The Rise of the Community Builders: The American Real Estate Industry and Urban Land Planning

Marc A. Weiss

Real estate developer, 1912

The best manner of subdividing land should not necessarily mean the quickest sale. The destiny and growth of your town is largely affected by the foresight of the man who subdivides the land upon which you live. The most efficient manner of platting land should be the plan which gives the greatest value and security to every purchaser, adds the greatest amount of value and beauty to the city as a whole, yet produces a big profit to the man who plats the land. To follow this method, one must have supreme imaginative confidence in his city and its future.1

Urban planner, 1925

Subdivision of land is a step in community building and must so be considered, rather than as merely a process in the transfer of property. As such it must follow sound principles of community development rather than haphazard chance, unregulated individual design, or deliberate selfishness. Reconciling this aim with that of a proper return upon investment and establishment of adequate land values may be said to be the common field of the realtor and the planner.2

The key to understanding this chapter is that it is about site planning and land development.3 When we think of the image of a “builder” we imagine someone who puts together a physical structure. The image of a “community builder” concerns the land pattern in which the structures are placed and the relation of the structures to one another. A community builder designs, engineers, finances, develops, and sells an urban environment using as the primary raw material rural, undeveloped land. In the
parlance of the real estate industry, such activity is called the platting and improvement of subdivisions. As one developer stated in 1936, "fundamentally the subdivider is the manufacturer in the field of real estate practice." The history of the past century in American real estate is one of increasing growth in the average scale of development and the size of the land parcel, increasing sophistication in the scope and quality of the structural improvements to land and buildings, and increasing economic coordination and integration in the phases of the developmental process of the entrepreneurs.5

In my book The Rise of the Community Builders I tell the story of "the creation of the modern residential subdivision." That an urban land subdivision could be considered "residential" at the time the land was still being platted was a fairly novel concept in the late-nineteenth- and early-twentieth-century America. Most land had previously been carved out into building lots and sold for whatever use the new owners intended. Subdividing land exclusively for residential purposes presupposed a level of planning and control that was certainly not the norm for American urbanization. Planning and developing for specifically residential districts or neighborhoods were first utilized by land subdividers in the case of high-income suburban communities. The technological and economic changes that made possible spatial separation of urban land uses were combined by the developer with substantial investment in landscaping and infrastructure improvements and legal use of deed restrictions to control and preserve a planned environment.

Creating residential subdivisions for builders and purchasers of expensive single-family houses represented the first phase of the modern transformation of urban land development by private real estate entrepreneurs. I call this phase "changes at the high end," which reached maturity during the 1920s. The second phase, "changes at the moderate end," completed the revolution in community building by the 1940s. In this phase subdividers became full-fledged suburban housing developers, not only planning and improving large tracts of land, but also building the houses on the lots and selling the completed package to the home buyer. Often parks, schools, shopping centers, and other community facilities were also built. What made the Levittown story of the late 1940s so important was not just that the Levitts had found a way to mass produce affordable housing, but that the housing was an attractive investment for young families precisely because of the planning and construction of a complete community. Even where smaller subdividers created only modest-sized neighborhoods, what the average consumer was now purchasing or renting was a new dwelling in a new district of completed dwellings, rather than a vacant lot in an undeveloped area with an uncertain future. This phenomenon of "community building," particularly for the average modest-income residential "lot-selling" practices is

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Subdividers who engage in lot-selling performed the function of towns. Working together, deeds, and buildings are put "on the ground" as accepted as good planning, minor streets, the superstructure, arrangement of back lines and lot coverage of multiple uses, design, facilities, ornamentation, and other physical features are later adopted as rules. This pattern "private into the public" look at the Federal Housing Act, Subdivisions, innovations of a half century, are adopted as public values.

