities, first ring suburbs, old towns, on the suburban fringe or in the countryside." To wit, there are several infill, inner city redevelopments patterned on the TND, such as Fall Creek Place in Indianapolis, but the vast majority of TND's are have acquired farms or vacant lands far removed from urban centers, and the essential compact development rations land consumption but practices sprawl nevertheless.

A benchmark publication in 1998 was sponsored by APA and the International City/ County Management Association [ICCMA], Best Practices Development. The best practices of mixed land uses, mixed-income housing, transit, and open space conservation were adopted in PUD ordinances.

More relevant, are urban, infill applications of this concept. Hope VI of HUD, the replacement of failing or defunct public housing, is premised on the lower-density design motif of TND's. Fall Creek Place, the award-winning, 26-block redevelopment of perhaps the most disinvested neighborhood in Indianapolis, during its development of 2000-2004 has proven a meteoric success of a public-private partnership of Federal HOZ, area lenders and Mansur Properties.

Predominantly residential, there are mixed uses present with retail, small office, recreation and institutional in these more recent infill developments. But, in each there is substantial land clearing, modest rehabilitation and major new construction.

The trend is to provide a semblance of the traditional neighborhood and small town effects. It is a nostalgic movement, but largely through new construction to mimic pre-modernist styles.

2. Research Questions

That brings us to the central challenge of our research. How do you plan and then execute the redevelopment of an urban neighborhood in a comprehensive, coordinated and coherent manner? How do you do so when, typically, such neighborhoods are those of disinvestment, and where a systematic approach to redevelopment is requisite to creating a market? The PUD concedes to the PUR that much structures will remain intact, although holding open their adaptive reuse, and that specific parcels will gain new structures and uses or be dedicated to agrarian, recreation and open space purposes.

Unlike the PUD with a single developer purchasing the land from a single seller, such as a farm, the PUR presents a mosaic of property owners. How to gain site control becomes the subsidiary challenge. In response, the PUR assembles the land not necessarily through purchase but by a variety of collective actions, including developer/ consumer cooperatives, and public tax/ subsidies for “windfalls and wipeouts.”

The regulatory challenges focus on the aforementioned question of discretion and the fairness of the negotiation between developer and local plan commission or BZA. Is this an overlay district? Does such a district float with the prescribed conditions of its location? Are land uses and forms generalized or rather precise? Or, should the underlying zoning district yield to a PUR?

More precisely, should the PUR district strive for sameness in architectural style, building materials, height and bulk, etc. with existing uses, or does revitalization require a higher density and diversity in uses and building types to attract a middle class, or a “creative class?”

Significantly, and if successful in its implementation, the PUR would tend to gentrify a neighborhood, absent price controls and affordable set-asides. Redevelopment and more intensive land uses would add to traffic and parking and introduce NIMBY critiques, a challenge to the politics of change. How to correct for these self-inflicted wounds?

These research challenges pale with the practical challenges of adopting a different regulatory path than in place since the early 20th Century. There are no true case studies, only creative measures that address both economic and political imperatives of this subject.

What we do know is of highest order: One, the PUR’s intention is economic, to generate positive impact on reinvestment through a coherent redevelopment strategy. This in contrast to the more modest, politically-motivated, conflict-aversion goal of conventional zoning’s compatibility of land uses and forms, and intention to preserve, rather than generate, property values. Indeed,

development of cities and towns predates zoning, which adopted the tactic of continuing with infill and extension the existing land use pattern. Two, that such a goal all starts with different comprehensive, and neighborhood community/ economic development plans.

3. Central Role of Innovative Planning in Land Development Controls

Virtually all zoning enabling state statutes require either *consideration* or *consistency* with the comprehensive plan.⁸ New Jersey, a state with an organized planning presence, mandates that zoning that is inconsistent with the comprehensive plan be so announced in the introduction of that local ordinance, an important public notice that may compromise the goals and strategies of the comprehensive plan.

