To: Elbert County Planning Commission  
From: Kyle Fenner, CDS Director  
Date: April 20, 2017  
RE: Undefined PUDs

Intent:  
To create an amendment to Part II, Section 16 – PUD of the ECZR to address Planned Unit Developments (PUD) that do not have an approved and recorded Design Guide; the CDS department refers to such PUDs as being “undefined”.

History:  
Planned Unit Development (PUD) is an alternate development tool for projects that propose a creative and innovative solution with a layout and/or qualities that are not achievable by the standards under which a property is currently zoned and are not achievable under any other of the defined or “straight” zone districts in the Elbert County Zoning Regulations. Some of the common elements in a PUD are a reduction or modification of setbacks, bulk regulations, additional signage, or mixed uses that are not allowed in any straight zone district. Elbert County began using the PUD tool in the 1970s.  
PUD zoning should be reserved only for developments that demonstrate a creative, unique, or efficient use of the land and that the typical zoning standard would prevent. A PUD should create an innovative, positive development for the community. It is unclear why the tool was used in many cases because most of the PUDs from the 70s, 80s and even into the 2000s would have fit nicely and easily into one of the predefined, straight-zone districts. Regardless of the “why” – it was used and it was used rather frequently. The way it was used may be a indication that PUD zoning wasn’t yet fully understood.

Because a PUD is “custom zoning” the uses, rights and restrictions for each PUD is unique and they are not captured or codified in the Elbert County Zoning Regulations; they are specific to that development only. The document used to spell out and codify those uses, rights and restrictions is referred to as a Development Guide or DG.

From Part II, Section 25 of the ECZR: Definitions
“Development Guide: A manual proposing variations from the lot size, bulk, type of use or activity, density, lot coverage, open space or other County Zoning regulation standards within a Planned Unit Development zone. Once a PUD Development Guide is reviewed, approved and recorded by the County, the current and future owners and their assigns are required to develop their property in accordance with this guide.”

It is that DG that allows the county and the land owners to develop the land because it spells out the development standards and the ongoing uses and rights. The DG describes the parameters in which the land can be used and exactly how it can be developed; it describes setbacks, number of dwellings per lot, density of the development itself, animal keeping and myriad other things. Without a DG coupled with a PUD rezone exhibit there isn’t anything to guide land use and there is nothing to restrict land use. The PUD essentially isn’t even defined without a DG. A rezone exhibit can show that a chunk of land is now “zoned PUD”; it can even cut it up into smaller parcels but without a DG though it lacks any meaningful zoning characteristics at all. It is simply a parceled chunk of land with a label “PUD”.

CDS has discovered a number of undefined PUDs in Elbert County and continues to discover more. It appears that they have been largely governed by HOA covenants in lieu of an approved and recorded development guide; it may be that back then, a PUD wasn’t fully understood and covenants were thought to be acceptable.

But, a DG is **ZONING. Covenants are not zoning.** Covenants are a private agreement between an association of property/home owners and the individual owners. They are amended through a process that is set forth in the covenants or bylaws of the association. Zoning is a legislative action and must be addressed by a legislative body. If we were to equate covenants with a DG we would be saying that the HOA can, by vote of the membership amend their zoning. They cannot.

Also, without a DG there is no way to enforce zoning regulation because in essence there are no adopted regulations that apply to these sorts of PUDs. There are no limits. There are no associated rights either. Limits and rights are embodied in the zoning and there is no zoning description. There is really little but the “PUD label”. The first discovery of an “undefined PUD” was made when two neighbors were having serious issues between them regarding animal keeping, numbers of animals and how they should be contained. Each wanted the county to enforce what they thought the regulations were. When we discovered there weren’t any regulations that applied to those lands the citizens had no legal recourse against the alleged abuses of the other. Because these developments lack zoning it leaves these property owners very vulnerable; they lack any legal recourse regarding zoning cases and violations and it makes enforcing violations of “zoning regulation” by the county impossible because there isn’t anything to enforce.

Additionally, CDS got calls from a citizen that a neighbor had at least two occupied RVs on their property. It was property in an undefined PUD. The County didn’t have
any authority, because the PUD lacked a DG, to require the property owner to move the RVs. What was intended to be a single family parcel was now essentially housing three families in three separate “dwellings”.

There is no way to know which PUD subdivisions do and do not have a proper DG without going through every single hard copy file in the department; this is time intensive and this method would require an amendment to each development’s zoning. This would be a massive undertaking that the County and the department doesn’t have staff to manage.

This will be incorporated into the rewrite of the ECZR but at this time should be addressed

**Proposed Language:**

**SECTION I. UNDEFINED PUDs** (this is a new section following subsection H. and preceding the Definitions in Part II, Section 16)

If at any time an existing Planned Unit Development (PUD) is found to lack a recorded Development Guide as defined in ECZR, Part II, Section 25 and/or lacks: obvious, clear zoning descriptions; direct references to the Elbert County Zoning Regulations regarding zoning; described uses by right; and/or lacks specific zoning land use regulation language, the parcels within that PUD shall have the uses, rights and restrictions of the most restrictive Elbert County zoning category they most closely match as determined by the adopted Elbert County Zoning Regulation and as it may be amended from time to time. These rights and restrictions shall be binding and regulatory. Such specific determination of which zoning category shall apply to the land(s) shall be made by the CDS director. Appeals may be made directly to the Board of County Commissioners.

**Recommendation:**

CDS recommends that the Planning Commission recommend approval for this amendment to the Elbert County Zoning Regulations, “Part II, Section 16, Sub-Section I: Undefined PUDs”.

Respectfully,

Kyle Fenner
Director, CDS
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