

**AN ANALYSIS OF PLANNED UNIT DEVELOPMENT (PUD)  
REGULATIONS AND PROCESSES IN WASHINGTON, DC:  
A DEVELOPMENT RISK MANAGEMENT CASE STUDY**

by

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“There are some kinds of uncertainty that are, to an extent, within the developer’s control. They can be identified, measured, and contained. Others are more difficult to control and to a large extent have to be accepted as part of the development risk. One such element of uncertainty is that of time. Property development is a dynamic process and time runs through it as a constant source of uncertainty.”

(Byrne, 1996, p. 5)

## **ABSTRACT**

The following report details the current state of the Planned Unit Development (PUD) regulations and procedures in Washington, DC. Based on interviews with planners, community leaders, land use attorneys, architects, and developers with extensive experience working on PUDs, the report answers the questions: how are the regulations and the processes currently working, and what are their specific strengths and weaknesses?

The report finds that the process’s overarching shortcoming is its uncertainty: developers seldom know how long the process will take, or what the final required proffer to the community will be. The large variation between proffer packages and the variation of timing is caused, in large part, by the fact that communities do not know how to get involved in the PUD process, and are unsure about the breadth and scope of their allowed involvement. This variability of outcomes makes it challenging for developers to embark upon new PUD projects, since the more closely they can model expected outcomes, the more carefully they can manage the inherent risk involved in undertaking

PUDs, and vice versa. In addition to making the process difficult for developers, the discrepancies between final PUD proffer packages may seem inequitable to communities, many of which may feel unfairly treated when they receive far less in a PUD negotiation than another neighborhood or community.

In light of these findings, this report recommends a number of ways to improve DC's PUD process; these recommendations are a menu of options from which the city can pick and choose to meet its goals. First, the city could much more clearly state the rules and timing of engagement between communities and developers. Second, once the process is more clearly defined, DCOP could actively educate communities about how the process works and how they can get involved productively. The city could conduct training sessions with ANC members and other community leaders. Third, DCOP could act as a facilitator for communities, helping guide them through their role in the PUD process. Fourth, DCOP (or some other third party) could act as a mediator in all interactions between the communities and the developers. This third party's role would be to keep the process organized and equitable, and to act as a referee, or an objective "truth-teller." Fifth, communities could create their own inventories of needed improvements, before any PUDs are begun, so that developers could base their initial proffers off of those lists of needed items. Sixth, it is possible to shorten other aspects of the process—outside the community-developer interaction—that delay it unnecessarily.

Implementation of these recommendations will help the city improve its PUD process, but it is important to note that these solutions represent simply tinkering around the edges. Instead of this tinkering, I recommend that DC radically re-think its PUDs, recognizing that it uses PUDs a type of super-variance, or incentive zoning, instead of

consistently with other cities' use of PUDs. There are many options for radically re-thinking PUDs in DC, including eliminating the PUD regulations and process entirely; making actual zoning match the city's desired development patterns, rather than forcing developers to apply for variances to meet those desires; making only very large tracts of land eligible for the PUD process; and establishing two separate processes for PUDs of varying sizes. DC's top policy-makers must ultimately decide upon the direction in which they will take the city's PUDs—whether tinkering with the process to address its shortcomings, or altering it dramatically to address its fundamental purpose and structure. No matter its course of action, the city should shape its decision with input from the community, in a way that accounts for the political climate and economic feasibility of each option, and that always keeps the best interests of the public at the fore.

## INTRODUCTION

This report examines the Planned Unit Development (PUD) regulations and processes in Washington, DC. It seeks to uncover the actual step-by-step experience of the process for each party involved, as well as the process's strengths and weaknesses. In addition, it attempts to understand the existing relationships between developers, planners for the DC Office of Planning (DCOP), architects and lawyers who work on PUD projects, and the community leaders called Advisory Neighborhood Commission (ANC) members.

One might imagine that the PUD regulations and process would be clearly laid out and defined, and that there would be little room for interpretation, confusion, or criticism. This is, however, not the case. Indeed, in the years preceding this report, DCOP has received numerous complaints about the PUD process from developers, ANC members, and citizens alike, each asserting that the process seemed unfair, poorly organized, overly complicated, and ineffective. Some involved in the process maintained that the regulations were overly restrictive, while others called them too vague. Others emphasized that there seemed to be little consistency between PUD project outcomes.

Similarly, DCOP planners had noted that some neighborhoods had successfully negotiated for numerous amenities in exchange for the granting of a PUD, whereas other neighborhoods had received nothing in return for a developer's PUD approval. Many at the Office of Planning wondered if these concerns were valid and substantiated, and, if so, how the underlying causes of these issues could be addressed. Overall, DCOP was eager to learn what the experience of going through the PUD process was like for each party involved, so that it could ultimately improve that process for *all* parties involved.

Posing and answering these fundamental questions is valuable to the city for a multitude of reasons. First and foremost, any city agency is, in many ways, a service organization, responsible for listening to and responding to its customers—citizens and businesses. If these “customers” of public government complain about a process, the city is obliged to examine the validity of their complaints, and to make adjustments and improvements as needed. In this case, recommendations for the city to improve upon the process in response to these public concerns can be found in the second half of this report.

Secondly, cataloging the process in such depth will allow the city to increase transparency for all those who have a stake in PUDs and neighborhood change. In any ongoing process, each party may only see his own slice of it, and may not know what the experience entails for the other parties involved. Bringing DC’s PUD process’s steps into the light is not only the necessary reaction to the complaints of the city’s “customers,” but also it makes known to each party what the other is experiencing. In that way, also, the process can be made more fair, as well as more efficient.

Beyond the particulars of this case and this city, many cities struggle with how to incorporate feedback from their communities equitably, efficiently, and reasonably into the development process. In most development scenarios, there is a fundamental struggle over the balance of power between developers, the city, and the public as to who should have the right to impose its will upon the other groups, and how much formal input each group should be allowed. This report examines one case of that balance of power, and offers guidance for ways in which the needs of *all* parties can be most equitably and efficiently met. These suggestions can be taken beyond the city itself, and incorporated

into any city planning process in which an active, open negotiation between developers and communities is required or desired.

Finally, this report seeks to understand the PUD regulations and process as part of a larger question about risk, an unavoidable component of any real estate development project. *Without* risk of delay or increased expense, for example, practically anyone could be a successful real estate developer. According to this project's findings, navigating a PUD process creates enormous additional risks for real estate developers: namely the risk that the project will take much longer than anticipated, and that it will cost far more than was budgeted. The report lays out a number of ways in which developers can address and mitigate those risks, as well as ways in which the city itself can reduce those risks through its regulation and guidance. These recommendations should improve DC's PUD process for developers and the public. More importantly, these recommendations should be helpful for any city attempting to open the channels for the efficient flow of private capital, while concurrently upholding the best interests of the public.

## **Methodology**

As stated above, the majority of this report was created at the behest of the Washington DC Office of Planning (DCOP), over the course of the summer of 2007. The new 2006 Comprehensive Plan for the City of Washington, DC had mandated that DCOP provide a thorough examination of the PUD regulations and processes, about which it had received many complaints over the years.



In order to meet that mandate, I first examined the city’s zoning regulations, to understand how the PUD regulations and processes were officially laid out and to understand what information may have been lacking in those regulations. I also drew on a number of academic and research sources to understand the broader nature of PUDs throughout the country, so that I might further understand best practices, as well as be able to compare DC’s use of its regulations to other cities. Third, I conducted interviews with twenty-six individuals—twenty-two in person, and four via phone. The twenty-two included ten DCOP planners; four land use attorneys with experience representing clients going through the PUD process; one DC-based land use expert working with a legal firm on PUDs; three DC-based architects who have designed PUD projects; three Area Neighborhood Commission (ANC) Commissioners whose communities have faced PUDs, and three DC-based developers who have gone through the PUD process. Phone interviews regarding PUDs were conducted with planners from Alexandria, VA; Arlington, VA; Baltimore, MD; and Boston, MA. These were selected as comparable size cities, and competitors to Washington, DC.

The purpose of each in-person interview was to determine the nature of the PUD experience—namely, what the process entails, and the challenges individuals and organizations face in going through it. The interviews were also meant to tease out exactly what the purpose of PUD regulations should be, and whether or not the PUD regulations—in their current state—were achieving that purpose. The following paper presents the majority of the results of that research, as well as an examination of how DC’s PUD regulations and processes provide an example of risk and uncertainty in the development process.

## **What are PUDs?**

Planned Unit Developments (PUDs) are both a process and the physical project that emerges from that process. The phrase is also used informally to refer to the PUD ordinances or provisions that describe the process and projects that result from it.

According to the American Planning Association (APA)'s PAS 545 Report, *Planned Unit Developments*, jurisdictions around the country think of and use the PUD concept in a number of different ways, most of which are quite different from DC's use of the concept. The different types of developments that PAS 545 qualifies as PUDs or master-planned communities are:

- 1) Single family residential density transfer, or cluster, developments, with no increase in density.
- 2) Single-family residential development with an increase in density.
- 3) Multi-family residential development with or without single-family residential development, and with or without an increase in density.
- 4) Single-use nonresidential development, such as office, commercial, or industrial development.
- 5) Nonresidential uses combined with residential uses, either single-family, multi-family, or both, with or without a change in density.
  - a. Infill development
  - b. New development
- 6) Master-planned community. (PAS 545, p. 20).

On this extensive list, only number 5a (infill development) comes closest to describing PUDs in the District of Columbia. Some DC PUDs may also fall into categories 3 and 4, but those are far less common. DC PUDs very rarely fall into categories 1, 2, and 6 (single-family residential development and large-scale, master-planned communities).

Most jurisdictions around the country, in sharp contrast to DC, use PUDs as a designation for large-scale, master-planned communities, often built on greenfield sites. These developments are primarily residential, but may also include centralized nodes of retail or business. These kinds of PUDs are meant to “encourage flexibility, innovation of design, and a variety of development types that will improve the quality of physical development over that normally achieved through the application of the City’s standard single use zones” (Colorado Springs, CO).

Essentially, these regulations allow applicants to develop a large-scale tract of land as a single entity, without having to adhere to the zoning constraints of each individual plot. PUD regulations like these might allow, for example, a developer to cluster all the houses of a development on one hundred acres of a five hundred acre parcel, rather than spreading the houses evenly across the five hundred acres as might be mandated by local low-density zoning regulations. By clustering development, the project could conserve open and green spaces, which are valuable amenities to the new development and its residents, to the community at large, and to the environment.

The community benefits from a more environmentally responsible, more cohesively planned development, in exchange for allowing the developer to stray from the city’s traditional (and often limiting) zoning regulations. Some jurisdictions allow developers

more density and more height than would be allowed by matter-of-right, but most simply allow developers to shuffle matter-of-right height and density within a single site, so that better open space and other public amenities might be provided *without* increasing the project's overall density.

The language describing the purpose of DC's PUDs may seem similar to that of Colorado Springs, above: "the overall goal is to permit flexibility of development and other incentives, such as increased building height and density; provided that the project offers a commendable number or quality of public benefits and that it protects and advances the public health, safety, welfare, and convenience" (Chapter 24, Title 11). Nearly everyone interviewed regarding DC PUDs described the purpose of the PUDs in similar language, as well. Most said that PUDs were meant to allow for flexibility of zoning (especially height and density) so that higher quality development projects could be built. They are also meant to provide for a mix of land uses, to avoid the segregation of housing from retail, employment, or education.

In DC, however, this language carries a different meaning than it does in most other jurisdictions. Elsewhere, PUDs are often large tracts of land that are to be developed as a cohesive neighborhood. In DC, PUDs may be these large-scale developments, but they also include smaller-scale, mixed-use development projects, and they are often even single buildings. Instead of shifting existing height and density limits around a large site, DC PUD applicants often seek additional overall height and density for their small-scale projects. In return for height and density, developers are expected to contribute amenities and benefits to the public.

The critical differences between PUDs in DC and in other cities, then, are the size and scale of the projects, as well as availability of extra height and density. Most other jurisdictions only designate large tracts of land as PUDs (such as 40 acres in Alexandria, VA), while DC allows projects as small as 15,000 square feet to be designated as PUDs, with DC Zoning Commission flexibility to allow even smaller projects to go through the process. With such small projects up for contention as PUDs, the process becomes less about making large, cohesive projects that must stray from the zoning a bit to work better overall, and more about gaining additional height and density for individual buildings, in return for providing some benefits for the community. This additional height and density often provides the kinds of returns that developers need to make a project fiscally solvent; without them, the architects, developers, and land use attorneys argue, far fewer high quality development projects would be built in DC.

