

# Land Lines

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# Land Use and Design Innovations in Private Communities

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**T**he twenty-first century will witness record growth in the number and distribution of private residential communities. Collectively referred to as common interest communities (CICs) or common interest developments (CIDs), these communities rely on covenants, conditions and restrictions to privately govern and control land use, design decisions, services and social conduct. The communities own, operate and manage the residential property within their boundaries, including open space, parking, recreational facilities and streets. Although CICs historically have been the domain of the affluent, they are now becoming a viable choice for both suburban and urban residential development. Taking the form of condominiums, cooperatives, and single- and multifamily homes, both gated and nongated private communities are spreading among diverse economic and social classes.

## A Worldwide Phenomenon

The proliferation of private communities in the United States is causing an unprecedented transition from traditional individual ownership to collective governance of property, signaling a remarkable shift in the American political and economic landscape. This trend establishes a new micro-scale level of governance beneath existing municipal structures, and highlights other tensions between the public and private sectors.

Indeed, the numbers provide a clear indication of this movement's strength. At the end of the twentieth century, about 47 million Americans lived in condominiums, cooperatives and homeowner associations (HOAs). Growing from only 500 in the 1960s to an estimated 231,000 in 1999, HOAs now comprise almost 15 percent of

the national housing stock, with an estimated addition of 8,000 to 10,000 private developments each year. In the 50 largest metropolitan areas, more than half of all new housing is now built under the governance of neighborhood associations. In California—particularly in the Los Angeles and San Diego metropolitan areas—this figure exceeds 60 percent (Treese 1999).

Recent press coverage and research from Europe, Africa, South America and Asia suggest that CICs are rapidly being popularized in other parts of the world as well. Although gated communities are still rare in Britain, former prime minister Margaret Thatcher reportedly moved into such a community in South London. In South Africa, where secure communities were an unavoidable consequence of racism, post-apartheid gated developments are

inhabited by all races, and not only by the wealthy. In Saudi Arabia private compounds of linked houses provide extended families with privacy and identity. Those compounds seem to be a reaction to the single residential typology imported from abroad during the country's modernization period.

Since the economic reforms of the early 1980s, many residential areas in Chinese cities have walls to improve security and define social status. Often these developments are designed by U.S. companies and based on U.S. planning and design standards. Private communities in Southeast Asia, such as in Indonesia, are marketed as places that allow the differentiation of lifestyle and give prestige and security to their inhabitants. In Latin America sprawling gated communities at the metropolitan



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In Latin America, sprawling gated communities, such as this one in Santiago, Chile, have become the norm for a growing sector of the population.



edges of Santiago, Chile, Bogotá, Colombia, and other cities have become the norm for a growing professional class in need of a secure lifestyle in an environment dominated by social and economic poverty. The deteriorating political and economic state of affairs in Buenos Aires, Argentina, has resulted in situations where developers and private companies provide privatized “public” services that attract large sectors of the population to private developments housing up to half a million people (*Environment and Planning B* 2002).

### Dual Governance, Rules and Outcomes

The spread of CICs in the U.S. is driven by the mutual interests of developers and local governments, including planning officials. Developers benefit because they can maintain profits—despite the high costs of land and infrastructure—by introducing efficient land design schemes and, often, higher densities. Local governments prefer CICs because they privatize infrastructure and reduce public costs. At the same time, consumers see a way to protect their property values through the ability to control their neighborhood character by using compliance and enforcement mechanisms. CICs also provide consumers greater infrastructure options, recreational amenities and community services.

The growing fiscal crisis experienced by many local governments means they are often unable to respond to such traditional community demands as building and maintaining streets, collecting garbage, snowplowing and other services. The establishment of a separate legal mechanism within a private neighborhood association allows collective control over a neighborhood’s common environment and the private provision of common services. Perhaps more important, this trend creates a de facto deregulation of municipal subdivision standards and zoning, because cities and towns allow for a different, more flexible set of standards to be implemented in private developments. Often, the results are innovative spatial and architectural layouts and, sometimes, unusually sensitive environmental design. This shift in neighborhood governance enables a resultant

shift in the design of residential developments that heretofore has not been fully appreciated.

A recent nationwide survey of public officials and developers gauges the impacts of subdivision regulations on the design of residential developments and the practices of developers in rapidly growing regions of the country (Ben-Joseph 2003). It assesses attitudes and perceptions and identifies the issues regarding subdivision regulations that members of the housing industry and the regulatory agencies feel are affecting housing development.

### Excessive Regulations

As early as 1916 Frederick Law Olmsted, Jr., commented on subdivision standards and regulations.

