

The Challenge of Nonconforming (“Antiquated”) Subdivisions

Definitions and Overview

Antiquated subdivisions – “those subdivisions which, when approved, met all then-existing regulations, but are inadequate by current market, land use or environmental standards.¹”

Other useful definitions:

Platting – “the formal procedure taken by landowners to officially record maps of land subdivision.” Plats must be recorded with the governing body of a locale and must meet all existing requirements.²

Land Pooling (or Readjustment) - “a process whereby land-owners pool ownership of scattered and irregular plots of agricultural land, build roads and main infrastructure, and then sub-divide the land into urban plots.³”

As is indicated by the definition, antiquated subdivisions are a problem to which current planning tools, such as land readjustment, are being applied. How these antiquated subdivisions come about, the problems posed by them, and some potential solutions, along with examples, are presented here.

How Antiquated Subdivisions Come About

In the normal subdivision process, a developer purchases a large piece of land and then divides it into sections, plats, and submits the division to the local governing body for approval. This submission includes survey maps and shows that all existing requirements are met. The governing body then approves or denies the platting. Once approved, plats may be sold and developed.

In some cases, owners of plats don’t develop right away. The majority of the approximately ten million current rural lots in the United States were created after World War II. A significant amount of these were subdivisions created before modern land use planning provisions were in place.⁴ Subdivisions become antiquated when land-use requirements change in such a way that it prevents the type of residential development originally intended. Subdivisions can also become antiquated when infrastructure requirements become too great for lot-size or too costly for local government or for the landowners. Either of these situations, and others, make development of the original plats of land impossible.

Problems and examples

Land Use

Local changes in land-use requirements can make development as originally intended impossible for landowners. In Oregon, the Oregon Land Use Act of 1973 provided a primary objective for land-use planning in the state, which was “to prevent urban development on resource lands, especially farm and

¹ Schnidman, Frank. “Resolving Platted Lands Problems: The Florida Experience,” *Land Assembly and Development: A Journal of Land Readjustment Studies*, Spring 1987, Vol. 1, No. 1, p27.

² Schnidman, Frank. “Resolving Platted Lands Problems: The Florida Experience,” *Land Assembly and Development: A Journal of Land Readjustment Studies*, Spring 1987, Vol. 1, No. 1, p27.

³ Sorensen, Andre. “Land Readjustment, Urban Planning and Urban Sprawl in the Tokyo Metropolitan Area,” *Urban Studies*, Dec99, Vol. 36 Issue 13, p2333.

⁴ Nelson, Arthur C. with J. Richard Recht. “Inducing the Residential Land Market to Grow Timber in an Antiquated Rural Subdivision,” *Journal of the American Planning Association*, Autumn 1988, p529.

timber land.⁵ Oregon courts have also held that any undeveloped land in rural areas that was subdivided before 1973 must be treated as if the plats did not exist.⁶ This prevents development on lands that were platted in the 1950's and then sold. Oregon allows local governments to "vacate" plats if all of the following apply⁷:

- Roads into and around the subdivision have not been built.
- Facilities for supplying water have not been built.
- Septic tanks, or the permits for septic tanks, have not been installed or are not being installed.
- Buildings have not been built on the land.
- Any number of lots have been sold or transferred.

Any one of these can prevent local government from being able to use the land for farm or timber, nor, with the provision of treating plats as if they didn't exist if undeveloped, could landowners or developers build residences in these locations.

Infrastructure

The assumption behind the problem with antiquated subdivisions is that, at some point, these lots will be developed, or "built out" and that the demands on infrastructure will be too great for what is in place.

The problem of not having proper infrastructure in place for the platted lands has several aspects. Many of these subdivisions are too far away from municipalities to have water and sewage lines constructed out to the locations. Septic systems could be built if lots are big enough, however, some soils can't accept the septic systems. This can cause water quality problems and even if soils can handle the septic systems, local governments cannot guarantee that the systems would be installed and maintained properly.⁸

The expense of getting the infrastructure in place, even if lot size meets the necessary standards, is an extremely prohibitive factor. The example of Cape Coral, Florida shows how costly this process is. In the 1950's, a New York real estate firm subdivided 114 square miles of land into approximately 250,000 lots, making almost the entire city a subdivision. The 5,000 square-foot lots were marketed and sold all over the world with many buyers never seeing the property. Most of the residents of Cape Coral are clustered in the southern and eastern portions of the city. In 1994, in order to supply just 14 square miles with municipal water and sewer systems, the city has committed \$100 million to build 250 miles of sewer pipe, 100 miles of irrigations mains, 22 miles of storm drainage improvements, and 90 sewage pumping stations. In order to pay for these improvements, Cape Coral has assessed owners of each lot \$10,000, which is approximately twice the worth of the property. Many owners decide to abandon the property rather than pay the assessment, leaving the city with over 100 abandoned lots.⁹

⁵ Nelson, Arthur C. with J. Richard Recht. "Inducing the Residential Land Market to Grow Timber in an Antiquated Rural Subdivision," *Journal of the American Planning Association*, Autumn 1988, p529.