In many ways, DC's PUD process has—over time—morphed from a typical PUD process into a type of incentive zoning, in which developers offer specific benefits to the community, in return for receiving specific variances from existing regulations. Although the bulk of this paper will focus on improving with the PUD process and regulations as they exist, the final section on “Thinking More Radically” will address whether this kind of contract or incentive zoning use for PUDs is acceptable, and what other options are available to the city to address this most fundamental concern.

## **How does DC's PUD process works**

According to DC Zoning Regulations section 2406 ("PUD Filing Requirements") and 2407 ("Processing of First-State PUD Applications"), DC's PUD process should unfold in the following proscribed steps:

- 1) Developer files PUD application in conjunction with request for change of zoning, and pays fees to city.
- 2) Ten days before filing, applicant mails written notice of intent to file with the Advisory Neighborhood Commission for the area, and all property owners within 200 feet. At time of filing, developer indicates that notice has been sent.
- 3) Commission refers PUD application to DCOP, which reports to Commission whether application is consistent with PUD purpose, and whether hearing should be held.
- 4) Commission decides whether public hearing shall be granted for the application.
- 5) If public hearing is granted, DCOP will review application, prepare an impact assessment of the project, including reports from city housing, preservation, and transportation agencies.
- 6) DCOP reports to Commission on: suitability of site for PUD use, appropriateness of character, scale, mix of use, design, other public benefits; compatibility of proposed development with Comprehensive Plan and PUD goals.
- 7) Public notice is given for hearing of PUD application.
- 8) At hearing, the developer/applicant must justify his proposal and inform the commission of his efforts to work with ANC and other community groups.

- 9) The Commission shall approve, deny, or modify the application. In an acceptance, the commission shall set forth appropriate zoning classification for the project, detailing elements, guidelines, conditions to be followed. This is valid for one year.
- 10) The developer then submits a second-stage PUD application to the Commission, providing much more detail on the proposed development project.
- 11) The Commission reviews the second-stage application, and decides whether to schedule a second-stage public hearing. A second stage hearing shall be granted if application is in accordance with first-stage approvals and conditions.
- 12) The Commission submits application to DCOP for coordination, review, report, impact assessment of final design, including input from relevant city agencies.
- 13) Notice for public hearing is given.
- 14) If commission finds application is in accordance with purpose of Zoning Regulations, PUD process, and first stage approval, commission grants approval to second-stage application.
- 15) Developer has 2 years to file for building permit, and three years to start construction.

This is the process, as laid out explicitly in the regulations. It is important to note that there is no formalized discussion of the interaction between community members and the developer. Rather, it is simply stated that the developer must alert the ANC as to the hearing, and must provide evidence that he has done so and has made an effort to work with them. It is not clearly established what constitutes proof of that interaction.

In addition to not discussing the specifics of the developer-community interaction, there are a number of assumed steps that are not explicitly touched upon in the regulations. Interviewees for this project were asked to explicitly describe their step-by-step experiences in going through a PUD process, including those steps not included in the regulations. This more fleshed-out, nuanced description of events (including the perspectives of each of the interviewee groups) is laid out below.

- 1) A developer or other landowner starts thinking about applying for a PUD designation for a piece of property.
- 2) The potential applicant meets with OP Development Review Specialists for initial input on the feasibility of the project as a PUD. In this meeting, OP staffers also urge (but do not require) the applicant to meet with the relevant ANC and/or community group.
- 3) Through subsequent meetings, the potential applicant works with OP development review specialists to refine the application so that it is most likely to pass the initial stage of review by the Zoning Commission (the decision-making body in this case). In this stage, the applicant creates an initial list of amenities and benefits (“the proffer”) that will accrue to the community if the development is built.
- 4) Ten days before formally applying for PUD status, the applicant is required to give notice of the impending application, by mail, to the relevant ANC and to neighbors within 200 feet.



- 5) The developer files its application with the Zoning Commission via the Office of Zoning; copies are sent to OP for review.
- 6) OP reviews the application and writes a “set-down” report, recommending that ZC either set the application down for a hearing or deny it before the hearing.
- 7) At its next regularly scheduled public meeting, the ZC reviews the initial application, and decides to set it down for hearing, or it denies the application outright. The developer is not required to attend or speak at this meeting. Members of the public and the ANC do not speak at this meeting. Staff from OP does speak at this meeting; they relate their judgment about whether or not the project should be “set down.”
- 8) After the proposal has been “set down,” the developer works with OP and the community to further refine the application over the course of several months. OP makes recommendations to the applicant based on prior experiences with similar PUD projects, knowledge of the ZC’s likes and dislikes, and its own priorities. According to the planners interviewed, recent priorities have included affordable housing and green features, such as green roofs. OP also provides informal design review comments, recommending higher quality materials or different design features that might better fit the site, the community, etc.
- 9) During this period of re-work, the developer usually presents the project to the relevant community and seeks input on the project. Negotiations with the community proceed in an undefined, amorphous way that is often quite contentious. The community is generally quite concerned with height of project, and with parking/traffic. During this time, developers may receive contrasting

input from individual community members and from ANC members. In this case, he may have difficulty ascertaining which input to weigh more heavily.

- 10) The developer modifies the application according to the comments from the OP and from the community (the two are generally in line with each other). When OP and the ANC differ in their input, the developer usually gives more weight to OP's comments, which are seen to reflect more closely the opinions of ZC.
- 11) Developer submits final application to ZC via the Office of Zoning. Copies are sent to OP for review.
- 12) OP staffer writes final recommendation report to ZC, recommending that the case be accepted or denied, and highlighting potential issues that should be addressed before the project can proceed. According to chapter 24 of DC's regulations, the OP staffer should base his/her recommendation to ZC on the "suitability of the site for use as a PUD, the appropriateness, character, scale, mixture of uses, and design of the uses... and other identifiable public benefits, and compatibility of the proposed development with the comprehensive plan, the goals of the PUD process in 2400 and the PUD evaluation standards in 2403. These 2403 evaluation standards mandate that OP ensure that the project is "acceptable in all of the following categories, and superior in many of the following categories":
  - 1) Urban design, architecture, landscaping, or creation or preservation of open spaces;
  - 2) Site planning, and efficient and economical land utilization;

- 3) Effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts;
- 4) Historic preservation of private or public structures, places, or parks;
- 5) Employment and training opportunities;
- 6) Housing and affordable housing;
- 7) Social services/facilities;
- 8) Environmental benefits, such as: stormwater runoff controls in excess of those required by Stormwater Management Regulations, use of natural design techniques that store, infiltrate, evaporate, treat, and detain runoff in close proximity to where the runoff is generated, and preservation of open space or trees;
- 9) Uses of special value to the neighborhood or the District of Columbia as a whole; and
- 10) Other public benefits and project amenities and other ways in which the proposed PUD substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.

In contrast, planning staff noted that they actually based their recommendations on:

- 1) Whether the project is consistent with the comprehensive plan.
- 2) Whether the project “fits well” with the neighborhood.

- 3) Whether the project truly is a “superior” project in its own right.
  - 4) The design and materials of the proposed project.
  - 5) Whether the developer’s proffer *seems* reasonable given the amount of zoning relief that he/she is asking for.
  - 6) The precedent this case would set for the future.
- 13) A public hearing of the Zoning Commission is held. The developer/applicant, the OP planner charged with the case, and a representative of the relevant ANC present their perspectives to the ZC.
- 14) Although the ZC can make a judgment at that time, it usually requests more information from applicant, and adjourns to make the decision at a later date.
- 15) At a later, regular monthly public meeting, the ZC sets down its decision to accept, deny, or delay (if ZC has further questions) the application. This decision is called the “proposed action.” According to interviews with planners, the ZC seems to base its decision upon (in order of importance):
- 1) Does the project fit with the comprehensive plan?
  - 2) Would the project benefit the neighborhood, and the city?
  - 3) Is the architecture “good” enough?
  - 4) Has the community been sufficiently involved in the process?
  - 5) If items 1-4 have been met, does the proffer seem commensurate with the zoning relief requested by the applicant?
- 16) There is an open period during which the public can appeal the ZC’s decision.

17) If there are no appeals, or if the appeals are unsuccessful, the proposed action becomes a “final action.” Notice of the action is published, and the developer can go forward with the rest of the development process.

### **What are the benefits of PUDs in DC?**

Despite the complexity of the PUD regulations and process in DC, they provide a number of critical benefits, according to those interviewed for this project. First, PUDs provide a way of ensuring that a given project receives at least some design review, thus ensuring that better, higher quality projects are built. This design review happens as an informal portion of OP’s review of a PUD application. OP, as well as the ANCs and the ZC, always push the developer applicants to incorporate better design and better materials (according to each individual’s perspective on what constitutes better design and materials) into the project. By contrast, matter-of-right projects (those that require no variances, special exceptions, or PUD designations) proceed without any design review, and without interacting with the Office of Planning. Nearly all interviewees confirm that the PUD design review process results in higher quality development—better materials, better design—than matter-of-right. Additionally, a survey of DCOP planners reveals that most planners think that the evaluation of building design and architecture is one of the most important parts of the PUD process.

Secondly, PUDs allow citizens to provide input into projects built in their neighborhoods. In cases of regular, matter-of-right development, there are no structured channels for community input, and developers are not required to respond to the concerns of the community in any formal way. In PUDs, however, developers are encouraged to

work closely with citizens (through the ANCs) to make projects that are satisfactory to all. In addition, the Zoning Commission is required to give the opinion of the ANC “great weight” as it decides whether to approve or deny a PUD application. Most interviewees named this encouragement of community input as one of the great benefits of the PUD process.

The third major benefit of PUDs in DC is that they provide a way for taller buildings to be built, and at greater densities, than would be allowed by matter-of-right. Promoting density in the District, where it makes sense—near jobs, transit, shopping, schools, and nightlife—is good for DC’s economy, good for the environment, and good for the region as a whole. Not only is additional height and density of benefit to the city, but also it is of enormous benefit to the developer. Sometimes a good project can only “pencil out,” financially, with that extra height or density. Allowing developers extra height and density, while still making a profit, benefits the entire city’s built landscape.

Fourth, besides providing attractive, buildings at higher densities on urban sites near transit, PUDs also provide the community and the city at large with much-needed site-specific benefits and amenities. These benefits include affordable housing, landscaped parks and open spaces, parking garages, and more. For example, a 2005 project located in Friendship Heights, on the DC-Maryland border, created a small on-site daycare center for the community, has created a pocket park for shared resident and community enjoyment, and has also designated 15% of its project as affordable. The negotiation and community-input process in this and other PUDs provides neighborhoods with a much needed opportunity to fund vital enhancement projects.

Fifth, PUDs provide an unexpected benefit: they allow the City to rezone properties into compliance with the most current comprehensive plan, without “losing face.” Occasionally, the City’s zoning map is inconsistent with the comprehensive plan, which should guide all development in DC. When the two documents are out of alignment for a given parcel of land, a developer has a strong case for a PUD. Of course, one could argue conversely that the zoning map should always be consistent with the comprehensive plan, and that it is the planning department’s responsibility to guarantee that this be so. If the two are not consistent, developers and other interested parties should be able to request that the zoning map be brought into conformance, without having to proffer amenities to the city.

Sixth, and finally, PUDs provide the city with a means of allowing more interesting, creative buildings to be built. DC’s severe height restriction means that the downtown is filled with what many interviewees referred to as “the box with windows.” This style is well known on K Street, in particular. Allowing deviation from the City’s strict height and lot occupancy guidelines allows for some variation along a street front, and allows a builder to add such ornamental features as towers, turrets, and entranceways that might otherwise be impossible. This benefit—providing visual excitement to an otherwise less-than-exciting downtown vernacular—should not be undervalued.

### **How do DC’s PUDs succeed?**

A good portion of those interviewed commented that, in general, DC’s PUD process is working well and is achieving its goals—namely providing developers with design flexibility in return for providing superior projects to the community. Most of those

interviewed comment that the process must also be satisfactory to the developers involved, since the number of PUD applications continues to rise each year, despite general complaints about the length and uncertainty of the process.