While such regulations are intended only to guard against the evil results of ignorance and greed on the part of landowners and builders, they also limit and control the operations of those who are neither ignorant nor greedy; and it is clear that the purpose in framing and enforcing them should be to leave open the maximum scope for individual enterprise, initiative and ingenuity that is compatible with adequate protection of the public interests. Such regulations are, and always should be, in a state of flux and adjustment—on the one hand with a view to preventing newly discovered abuses, and on the other hand with a view to opening a wider opportunity of individual discretion at points where the law is found to be unwisely restrictive. (Olmsted 1916, 3)

Indeed, developers in the 2003 survey clearly expressed their frustration with the excessive and often unwarranted nature of physical improvements and standards associated with subdivision development. When asked to indicate which types of requirements present the greatest expense in conforming to regulations, an overwhelming majority (80 percent) pointed to requirements associated with site design. When asked to indicate which specific requirements they perceived as excessive, 52 percent of the respondents indicated those relating to street design and construction,

with almost 45 percent indicating land dedication and 43 percent storm sewer systems (underground piping for storm water mitigation). When asked about which physical standards within each category were seen as excessive, those most frequently cited were street widths (75 percent of the respondents), street rights-of-way (73 percent) and requirements of land for open space (73 percent). Most developers also mentioned water and sewer hook-up fees (85–90 percent) and payments in lieu of land dedication (79 percent) as being excessive monetary requirements associated with physical improvements (see Table 1).

While one might expect that developers would criticize regulations as interfering in their business, it is important to note that most respondents were selective in their answers to the survey. Out of 29 requirements listed in Table 1, only 13 were considered excessive by the majority of developers, while 16 others were deemed reasonable. Such results indicate that many developers are tuned in to construction and design performance, and their attitude toward regulation cannot always be assumed to be negative.

Furthermore, the surveyed public officials (town planners and town engineers) often concurred with the developers’ observations. Generally these officials agreed that the regulatory process, such as the enforcement of subdivision regulations, has become more demanding and complex. Over the past five years, for example, 70 percent of the jurisdictions where these public officials work have introduced new requirements, and 57 percent have increased specifications, such as those for setbacks and lot sizes. Only 16 percent of these jurisdictions have decreased their specifications, mostly by reducing street widths.

### Relief from Subdivision Regulations

Two-thirds of residential developers consider government regulations, particularly those pertaining to the design and control of subdivisions, the main culprit in prohibiting design innovation and increasing the cost of housing. More specifically, they see these regulations as an impediment

to increasing densities, changing housing types, and reconfiguring streets and lots. One way developers try to relax these regulations is through requests for relief in the form of zoning or design variances. More than half of the surveyed developers (52 percent) had to apply for some sort of relief in at least half of their projects, while 37 percent had to apply in at least three-fourths of their projects. When asked to point to the type of changes they requested, many indicated higher-density single-family projects, more multifamily units, and more varied site and structural plans. The majority of the developers in the survey responded that they sought to increase the density of housing units on their sites, but 72 percent noted that because of existing regulations they had to design lower-density developments than they wanted. Some developers reported that regulations forced them to build in greenfield locations away from major urban areas, where restrictions and abutters' objections were less onerous.

Although almost all of the public officials (83 percent) reported that their jurisdictions require private developments to follow established subdivision regulations, the enforcement of these standards through the approval process is malleable. In some cases, when such a development is classified as a condominium, which may include attached and/or detached dwelling units, no formal review of street standards is required. In fact, the majority of public officials surveyed (61 percent) indicated that their jurisdictions allow for narrower streets to be constructed within private developments. One respondent stated, "Variances are more easily granted within private road systems since the county will not have any maintenance responsibility or liability."

The practice of building narrower roadways and offering smaller building setbacks within private subdivisions has become widely accepted over the last decade. A street standards survey completed in 1995 showed that 84 percent of the cities responding allowed for different street standards in such developments, and that they more readily accepted the introduction of differ-

ent paving materials, changes in street configurations, and the employment of traffic calming devices (Ben-Joseph 1995).

### Design Benefits

Both public officials and developers acknowledge the design benefits associated with private subdivisions (see Table 2). Fifty-seven percent of officials indicated that private developments are introducing innovative design in the form of building

arrangements and unit clustering. Forty-one percent felt that such developments permit the introduction of housing types not found elsewhere in their communities, and 61 percent indicated that they allow for narrower street standards to be incorporated.

While public officials see the benefits of pushing the design envelope within the confines of the development itself, many are also concerned about the social

TABLE 1  
Developers' Assessments of Various Requirements (n=84)

Requirement	Excessive (% responding)	Reasonable
Street width	75	
Street right-of-way	73	
Pavement thickness		62
Curbs		83
Sidewalk width	56	
Sidewalk thickness		70
Water pipe diameter		55
Water pipe material		80
Water pipe depth		93
Water pipe hook-up fees	85	
Sewer pipe diameter		72
Sewer pipe material		75
Sewer pipe depth		70
Sewer hook-up fees	90	
Sewer system layout		56
Storm water pipe diameter	62	
Storm water pipe material		50
Storm water pipe depth		45
Storm water pipe hook-up	57	
Storm water system layout	73	
Street trees	73	
Street lighting		52
Telephone lines		53
Electric lines	60	
Cable/TV lines		64
Land for recreation	52	
Land for open space	73	
Land for schools		65
Fee in lieu of land dedication	79	

Source: Adapted from Ben-Joseph (2003, Table 26)

implications and impacts of these private developments on their surrounding communities. “As a matter of policy,” a survey respondent wrote, “gated private communities are discouraged as they are not in keeping with the urban form, which calls for an interconnecting network of vehicular and pedestrian movement. In addition, the walling of neighborhoods from arterial roadways should be avoided by alternatives such as the placement of other compatible uses along the periphery.”