Either *consideration* or *consistency* are enforceable, and should be more seriously practiced. This presents an imperative if planned unit redevelopment is to pursue a plan of the target neighborhood and its relation to the entire jurisdiction, its needs and its impact on public facilities.

Second, planning is responding to the market demands of the important millennial demographic segment for places to live, work, shop, play, and learn, with serious ramifications for mixed-uses and housing preferences⁹. In the rush to attract the creative class, identified by Richard Florida¹⁰, and a sustainable younger generation, cities and towns seek new regulatory, marketing and financing instruments to compete.

Third, to be effective, planning is evolving toward the actionable plan, where a feasible path to implementation is delineated in responsible parties, resource requisites and procurement, phasing,

⁸ Stuart Meck, *Growing Smart Legislative Guidebook*, APA, 2002

⁹ Niche housing markets dominate over a mass market geared toward the nuclear family [married parents with at least one child under 18 years old], which has declined in importance [37% of households, nationally in 1960 to 16% in 2013; source: *PEW Research*], and household size has diminished [3.33 in 1960 to 2.54 in 2015; source: *Statistica*]. Multifamily rental options have soared recently, and with a convenience retail ground floor. Live/work options have emerged.

¹⁰ *The Rise of the Creative Class*, 2002, and in a series of related books and articles

etc. Accordingly, new development and redevelopment is planned with partnerships of public and private sector players, as well as extensive stakeholder involvement and community organization. Where the market has abandoned a neighborhood, a downtown, cooperative initiatives among stakeholders has taken hold. The PUR advances as the matched regulatory instrument. Lastly, sustainability and its smart growth component promote redevelopment over new development. A PUD from a cornfield is still sprawl, just planned and less monotonous. A PUR is the adaptive reuse of existing development, carried by a previous investment in infrastructure, both public and private, or the adaptive reuse of private structures. The positive impacts are on energy consumption, carbon emissions, public budgeting, both capital and operating, and private development costs. A sustainability strategy, local and state, cannot avoid the PUR.¹¹

3.1 Features of the PUR Ordinance

Daniel Mandelker¹² has formulated a checklist of ordinance options for the PUD that, in part, constitute a template for the PUR. I have added to his list of options in Figure 1.

¹¹ I asked a local PUD developer in West Clay Township, a suburb of Indianapolis, why not redevelop any one of the 51 dying Indiana towns instead of a cornfield. The response was she had not thought of it that way, but that land assemblage would prove too complex.

¹² Planned Unit Developments, APA, PAS #545, 2007

Figure 1. Options in Formulating PUR Ordinance

	Ordinance Options	Rationale
A	By-Right <i>or</i>	Locality has established a set of redevelopment formats with confidence and more than a cursory review of conformance is unnecessary
	By-Review	Discretionary review by Plan Commission, BZA and local governing body, with prescribed roles, is required
B	Short-Form <i>or</i>	In absence of expected problems, maximize discretion of Plan Commission and BZA in development plan review; the property owners in some legal standing form pursue redevelopment plan review and entitlement
	Long-Form	A site/ re-subdivision plan is presented in the zoning ordinance particular to a geographic area
C	Concept Plan <i>and/ or</i>	Local governing body approves goals and general features of the PUR prior to formal redevelopment plan review
	GDP <i>and/ or</i>	A general redevelopment plan is presented in zoning depicting the general location and intensity of land uses
	Site/ Re-Subdivision Development Plan	A detailed plan is incorporated into zoning, akin to a development plan but formulated by the public
D	Local Governing Body <i>or</i>	Local governing body's approval is required on any changes to the redevelopment plan
	Plan Commission <i>and/ or</i>	Plan Commission handles all approvals pursuant to the ordinance
	BZA	PUR is a conditional use or requires variances or special exceptions, requiring Board of Zoning Adjustment approval
E	Overlay Zone <i>or</i>	Underlying zone prevails and controls redevelopment plan, subject to modifications in that plan
	Base Zone <i>and/ or</i>	PRD replaces underlying zoning
	Conditional Zoning	Local governing body prescribes detailed conditions regulating redevelopment
F	Method of Owner Compensation Prescribed <i>or</i>	Ordinance prescribes one or more methods of compensating land owners for the rezoning that results in winners and losers in property valuations, and especially in cases of windfalls and wipeouts
	Method of Owner Compensation Deferred	Ordinance defers to future legislation on differential valuation consequences of rezoning or prescribes conditions and options to be followed in future legislation

Of note is that enabling zoning state statutes do not limit the detail of zoning districts, which could embrace detailed site and subdivision plans, and pass the judicial test of spot zoning.