Overall, the majority of interviewees remark that the best part of the process, and the part that works most effectively, is the interaction between the development team (including the developer, architect, and attorneys) and staff at the DC Office of Planning. Developers, architects, and attorneys all comment that the OP staff:

- 1) Work at a consistently high-quality, professional level.
- 2) Provides helpful, honest, candid feedback from day one.
- 3) Is consistent in its treatment of applicants, and its interpretations of the regulations.
- 4) Is very accessible.
- 5) Is well-informed about the preferences and concerns of the Zoning Commission (ZC).

In particular, the development teams enjoy working with staff at the Office of Planning on the back-and-forth, application refinement process that occurs between the set-down and the public hearing before the Zoning Commission. The informality of this process is appealing to both planners and to the development teams, and it allows developers to get further input and assistance from OP whenever needed. Most of those interviewed do not feel that a more formal process or more proscribed design guidelines are needed; the informality of the process seems to work well.



OP planners (predominantly Development Review Specialists) also report that the best part of the PUD process is their work helping development teams refine and improve their applications. Most planners find the back-and-forth process with developers to be satisfying and productive. More broadly, most planners comment that the Development Review group and the development community have a strong, open, candid relationship throughout all interactions.

While ANC Commissioners generally do not have any words against OP, only one Commissioner describes OP's work as one of the best and most effective parts of the PUD process. The other Commissioners do not point to any one part of the PUD process as working especially well. One ANC Commissioner, however, appreciates that community input is required at all, and believes that to be one of the greatest strengths of the PUD process. Most interviewees recognized that planners were put in a potentially awkward situation—caught between listening and responding to public input and acting in the best interest of the public, and moving acceptable projects forward at a reasonable rate. An outside observer might worry that the relationship between developers and the city is too close, or too cozy, but this did not seem to be the case. No interviewees, including ANC Commissioners, complained of planners working at the behest of the developers.

A minority of developers notes that there are occasional discrepancies between OP staff members: one staff person might support a particular project or feature, while another might not. While they are generally supportive of the work of OP, they do wish that this inconsistency could be avoided. Similarly, developers report that any

inconsistencies between the OP staff and the ZC (though rare) should be avoided if possible.

### **What are the major problems with PUDs in DC?**

There is one major and overarching weakness with PUDs in DC: nearly everyone interviewed sees the results of the process as entirely unpredictable. This complaint can be broken down into two separate areas: 1) time, and 2) the final benefits and amenities packages.

**TIME:** Although most of those interviewed indicate that PUDs take between 9 and 12 months, many also indicate that the process can take much longer, and can face many unforeseen delays. According to developers, these delays occur seemingly without warning, making the process unpredictable. They note with frustration that some projects seem to sail through the process with no delays, while others are held up for years by angry community members.

**BENEFITS and AMENITIES:** In addition to the time uncertainty, most note that the final outcome of the benefits and amenities negotiation is highly uncertain. Interviewees note that there is an enormous range of acceptable benefits and amenities: some projects were approved as PUDs with their main benefit being “good design,” while other projects were approved as PUDs only after providing great design, affordable housing, a green roof, a park nearby, and a large contribution to a local organization. These discrepancies not only seem unfair, but also they make it difficult for developers, attorneys, and architects to know what to expect when entering the PUD process.

These uncertainties, both of time, and of the amenities packages, have enormous cost implications to the developer. A time delay of 6 months can cost hundreds of thousands of dollars, as can having to make repeated changes to the design of the building or to the amenity packages being offered to communities.

It might be easy for interviewees to blame the uncertainties of time and of the benefits package on the Office of Planning, or on the Zoning Commission, but this was not the case. Instead, most interviewees find that OP and ZC are consistent in their interpretation of the regulations, and that ZC is consistent in its final rulings. What is inconsistent, however, is interaction and negotiation between the community and the developer over the proposed project. In the words of one lawyer interviewed, “the community involvement process is broken.”

### **Uncertainty: community involvement process**

Pushback from communities makes sense; people are highly attached to the places they call home, and they feel strongly about any changes that might take place. Indeed, in a world in which so much seems out of our control, consistency of the built environment seems like one thing that should and could be a constant. Therefore, people push for it to remain a constant, by fighting back against possible new developments in the form of PUDs. According to Gaffney (1973), people are much more emotionally invested in their neighborhoods than in other investments, because they cannot just move their land. “Landowners therefore pay close attention to local decisions, so that they take a strong and steady interest in local government out of proportion to their numbers” (Gaffney, 1973, p. 117).

This project found that, when people want to fight against a new development like a PUD, they often disguise their antagonism toward the project with complaints against noise and traffic. This finding is backed by a large canon of research. For example, Cox and Johnson (1982) find that it is much more acceptable for an individual community activist or group to base its complaint against a new project on environmental or traffic reasons rather than any other reason, including those of race and SES, in addition to fear of change.

This fear of change, often couched as rational antagonism towards traffic or other disruption, rears its head in the form of serious delays for PUD developers in DC. There are a number of ways in which this translates into a “broken” community involvement process, according to all of those interviewed in DC.

First, according to all of those interviewed (including ANC Commissioners) communities don’t know *how* to get involved and stay involved. Community members can become emotional and eager to get involved, but are not necessarily informed regarding the best means for doing so. Second, according to all of those interviewed, communities don’t know *when* to get involved. Developers and others feel that community members become involved very late in the process. When this happens, they are insulted that they were not informed earlier, or feel like they are being rolled over by developers and OP.

Third, interviewees from every perspective reported that communities do not know what to ask for from developers (they do not know the range of amenities and benefits that are feasible, legal, and reasonable). Developers find that ANCs often seem to speak for only a few, rather than for the community at large, leaving large swathes of the

community unrepresented. Nowhere in the regulations are the roles of the community and the developer and their protocol for interaction specifically laid out. Instead, OP simply encourages developers to meet with, and receive project feedback from, community members as soon as possible in the development process. It seems that communities populated with wealthy, highly educated individuals and families are much more likely to push back against development projects, and to hold them up.

### **Uncertainty: amenities and benefits**

“PUD ordinances must walk a fine line between specifying in detail the kind of project that is acceptable, and giving developers an opportunity under more generalized guidance to provide a good development project. This tension has always been present and is difficult to resolve” (PAS 545, p. 16).

In addition to the confusion on the part of ANCs about how the process works and how they should be involved, there is significant confusion on all sides about what can and cannot be included in a developer’s proffer (package of offered amenities and benefits). The results of this confusion are two-fold. First, communities and ANCs do not know what to ask for from developers. Second, developers themselves feel that there is little guidance about how much is appropriate to proffer; it is especially confusing since proffers seem to vary so much from project to project.

### **Proffer reasonability**

Interviewees are mixed about whether the proffers have been reasonable for what the developers have received in return. Most interviewees note that the proffers must not be

placing an inordinate burden on developers, because the developers continue to apply for PUDs and nearly always complete the PUDs once the process has begun. Most interviewees also note that it is nearly impossible to know how “fair” a proffer is, without knowing the intimate financial details of the case. Some planners and ANC Commissioners, however—despite recognizing that it is difficult to determine exactly how fair the cases are—feel that communities receive too little from developers, and should be asking for (and receiving) more.

Interestingly, all ANC Commissioners interviewed emphatically state that the amenities and benefits should be either directly tied to the projects, or should be focused on directly mitigating the effects of the projects. Real estate developers recognize the convenience of being able to make donations to local groups, but comment that it is more important to make sure that public benefits really benefit the entire public near the project—not just a select few. For that reason, they feel that amenities and benefits should be more closely tied to the building itself. Planners and attorneys are mixed on the subject: some believe that the proffers should be directly tied to the buildings themselves or to mitigating its impacts, while others believe that allowing developers to make tangible purchases or improvements for local community organizations has been and is extremely valuable.

All interviewees (including all of the planners, developers, attorneys, ANC Commissioners, and architects) who have an opinion on this matter agree that an amenity should not under any circumstances consist of monetary contributions to ANCs, or to community groups unrelated to the project. They note that it is difficult to ensure that the money will have its intended effects, or the effects promised by the developer; that

money donated to an organization in this manner may benefit only a few members of the community, and not the community at large; and that it just feels improper. Several planners from other cities were extremely surprised to learn that developers in DC had the option of making contributions to community organizations as a part of the proffering process.

### **Proffer consistency**

As mentioned, it seems that some projects were approved with enormous benefits packages, while others offer very few benefits to the community. Although most interviewees wish there could be more consistency, most also remark that each ward, each neighborhood, each site, and each proposed project is so unique that it would be difficult to equalize proffers across projects. Most also note that doing so would override the very purpose of the PUD process: negotiating the details of a project, based on its specifics, in order to make it truly superior.

Despite recognition that proffer consistency is a problem, interviewees have mixed feelings about quantifying the proffers. More than any other group interviewed, the planners would prefer a method of objectively quantifying and evaluating the strengths of proffers, in order to more easily and directly compare projects. Some planners interviewed even support employing a more mathematical formula between proffers and the bonuses received by developers. A minority of developers interviewed would also support a more mathematical relationship between proffers and bonuses, if only to ensure greater consistency between cases and more predictability for the process.

Every *other* group interviewed, however, warns against creating a mathematical formula of proffers and bonuses; one attorney calls it dangerous and impractical to do so. In general, most interviewees think it would be useful to be able to loosely quantify the benefits of a proffer package and its costs to the developers, but do not support creating a strict x-for-y formula. They believe that some other method can and should be found for achieving greater consistency between cases and between neighborhoods.

### **Other problems with PUDs**

- 1) Many interviewees, particularly ANC Commissioners and attorneys, feel that PUDs are being used far too often and for too-small projects. They feel that the system should be changed so that there are fewer PUDs—either by making more PUDs matter-of-right, or by raising the minimum size so that fewer projects were eligible for PUD status.
- 2) Several interviewees note that the name “PUD” is meaningless, and sounds like bureaucratic jargon. They wonder if it might be better to re-brand the projects, the regulations, and the procedures with a “snazzier” name.
- 3) None of those interviewed have a clear sense of how the enforcement of the approved plans and proffers works, or even if the enforcement was working at all. Most recognize that the Office of Zoning and the Department of Consumer and Regulatory Affairs (DCRA) are responsible for making sure that projects are built and benefits are provided as they were approved, but they have little sense of the details involved.



- 4) Several interviewees (predominantly planners) note that getting input on applications from other agencies, such as DDOT, the Department of Parks and Recreation, and DC Public Schools is extremely difficult and often impossible. They note that these agencies seldom respond to OP's requests for input and that, when they do, it is often very late in the process. This can, in turn, further stall the PUD process.
- 5) Many of those interviewed feel that neighborhoods with weak, unorganized, or un-savvy ANCs get "steamrolled" by developers, who push projects through without receiving or incorporating any meaningful community input. Others feel that, when ANCs are less organized, one or two people end up speaking on behalf of the entire "community," in a way that is entirely *unrepresentative*.
- 6) In both organized and disorganized ANCs, it is common to have a PUD process dominated by a small "vocal minority," which may not reflect the opinions of the large silent majority that may support a project.

## PUDS AS A FORM OF DEVELOPMENT RISK

“The developer group (including the lender) makes assumptions about the nature of the product demanded by the market, the price his customer will be able to pay, the *demands of the local government on the development, and the length of the development process*. Although these assumptions cannot be refined to statistically reliable probabilities, the property developer can practice risk management by attempting to validate the assumptions and reduce the range of uncertainty” (Vernor, 1981, emphasis mine).

From the developer perspective, DC’s PUD issues are ones of risk and uncertainty. When a developer does not know how long a process will take, or how much it will ultimately cost her, she is less able to accurately forecast future cash flows, and is therefore less equipped to successfully judge the outcome of the project before she undertakes it. She exposes herself to the possibility that the project’s outcomes will vary greatly from the anticipated outcomes, and that she will thus lose money in its undertaking. According to Vernor, “the length of time required to produce a project is one of the greatest risk factors confronted,” in undertaking a development project (Vernor, 1981). In DC, it appears that navigating the PUD process is, in turn, one of the greatest risk factors contributing to the length of time required for that project.

Although often used interchangeably, it is important to note that risk and uncertainty are separate concepts. “Risk” is a statistically predictable set of odds, or a calculated likelihood of a certain event taking place (Adams et al, 2005, p. 50). Risk can also be understood as the variance between the intended and realized results, due to injury, damage, or other loss (Vernor, 1981, p. 1). “Uncertainty,” on the other hand, connotes a

lack of knowledge about all possible outcomes, and an inability to predict the likelihood of each possible outcome (Adams et al, 2005, p. 50).