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modest-income resident, constituted a dramatic change from the speculative "lot-selling" practices of the preceding generation.°

That this change is of so recent vintage is attested to by Clarence Stein, the famous architect and planner who designed Radburn with Henry Wright, in comments about the crisis of American housing in 1930:

The more I think of what has been happening in the field of housing in this country during the last decade the more strongly I feel that the essential lack has been our inability to see that the house itself is of minor importance. Its relation to the community is the thing that really counts.... It is not only the fact that a small house must depend on its grouping with other houses for its beauty, and for the preservation of light, air, and the maximum of surrounding open space. What is probably more important is the economic angle. It is impossible to build homes according to the American standard as individual units for those of limited incomes. If they are to be soundly built and completely equipped with the essential utilities they must be planned and constructed as part of a larger group. 7

Subdividers who engaged in full-scale community development also performed the function of being private planners for American cities and towns. Working together with professional engineers, landscape architects, and buildings architects, residential real estate developers worked out "on the ground" many of the concepts and forms that came to be accepted as good planning. The classification and design of major and minor streets, the superblock and cul-de-sac, planting strips and rolling topography, arrangement of the house on the lot, lot size and shape, setback lines and lot coverage restrictions, planned separation and relation of multiple uses, design and placement of parks and recreational amenities, ornamentation, easements, underground utilities, and numerous other physical features were first introduced by private developers and later adopted as rules and principles by public planning agencies. I call this pattern "private innovation preceding public action." One need only look at the Federal Housing Administration's (FHA's) 1940 publication, Successful Subdivisions, to see clearly and graphically how the various innovations of a half century of private development were fully incorporated as public values to be standardized and emulated. 8

The main method by which community builders implemented their planning and design vision, other than through direct capital investment and administrative coordination of the investment and improvement process, was through the vehicle of legally enforceable deed restrictions. These restrictions, written into a private contract between the original seller and buyer of the building lot, both mandated and prohibited certain types of behavior on the part of the current and future property owner. Deed restrictions, by virtue of being voluntary private contracts, often went beyond the scope of public sector police power regulations, par-
ticularly in the earlier years. These restrictions, which might even include barr
ing the owner from painting the house a certain color, constituted a significant abridgment of private property rights. That they were willingly and, in many cases, eagerly accepted by purchasers opened the wedge for the introduction and extension of public land-use controls. Deed restrictions, an innovation of community builders and their attorneys, served as both the physical and political model for zoning laws and subdivision regulations.4

Community builders did more than just serve as innovators for the land planning ideas that were spawned in the early 1900s and spread rapidly during the succeeding four decades. Many of the large subdivision developers played a direct role in actively supporting and shaping the emerging system of public land planning and public land-use regulation. These community builders, most of whom developed stylish and expensive residential subdivisions and were leaders of the Home Builders and Subdividers Division and the City Planning Committee of the National Association of Real Estate Boards, (NAREB), worked actively with urban planners to establish public-planning laws and agencies.10 J. C. Nichols, developer of Kansas City's Country Club District, spoke for his colleagues among the community builders when he stated that the private planning of large residential subdividers could not succeed without "municipal assistance." What Nichols meant was that in addition to the public provisions of infrastructure and services, private developers who scrupulously planned and regulated their own subdivisions needed the planning and regulation of the surrounding private and public land in order to maintain cost efficiencies and transportation accessibility and to ensure a stable, high-quality, long-term environment for their prospective property owners.11

Community builders by no means represented the typical subdivider. In their support of public planning, as in most other aspects of their business operations, they were a distinct and fairly unrepresentative minority breed of real estate developer. The longer time frame for development, larger scale of activity, and greater degree and quality of design and improvements distinguished community builders from the average subdivider. Many subdividers were indifferent, if not openly hostile, to public planning regulations, although they often welcomed public investment. One group of subdividers, referred to variously as "curbstoners," "fly-by-nights," "land butchers," and "lot sellers," were a source of scandal and market instability that community builders hoped to eliminate as competitors through government regulation and private trade association agreements. An important goal of community builders was to stop the mania of land speculation that turned subdividing into stock market-style gambling in vacant, unimproved lots heavily encumbered with private debt and public taxes.5

The two most widely adopted which regulated the use, height, and bulk of subdivisions, restrictions, and zoning ordinances. These restrictions, including those regarding street width and alignment improvements in the subdivision, were among the three forms of planning control—planning, subdivision, and zoning—used to ensure that transportation networks, parks, and public land were properly aligned with each other. The first (1) planning for street, lots, drainage, and easements that would enhance public access and provide competition in subdividing the land; the second (2) subdivision agreements; and the third (3) zoning regulations, allowed subdividers and urban planners to submit applications for approval in public hearings and establish uniformity and order in the creation of new subdivisions.