4. Legal Review of the PUR/ PUD

There are two categories of legal challenges to PUR's. One is the constitutionality of form-based regulations as falling under the police power's welfare [property values] condition. Such a challenge can be withstood if it adheres to the jurisprudential standard of the rightful use of legislative power, or its delegation to an administrative agency/ official, and if not constitutionally vague and, thus, a condition for due process.

The second challenge arises, as PUR must overcome spot zoning and nonconforming, pre-existing uses. Spot zoning is illegal if the individual parcel, small in scale, is designated a land use distinct from proximate uses and principally for the benefit of the parcel owner. The dual juris standard is established with [a] a clear public purpose, such as found in the comprehensive plan upon which the zoning is based¹³, and [b] documented with either a mixture of uses in the area or a trend toward the land use attributed to the subject parcel¹⁴. The second challenge is exclusively the province of the PUR, not the PUD and where owned by a single developer.

4.1 Form-Based Challenges

In his 2010 publication¹⁵ on designing PUD's, Daniel Mandelker presents the court challenge of design standards in land development ordinances. He bases this largely on a 2006 law review article¹⁶ that comprehensive reviewed state-by-state court cases, and categorized:

- a. Allow aesthetics to be used alone as basis for regulation¹⁷

¹³ See, e.g., *Hanna v. City of Chicago*⁵ (spot zoning occurs when a relatively small parcel or area is rezoned to a classification out of harmony with the comprehensive plan).

¹⁴ See e.g., *1350 Lakeshore Associates v. Casalino*, 352 Ill.App.3d 1027, 816 N.E.2d 675 (1st Dist. 2004).

¹⁵ Daniel Mandelker, *Designing Planned Communities*, iUniverse, 2010

¹⁶ Perlman, et. Al., "*Beyond the Eye of the Beholder Once Again: A New Review of Aesthetic Regulation*," 38 Urb. Law, 1119, 1120 (2006)

¹⁷ AS, AK, CA, CO, DE, FL, GA, HA, ID, MA, MI, MS, NH, NJ, NM, NY, NC, OR, SC, TN, UT, VM, WI, DC, and Federal jurisdictions

- b. Allow aesthetics when also justified by some other basis, but ARE moving toward “aesthetics alone”¹⁸
- c. # [b], but NOT moving toward “aesthetics alone”¹⁹
- d. “aesthetics alone” is not a valid governmental purpose, but will uphold such regulation if also based on another public purpose²⁰

The kernel of the Mandelker argument in judicial review for upholding aesthetics [form-based codes] in zoning is the standards be adopted legislatively before delegated to an administrative or quasi-judicial body, such as a Plan Commission, and that the standards be explicit and not vague. Mindful that there is no prohibition in the Federal or any state constitution that forbids the delegation of legislative powers, but state courts have actively applied the delegation of power in a range of highly limited or liberal decisions. Of course, the reasoning for explicit design standards is in the due process clauses of the 5th and 14th Amendments of the U.S. Constitution.

4.2 Spot-Zoning Challenges

The courts review factors such as the size of the parcel, the anticipated public benefit, the consistency with the comprehensive plan, and the consistency with surrounding zoning, and uses, to make a determination in denying a spot-zoning claim. The public benefit standard originated with in *Griswold v. Homer*,²¹ the Alaska Supreme Court found spot zoning to exist by considering a cost benefit analysis, as well as the size of the parcel in question and the rezoning in relationship to the comprehensive plan. Critically, it found that the spot zoning was absent because, among

¹⁸ AL, AR, CN, KS, LA, ME, MN, MO, MN, ND, SD, WV

¹⁹ IA, KY, NV, OK, WY

²⁰ IL, IN, MD, NE, OH, PA, RI, TX, VA, WA

²¹ *Griswold v. Homer*, 926 P.2d 1015 (Alaska 1996)

other things, the underlying ordinance resulted in genuine benefits to the City of Homer as a whole, and not just to the particular landowner.