In the case of PUDs, risk can be understood as the percentage likelihood that a project will take a certain amount of time to pass through the PUD approval process, or the probability that a neighborhood will require one proffer package over another. Because DC PUD outcomes are seen by interviewees as somewhat random and difficult to predict, the process can be categorized as a type of uncertainty. Developers can often estimate the range of outcomes possible, but do not know with certainty the likelihood of any one outcome over another. At best, they can only make educated guesses.

Ultimately, the uncertainty associated with PUDs is like any type of uncertainty or risk that a developer faces. Development theorists point to two main, overarching types of risk possible in the real estate development process. First, there are dynamic, speculative risks. These are the risks associated with, or resulting from, changes in the political, social, and economic environment. The PUD process—in which outcomes are *dominated* by inputs from the political, social, and economic environment—would fall under this umbrella. Within this type of uncertainty, there is the chance for gain as well as for loss; if public opinion sways in favor of leniency for the developer, or expediency for a project, the developer “wins.” The second type of risk is static, pure risk, related to the physical loss of a property, or damage to that property. There is only the chance of downside associated with this risk. Although this is a critical factor in real estate development, it is not a type of risk related to the PUD process, and will not be examined here (Vernor, 1981).

My interviews with those familiar with the DC PUD regulations and processes find that going through the PUD process predominantly poses financial risks. Namely, there are the risks associated with 1) time delay, and 2) cost uncertainty. Ultimately, both of those risks translate into cost uncertainty for the developer, as time delay merely adds more cost to the process. Although developers are often stereotyped as risk-lovers who “shoot from the hip,” the truth is that nearly all developers create careful pre-development projections and pro formas, which show the expected monthly expenditures (uses of funds) against the monthly sources of those funds for the entire duration of the project.

In order for a project to work, the sources and uses must match each month (ie: the project must be able to meet its own capital needs). In addition, during this current economic crisis, those few banks that are lending are requiring extremely conservative and careful underwriting; this means that developers are unable to “pad” their sources and uses of funds budgets in order to avoid cost overruns from any delays in the PUD process. Developers must accurately forecast their financial needs before the start of the project; failure to do so will guarantee failure of the development project. In addition, if cash profits from the sale or rental of the property (whichever its intended use), accrue later than projected, then the developer may lack the necessary funds to keep the project moving forward. In this case, the developer may need to seek more funding from its debt providers.

In this chaotic economic climate, seeking additional funding from lenders may be entirely untenable. Few lenders are providing leniency on loan terms and limits, and almost no lenders are offering re-financing options for projects in distress. Since

additional funding is unavailable from lenders, a developer would have to seek an additional capital call from his investors. Not only is this unprofessional, indicating to the investor that the developer was unable to fully anticipate his needs before the start of the project, but also this would result in an undesirable, lower IRR to the investor (since he will be receiving the same or perhaps lower returns on a larger equity infusion). Even if the project performs better than expected, the investor still makes lower returns than anticipated before making his initial investment. In addition, the more funds that need to be put into a project over a longer time period, the less likely the developer himself is to be able to profit from that project. As Adams et al (2005) have stated succinctly, uncertainty itself carries with it enormous transaction costs, so developers must seek to understand and model uncertainty as much as they can in order to keep those costs low.

If a developer does not effectively control the risks associated with his project, he stands to lose on other fronts as well. Not only does he stand to lose his invested capital and the guarantees for which he is personally accountable, but also he stands to lose his professional reputation, and the opportunity to do future business. When a developer ineffectively calculates and controls for the risks associated with his project, the community also stands to lose. It is stripped of tax revenues, as well as other future revenues or services that the project could have provided. It is clear that the stakes are high for any real estate developer; he *must* account for and control risk if he wants to continue doing business.

Because of the negative consequences of time and cost overruns, developers must manage these uncertainties before the project is undertaken, in order to succeed. The process itself is simple, according to Vernor: 1) identify where you are exposed to lose;

2) estimate frequency/severity of potential losses; 3) select how to deal with that possibility; and 4) put the plan into action and monitor the outcome (Vernor, 1981). Vernor's method is very similar to that of real estate expert James Graaskamp, who advocates the following risk management process: 1) identifying exposures to surprise and financial loss; 2) estimating economic consequences; and 3) choosing risk management methods to control and mitigate those consequences (Mun, 2004).

Once the risks are identified and quantified, a developer has several options for dealing with them. First, the developer can choose to simply "take that hit" if he can bear the capital cost. Second, if the risk appears to be too great to bear, the developer could take out insurance against that risk before he begins on a project. This might come in the form of a contractual agreement that shifts uncertainty to another party involved in the deal, such as the architect or the contractor, or it may be actual insurance purchased to hedge the deal. Faced with an uncertainty too large to bear, the developer could also simply create an up-front capital replacement reserve to be used in the case that the worst risks are realized. Of course, this has large cost implications for the developer, but because they are known up front, rather than appearing unexpectedly during the development process, they can be effectively modeled and accounted for in the uses of funds (Vernor, 1981). Finally, the developer always has the option of simply not moving forward with the project at all, and avoiding the potential for further losses.

In terms of PUDs in DC, the topic of this research paper, the most relevant risk management step is Vernor's and Graaskamp's first: inquiring into the feasibility of the project, using all financial and statistical analysis tools at hand. There are two main

techniques that can be used to inquire into the feasibility of a project: 1) probability forecasting; and 2) scenario planning/simulation.

In the first technique, probability forecasting, one creates a theoretical range of possible outcomes and attaches a value to each of those outcomes occurring. He must make sure to use subjective assessments of the probability of each outcome, and to be honest, consistent, and not overly optimistic by attaching an artificially high percentage likelihood the most desirable outcome.

The quantitative value of each outcome can be multiplied by the likelihood of that outcome, and all weighted outcomes should be summed to find the ultimate weighted probable outcome cost. This amount should then be discounted back using the developer's internal discount rate and the expected time delay. A variation of this technique is also known as the Hurwicz approach, in which a decision-maker states his degree of optimism on scale of 0 to 1, with 1 being total pessimism, then uses that percentage to weight each possible outcome (Byrne, 1996).

In addition to weighted statistical analysis, one might also use scenario planning or simulation in order to judge the likely outcomes of an event or series of events (Byrne, 1996). Jonathan Mun also encourages this type of "what-if" or sensitivity analysis, as the method most likely to reveal which variables drive or impact that bottom line more than any others (Mun, 2004, p. 16). According to Byrne, the thoroughness required for in scenario planning is rare in the field of real estate: even when developers do assess risk, Byrne states that they do not pay enough attention to the range of possible/probable outcomes. Instead, they look only at the best outcomes, without a rigorous look at the kind of stress sensitivity outlined here (Byrne, 1984). In the stress-test method that Byrne

and Mun endorse, one might create multiple different scenarios for how a project might move forward. Next, he might use modeling software such as Excel, ARGUS, or YARDI to examine the effects of each of these scenarios on the project's bottom line.

Performing scenario simulations will allow the developer to see the broad range of possible outcomes, should the circumstances surrounding his project vary from those desired. The developer must then compare this range of outcomes against his own appetite for risk. For example, would he be willing to go forward with a project if only one in twenty scenarios fails, or puts it "under water?" Would he be willing to go forward with it if ten of the twenty scenarios sink the project? These are the decisions that must be made on an individual, case-by-case basis. Byrne notes that different people are comfortable with different levels of risk and return: "different decision-makers' responses to the same situation can result in different decisions, each of which may be capable of rationalization" (Byrne, 1996, p. 27).

Going through this process will reveal to the developer what are the most likely issues to arise, and what impact each will have on the bottom line. He can then use this information to create an action plan for dealing with each of those potentially fatal issues, before they arise. For example, if the probable cost of the project (weighted by likelihood) is too great to bear, then the developer might scrap the project entirely, to avoid that risk. Conversely, if it appears that the risks of the project are negligible, then the developer might create no action plan for dealing with the risks.



## **RISK MITIGATION TACTICS FOR PUDS**

Now that we have examined how developers normally assess and guard against risk—by using probability or sensitivity analyses, deciding on how projected outcomes measure against the individual’s risk appetite, and creating a course of action to deal with those risks—it is worth outlining how developers could apply these techniques to PUDs in DC.

The first technique developers considering PUD projects should use is probability modeling, using previous and existing cases of PUDs as the basis for estimating probabilities. As outlined earlier, the main cause of increased delay and cost is the level and timing of community involvement in the PUD process. Therefore, a developer seeking to undertake a PUD project would be well-served to examine how the project matches up against similar recent projects in the neighborhood, and against similar projects in other neighborhoods. What did those communities demand from the PUD process? How long did they hold up the process, while it was passing through the zoning committee? How much, in the end, was required in the proffer for that project?

Once the developer has obtained this historical data, he can compare the characteristics of his project against those others. He should look at whether his project’s ANC is more or less vocal than those of past projects (perhaps due to changeover in ANC Commissioners and their various personalities). Is the community more or less active than it was in the past? Is his proposed project denser than the one that was held up for two years as too dense for a neighborhood? Will this project generate more traffic than the one that was held up for years on traffic arguments? Judging his own project and the

community's characteristics against past cases and political environments should give the developer a strong sense of each expected outcome and its likelihood.

The developer should also compare the strategy he plans to use with the community against the tactics used by developers in those historical PUD cases. Interviewees generally recognize that PUD processes proceed more smoothly when a developer is involved in the community earlier, and when he is truly more open to receiving community input in those early stages. Therefore, when a developer examines himself against past cases, he should ask: will I be inviting community input before this past project did? If so, he could reduce the likelihood and expected duration of delays, as well as additional capital requirements, in his probability models.

Similarly, the developer should also compare the current Zoning Commission (ZC) to the ZC at the time of his comparison project(s). Is the ZC more vocal or demanding now, or was it more so then? Do today's commissioners have certain pet projects that they will require be a part of the PUD process with high certainty? Is today's ZC more or less likely to make a developer "return to the drawing board" than it was in the past? These kinds of trends should be noted and incorporated into the probability modeling for the PUD at hand.

In general, the developer should seek to understand what is a *likely* proffer that the neighborhood will demand and the ZC will sign off on, given what similar neighborhoods have demanded in the past, and the strength of the current ZC. Once this has been ascertained, the developer can carefully quantify the expected costs of that proffer. To do this, the developer should assign a monetary value to each of the possible proffer packages and time delays, and should weight each of those packages and delays

according to its likelihood of being demanded (given ANC strength, amount of solicitation of neighborhood input, etc.). Summing these weighted outcomes will give an average expected outcome of the project's PUD-related cost to the developer. This can also be discounted across time, according to the probable length of delay expected and the developer's internal discount rate.

Once this expected cost is known, the developer can analyze it against his own risk profile and can decide if this expected cost acceptable to his bottom line. If the answer is no, then he should not go forward with the project. If the answer is yes, however, then the developer should continue to move forward with the development process, while creating and implementing an action plan to reduce the likelihood of any one of the potential negative outcomes occurring.

There are a number of qualitative action plans a developer could undertake in order to limit the likelihood of an unwanted outcome. For example, the development team should be carefully selected to include individuals with significant experience in undertaking projects of that type in that specific community. Having such experience will help the team understand how best to connect with ANC commissioners and other community members, and how best to negotiate the proffer carefully, such that the developer's profit is not squeezed out.

It is also important that the development team build trust with the local community. Not only does this help speed the process, but also it ensures that the community will not try to sabotage a project in the final hour, thus delaying it further. Finally, the development team should also be familiar with the local political climate, to ensure that it can accurately assess the inclinations of the ZC before undergoing the PUD process.

Each of these qualitative steps can help the developer more actively understand and control the risks to which he is exposed in the PUD process, should he decide to move forward with it.

## **IMPROVING PUDS: CITY-LEVEL STEPS TO REDUCE UNCERTAINTY**

“A prime role for public policy is to reduce or contain risk and uncertainty in order to enhance user, developer, and investor confidence in new forms of development” (Adams et al, 2005, p. 38).

