AN INTRODUCTION TO THE MODEL ENABLING ACT FOR PLANNED RESIDENTIAL DEVELOPMENT *

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The cookie-cutter pattern of residential development to which the country became accustomed during the decade after World War II is now being challenged. The shift in the suburban house market from a seller's paradise to a hot contest for skeptical buyers has occurred simultaneously with demands for new ideas in center city residential development. These pressures have produced imaginative proposals by planners and land developers for significant changes in the design of residential subdivisions. The heart of these new concepts is a rejection of the homogeneous, single lot, single family subdivision. The proponents of these new ideas urge that by every reasonable test—from the economic to the aesthetic—the development of open land and the redevelopment of reclaimed land should not only provide a variety of housing types but, to meet the needs of a new and more sophisticated market, should offer a variety of amenities that seemed superfluous ten years ago. Advocates of the new concepts also make a persuasive argument that the planning of large scale developments cannot be subjected to a degree of preregulation which assumes that every tract of land is fungible and can be controlled in advance by the same rules that govern all other tracts of land.

The most serious obstacle in the path of these new ideas is the orthodox zoning and subdivision regulations that swept the country in the twenties. These ordinances were—and in most instances still are—bottomed on the assumptions that dwellings must be segregated by type, that creation and maintenance of open space is solely a function of government, and that the home building business is conducted by master craftsmen who merely construct a single house on a single lot.

The disparity between the condition of the law and the realities of the market would not be quite so serious if adoption of the new

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concepts were only a matter of municipal regulation. The rub is that in nearly all jurisdictions the municipalities rely upon authority delegated from the state in order to regulate the use of private land, and the statutes that enable municipalities to regulate land use reflect the same antique assumptions about land development that are antithetical to the new techniques.

An observer of the dreary residential construction in the fifties may regard with skepticism a piece of legislation cosponsored by a group such as the National Association of Home Builders which represents the interests of an important segment of the homebuilding industry. It has been the purpose of the sponsors of the statute, however, to combine substantive flexibility and administrative certainty for the developer with necessary protection for the municipality.

This model enabling act was drafted to provide a legal framework within which new ideas could be tested and new demands could be better satisfied. The fact that numerous municipalities were already experimenting with local regulations to accommodate the new concepts—in the absence of any clear authority from the state—was considered an argument for proposing such legislation, not a reason to ignore the situation. For example, the durability of devices employed by municipalities to bind the developer to his representations on permanent common open space is questionable in the absence of clear statutory authority.

Specifically, new enabling legislation is necessary because:

1. The subdivision (platting and design) function and the zoning function (use and bulk) are treated separately in the statutes and in the ordinances. This separation may be no more than a nuisance to the developer under Euclidean zoning, but it is a serious obstacle to the use of the Planned Residential Development. Density zoning can function best when these two regulatory devices are treated as one issue, at one time, by one agency.

2. The legislative-administrative dichotomy in local regulation of land use and platting raises unnecessary problems at the level of judicial review. The source of the difficulty is that the subdivision function is frequently treated as an administrative responsibility, while the zoning function is considered legislative. This distinction is accentuated in density zoning where preregulation to the degree common in orthodox zoning is unacceptable. Enabling legislation should eliminate the distinction between administrative and legislative action at the municipal level in order to permit a local body both to operate in an *ad hoc* manner, subject to standards, and to permit re-

viewing courts to impose strict accountability on that local body whether it be regarded as legislative or administrative. By imposing more stringent procedural safeguards on the increased discretion inherent in any departure from orthodox zoning, a new statute can minimize, if not wholly eliminate, the abuses which uncontrolled density zoning invites. Moreover, when the local legislature departs from its traditional role of general rule making and, in effect, grants land use certificates or licenses in particular cases, the courts should be in a position to review that action to insure equal protection and procedural due process in a manner similar to judicial treatment of administrative decisions of state or federal agencies.

3. The enabling legislation presently in effect does not anticipate the problems arising out of the creation of open space by density zoning. Most current legislation is silent on the right (or nonright) of the municipality to take over the collection of assessments, or to enforce, or, indeed, to authorize the modification of private covenants previously required or approved by the municipality. The identity of the persons responsible for the continuing control of common open space is also unclear under current law.

4. There is doubt in some jurisdictions whether planned developments are permissible under standard enabling acts that require "uniformity" as the touchstone of zoning law. Even greater uncertainty would result if any one jurisdiction were to hold that the standard zoning enabling act was incapable of supporting a planned development. There are municipalities which express a desire to enjoy the benefits of density zoning but articulate a concern over their power to do so. This uncertainty is also of increasing concern to mortgagees and title companies. The statute would eliminate the fears of all interested parties by clearly making this power available on an optional basis.

This proposed act is not intended to supplant the standard enabling acts which, along with their dependent ordinances, are appropriate for the regulation of land use in neighborhoods that are already substantially developed. Rather, this act, which may be considered an amendment to the previous acts, is designed to authorize unequivocally new techniques of land development in cases where those techniques are deemed appropriate by the municipality.

The statute begins with (section 1) the constitutional generalization of the preamble; continues with (section 2) a delineation of the boundaries within which this technique shall be employed if the mu-

nicipality so chooses, (section 3) an enumeration of the basic criteria required by the state in all cases, (section 4) the definition of the respective interests of the residents and the municipality in the enforcement and modification of the plan, (sections 5-10) a chronological account of the procedural steps which a prospective applicant must take in the course of local administration and possible court review; and concludes with (section 11) the definitions.