Commonly, if the zoning is enacted in accordance with a comprehensive plan, it is typically not “spot zoning.”²² As far back as 1995, researchers concluded that the judicial tests widely known and a litany of cases denying its validity, that spot zoning had become an anachronism.²³

Nevertheless, the practice of the PUR to results in parcels gaining windfalls and others denigrating to wipeouts based on the land-use designation may see a resurgence of spot zoning legal claims. Accordingly, financial mechanisms to have windfalls compensate wipeouts, such as special tax assessments or the distribution of dividends in a mutual benefit corporation of neighborhood property owners emerges as essential.

4.3 Accommodation to Pre-Existing Land Uses

Zoning enabling statutes commonly set-aside “pre-existing” land uses, which may also prove to be “non-conforming” to the newly enacted local code. In all cases, the PUR must deal with these land uses, and property owner agreements facilitates this. These were discussed above, and may entail consortia agreements amongst all or several property owners, the membership in a mutual benefit neighborhood corporation, the provision for compensation among properties developed with different financial outcomes, etc. Benefit from this mode of zoning continues despite the lack of unanimity among all property owners to abide by the redevelopment plan, and indeed the redevelopment plan may be selective of properties.

²² See, e.g., *Jones v. Zoning Board of Adjustment of Township of Long Beach*, 32 N.J. Super. 397, 108 A.2d 498, 502 (1954).

²³ Osborne M. Reynolds Jr., “Spot Zoning”—A Spot That Could Be Removed from the Law, 48 Wash. U. J. Urb. & Contemp. L. 117 (1995)

4.4 Challenge to Vague & Inflexible Standards

For planned developments to be valid the case law makes clear that vague and inflexible standards must be avoided. These go beyond the challenge just to design standards and spot zoning. Prominent among this case law is the Colorado Supreme Court²⁴ promulgated twelve [12] standards for a valid planned development:

1. **Compatibility** with surrounding area
2. **Harmony** with the character of the neighborhood
3. **Need** for proposed development
4. **Effect** of the proposed PUD upon the **immediate area**
5. **Effect** of the proposed PUD upon the **future development of the area**
6. Whether or not an **exception from the zoning** ordinance requirements and limitations is **warranted** by virtue of the design and amenities incorporated in the PUD plan
7. Land surrounding the proposed PUD can be planned in **coordination** with the proposed PUD
8. Proposed change to the PUD District is in **conformance** with the general intent of the **comprehensive master plan and the general zoning ordinance** of the jurisdiction
9. Existing and proposed **streets** are suitable and **adequate** to carry anticipated traffic within the proposed district and in the vicinity of the proposed district
10. Existing and proposed **utility** services are **adequate** for the proposed development
11. PUD creates a **desirable and stable environment**
12. PUD makes it possible for the creation of a **creative innovation and efficient use of the property**

Given these explicit standards, the Court noted that PUD ordinances were a “modern concept in progressive municipal planning.” Applying standards was the necessity of meeting substantive

²⁴ *Tri-State Generation & Transmission Co. v. Thornton*, 647 P2d 670 (Colo. 1982)

due process. In a companion ruling of the Vermont Supreme Court, the principle of flexibility [e.g., granting waivers of specific standards] must be compliant with the general standards of the ordinance.²⁵

It appears conclusive that judicial review honors for planned developments the contextual matters of legislative land development general standards and the process of planning as a precursor for legislation. The ordinance for PUD's [and PUR's] benefits from comprehensive planning, and as a child of both necessity and general benefit.

The courts have yet to rule on PUR's use of the mutual benefit corporate or contractual form of cooperation among property owners and the compensatory measures of dealing with windfalls and wipeouts.

