

Planned Unit Developments: The Ups and Downs of Custom Zoning

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What is a Planned Unit Development?

- Zone district category – “custom zoning”
- Designed to allow for more flexible site designs
- Intended to encourage more diverse site designs
 - Density
 - Spacing
 - Heights
 - Setbacks
- Often result in increased negotiations with land authorities and adjacent property owners

Before PUDs

- Euclidean zoning – fixed uses and requirements for specified areas
- Cookie cutter – limited opportunities to
 - mix uses
 - vary housing types
 - plan effectively for open space
 - Consider the project as a whole

State PUD Legislation

- Colorado adopted the Planned Unit Development Act of 1972, Colo. Rev. Stat. §24-67-101 et seq.
- Generally authorizes local governments to authorize PUDs
- Goals include:
 - Convenient colocation of commercial, recreational, and residential facilities along with safe industrial sites
 - Encourage innovation in development
 - Encourage efficiency in land use and traffic planning
 - Encourage integrated planning among stakeholders

State PUD Legislation

- Notable PUD Act Provisions
 - Requires local governments to follow certain procedures when developing and implementing PUD ordinances
 - Statement of objectives
 - PUD review board
 - Application and review procedures
 - Conformity with local government master plan
 - Standards and conditions for PUDs
 - Enforcement
 - Modification

Typical PUD Provisions

- Permitted Uses
 - Many jurisdictions allow any use that is otherwise permitted under any other zoning district within the jurisdiction
 - Others restrict permitted uses in various ways
- Plan requirements
 - Different jurisdictions name them differently – general development plan (Aurora), district plan (Denver), preliminary development plan and final development plan (Arapahoe County), PDO plan (Littleton), MDP (Arapahoe County, used for office park and light industrial park developments).
 - Some extremely specific, some more general
- Read the ordinance!

Typical PUD Provisions

- Examples of plan requirements:
 - Location of land uses by type
 - Gross acreage, square footage, and height
 - Parking (vehicles and bicycles)
 - Public and private open space
 - Pedestrian circulation
 - School sites
 - Setbacks and separation of buildings
- Additional conditions may be imposed on the overall plan, usually as a result of public involvement
 - Design
 - Construction Requirements
 - Operational Requirements

Typical PUD Provisions

- Review Procedure
 - General requirements usually set out in zoning code
 - More specific procedures may exist in other documents
 - Review by the Planning Commission and the City Council/Board of County Commissioners
 - Denver
 - Zoning Code (2010) classifies PUD as a map amendment requires PUD review under that process
 - Still must be reviewed by the Planning Board and City Council

Typical PUD Provisions

- Review Standards
 - Ordinances must reflect the standards by which a PUD will be evaluated, and those standards must be consistent with State law
 - Some jurisdictions use their general review standards
 - Other jurisdictions develop more specific review standards
 - Jefferson County allows the reviewing entity to consider impacts on the surrounding area, mitigation, conformance with land use plans, and the adequacy of public services for the proposed use

A Note about Due Diligence

- PUDs can impose very specific requirements on property
- Just determining zoning will not be enough
- Need to review PUD Plan itself
- Be careful to check amendments

PUDs and Vested Rights

- Colorado vested rights statute requires local governments to identify site specific development plans.
- Unless the local ordinance specifies otherwise, a PUD can qualify as a site specific development plan and is vested for a period of three years after approval

PUDs, HOAs, and Covenants

- In some states (not Colorado), the term “PUD” can refer to the way a community is governed, not zoned
 - In Colorado, these communities are known as “covenant controlled communities,” “common interest communities,” or “planned communities”
 - See Colo. Rev. Stat. 38-33.3-101, et seq.
- In general, these communities:
 - Are governed by private restrictive covenants
 - Common areas (pools, etc.) owned by the association
 - Impose a monthly or yearly assessment fee
 - Can impose significant restrictions on individuals

PUDs, HOAs, and Covenants

- PUD zoning different from private covenants imposed as part of a common interest community
- Zoning authority will not enforce the private covenants
- A PUD zoned property does not mean that it is a planned community, and a planned community may not be zoned PUD
- Planned communities are subject to other non-zoning statutory requirements (CCIOA)

Common Issues with PUDs

- Amendments
 - Sometimes must be processed as a new PUD
 - Administrative or minor amendments usually follow a different process
 - Issues with which parties must be involved in the amendment process, especially if portions have been sold
- Responsibility for Implementation
 - A well-drafted PUD should be very specific
 - Most jurisdictions require some financial assurance for common use or open space projects

Common Issues with PUDs

- Applicable Development Standards
 - Missing terms
- Obsolete PUDs
- Appropriateness of Conditions
 - Local governments may not impose “individualized exactions”
- Minimum Size Standards

Advantages of PUDs

- Flexible Site Design
- Allows negotiations between property owners, adjacent landowners, and local jurisdictions
- Comprehensive treatment of infrastructure requirements
- May result in cost savings over traditional development

Disadvantages of PUDs

- Difficult to administer over time
- Limited flexibility over time
- Negotiations can be complex and time consuming
- Sometimes results in too much individualized zoning

Key Cases

- Spiker v. Lakewood, 603 P.2d 130 (Colo. 1979)
- Tri-State Generation and Transmission Co. v. City of Thornton, 647 P.2d 670 (Colo. 1982)
- Beaver Meadows v. Bd. of Cnty. Comm'rs of the Cnty. of Larimer, 709 P.2d 928 (Colo. 1985)
- S. Creek Assoc. v. Bixby & Assoc., Inc., 781 P.2d 1027 (Colo. 1989)
- Applebaugh v. Bd. of Cnty. Comm'rs of San Miguel Cnty., 837 P.2d 304 (Colo. App. 1992)
- Wolf Creek Ski Corp. v. Bd. of Cnty. Comm'rs of Mineral Cnty., 170 P.3d 821 (Colo. App. 2007)
- Bd. of Cnty. Comm'rs of the Cnty. of Boulder v. Hygiene Fire Prot. Dist., 221 P.3d 1063 (Colo. 2009)

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