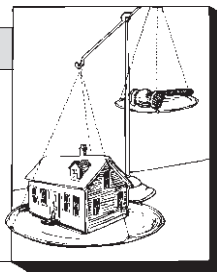


Cluster Zoning

by Charles R. Wolfe



Cluster development, an alternative to the prevalent "cookie cutter" subdivision approach to residential development, has become a major tool of environmentally conscious land-use decision-makers. The premise of cluster development is simple: rather than being scattered about on roughly uniform lots, buildings on a given parcel of land are grouped together in a way that makes construction more efficient while preserving the land's aesthetic qualities and protecting environmentally sensitive areas.

Although the concept has several historic precedents, it remains novel to many local officials, and many developers and builders seem wary of it. But cluster housing can provide residential developers with an ideal method of satisfying local growth management concerns while retaining the desired density and type of development on a given parcel.

Roots in the New England Village

Cluster housing's recent rediscovery has been spearheaded in rural areas in New England in response to the now simmering development boom of the 1980s. In states such as Connecticut, residential developers and planners have repeatedly sought amendments to or variances from inflexible local zoning and subdivision regulations requir-

ing minimum lot sizes and road frontages. These developers and planners have touted cluster ordinances as a necessary growth management tool to preserve New England's traditional colonial development patterns (in which a clustered village is surrounded by open land), assure the preservation of open space, and channel development away from sensitive areas such as inland wetlands, steep slopes, and agricultural land.

In many cases, cluster ordinances have also been promoted as a way to reduce residential development costs through infrastructure savings resulting from the grouping of structures. They can also be used to provide more affordable housing units.

As a general rule, local planning and zoning authorities draft cluster ordinances on their own initiative, usually in response to public sentiment or the introduction of the cluster concept into the community by an expert guest speaker. However, residential developers can also play a valuable advocacy role in publicizing the concept. Developers are increasingly proposing cluster zoning amendments in order to allow greater flexibility in site design than would be available under standard zoning and subdivision regulations.

No matter how the cluster concept is introduced to a community, it is

important that proponents develop a workable and legally defensible process for a local cluster ordinance. Residential developers and builders must therefore be sensitive to the legal and planning considerations necessary for proper adoption of a municipal cluster development program.

Legal and Planning Concerns

Before drafting a cluster ordinance, a town must assess its overall goals and objectives for open space preservation and provision of housing types so that these goals can be included in the plan of development. For instance, if one of the goals is to link open spaces, this sentiment should appear as a policy in the adopted plan. In addition, planning and zoning authorities should develop inventories and maps of desired open space corridors in order to target parcels of land suitable for cluster development in the future.

State guidelines. The local authorities redrafting the zoning and subdivision ordinances must also consider statutory language regarding cluster ordinances from the enabling authority at the state level. A minority of states' zoning-enabling legislation specifically addresses cluster zoning, while most do not.

In general, a cluster ordinance may proceed under the ordinary zoning authority even if cluster housing is not specifically authorized by the state, because cluster ordinances restrict only the location of structures on a parcel and do not severely impede the overall density of development. Cluster ordinances have generally been upheld under general zoning-enabling authorities as long as adequate due process provisions and administrative standards and guidelines are included.

Most cluster ordinances are optional in nature, so that a developer can readily ignore the cluster alternative in favor of a conventional subdivision. However, there is an increasing trend towards allowing local authorities to require cluster development on a given parcel. New York's zoning-enabling law, for instance, expressly allows a local legislative body to authorize its local planning board to mandate cluster development under certain circumstances. Many legal authorities argue that under a properly drafted ordinance, mandated cluster developments may be permissible even without such express enabling language.

Establishing rules and standards. To be workable and legally defensible, a cluster ordinance must set out rules and standards that can be applied to proposed developments. Such an ordinance should contain, at minimum, provisions which set out:

- application procedures;

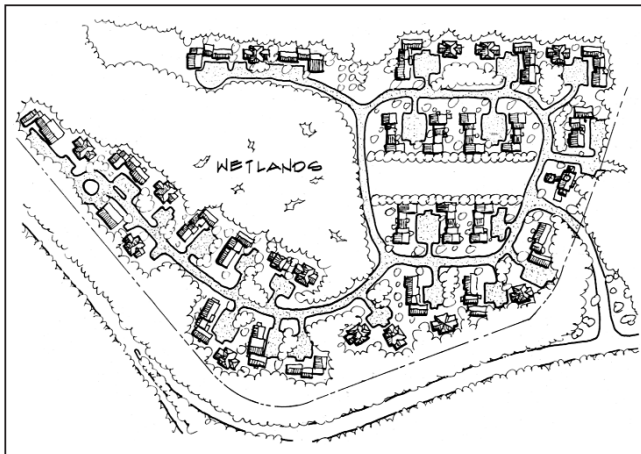
- a statement of minimum parcel size, natural features, or other qualifying parcel characteristics necessary for allowing the use of the cluster approach;
- a method or calculation for determining the allowable number of dwellings (overall density);
- infrastructure requirements for roads and provision of water, sewer, and other utilities;
- permitted types of dwellings and design standards, if any;
- criteria for establishing dimensions of lots, setbacks, and road frontages; and
- perhaps most importantly, specific criteria addressing the location, amount, and use of open space on the parcel, as well as permitted methods for open space ownership and maintenance. (For instance, whether the land and/or development rights are owned in conjunction by all the landowners, in specific lots titled to individual owners, or altogether deeded to another party, such as the town.)

Depending on the municipality's needs, additional provisions may also address special requirements for cluster developments in agricultural areas, specific requirements for affordable units, and/or allowance of a density bonus to developers of cluster projects. This last concession is a common one, and can often provide an extra incentive for a developer to use cluster development rather than tract development.

A Basis for Cooperation

The cluster alternative offers residential developers an ideal opportunity for creative cooperation with local planning and zoning officials, and a unique opportunity to develop land in a way that is both profitable and environmentally and aesthetically sensitive. If you're building in a community that already has cluster ordinances in effect, you or your attorney should review the ordinances to determine whether they satisfy the criteria set out above and what opportunities they provide. If the ordinances are deficient or the community doesn't yet have a cluster zoning ordinance, you can play a key role in establishing a defensible and constructive ordinance that will address both public and private concerns regarding land preservation and affordable housing. ■

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Cluster developments can be a more efficient method of sectioning sites with environmentally sensitive areas such as wetlands.