Further, in a PUR the needs and effects of the development plan may override the compatibility of the surrounding area and harmony of the neighborhood, providing new land uses and contemporary forms essential for redevelopment purposes. The question is whether the redevelopment objectives and strategies of the neighborhood are harmonious with the needs of that neighborhood; it is challenging to consider that it is not.

4.5 Legally Requisite Standards for PUR's

There are a series of issues in establishing a PUR ordinance, in its administration and in the conduct of redevelopment of the subject neighborhood. The resolution of these issues is discretionary to the jurisdiction, and that we highlight only.

²⁵ A similar approach taken in *Pierce Subdivision Application*, 965 A.2d 468 (Vt. 2008) regarding a PRD ordinance authorizing cluster housing

4.5.1 Plan Presentation in the Ordinance

The zoning ordinance may declare the PUR as its own base district or as an overlay for the underlying base district or a portion thereof. The advantage of an overlay is that the PUR district requires a certain degree of cooperation among properties owners within and when achieved could qualify for the overlay. The requirements for either involve the presentation of a site/ subdivision plan of one of the following orders, or in their combination:

A. A **General Development Plan [GDP]**, demonstrating the general locations and intensities of land uses, and their conditions, if any. For example, on arterial roads the plan may show mixed uses in retail, office and multifamily with the highest density in dwelling units and F.A.R. per acre. It may also designate 24/7 mixed retail/ professional office with residential at corner lots. It may demonstrate conditions for shared spaces, such as decked parking or community centers or shared retail services [e.g., food coops, grocery stores, sales of maker district products]. These conditions could include that attendant to the access road, density of adjoining uses, and even a distribution of land uses by range to serve a balance of neighborhood needs [e.g., 5-20% of total land uses in food services].

B. A series of **Redevelopment Plans** [site and subdivision plans] from preliminary to final. This results in approved lots for development as authorized by zoning, and inflation of property values as approved land parcels. “Developer commitments” would be for form-based matters, “urban amenities,” anti-displacement, affordable set-asides, compensation for wipeouts or the sharing of gains, etc. As this may eliminate the need for land developers, except for common area improvements²⁶, builders can readily receive building permits, upon meeting those requirements

²⁶ On-site improvements, such as shared parking, recreational spaces, land or building dedications for public purposes; off-site improvements, such as street improvements, complete streets.

and bypassing the Plan Commission/ BZA. The local building or zoning administrator may administer these commitments, or as preliminarily delegated to a recognized neighborhood organization.

C. **Rules for granting variances** in the development plan or the GDP. These must prescribe the procedure, prescribe criteria, and not violate the general objectives of the plan as delineated for each type of plan above. For this reason among others, the plans for development must emerge from a neighborhood or comprehensive planning process, and adopted by the local governing body.

D. In a modification of [B], the **Selective Redevelopment Plan** would single-out existing land parcels as the subject of significant improvements, including adaptive reuse. For illustration, the neighborhood's redevelopment objective is to remedy the problem of vacant and abandoned housing at 15% of its stock, and those parcels become the subject of the plan. Alternately, the neighborhood may recognize itself as a food desert or entailing food insecurity, and designate parcels for attendant land uses of crop farming, grocery outlets, etc. The redevelopment plan may leave unattended all other parcels, including those that may require less than gut rehabilitation or that would prove more suitable in a reuse. It may preserve certain parcels until they are vacant for enough time to be the subject to the new ordinance. The degree of selection is discretionary and the subject of a planning study.

4.5.2 Failure to Redevelop or Maintain

Although common to PUD under the control of a single land developer, the need for penalties [e.g., performance bonding] or reversion to the underlying zone appears incongruous with the redevelopment model outline above. Failure would simply mean that existing land uses would continue until the time another redeveloper would procure site control.

Of course, success to redevelop may bring issues of maintenance of private and common area properties. Utilized is the convention of property maintenance codes as enforced, special tax assessment authority implemented, and HOA or Merchant Association/ BID organizations with ability to establish fees for remedy.