While developers themselves are responsible for understanding and controlling the risks associated with their projects, there are also a multitude of steps the city of DC could take in order to limit developer exposure to the PUD-related risks outlined in this paper. Most experts on development risk agree that, in general regarding development issues, the public sector should lead in clarifying public policy and processes, as well as guaranteeing its own involvement, in order to build confidence and increase certainty in the private sector (Adams et al, 2005).

The city already does at least one part of the process well, according to experts on development risk: it requires the use of a form of binding development agreements. Development agreements are often used in PUDs or other potentially contentious development situations, to “formalize and stabilize decisions made in the course of a community’s underlying discretionary land use control system” (Porter and Marsh, 1989, p. 31). This means that, once all the details of the proffer package are hashed out, the city and the developer commit to the agreement in writing. Though it may seem an unnecessary formal step, going through this process assures the developer “that the rules of the game will not change, for without such assurance, the developer incurs greater risk in constructing infrastructure and providing public benefits during a project’s early

states” (Porter and Marsh, 1989, p. 3). Using a binding development agreement also ensures that the developer will follow through with the plans accepted by the ZC and the ANC.

Speaking more generally about development risk, every city has the ability to reduce uncertainty in the development process by ensuring access to more transparent information systems (Adams et al, 2005). If information is power, then increasing access to information through transparency empowers all involved, including developers and the neighborhood constituents. In the PUD process, this could entail providing access to a database of previous PUD cases, including information about the proffer packages and cause for delays, if any. Providing access to this information would allow developers to better model their expected outcome values using the probability methods outlined above. To address the uncertainty of proffer size, DCOP could even create a clearly written set of proffer guidelines for developer use, including what has and has not been acceptable in past. This would be particularly meaningful if there was buy-in from the Zoning Commission (ZC) agreeing to use previous cases as precedent for those in the future.

More specifically, much of the risk in DC’s PUD process comes from the uncertainty of timing surrounding the process, and there are at least five distinct steps the city could take in order to limit this uncertainty. First, the city could establish more clear regulations stating rules and timing of engagement between developers and community stakeholders. Second, the DC Office of Planning could conduct outreach programs to communities to better define the community role and timing of input in the PUD process. Third, DCOP could serve as an intermediary in facilitating discussions between

developers and community, or could act as a guide, walking communities through the process in the same way that it does developers. Similarly, an unrelated third-party mediator might also serve to equitably facilitate discussions between developers and community. Fourth, the City Council could establish a “cut-off” point for community involvement in the PUD process, after which negotiation continues between the developer and city alone. This would allow developers to cap their uncertainty related to the community’s involvement. In the section that follows, these potential solutions, as they relate specifically to each of the main problems with PUDs indicated by interviewees.

In seeking solutions, I relied heavily upon suggestions and input from the DC interviewees themselves, with the understanding that looking to other cities’ PUD regulations might not be helpful. In terms of both planning and PUDs, DC is unusual. Planning-wise, the city contains relatively little developable open space, and it has very strict height and density limits. Because there is so little space for development, and because land values are so high, many developers are eager to maximize height and density, since that key to maximizing profit.

In jurisdictions with less severe height restrictions, maximizing height and density is less vital for developers, and it is a less important part of the PUD process. In addition, other jurisdictions may have very different planning governing bodies; these may include a planning commission, a strong mayor, or a city council that must approve all planning cases. In DC, however, the city has no planning commission, and neither the mayor nor the City Council is required to weigh in on planning cases. PUD-wise, it is most important to remember that most other jurisdictions use PUDs for different circumstances

than DC: for large-scale, neighborhood-type development, rather than the single, smaller-scale projects in the District.

For these reasons, any re-formulation of DC's PUD regulations and procedures will have to be based predominantly on the needs, constraints, and goals of this city in particular. Therefore, the following possible solutions to the problems identified above are based more on the ideas and suggestions of the DC PUD interviewees than on the mechanics of other jurisdictions' PUDs, although those are drawn on where they can provide relevant help in framing regulation text. DCOP and other agencies concerned with updating the city's existing PUD regulations and processes should think of the solutions listed as a menu of options, from which any number of items can be implemented, alone or in combination. In addition, since DC uses its PUDs more like contract or incentive zoning than other cities use their own PUDs, one should also remember that it may be possible to think more radically entirely about the process, and to recreate it in a way more suitable to the city's overarching goals. This possibility will be examined in the section following.

**PROBLEM 1: Communities do not know how the PUD process works or how to get involved.** Several interviewees note that few citizens are aware of what PUDs are and how the process works. Even those who are aware and who have been involved in the past are confused about the stages of the process and the roles of each party involved. Currently, the rules of engagement between developers and communities are not clearly laid out in any document or guidelines. The regulations require only that: 1) developers notify ANCs and neighbors within 200 feet of the site, ten days before the set-down



hearing, and 2) ANCs report their opinion of the proposed project to the ZC at the public hearing. The regulations also allow citizens and other community groups to voice their concerns at this time. While DCOP encourages developers to work with ANCs and community members from the beginning of the process, and DCOP helps facilitate this interaction, in no part of the regulation is this interaction defined.

### **SOLUTION 1.1:**

The regulations should clearly state the rules and timing for engagement between communities and developers, and these rules should be clearly and explicitly delineated to ANCs, community members, and development teams.

#### **What should the rules say?**

Several ANC Commissioners feel that ANCs should be involved in working with the developers from the very beginning of the process (ie: from the “ground up.”) This could be required in the regulations; developers could be required to show proof of community meetings or community input before even approaching DCOP with a potential project.

Developers and architects also feel that communities should be involved from the very beginning of the process, but that there should be a time limit on public input. If the community members and ANCs miss that window of opportunity, then they should not be allowed to delay the process. Imposing a time limit would force the ANCs to be more responsible and conscientious when involved in PUD processes. Having a timeline would also allow developers to more accurately model the extent to which ANCs pose a risk in derailing the development timeline and other projections. Changing the process in

such a way might shift power to the developer; in order to avoid doing so, the regulations could require that the developer approach the community far more than ten days in advance of submitting its application to the ZC.

Although DC is unique, there are some examples of PUD regulation text that clearly delineate the public-developer process and relationship, and that may provide helpful guidance for how DC could change its regulatory text, in order to clarify this relationship.

From Spokane, Washington:

*“Community Meeting and Public Notice:*

Prior to submittal of the application, the applicant shall conduct a community meeting. The applicant shall hold the community meeting no more than one hundred twenty days prior to the submission of the application. All public notice and format of the meeting shall be given in accordance with the procedures set forth in [chapter 17G.060 SMC](#) for a Type III application.”

From Moscow, ID:

“Neighborhood Meeting: Every application submittal for a PUD shall be preceded by opportunity for neighboring landowners and residents to meet with the applicant to review and provide comments on the proposal. Prior to application submittal the applicant shall invite all owners of land within six hundred feet (600’) of the subject land to a neighborhood meeting. The applicant shall consider comments from the neighborhood meeting and adjust the proposal if and how deemed appropriate by the applicant. The application submittal shall include a written record of comments

received at the neighborhood meeting and a written statement of applicant's response to such comments. These written records shall be considered as part of the preliminary plat application."

**SOLUTION 1.2:**

Once the process has been more clearly defined in the regulations, DCOP should reach out and educate ANCs and communities about how the PUD process works, and how they can get involved. This solution has been requested by ANC Commissioners, planners, developers, architects, and attorneys; each group independently believes that DCOP can and should play a much greater role in community education about PUDs.

In terms of a specific program, I recommend that DCOP, perhaps led by the Ward Planners, conduct PUD outreach/training sessions with ANCs. These sessions would focus on how community members should be involved and what is reasonable/legal to ask for from developers. OP could create a 1-concise primer detailing the process for ANCs. This would include the rules of engagement between developers and communities (solution 1.1) and a section on the purpose of PUDs. To address NIMBYism, the document could emphasize the benefits of density for neighborhoods, the city, and the environment, and should mention how greater height and density can be more than appropriate in certain locations, such as near transit stops. This document would be easily available online, and would be used as a tool in scheduled outreach meeting with ANCs and communities.

**SOLUTION 1.3:**

DCOP could serve as a facilitator for communities dealing with proposed PUDs. Interestingly, DCOP staff often provides developers with guidance through the PUD process—helping them draft their applications and learn what to expect from the process and from ZC, etc. Although DCOP staff is more than willing to assist communities when asked, they do not automatically offer that same guidance to communities facing PUDs. Since communities are traditionally less proactive than developer applicants about approaching DCOP for assistance, it would benefit everyone involved if DCOP automatically provided assistance and guidance to the ANCs. Many of those interviewed, including some (but not all) ANC Commissioners, believe that this would improve process efficiency.

**SOLUTION 1.4:**

DCOP, or an independent third party, could serve as an informed mediator or referee between communities and developers. Even if DCOP does not serve as a facilitator for ANCs and community groups throughout the entire process, it would still be helpful for an OP staffer to be present at meetings between the community and the developer. Many interviewed—particularly lawyers and developers—envision this person as an instantly credible, trustworthy, non-partisan resource about what developers and communities can and cannot ask for or do.

As above, this reduces the burden on developers to explain how zoning works and what is or is not legal to the communities. It also helps reduce the antagonism between

developers and community members that results when there is no third party to verify each side's statements, and each party feels that the other might be deceitful.

The Arlington County, VA, process works in this way. The site plan/negotiation process takes place in a series of informal meetings between the developer and the Site Plan Review Committee, which includes members of the Planning Commission, members of the Council Advisory Commission, Civic Association representatives, and members of the community. Instead of having the developer meet with the community and the planning officials separately, this organized committee, which includes community members and planning decision-makers, meets all together to work through changes to the process. Once the Site Plan Review Committee feels comfortable with the developer's plan, it can move forward to review by the Planning Commission.

The City of Alexandria, VA, circumvents direct developer-community interaction altogether, by having its own Office of Planning present its PUD-like cases to the communities, and acting as the messenger for carrying those concerns back to the developer. In Alexandria, this practice works well. The planning officials neither endorse nor disapprove of projects they present; they present them objectively to the communities, and openly solicit feedback and concerns. The planning officials then bring those concerns back to the developer, and work with him to address them. Once refined, the planning officials might bring the plans back to the community for further input. The Alexandria official interviewed comments that the process seems to work well. He believes that community members seem to be supportive of the system and feel that it provides them with effective and appropriate channels of input. Although it would mean an increase in amount of work for DCOP, one possible way of dealing with the

antagonistic developer-community negotiation process might be following Alexandria's lead and having DCOP present developers' projects to communities, rather than having the developers do it themselves.

The Boston Redevelopment Agency (BRA) employs a similar strategy for mediating between the community and the developer in Boston, MA. The BRA holds community meetings at which it presents a potential development project to the public. The developer may be present at these meetings, but his presence is not required. The BRA collects verbal and written feedback on the project from the public, and is responsible for conveying this feedback to the developer. The BRA then works with the developer, in a process very similar to DC's, to refine the application so that it addresses the concerns of the public.

#### **SOLUTION 1.5:**

When the developer has done everything within reason to engage the community and work towards mutual goals, and the community has been unresponsive or willfully uncooperative, there should be formal means for the developer to indicate to ZC that it has tried its best. Ideally, ZC should incorporate this "proof" of community outreach into its consideration of the PUD, and should weight proof of good faith outreach as seriously as it does actual approval from the community, when communities are being unreasonable or unresponsive. Developers interviewed note that this would be extremely helpful in some of the more contentious cases, as it would allow them to control for otherwise uncontrollable risks related to community input.

In terms of the mechanics of such a scenario, one possibility might be for applicants to keep a written record of their interactions with the community, including what requests were made, and how the applicant responded to each of those requests. This record could be validated by a third party, such as a DCOP staffer, or other third party mediator called for in the previous solutions. This documentation could be submitted to the ZC along with the developer's final PUD application, and could be taken into consideration as a part of the overall package.

Each of the solutions above is meant to improve the PUD process by making the process much more transparent, comprehensible, and predictable (if a bit more cumbersome). It is my belief that, if each party in the negotiation clearly understands and commits to the rules and time constraints of that negotiation, then these interactions may be much less fraught with apprehension and tension. Assistance and oversight from DCOP would help ensure that all parties involved remained within the agreed-upon bounds of interaction.

**PROBLEM 2: Even when ANCs and communities are familiar with the PUD process and understand their relationship with the developer, they are unsure of what to ask for from developers.** Many interviewees note that the most successful ANCs are those that know what they want and are organized and articulate in asking for it from developers. Many ANCs, however, do not seem to fall into this category. If all ANCs began the negotiation process with the same background knowledge of what proffers were possible or likely, proffers might be more consistent across projects and across wards.