Community builders fought with" the recognition of the need for public subdivision regulations with a "master plan" in public land-use control. Whereas the subdivision control and often did not consider the design and engineering of the subdivision, community builders understood the need for coordination and planning agency cooperation to enhance the sales value of their subdivisions. Through the use of private real estate development and sales, community builders were able to bring together city, state, and federal approval for their subdivisions. J. C. Nichols, in calling for the constant use of subdivision control and zoning ordinances, wrote that "the constant use of uniformity and order in the creation of new subdivisions is the key to the future of urban development. The subdivision control and zoning ordinances, in their present form, are the only effective means of ensuring that communities are planned and developed in a manner that will enhance the quality of life for all residents. These controls and standards are necessary to prevent the haphazard growth of new subdivisions that can result in the destruction of our communities and the loss of our natural resources. By implementing these controls, we can ensure that our communities are developed in a manner that is consistent with the needs and goals of our residents and the environment. Through the constant use of subdivision control and zoning ordinances, we can work together to create communities that are sustainable, healthy, and livable for all residents. This is the responsibility of community builders and urban planners, and it is our duty to continue to work towards this goal."

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Rise of Community Builders
which might even include a certain color, constituted agents. That they were willingly opened the wedge for use controls. Deed restricted and their attorneys, served as zoning laws and subdivision serve as innovators for the land prior 1900s and spread rapidly of the large subdivision supporting and shaping the public land-use regulation. Developed stylish and expertise of the Home Builders and Committee of the National worked actively with urban and agencies. J. C. Nichols, staked, spoke for his colleagues stated that the private planning succeed without "municipal in addition to the public private developers who scrupul-rsions needed the planning and public land in order to accessibility and to ensure a for their prospective pro-sented the typical subdivider. For other aspects of their busi- unrepresentative minority time frame for development, and quality of design and im- from the average sub- if not openly hostile, to welcomed public investment variously as "curbstoners." were a source of scandal hoped to eliminate as and private trade association city builders was to stop the dividing into stock market- heavily encumbered with private debt and public tax and special assessment obligations. The battle between community builders and curbstoners and the many factions in between is a vital part of the story of the American real estate industry and urban land planning.

The two most widely adopted land-planning tools were zoning laws, which regulated the use, height, and bulk of structures on urban land, and subdivisions regulations, which imposed minimum standards of lot size, street width and alignment, and other provisions for physical improvements in the subdividing of land for sale as urban building lots. Community builders' desire for subdivision regulations encompassed three forms of planning to address three sets of concerns: (1) planning as coordination, to ensure that new subdivisions would be accessible to highways, parks, and other public infrastructure and facilities, and would be properly aligned with existing and projected major and minor streets; (2) planning as design and engineering, to develop and enforce standards for street, lots, drainage, and utilities in the laying out of new subdivisions that would enhance their marketability for residential construction (as opposed to pure speculation in vacant lots); (3) planning as control, to restrict competition in subdividing by regulating the procedures, increasing start-up costs and barriers to entry, and publicizing and penalizing fraudulent or misleading sales efforts, thereby reducing the overall supply of available lots and eliminating the curbstoners.

Community builders fought with their fellow subdividers over the issue of strict public control, although the opposition partially yielded in recognizing the need for public coordination. The coordination function of subdivision regulations was the most closely associated with the rise of the "master plan" in public land-use planning. It was also the least controversial of the three. Whereas the majority of subdividers bitterly opposed subdivision control and often deeply resented the intrusive regulation of the design and engineering of their subdivisions, most subdividers welcomed planning agency coordination as an important service that could only enhance the sales value of their land.