5. Feasibility of the PUR

Traditionally, development plans presented for local approval entail a single property and developer. In PUR, land is not assembled in the conventional sense of purchase, and the redeveloper may be a consortium of existing property owners, managed by themselves or contracting with a master developer or construction management company. The property owners may be the developer or the consumer, they may experience windfalls or wipeouts in the process of redevelopment as some parcels will change uses and intensities, up or down in valuation, and others remain but would experience improvements.

5.1 Valuation Differentials

Pursuant to the 1992 *Lucas*²⁷ decision, short of a total taking [i.e., rendering the land parcel without economic value], or present a compelling state mandate, localities may increase or decrease the value of property through land development ordinances. These are depicted in Figure 2.

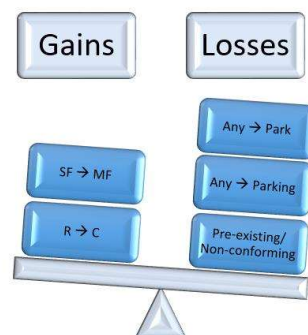


Figure 2. PUR Owners Gains/ Losses.

²⁷ 1992, U.S. Supreme Court, *Lucas v. South Carolina Coastal Council* (112 U.S. Supr. Ct. 2886)

There may be wipeouts in a PUR, with some parcels re-identified as open space, say as a neighborhood park owned by the HOA or similar collective, or maintained by the city. There may be near wipeouts for less intensive uses, such as parking. On the other hand, the net effect may well be windfalls with many uses becoming more intensive, such as multifamily or mixed-use.

The options in compensating for value differentials as a consequence of the PUR rezoning are depicted in Figure 3.

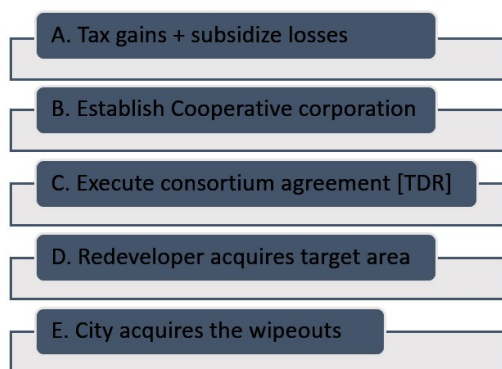


Figure 3. Methods of Compensation in a PUR

5.1.1 Tax Gains & Loses

The convention is a *special assessment* by the locality of positive and “negative” taxes. Those experiencing a gain in real estate valuation are taxed, and those with a loss are compensated. Controlled are any improvements on the property, of course. As the PUR is designed as a net positive economics, those taxed should compensate for those losing value, with funds remaining for public services and capital improvements.

5.2 Establish Cooperative Corporation

The owners in the target area establish a cooperative corporation [for-profit, but with a social mission]²⁸, and either as a *producer coop* [serving as the redeveloper] or a *consumer coop*, serving as consumers of the PUR improvements. The shareholder agreement sets the method of compensation. This is my preference and achieves the required community organization.

5.3 Execute Consortium Agreement

This has the similar effect of a cooperative corporation or “B” corporation, but with less dynamics, although the consortium or property owners’ agreement is subject to amendment. Thus, the legal form is a contract to be civilly enforced. The common Transfer of Development Rights [TDR] is a longstanding instrument for windfalls compensating wipeouts, and holds the promise of property gains compensating property losses short of a wipeout.

5.4 Redeveloper Acquires Target Area

We return to urban renewal, where the private redeveloper or the Redevelopment Commission acting as the redeveloper, and attracting builders, acquires the target area. If blighted, a declaration of the same is pre-required for condemnation. This is fraught with either the politics of contention or cooperation, however.

5.5 City Acquires the Wipeouts

A facile solution is to avoid the wipeouts in meeting the judicial test, and so the city acquires those parcels dedicated as city parks or other forms of open space. This is not comprehensive compensation, only that required pursuant to *Lucas*.

²⁸ In Indiana and other states there is also the “B” corporate form, with a social purpose above and beyond the “C” corporation.