## **SOLUTION 2.1:**

DCOP should create a clearly written set of proffer guidelines for use by ANC members, developers, attorneys, and others. These guidelines would include what is and is not legal to ask for from developers, what communities have asked for or have received from developers in the past, and what might be appropriate proffers in certain situations or neighborhoods. In creating a list of potential proffers, the city would have to think deeply about one of the main philosophical questions that emerged in the interviews—whether or not proffers should be strictly tied to the property and to mitigating the impact of the development, or whether proffers should be able to accrue to other community groups in the area.

Having a list of suggested proffers might be a welcome middle ground between having no formal direction at all, and having a set-in-stone proffer formula (which all of those interviewed warn against). Overall, creating established guidelines would provide communities and developers with a common starting point for beginning the process. It would help equalize proffers across the city, since all communities would be working from the same list of suggestions. These guidelines could be distributed and discussed at the neighborhood training sessions mentioned as a solution to problem 1.

For example, recent PUD proffers included:

- Affordable housing units in residential PUDs
- Monetary contributions to affordable housing funds
- Monetary contributions to community organizations such as elementary schools, recreation centers, and animal shelters



- Exemplary urban design and landscaping
- Environmental/green features on the building
- Monetary contributions to be disbursed by the ANC
- Public recreation space or open space preservation
- Preservation of a historical feature of the property (a church)

A list like this, including all full proffer packages offered in the past five years, should be written and distributed to DC's ANCs and developers as a means of increasing transparency and leveling the playing field. Of course, this list would be subject to changes based on the political climate, the city's budgetary needs, as well as other policy changes. For example, the eventual implementation of the pending inclusionary zoning ordinances will mean that mere provision of affordable housing will no longer be characteristic of an exemplary project, worthy of additional height or density through the PUD process. Likewise, mandatory green building criteria would eliminate that as an option from the list of possible proffer items.

**SOLUTION 2.2:**

If DCOP were to make a list of suggested or feasible proffers for distribution to ANCs and developers, that list should be neighborhood-specific, since each neighborhood's needs vary so much from another. In order to make a neighborhood-specific list, DCOP (particularly the ward planners) could survey the different neighborhoods, and DCOP could create inventories of what each neighborhood needs. DCOP would distribute these inventories to ANCs themselves, to developers, to

attorneys, and they would be available on the web. ANCs would be reminded to work off of their own lists when negotiating with developers, DCOP would use these lists from its earliest, pre-hearing meetings with developers, and developers themselves might use the lists as they started work on the earliest stages of a project.

This up-to-date “wish-list” solution would particularly benefit neighborhoods that have been disorganized about making requests from developers in the past. Undertaking the process of inventorying community needs alone might help communities be more confident about making requests from developers. In addition, access to this inventory would help DCOP ensure that less organized or less savvy neighborhoods still benefit from PUDs; in this way, OP might help communities avoid “getting steamrolled.”

### **NOT A SOLUTION 2.3:**

DCOP should *not* attempt to equalize proffers across communities by creating a formula of what different community benefits are “worth” in terms of bonuses to developers. Nearly all of those interviewed, including individuals from each profession, note that this solution would eliminate the degree of negotiation room and site-specificity that is so fundamental to PUDs.

**PROBLEM 3: The PUD process takes too long, and it can stretch on beyond the expected time period.** These delays can be quite costly to the developer, and they also unfairly benefit those opposing a project.

**SOLUTION 3.1:**

DCOP could reduce the mandatory open review/comment periods between each step, as well as the final appeals window. Those interviewed are mixed about this possibility. Some feel that the process takes exactly as long as it should take for projects of such a large and important scale, while others think that the process could be condensed, by shortening the periods between each step. Shortening these open periods would allow the developer to move forward through the process more quickly, with a higher degree of certainty.

**SOLUTION 3.2:**

Several of those interviewed (including the attorneys and one developer) express frustration with the length of time it takes to have PUDs reviewed and approved by the National Capital Planning Commission (NCPC), after the plans were approved by the Zoning Commission. One attorney notes that it is not legally required for NCPC to review *every* PUD case—only some are required. This should be determined and clarified.

**SOLUTION 3.3:**

At the public hearing, the Zoning Commission has the ability to approve applications, deny applications, approve applications with conditions, or request that applicants resubmit applications after they have addressed certain concerns. Developers, architects, and attorneys interviewed note that ZC frequently requests changes to developer plans, and often asks applicants to resubmit after addressing those concerns. Depending on the

schedule of the ZC, it may take several additional months before the case can be heard again, and before the applicant can continue forward in the development process. This kind of procedural delay can have an enormous cost to developers—one that seems both unnecessary and avoidable.

A solution to this snag in the process has been offered by several of those interviewed: instead of doubling applications back through the process, the ZC should much more frequently approve applications “with conditions.” When the ZC is close to approving a project, but wants the applicant to make a few minor changes, it should simply approve the project, contingent upon those changes being made. DCOP could be responsible for checking to ensure that the changes do actually get made before the project proceeds. Although the ZC does currently have this power, interviewees generally feel that it does not use it frequently enough. In its zoning regulations, the City of Madison, WI phrases this idea as: “the plan can be approved as submitted, *approved with modifications*, referred for further consideration, or disapproved” (emphasis mine).

Several of those interviewed, including an ANC Commissioner, also note that ZC should take a more active role in determining the final packages. They would like the ZC to be less reactionary and more proactive. Planners from other cities who were interviewed for this report all note that their PUD decision-making bodies (be they ZC, a City Council, or a Planning Commission) take an active role in determining what the final development package will be, rather than simply responding to developer offers.

#### **SOLUTION 3.4:**

Educate ANCs and communities about the PUD process, how they should be involved, and what proffers are feasible and available to them, by implementing any of the above solutions for problems 1 and 2. When the ANCs and communities know how to get involved, are involved from the beginning and cannot get involved at the last minute, and know what proffers are reasonable, there may be fewer delays and setbacks.

**PROBLEM 4: OP asks other agencies (such as DDOT, DPR, DC Public Schools, and DCPD) to review PUD applications, but OP seldom receives responses from these agencies.** Even when the agencies do provide feedback, it often comes too late in the process to be useful to the developer, or to be meaningfully incorporated into the plans without starting from the beginning again.

#### **SOLUTION 4.1:**

If the ZC feels that the input of these other agencies is valuable and necessary, the city should make the agency-input process more formalized, or should even make it required in certain circumstances. In Boston, formal agency comment on each PDA (Boston's version of a PUD) is required. The Boston Redevelopment Authority (Boston's city planning agency) sends out copies of the PDA application to each of the city's agencies, including housing, schools, police, fire, water and sewer, parks and recreation, and transportation, among others. These agencies must respond by a certain deadline. Agencies can provide their review in-person, at an informal meeting at which developers present the proposed project to representatives of the agencies. Agencies can

also respond formally, in writing, to the planning agency. If no agency response is received by the deadline, then that agency forfeits its right to have a say in the project. Informally, this is already happening in DC, but it would be helpful for everyone involved to have a clear deadline after which it was acceptable to move forward in the process, rather than simply waiting until it feels as if enough time has passed, but not being able to define how much is enough.

## OTHER PUD PROBLEMS AND SOLUTIONS

During the interview process, there were several smaller, less overarching issues that emerged. These could be addressed if the PUD regulations were to be re-written.

- 1) The regulations should be more explicit about how the PUD relates to the underlying zoning. According to one of the planner interviewees, “if the density allowable in a given zone is different than that resulting from underlying zoning, the mechanism by which the allowable density is compared should be described.”

See, for example, zoning regulations from the City of Sacramento, CA state:

E. Effect of PUD Designation. A PUD designation constitutes an overlay zone. However, approval of a PUD designation does not establish an underlying zone or enlarge the uses provided by a zoning classification. (Ord. 2005-051, 5: Ord. 99-015, 5-4-D).

- 2) Several planners and one attorney note that it seems strange that, when applicants are seeking a map amendment through the PUD process, the applicant only has to compare the final project to the requirements of the applied-for zone, rather than the original zone. For example, if a developer owned a property in a C-2-B, and was applying to for a PUD and map amendment to a C-3-A, all documentation of the project would evaluate it based on how far beyond regular C-3-A the project was, rather than how far beyond C-2-B it was. Interviewees who were concerned about this wish to see it reverted, so that a proposed PUD project must be evaluated based on how far it deviates from its existing zoning, rather than its proposed zoning.

- 3) Several architects note that they would like to see the regulations be more explicit about the quality and type of the architectural renderings and the application materials for PUDs. They note that some firms seem to turn in mediocre application materials, occasionally even missing important details. If the regulations provided more detail about the size, color, quality, etc. of the materials, it might be easier for OP and the ZC to more equitably evaluate applications.
- 4) The PUD regulations could include introductory language about why more density around metro stations and in other nodes is beneficial to the city: it promotes public transit use, reduces congestion and pollution, adds to the DC tax base, supports local retail, etc. This type of language would serve to educate the public and prevent NIMBY-ism.
- 5) There are no formal channels for local businesses to provide input about PUDs. In many cases, a PUD project may impact local businesses just as much as it will impact local residents—in fact, it may even impact local businesses more. However, businesses are not invited to meet with developers, nor are they invited to share their opinion before the Zoning Commission. Perhaps local businesspeople could be more formally invited into the structure of each ANC, so that their thoughts and opinions could be incorporated into a project. Alternatively, perhaps local businesspeople could have a separate channel for providing input.



## **THINKING MORE RADICALLY ABOUT DC's PUDS**

The previous sections of this paper have focused on small-scale changes that could be made to DC's existing PUD regulations and process, in order to address the most commonly mentioned complaints about PUDs, and those that affect a developer's risk management practices. Rather than simply tinkering with the existing PUD regulations and procedures, however, DC could be bolder; the City could make large-scale changes that more fundamentally address the purpose of its PUDs. The following is a menu of possible large-scale changes that would address some of the underlying issues with PUDs in DC.

First, as the City begins the process of re-writing its zoning regulations and its zoning map, it should consider how set in stone those zoning regulations should be. One possibility for re-thinking the way PUDs are used in the city is to fully update the zoning regulations and map so that they reflect the City's actual desired heights, densities, and uses—making sure that the zoning map is fully consistent with the Comprehensive Plan—and then it should stick much more closely to them. Once the zoning has been updated to represent the type of development the City wants in the first place, there would be minimal need for PUDs, except perhaps in very rare cases.

This possibility would be supported by many of the interviewees, who note that many of today's PUD cases seem motivated by the applicant's desire to simply update the zoning map to more accurately reflect the changing urban landscape. Several interviewees, all ANC Commissioners, note that when developers can get "extra" height and density through the PUD process, or can get the actual zone changed, it seems as if they are going around the regular zoning process entirely. In fact, this scenario seems a

clear case of what is often called incentive zoning, in which “cities grant private real estate developers the legal right to disregard zoning restrictions in return for voluntarily providing urban design features, such as plazas and atriums, and social facilities and services” (Lassar, 1990. p 99). Since people are inclined to believe that the existing zoning must have been established for a valid reason, it seems that going around this zoning must therefore be wrong. For this reason, community members are justifiably wary of PUDs. Updating the zoning and then “sticking to it” more closely would be one way of calming those fears of the community, and eliminating the sense that PUDs are being used far too often and for minor projects. It will also help eliminate the sense of unease surrounding the concept that developers may be “paying to play.”

On the other hand, many interviewees note that there will always be a need for flexibility from the zoning regulations, since no one set of regulations can foresee all possible future circumstances and can best guide every future decision. In some cases, flexibility from those regulations may be in the best interest of the City and its population. For this reason, even if the City makes a policy shift to allow less deviation from the regulations, the option to apply for a PUD should still be open for very special cases.

Another possible negative repercussion of actually zoning the city as planners desire it be built, rather than requiring developers to ask for it, would be the loss of proffers, many of which help provide needed infrastructure and amenities to communities. If the city were to eliminate PUDs, then, it would likely need to find another way to generate private financing of public projects—perhaps using development impact fees. According to Snyder and Stegman (1986), development fees are monetary

contributions made by developers in order to offset the fiscal implications of their projects on a community. These fees must be used to directly offset the project itself, and the city must prove that there is a “rational nexus” between the fees charged and the project’s impacts.