Community builders wanted zoning to help stabilize the pattern of land usage in residential subdivisions and surrounding areas. The executive director of NAREB stated in 1947: "We helped think up the idea of city zoning ordinances thirty years ago. Their purpose was to protect good residence neighborhoods from trade uses that would destroy values." Through the use of private deed restrictions, residential subdividers had already market-tested land use regulations and found them most desirable. Community builders needed public zoning to supplement private restrictions and, especially, to regulate areas not covered by deed restrictions. J. C. Nichols, in calling for zoning and subdivision controls in 1916, declared that "the constant effort of the operator is to try to get surround-
ings that are entirely congenial to what he has placed upon his property, and to do that successfully we absolutely must have municipal control of the surroundings on the adjoining lot.15

In lobbying for zoning laws, community builders were opposed by their curbstone rivals. Most real estate interests in central cities were not in the business of developing “good residence neighborhoods.” City zoning, once established, was frequently used for promotion of higher-density apartment buildings and commercial and industrial land uses, rather than for protection of single-family houses. Zoning quickly became a tool for speculation and turnover, destabilizing land uses and property values. Community builders turned to incorporating smaller suburban governments, enforcing tighter deed restrictions, and developing larger land parcels with protected borders such as rivers or parklands as alternative methods of maintaining control.16

By the time the real estate market was in serious crisis during the early 1930s, community builders had become increasingly pessimistic about their ability to shape local public planning through local politics. Zoning laws, subdivision regulations, and master land use plans were either non-existent or poorly enforced in most urbanizing areas. Community builders feared both too lax and too strict enforcement, wishing to avoid corrupt officials as well as idealistic citizen activists. The need for public-private coordination, standardization, and control, however, was still pressing. Also needed was a stimulus to help put the development industry back on its feet. The FHA was created in 1934 to accomplish both objectives.17

FHA, by introducing the mutual mortgage insurance system, succeeded in expanding the supply of capital available from lenders for residential development and making mortgage loans more affordable for borrowers. Through the powerful inducement of mortgage insurance, FHA’s Land Planning Division was able to transform residential development practices as well as play a key role in shaping and popularizing local land use regulations.18

FHA’s underwriting standards and land-planning policies were highly favorable to the community builders, enabling them to expand the scope of their businesses and capture a bigger market share by enhancing the financial feasibility and sales appeal of new, large-scale residential subdivision developments of single-family detached houses. FHA also helped to put the 1920s-style “curbstone” subdividers and “jerry-builders” out of business by imposing publicly advertised development standards and by denying mortgage insurance on properties located in subdivisions that failed to meet these standards. FHA’s land-planning consultants and manuals served to guide the decision making of private subdivision developers, and its Land Planning Division to establish and revise subdivision regulations.

This new federal agency, FHA, builders, and brokers, even politicians and public officials, businesslike, voluntary approach stick,” FHA adopted the plan to complete the reasonably than local planning intervention. By 1940 FHA's development process and attention as “postwar suburban

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3. More than other scholars, my approach to this topic is based on住宅 Areas (Cambridge. Mass.: other books were critical in the efforts of Planning with FHA. (New York: G. P. Putnam’s Sons, 1940.

The rise of community builders has placed upon his property, must have municipal control of city builders were opposed by their central cities were not in the neighborhoods.” City zoning, for promotion of higher-density and industrial land uses, rather Zoning quickly became a tooling land uses and property values, using smaller suburban governments and developing larger land partners or parklands as alternative in serious crisis during the early increasingly pessimistic about through local politics. Zoning land use plans were either non-urbanizing areas. Community enforcement, wishing to avoiding activists. The need for public and control, however, was still help put the development induced in 1934 to accomplish both insurance system, succeeded able from lenders for residential more affordable for borrowers. engage insurance, FHA’s Land residential development practice and popularizing local land planning policies were highly motivating them to expand the scope market share by enhancing the new, large-scale residential sub-detached houses. FHA also subdividers and “jerry-builders” revised development standards parties located in subdivisions land-planning consultants and making of private subdivision developers, and its Land Planning Division encouraged state and local governments to establish or restructure planning agencies and zoning and subdivision regulations.

