AFFORDABILITY ROADBLOCKS

Planned Unit Developments

Housing Affordability Institute's Affordability Roadblocks series highlights housing policy issues adversely impacting housing affordability and access.

PLANNED UNIT DEVELOPMENTS

A "Planned Unit Development", or PUD as it is more commonly known, is a form of zoning in which project applicants and municipalities to bypass zoning controls as a form of variance. Initially intended to be used sparingly for creative and unique projects, PUDs have become the default form of residential zoning for Minnesota suburban municipalities in the Twin Cities growth plain.

What sets a PUD apart from a traditional variance is the *quid pro quo* aspect. A project applicant must "give" exactions to the permitting municipality, in order to "get" the zoning variance. The PUD "give-to-get" relationship does not exist in other zoning variances in Minnesota.

ON PLANNED UNIT DEVELOPMENTS

Salim Furth, senior fellow at the Mercatus Center at George Mason University, studied PUDs in Minnesota and found that roughly half of all new homes in suburban Twin Cities from 2010-2019 were approved via PUD, with caution that the number may be higher due to PUDs labeled as their approved zoning form[1]. In his testimony before the Minnesota Legislature, Furth said:

> *"Mounting evidence suggests that the institutions of development in suburban Minnesota are broken. An increasing number of suburbs are abandoning traditional zoning in favor of PUDs. PUDs are appropriate for unique or innovative projects, but they are an invitation to opaque policymaking and favoritism. In addition, the creation of a PUD agreement involves up-front administrative costs, making it uneconomical for small-scale builders.*
>
> *PUDs used for routine subdivisions are a warning that something is not working as it should."*[1]

[1] Furth, S. Mercatus Center at George Mason University. "Rights, Responsibilities, and Preemption in Minnesota." https://www.mercatus.org/publications/urban-economics/rights-responsibilities-and-preemption-minnesota Retrieved March 2, 2022.

SPECIFICATIONS

A PUD is a privately negotiated deal between a developer and the local unit of government with jurisdiction over land use approvals. To achieve density other than what is allowed under zoning controls. In exchange for this density variance, municipalities will impose additional conditions on project applicants. These conditions can include land dedications and/or funds for parks and trails outside of the local fee schedule, off-site improvements, illegal impact fees and taxes.

Complicating the PUD discussion is that local zoning controls often conflict with a municipality's stated comprehensive plan. On paper, a project applicant is told the density is greater (and more attractive) than what a municipality will allow. Achieving the comprehensive plan's density can only be achieved through a variance that a municipality is more than willing to grant via a PUD.

At issue with PUDs is the voluntary nature of both the terms of a PUD and the consent to a PUD in lieu of straight zoning. Municipalities contend PUD terms are voluntary and that developers request PUDs. Home builders say that at the middle-class price points, a variance on density is often necessary as the market cannot bear existing zoning controls. As for the terms of a PUD, developers contend they face the danger of project denial if they fail to consent to any term.

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The Minnesota Supreme Court, in *Harstad v. Woodbury*, expressed skepticism of the so-called "voluntary nature" of terms placed on subdivision approval in Minnesota. In its decision on the issue of Traffic Impact Fees, the court's opinion states:

> *"Put another way, the pearl of great price here is approval of the subdivision agreement. A developer who fails to make a "voluntary" payment in an amount Woodbury [municipality approving a development] finds acceptable faces the prospect of denial of the subdivision application. The infrastructure charge is thus a requirement and Harstad [the project applicant] is correct that there is nothing voluntary about it."*[2]

[2] Harstad v. Woodbury, A16-1937 14-15. (Minn. 2018)

PLANNED UNIT DEVELOPMENTS AND HOUSING AFFORDABILITY

PUDs are individually negotiated private deals, each with unique terms and conditions, making it difficult to express a consistent per unit cost impact. Instead, the cost impacts can be expressed as the cost of each specific provision. According to Minnesota home builders, cost impacts of common provisions of PUDs have included:

UP TO $20,000 PER UNIT
Four-Sided Aesthetic Mandates With Partial Stone Façade

UP TO $9,000 PER UNIT
Excessive Park and Trail Costs, Excluding Trail Land

UP TO $45,000 PER UNIT
Extra-Large Garage , Added Lot Width and Construction Cost

ADDRESSING PLANNED UNIT DEVELOPMENTS

For growing communities in Minnesota, the reliance on PUDs far exceeds "straight-zoned" projects that adhering to existing zoning controls. Options exist at both the local and state level in Minnesota.

Municipalities have several options, including reforming local zoning codes to allow greater flexibility or allowing the requested density. Municipalities can also elect to abandon the quid pro quo aspect, as nothing in Minnesota State Law requires the "give-to-get" actions which have a negative effect on affordability. Of course, local housing markets do not begin and end at a single municipality's border. Markets span city, county, and even state lines. Substantive action at the local level must be near universal to have any impact.

As suburban Minnesota municipalities have shown resistance to willingly reform the PUD process, the Minnesota Legislature has explored options. Legislation has included aligning zoning controls to comprehensive plans which already include greater density, exaction limits, explicit bans on aesthetic mandates and extra-large garages, and shifting to voluntary PUDs.