6. The Form of the PUR

In studio, a team of graduate urban planning students performed a PUR plan for a targeted neighborhood in the City of Muncie, IN, the Gilbert neighborhood. Below is a site/ re-subdivision plan that was produced in Figures 4 and 5. Their plan presented four [4] phases.



- Legend
- | | | | |
|-----------------------|---------------------------------|--------------------|-----------------|
| Neighborhood Boundary | Commercial/Professional Offices | Community Services | Live/Work Homes |
| Mixed Use Development | Single Family Residential | Parking Structure | Green Space |

Figure 4. Gilbert PUR Plan Aerial View with Legend of Land Uses



Figure 5. Gilbert Plan Birds Eye View

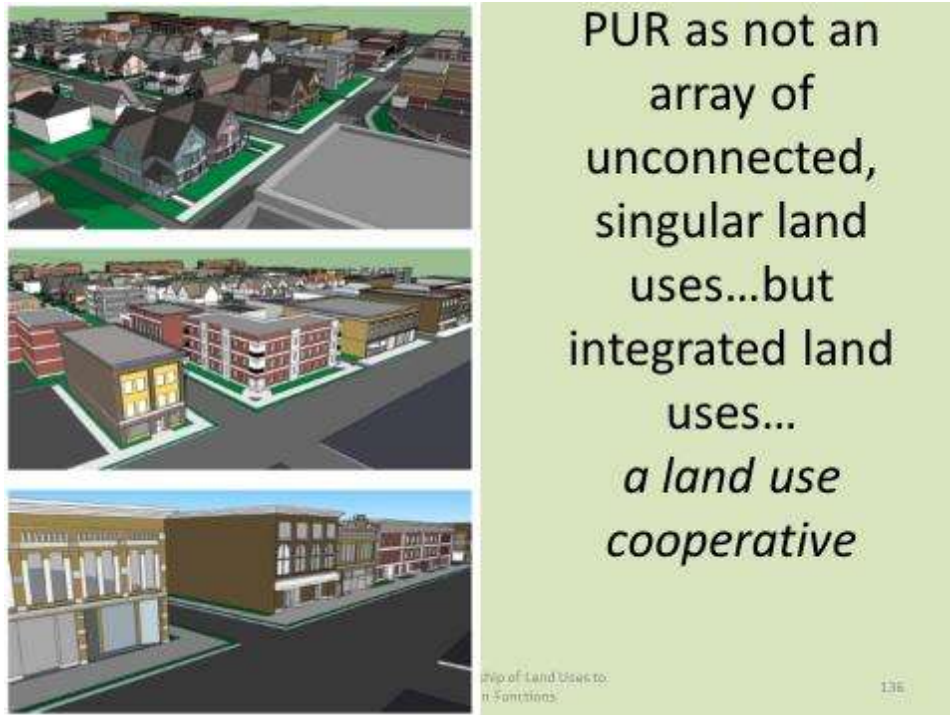


Figure 6: Aspirations of a PUR.