This new federal agency, run to a large extent both by and for bankers, builders, and brokers, exercised great political power in pressuring politicians and public officials to conform to its requirements. Using a businesslike, voluntary approach I call “the carrot is mightier than the stick,” FHA adopted the philosophy of the community builders and was able to complete the revolution in community building far more effectively than local planning agencies had accomplished before national intervention. By 1940 FHA had fully established the land-planning and development process and pattern that a decade later captured media attention as “postwar suburbanization.”

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9. "The principle of restriction in the subdivision and use of land is well understood in the United States and very frequently applied. In fact, it is so well understood and so highly valued that it is most often applied in a thorough going way by the real estate operator himself in his own interest. The restrictions placed upon a purchaser in the conveyance of a plot of land often include a long list of the kinds of business which are established or maintained upon the premises, fences and walls; set back of the lot, cost of buildings; easements in cases, even the approval of the plan of building, shape, kind, height, mass, plans of the plot to be built upon, term them "safeguards," are often with the right of renewal to the land and City Planning," *The City* 13 (March 1950). On deed restrictions and planning, see also: Monchow, *Use of Deed Restrictions and Ethnic Discrimination*; a letter describing the deed restrictions he designed with Frederick Sumichrast and the high class guide and automatically restrictive regulations and the occupations, house restrictions tends to go as far as it is reasonable, and *Fragmented Metropolis: Los Angeles* (Boston: Little, Brown, 1967), 324 fn. On race and *The Supreme Court, the NAACP*, *Neighborhood Deterioration* and *People vs. Property* (Nashville: The Book People, 1958).


kind of business which are classified as nuisances, and which may not be established or maintained upon the property; regulation as to stables and garages; fences and walls; set back of buildings from streets and from lot lines; minimum cost of buildings; easements and rights of way for public utilities; and in some cases, even the approval of plans and specifications of buildings including their nature, shape, kind, height, material, color scheme and location; also the grading plans of the plot to be built upon. These restrictions, or, as some operators happily term them "safeguards," are often placed for a period of twenty-five years or more with the right of renewal to the assent of the owners." (John Nolen, "Real Estate and City Planning," The City Plan 2 no. 1 [April 1916]: 6).

On deed restrictions and planning see Weiss, Rise of the Community Builders, ch. 3, and Monchow, Use of Deed Restrictions. Deed restrictions were also used for racial and ethnic discrimination. For example, urban planner Charles H. Cheney, in a letter describing the deed restrictions of the famous Palos Verdes Estates subdivision he designed with Frederick Law Olmsted, Jr., says: "The type of protective restrictions and the high class scheme of layout which we have provided tends to guide and automatically regulate the class of citizens who are settling here. The restrictions prohibit occupation of land by Negroes or Asians. The minimum cost of house restrictions tends to group the people of more or less like income together as far as it is reasonable and advisable to do so" (quoted in Robert Fogelson, The Fragmented Metropolis: Los Angeles, 1850-1930 (Cambridge, Mass.: Harvard University Press, 1967), 324 fn. On race restrictions see Clement E. Vose, Caucasians Only: The Supreme Court, the NAACP and the Restrictive Covenant Cases (Berkeley: University of California Press, 1959); Thomas Lee Phippott, The Slum and the Ghetto: Neighborhood Deterioration and Middle-Class Reform, Chicago, 1880-1930 (New York: Oxford University Press, 1978); Herman H. Long and Charles S. Johnson, People vs. Property (Nashville: Fisk University Press, 1947); Charles Abrams, Forbidden Neighbors (New York: Harper Brothers, 1955).


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