A second radical way of changing DC’s PUDs going forward would be to entirely eliminate small-scale PUDs, making the process a viable option only for the kind of large-scale, mixed-use projects that most other cities think of as PUDs. In its current form, the minimum PUD requirement in DC is only 15,000 square feet in commercial zones, where most PUDs are located. Residential PUDs must be at least one or two acres, depending on the zone, to be eligible for PUD designation. Even those minimal requirements, however, are easily overturned by the Zoning Commission, which has the authority to allow projects of any size go through the PUD process, at its discretion.

Making only large-scale projects eligible for PUD status would greatly reduce the number of PUDs each year, giving OP and other agencies much more time to work on and respond to the PUDs that would still come through the process. This could also help quell the anxiety of those interviewed—that PUDs are being used for too many projects, and at too small of a scale. In addition, this would be more in keeping with other cities’ PUD processes and regulations. For comparison, other cities have the following minimum size requirements for PUDs or their equivalents:

- Arlington: no minimum size requirement.
- Alexandria: 30 acres.
- Baltimore: the smallest requirement is 2 acres. Other zones have larger requirements.

- Boston: 1 acre, and only within certain neighborhoods.
- Los Angeles: 3 acres.
- San Francisco: ½ an acre.

A third way of radically changing DC's PUDs would entail having two separate PUD processes, not separated by size or by other physical characteristics, but by the amount of process the developer would be willing to go through (and thus the amount of uncertainty he was willing to undertake). In this case, some PUDs could be made automatic or as-of-right: if the project meets certain minimum requirements, it can get certain pre-determined bonuses without going through more than a very minimal site-review. Other PUDs could go through the full discretionary process, in order to get the full flexibility they need. This option would be more feasible for developers more comfortable with taking on the risks associated with such a large scale, open-ended process.

According to the PAS Report Number 545, "permitting PUD as-of-right has become a popular alternative in many communities... If it is possible to identify and agree on the elements of a PUD in the zoning ordinance, approval should follow without difficulty if ordinance standards are met...PUD as-of-right is also possible on smaller sites, such as infill sites in downtown areas, where the community can establish design requirements in its land-use regulations." (page 14). Since Washington DC already applies its PUD regulations to smaller, infill sites in downtown areas, it seems a likely candidate for this form of PUD.

Having two processes could have a number of benefits. First, it would reduce the number of work-intensive, discretionary PUDs and help unclog the system. Second, it

would altogether avoid the often contentious developer-community negotiation process. Third, it would alleviate some developer frustration at the uncertainty of the process, by providing an easy menu of options in known quantities. Fourth, it would alleviate some planners' anxiety about the inequities between different PUD projects and the bonuses the developers have received in return for the benefits they have provided.

However, there are potential downsides to this two-PUD system as well. First, it would probably not be welcomed by ANCs and other community groups, whose input in the process would be reduced (or even eliminated in some cases). Second, when setting up the system, it might be difficult to determine what the standards should be (ie: how much is each bonus “worth?”). Third, it would require that the zoning maps and regulations be current at all times. Fourth, if this option became popular with developers, it might also eliminate one of the most highly-regarded aspects of PUDs—their ability to respond very specifically to the needs and constraints of the site itself, and the surrounding neighborhood.

The main challenge facing the Office of Planning is this: should it accept the current purpose of PUDs in DC as valid, and work on improving the process the already exists, *or* should it rethink the underlying concepts behind PUDs in DC, and create a new process that promotes the kind of development that the City would like to see occurring instead?

Most interviewees note that the system seems to be working fine as it is, although it could be made even more effective by removing the high levels of uncertainty surrounding it. If the City chooses to accept the current purpose of the system and re-work the regulations to alleviate the concerns of interviewees, it can simply pick and

choose between the options listed above: namely educating ANCs and communities, clarifying the interactions between developers and communities, and the like.

Rather than simply improving the current system, the City may choose to re-work it entirely. This choice would be based not on the feedback of interviewees, but on the fact that most other cities think of and use PUDs very differently from how DC does. In most places, developers get flexibility from the zoning *so that* they might build better projects, while, in DC, developers get flexibility from the zoning *in return* for building better projects. The difference is subtle, but important. If the Office of Planning decides that DC should adhere more closely to the concept of PUDs in much of the rest of the nation, then it can choose among the different options laid out in the “Thinking More Radically” section above.

As the City chooses a new direction for PUDs, and contemplates re-writing the PUD regulations, it should keep in mind several important issues. First, whatever the PUD regulations might be, they should always be kept current in relationship to the most recent versions of the zoning regulations, zoning map, and Comprehensive Plan. Likewise, those documents should be in tune with the PUD regulations.

Secondly, DC has adopted a set of Inclusionary Zoning regulations, which will require developers in some cases to offer affordable housing units. In return, they will automatically receive extra height and density for those projects. The effects of Inclusionary Zoning (IZ) on PUDs will not be known until IZ is fully implemented, but interviewees predict that there will be fewer PUDs (since developers can get nearly as much extra height and density through IZ), and that the proffer emphasis will shift from affordable housing to something else. Whatever the case may be, OP should keep an eye

on the effects of IZ on PUDs and the PUD process, as it examines how to change the these regulations and procedures.

Regardless of how the Office of Planning chooses to revamp its PUD regulations and processes, it should keep in mind that, above all, PUDs are meant to bring a more valuable, more desirable, better quality of development into the City. PUDs can lay the groundwork for how we want the city to grow and change, and they set the precedent for future development in each neighborhood. In deciding the fate of PUDs, OP will be—in some ways—deciding the fate of the city.

## CONCLUSION: IMPLICATIONS FOR PLANNING

Although DC uses its PUDs differently from most cities, there are a number of points in this report that can be useful to the field of planning at large. Most notably, it becomes clear that the city can play a large part in reducing risk for the private sector. When the private sector—including developers—can act more boldly, assertively, and conscientiously, the city as a whole may benefit through increased tax revenues, higher quality built landscape, access to greater amenities and housing opportunities, and more.

Each city has a number of means available for reducing uncertainty in its PUD processes, or in any development processes that requires community input. First, and more importantly, the city should increase process transparency. In the case of PUDs, this would entail providing easy access to a log of previous cases, so developers can more accurately understand and model expected outcomes. Second, cities should provide mediation between developers and community members, as a way of making those interactions more equitable, efficient, and self-contained. Doing so allows the developer to cap his or her uncertainty. Third, the city should clearly define the roles of developer and community, so that all expectations are known and can be clearly modeled.

Once these qualitative, public policy measures are incorporated into any development process, developers can more confidently use the risk modeling techniques outlined in this report, knowing that the range of uncertainty is much narrower for each outcome. These steps can be taken in *any* situation in which a city supports development by attempting to minimize private sector exposure to unnecessary risks.



After several years of wild, fast-paced growth, the country's development is now at a standstill; there is little to no debt financing available to undertake new development projects, and obtaining re-financing on existing projects is nearly impossible. In the few cases in which debt is available, lenders are underwriting projects using extremely tight standards. In the current economy, only projects with low debt coverage ratios, low loan to value ratios, and—most importantly for the findings of this report—low uncertainty, will be provided with the capital needed to move forward. For that reason, among many, the City of DC and its agents should work to reasonably reduce uncertainties in the PUD process, while maintaining the public interest, through the steps outlined. If the process continues with the same amount of risk and uncertainty as it currently entails, it may be a long, slow recovery period for the city of Washington, DC.

## APPENDIX

### Item 1: Sample PUD Interview Questions

The following questions were asked of planners at the DC Office of Planning. Individuals from other professions were asked slightly different—though very similar—questions, based on their areas of experience.

The PUD ordinance:

1. What is the purpose of having a PUD ordinance? Does the process accomplish this purpose?
2. Is there a minimum PUD size? Should there be?
3. How is the PUD related to the base zoning? Is it related strongly, loosely, or not at all? (Ie: is the extra FAR given on top of the base, etc.?) Or does it work independently of the zoning ordinance?
4. How does PUD relate to TDRs? Can you add additional TDR FAR onto your PUD FAR? What is the limit?
5. Is the PUD ordinance consistently interpreted by the DCOP and by the Zoning Commission?
6. Do you think that expectations of amenities and provisions should be laid out more mathematically, and be less open to interpretation? (ie: if applicant provides X, city will provide Z).
  - a. Would this be a logistical nightmare to try to monitor?
  - b. Does the current system provide necessary flexibility?
  - c. How would you do this?

Proffering process:

7. Is there a specific community amenity that planners are always pushing for? Or that the community always wants?
8. What do developers most often want to proffer? Why?
9. How do community members get what they want from the developer?
10. How does the developer best satisfy the many different wants and needs of the ANC and the OP?
11. How often are the amenities/proffers something that is off-site?
12. In your opinion, are the proffers usually reasonable for what the developer is asking for in return?
13. What should neighborhoods and OP ask for from developers, which they are not currently asking for? (eg: green building components of project? LEED certification? In-lieu payments to metro?)
14. What happens in neighborhoods that are less savvy in making requests from developers? Do they get nothing? Who makes the demands when neighbors do not?

PUD process as a whole:

15. What are the role/duties of the OP, the developer/applicant, and the ANC in this process? What does each entity need to do/provide?
16. What is the OP looking for in applications? What are the standards upon which OP planners base recommendations of approval or denial?
17. What design review takes place? By whom?
18. What is the Zoning Commission looking for in applications? What are the standards by which the ZC makes its judgments of whether the benefits outweigh the costs?
19. How consistent is the Zoning Commission in denying/accepting projects of the same type?
20. What do developer/applicants most frequently GET out of the PUD designation? Is there any one thing that they are most often asking for relief from?
21. What is the difference between the combined and the 2-step processes? Is there a benefit to either type? Should all PUD applications just be one step?
22. Public involvement:
  - a. How is the public involved in contributing to the process?
  - b. Is this effective?
  - c. Do they feel that it is effective?
  - d. How could it be better?
23. Is the process efficient? If not, where could it gain efficiency? What part of the process takes longer than it should?
24. What do citizens think of the process?
25. What do developers think of the process as a whole?
26. As a planner, what is the most frustrating part of the process to you?
27. As a planner, what is the BEST part of the process to you?

Enforcement of plans and proffers/amenities:

28. What if the developer/applicant wants to make changes to the plan after it has been approved by the Commission?
  - a. Who follows up to make sure that project is built as designed/approved?
  - b. Who monitors compliance?
29. How difficult is it to enforce the intent of amenity packages? (in cases in which developers pay the amenity fee and relinquish control of project thereafter).
30. As it exists now, applicants can just pay money to a non-profit to provide social services, etc. but the money paid cannot be used for administering their program. Should rules be changed so that amenity money can be used to ADMINISTER the program? Is there a solution?
31. Should developers be able to pay in-lieu fees at all, instead of providing on-site amenities themselves?

Results/outcome:

32. Do you feel that the PUD process results in higher quality development than the by-right process?
  - a. If so, what aspect of the development is better than a matter-of-right?
33. Do you feel that the process results in development that is in the spirit of the comprehensive plan?

34. Does the resulting development fit the neighborhood in terms of mass and style?
35. Is the resulting development “smart growth?” Maximizing transit-orientation, reusing existing and under-used properties, supporting transportation options, higher density, etc.?
36. If you could set up the process in whatever way you liked, what would you do?
37. Is there a need for PUDs in DC? OR could the same ends be accomplished by other means?
38. Do we need PUDs now that we have inclusionary zoning and a green building mandate?
39. Is there anything that I should have asked in this interview, but did not?

## **Item 2: A Review of PUD Regulations and Procedures in Comparable Cities**

### **ARLINGTON COUNTY, VA**

In Arlington, *most* development is done as a special exception, through a site plan review process that is very much like PUDs in DC. Arlington’s regulations are structured so that there can be by-right development, but only at a very minimal level. In order to get more desirable levels of height and density, developers must go through the site plan review process (Arlington’s version of a PUD). The available bonuses are quite large: by-right development allows only 1.5 FAR and 45 feet of height, whereas a developer can get between 3.5 and 10 FAR and 100 to 300 feet of height by going through the site plan review process. The overarching purpose of the site plan review is to allow more flexibility in development form, use, and density than would be permitted in by-right development in a zoning district. Any development project is eligible for this special exception process.