Both developers and public officials believe that common subdivision regulations restrict alternative solutions, and they see privatizing subdivisions as a vehicle for simplifying the approval process and introducing design innovation. As one of the developers remarked, “Regular subdivision codes don’t allow flexibility. Lots are too standardized and streets use too much area. If I could build narrow streets and small lots, developments controlled by covenants and HOAs will not be necessary.” The ability to provide design choices and efficient layouts and to avoid a lengthy approval process drives both public and private sectors to offer CICs rather than typical subdivisions. Indeed, it seems that in the last decade most innovation in subdivision design has sprung from within the private domain and under the governance of community associations rather than within the public realm through traditional means.

### Toward Better Subdivisions

The proliferation of CICs, with their ability to plan, design and govern outside of public boundaries, can be seen as an indicator of a failed public system. When developers and public officials resort to privatization to achieve a more responsive design outcome, and when local jurisdictions acknowledge that privatized communities provide a straightforward way to grant variations and innovation, then something is wrong with the existing parameters of subdivision codes and regulations.

For the last 25 years the subdivision approval process has increased in complexity, in the number of agencies involved, in the number of delays, and in the regu-

TABLE 2

Perception of Design Characteristics Fostered by Private Subdivisions

Residential Private Subdivision Characteristics	Developers (% responding)	Public Officials (% responding)
Encourage housing clusters	42	49
Permit greater density	25	26
Permit housing types not found elsewhere	37	41
Allow narrower streets	49	61
Allow innovative design	67	57

Note: Survey respondents included developers (n=80) and public officials (n=145).  
Source: Adapted from Ben-Joseph (2003, Table 36).

lar addition of new requirements (Seidel 1978). Both developers and public officials acknowledge that the application for variances and changes in subdivision regulations are lengthy and cumbersome. Therefore, it is not surprising that developers see private projects governed by HOAs as not only responding to market demands and trends, but also introducing planning and design concepts that are often not allowed or are difficult to get authorized under the typical approval process.

CICs are enabling developers to maintain profits and keep the design process relatively open-ended and flexible. The ability to operate outside the regular, common set of subdivision regulations allows developers to offer various design solutions that fit the local setting, the targeted site and the prospective consumers. In some cases these can be attractive, high-density yet affordable single-family developments, and in others low-density, high-end yet ecologically sensitive construction (McKenzie 2003).

The concept of private communities as environmentally sensitive developments may seem a contradiction in terms. However, some of these developments provide examples of responsible construction that minimizes environmental impact while maximizing economic value. In Dewees Island, South Carolina, there are few impervious road surfaces, allowing full restoration of the underground aquifer. Only vegetation indigenous to the local coastal plains is allowed. This xeriscaping approach removes the need for irrigation, fertilizers and pesticides. In addition, homes are

required to use water conservation fixtures, reducing water consumption by 60 percent.

Paradoxically, while CICs are often controlled and managed by strict covenants and regulations, their initial design is very much outside the mainstream regulatory apparatus. It is precisely for this reason that they prove to be more flexible in their design solutions and more agreeable to developers, consumers and local governments.


How can such flexibility be integrated in the regular planning process? Can subdivision regulations be made more accommodating and less prescriptive? Will such an approach level the playing field and allow for more housing choices and greater design variety in the public domain? Will such changes promote developers to plan subdivisions endowed with CICs’ design qualities without their restrictive covenants and privatized shared spaces? And conversely, can CICs, while exhibiting great variation in architecture and site design features, be made less controlling in their management policies?

There are many issues raised by the spread of CICs, but none is more important than the realization that public policy and subdivision regulations must allow and promote more variety in housing styles and development options. Consumers should not be forced into CICs because they are the only type of development that offers a lively choice of features. CICs should be seen as a catalyst to change subdivision standards and regulations and as a vehicle to create a bridge between public officials and developers. Through the use

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of CICs developers are not only able to circumvent existing regulations, lower development costs and in some cases produce quite innovative community design solution, but also enable jurisdictions to secure new taxpayers with less public expenditure.

Not all CICs are created equal, and many are far from perfect. But, in terms of design efficiency, utilization of space, and integration of social and environmental amenities, private communities illustrate the shortcomings of many standards applied to typical subdivisions. 

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