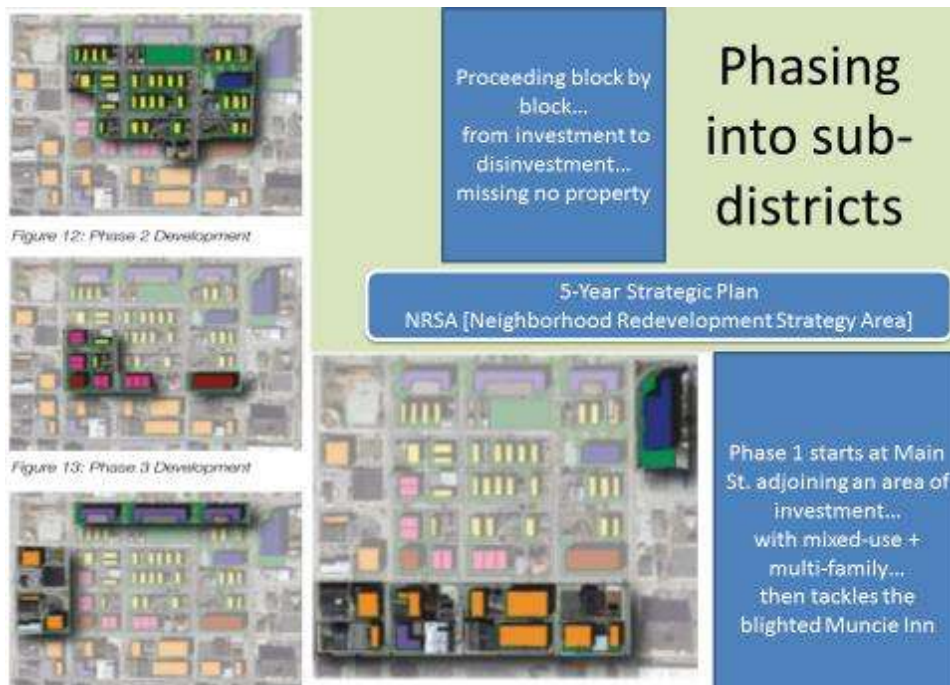


Figure 7: Example Phasing into Sub-districts.

7. PUR Light Alternative

Absent a well-organized mutual benefit corporation to manage windfalls and wipeouts, a viable alternative is to formulate and put in place a more specified General Development Plan [GDP] as the new zoning district.²⁹ All economically non-productive land uses, such as free parking, parks, community centers, and public facilities are either bought by the city or the neighborhood association as incorporated, and akin to common areas of a subdivision owned and managed by a homeowners association. However, this would prove a spot zoning denial of economic use and, thus, illegal unless there was a mandate to purchase for the existing fair market value prior to the new zoning. Such mandate would not pose a significant barrier.

Conditional uses direct the redeveloper, constituted as individual property owners or a consortium thereof contracting a professional firm, toward specific locations that meet certain conditions for various special land uses. These uses may be live-work-sell, professional offices, retail, etc. and with conditions such as on arterial or connector streets only, at the corners of neighborhood streets, proximity to public parking, etc. Terms of the use may consider a form-based code component. For example, the district may allow for a big box retail that sells only the works and services of local residents in “production, distribution, repair” [PDR] in the manner of a “maker district,” or the more familiar farmers market with only local growers.

²⁹ West Lafayette, Indiana, has adopted a similar code [2017]

8. Conclusions

To put planning into land development controls, communities must meet the challenges. Zoning accommodates multiple uses, but needs to make way for coherent, coordinated, and strategic mixed uses. Residential districts should urbanize with 24/7 retail, consumer-serving professional office and live/ work/ sell arrangements. Downtown districts need to add residents to their day workers, realizing retail as a child of this marriage. Bedroom suburbs are considering tract subdivisions and reaching for a center with mixed uses. Planning and zoning should further its response to significant demographic demand for urban living, the millennial market, and addressed well, perhaps only, through the PUR. Proposed here is to accelerate the repopulation of metro cities and small towns.

At the center of these challenges is the role of community organization. The collaboration of neighborhood property owners for the common cause of redevelopment and the creation of an investment market may take many forms, but most promising is the producer/ consumer cooperate. Further, that same organization also markets the investment, finds end users, and otherwise promotes the plan. That same organization eliminates the necessity, but accommodates the role, for the redeveloper and its profits, relying instead on builders or even on their trades as contractors. The PUR is recorded in zoning, in an agreeable detail of a site/ re-platting plan of particular land uses per parcel, which may be changed through consolidation or further subdivision. Winners compensate losers in land value differentials based on changes in current valuation through shareholder agreements, special assessments/ subsidies, or the city's role in acquiring the "wipeouts."

Planners are called to claim the regulatory environment they commonly administer. A planner's formulation of such land development control ordinances would encourage a reclamation of

downtowns and neighborhoods of disinvestment, instead of merely shooting for conflict mitigation, the province of our legal community. Cooperation with a strategy emerges as the promising agent of change for our distressed communities.

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