The site plan review process works as follows:

- 1) Applicant meets with staff members to understand the process and the unique constraints of the proposed site. Staff encourages applicants to contact neighbors and Civic Associations.
- 2) Applicant files application (including site plans).
- 3) Site plans are reviewed by Departments of Community Planning, Housing and Development, Public Works, Parks and Rec, Police, Fire, Environmental Services, Econ Development.
- 4) Site Plans are reviewed by a committee of the Planning Commission and the Site Plan Review Committee (which includes Planning Commission Members, Council Advisory Commission members, and Civic Association and Neighborhood representatives). These meetings are INFORMAL and they are opportunities for developer to present plans and for community to provide comments and direction. These meetings continue until the SPRC believes that the plan is ready to proceed to the Planning Commission.
- 5) Planning Commission receives a staff report and a report from SPRC on the plan. These reports include a number of suggested conditions for approval.
- 6) Planning Commission reviews site plans and major amendments, in light of the staff report and SPRC report, and makes recommendation to the County Board.
- 7) The County Board meets (at least 90 days after the original application submittal) and takes final action on the site plan (accepts or denies). It can

impose specific conditions in the approval of the site plan (ie for parking, landscaping, facilities, etc.).

- 8) Within 90 days, the applicant is required to provide a detailed final plan (the 4.1 plan), representing the plan approved by the County Board and including the Boards required changes.
- 9) If plan is approved, developer can move forward with obtaining permits for development, etc. At each stage, zoning and planning offices check the project for compliance with the approved plans.

In general, the site plan is approved by the County Board if:

- 1) it complies with standards of zoning ordinance
- 2) it complies with mix required by GLUP
- 3) it provides public improvement features called for by the sector plan

In order to receive the extra height and density allowable through the site plan review process, the developer is required to provide an extensive list of amenities to the public. For example, the developer is expected to carry out ALL of the necessary public improvements to the site, including building or repairing related sidewalks, utilities, streetscapes, landscapes, etc. The developer may also be required to contribute to an under-grounding fund, an arts fund, a LEED fund, or other city-managed funds. In addition, if the site has other specific needs, the developer is expected to pay for and address those (for example, building a public plaza).

One benefit of Arlington’s method: the ordinances do not need to be written very specifically, or with great complexity, since nearly every development project goes through this discretionary process. Instead of being cramped by rigid regulations, the planning office can more closely its work and its decisions closely on the plans for each neighborhood and for the city, and on the specifics of each site.

One major downside of Arlington’s method: it builds a huge and ongoing need for inspections. Every project approved through the process has a number of very specific amenities that must be inspected and monitored, and this can be a large challenge for a small staff.

## **BALTIMORE, MD**

The City of Baltimore does have PUDs—planned developments of over 2 or 3 acres in size. Developers go through the PUD process in order to get permission for land uses that are not otherwise permitted in the underlying zoning. The PUDs cannot get additional height and density, although they can shuffle the allowable height and density around the site as a whole.

The Land Use and Urban Design Office (like the Office of Planning) encourages applicants to provide amenities like parking or open space, but cannot require these in any way. The benefits of the PUDs are mostly things inherent to the building itself, like superior design and superior landscaping.

Baltimore’s PUD process works as follows:

“The first step of the PUD process is creating the master plan, with input from the planning department. That is, we try to create a master plan for a PUD project. That includes everything in terms of layout, design, number of dwelling units, square footage of each use, parking, etc. After that informational process, we have our site plan review committee look at the master plan. In addition we have the urban design and architectural review committee and that is a panel of architects and landscape architects that look at projects. The goal here is to formulate the best master plan that we can in terms of building layout, circulation, parking, the whole thing.

Once the master plan has gone through the agency review process, the sort of final approval of that master plan process comes from UDARP. Once that happens, then we can move forward with the legislation—because PUDs are legislation. The legislation could be already introduced, or it could be introduced after that master plan is finalized. The legislation is introduced into city council, and once is introduced, is referred to various agencies for recommendation.

Then it comes to Planning office for recommendation and there is a whole formal process. Then either the planning office or the applicant will submit to community organizations the proposed plans that are coming to the city. They have to submit to the community the same plans that are submitted to the planning office. We have our notification process. We also have the posting of the property requirement—letters to community groups, stakeholders, property is posted saying when it will be considered by the planning commission. That gets you the master plan.



In your master plan you have a series of plats or sheets. One is your existing conditions drawing that shows property of PUD and boundaries and what is there now. Then you have a series of development plans. One of them is your site plan, another is landscape plan, and then depending upon how long your project is you might have a series of plans. You have to include certain info on your development plan—for example, that you will have so many dwelling units and so many dwelling units that are single family, so many that are multi-family, so much sq. ft of retail, office, parking, etc. You also have to do a zoning analysis as to what the zoning code requires and what you are proposing and where you are in relationship to underlying zoning. Master plan sort of sets your proposal in terms of what you can do—how much res, office, parking, open space, street layout, etc. is all laid out.

Then once you get into your actual plan implementation, depending upon the magnitude of your project and how you phase it, each component has to come back for final development approval. You have to come back in for final design approval process, for each component of the project. Site plan review, community information process, design panel, and the end product would be a site plan for that component, landscaping plan for that component, and all of it would have to be compatible with the master-plan. You could do both steps at once.

Within PUDs, there are two types of changes. First, there are the minor changes that planning commission can consider. Then there are major changes that have to go

back to city council in the form of an ordinance, and planning commission gets to decide what is major and what is minor. In general, minor changes are those that involve maybe a site plan tweak or a rearranging of your park and open space a little with some other use. Major amendments are for things like uses that were not permitted in the original PUD. You can be really specific about what uses to permit and what you will not. You can exclude for example a lot of the B1 uses.” (Personal interview with Baltimore planner, June 2007).

## **BOSTON, MA**

The City of Boston has something called Planned Development Areas (PDA), which are very similar in purpose and in process to DC’s PUDs. A PDA is a special purpose overlay district, within which special kinds of development can occur, provided they are approved through the PDA process. The BRA (Boston’s version of the Office of Planning) must vote on and approve both the zoning map amendment that establishes the PDA and the specific development plan/plans for that PDA. A site must be at least one acre to be eligible for designation as a PDA.

Developers generally go through the PDA process for larger-scale, mixed-use developments that may need relief from some of the zoning requirements. Rather than getting a number of separate variances and exceptions that are needed for one, cohesive project, developers are able to get them all at once. The developers also find that earning these variances through the PDA process is often more legally bullet-proof than earning them separately (it is harder for the community to challenge PDAs, once they have been accepted). Also, in some zones (but not all) developers are able to get extra height and

density through PDAs, if they provide amenities and benefits to the communities. These benefits vary from providing affordable housing, open space, and community-gathering space, to making contributions to the local library or homeless shelter. The proffers in Boston are usually a combination of things on and off the development site

Boston's PDA process works as follows:

1. There is a pre-review planning meeting. Applicants are strongly encouraged to meet with BRA to discuss matters raised by the PDA Development Plan and the PDA Master Plan. BRA and the applicant identify need for coordination with other BRA review and review by other agencies.
2. The applicant files its development plan with BRA, with fact sheet describing each proposed project in the Development Plan, and a map or description of the area involved.
3. The BRA publishes notices of receipt of forms.
4. The public comment period is open for 45 days after BRA has received the documents. These comments include those of public agencies like parks and recreation, schools, fire, police, environment, transportation, etc. These agencies are required to submit their opinion of the project.
5. The BRA shall hold a public hearing, which shall be publicly announced, and the public will be able to comment during this meeting.
6. No more than 60 days after the BRA has received the PRDA Plan (thus 15 days after the public comment period has closed), the BRA shall either:
  - A) approve the plan and authorize its Director to petition the ZC to approve the plan and designate the area as a PDA, or

- B) conditionally approve the plan, or
  - C) disapprove of the plan.
7. The BRA shall transmit the plan to the ZC for its consideration.
  8. The ZC publishes notice of the hearing at least 20 days before the hearing.
  9. The ZC holds a public hearing and votes on the plan. It shall either approve or deny the plan. If it is approved, then the PDA is considered to be “established.”
- Then no building permit in the PDA shall be given unless it is consistent with the Development Plan (or else the plan must be amended).

Boston’s PDAs also must go through large project review (or small-project review if they are smaller than the minimum). The main frustration with PDAs in Boston is the feeling that developers are just using them to get a convenient “super-variance,” rather than providing a truly superior project with a legitimate planning rationale behind it. There is also the public complaint that the BRA seems to be making special, behind-the-scenes deals with developers.

## **ALEXANDRIA, VA**

Alexandria does not have PUDs, but it does have something called Coordinated Development Districts. These are like district overlays, on very large sites (over 30 acres). Each of the city’s 14 different CDDs has different guidelines governing it. Within each CDD, a variety of densities can be moved around, in order to make a better development project.

In order to be approved for a CDD project, most developers proffer things like housing, open space, public facilities, landscaping, etc. The proffer is always something that is either integral to the proposed project, is related to mitigating the effects of the project, or is a city-wide benefit (such as making a contribution to the city's tree fund). Money is never donated to community groups by developers seeking CDD exceptions.

The application process for Alexandria's CDDs is as follows:

1. The applicant files a concept/bubble plan with department.
2. The applicant has numerous meetings with developers and neighborhood groups, refining plans numerous times before they goes to public hearing.
3. The application then goes before a public hearing of the Planning Commission.
4. The planning office files its report in terms of what we agree on in terms of streets, structures etc. and what the office of planning's recommendations are to reject or accept it.
5. The planning office presents its recommendations for the case, and its conditions for support, if applicable.
6. The developer presents its side of the case.
7. The commission makes a recommendation to the City Council to accept or deny the case.
8. The case goes before a public hearing of the City Council. Council can accept—but can throw out any conditions that it wants to AND can require additional conditions in order to approve it. Council is the

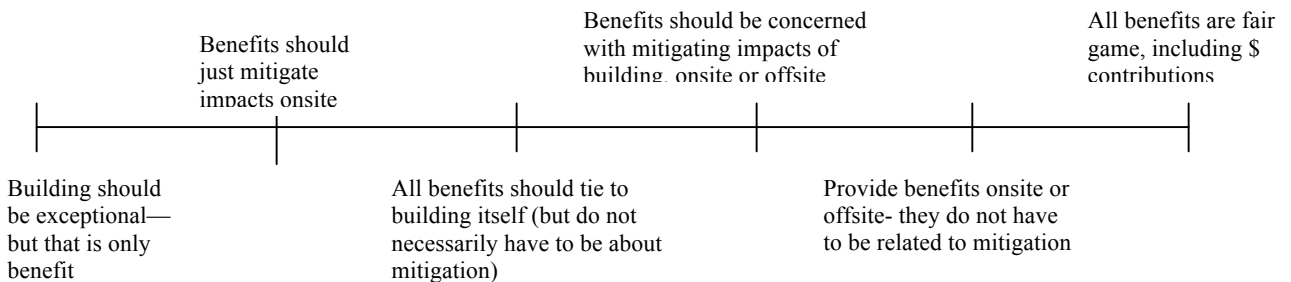
final decision-making body, with the objective of resolving all issues before the hearings. The planning group with them the whole way through the process, and the Council has final say on what it should look like.

9. Once the plan is adopted, the developer/owner will file specific plans based on that concept.

There are several benefits of this process:

“The office of planning goes out and makes the presentations to the citizen groups, and NOT the developer. That works well for us. Our goal is to provide the best project for the good of the community. The community respects this—we just say here is this project coming in, and here are the issues we see, and do you have any other inputs to raise about this. At that stage we are not advocating yes or no for the project, we just are saying this is what it is—what can you suggest?”

**Item 3: A spectrum of PUD proffers (different ways of conceptualizing PUDs)**



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Alexandra Moravec's in-person interviews with:

- Ten DC Office of Planning Planners, most of whom are development review specialists
- Three DC-based land use attorneys with experience representing PUDs
- One DC-based land use expert working with a legal firm on PUDs
- Three DC-based architects who have designed PUD projects
- Three ANC Commissioners whose communities have faced PUDs
- Three DC-based developers who have gone through the PUD process

(All interviewees will remain anonymous, to ensure that they were able to speak freely regarding issues that can be highly contentious in the city).

Alexandra Moravec's phone interviews with planners from:

- Alexandria, VA
- Arlington, VA
- Baltimore, MD
- Boston, MA