⁶ Nelson, Arthur C. with J. Richard Recht. "Inducing the Residential Land Market to Grow Timber in an Antiquated Rural Subdivision," *Journal of the American Planning Association*, Autumn 1988, p530.

⁷ Nelson, Arthur C. with J. Richard Recht. "Inducing the Residential Land Market to Grow Timber in an Antiquated Rural Subdivision," *Journal of the American Planning Association*, Autumn 1988, p530.

⁸ Schnidman, Frank. "Resolving Platted Lands Problems: The Florida Experience," *Land Assembly and Development: A Journal of Land Readjustment Studies*, Spring 1987, Vol. 1, No. 1, p30.

⁹ Salvesson, David and Douglas Porter. "The Ungrateful Dead," *Planning*, May 1996, Vol. 62, Issue 5, p8.

Another example of lack infrastructure or ability to get infrastructure in place are the colonias in South Texas. Although the colonias present a different kind of problem with conditions of extreme poverty and many other issues, one problem is the same – not having an incorporated town close by to supply water and sewage. The colonias that are close enough to cities to be annexed have not been because the cities do not want to burden their own citizens with the taxes that would be required to get infrastructure in place for the colonias.¹⁰

The classic example of the county seeing general build out of a large subdivision becoming a problem, and considered to be “the mother of all antiquated subdivisions,” is Golden Gate Estates, near Everglades National Park in Florida. The 175-square mile subdivision was platted in the 1960’s by the Gulf America Corporation. The company dug canals to drain wetlands and divided the land into 1.25-acre lots. The subdivision was marketed as a vacation and retirement community and most lots were sold by 1965. Buyers paid about \$15,000 for lots that were worth about \$3,000. By 1974, less than 10 percent of the subdivision was developed and the county saw that, with no centralized water or sewer system, the project could not support the number of plats.¹¹

Another issue facing Florida is that, in the event of a hurricane, quick evacuation of an area will be necessary. Because these subdivisions are so large and have few arterial streets, road improvements will be needed in order to be able to move the population on short notice.¹²

Leap-frog Development

Although many times antiquated subdivisions are in themselves a “leap-frog development,” the obsolete plats can cause this kind of development in pockets. As a result of committing subdivisions to single-family housing only, developers must look to other tracts of land to meet potential demands for other kinds of housing.¹³

Solutions and Examples

Land Readjustment

One solution to the problem of an antiquated subdivision is to perform a land readjustment, also known as “land pooling.” The process of land readjustment goes as follows: all of the land in an area is pooled together and determinations of infrastructure needs and costs are made. The percentage of land necessary to complete the readjustment – that which will be needed to build public facilities and the land to be sold to cover the costs associated with this process – is determined. Each owner accepts this percentage as a “land reduction.” Owners are willing to give up this land because the value of the remaining land increases substantially.¹⁴

Other options available to local governments are condemnation or purchase. Land readjustment is less expensive than purchase (for obvious reasons) and condemnation. For condemnation, it is the government’s sole financial responsibility to rebuild, whereas with land readjustment, the costs are recovered in the sale of land. Replatting usually costs a small amount of cash to change over the titles to the new lots. Land purchase or condemnation does not include the community in its decisions for redevelopment, whereas in the land readjustment process, landowners often join together to form an association and initiate the process, resulting in greater authority over the whole process. Property

¹⁰ “Texas Colonias: A Thumbnail Sketch of the Conditions, Issues, Challenges and Opportunities,” <http://www.dallasfed.org/htm/pubs/ca/colonias.html>

¹¹ Salvesson, David and Douglas Porter. “The Ungrateful Dead,” *Planning*, May 1996, Vol. 62, Issue 5, p8.

¹² Schnidman, Frank. “Resolving Platted Lands Problems: The Florida Experience,” *Land Assembly and Development: A Journal of Land Readjustment Studies*, Spring 1987, Vol. 1, No. 1, p30.

¹³ Schnidman, Frank. “Resolving Platted Lands Problems: The Florida Experience,” *Land Assembly and Development: A Journal of Land Readjustment Studies*, Spring 1987, Vol. 1, No. 1, p28.

¹⁴ Schnidman, Frank. “Land Readjustment,” *Urban Land*, Feb 88: 2

owners and those executing the readjustment have more of a sense of joint enterprise. Purchase and condemnation usually require the relocation of residents, along with compensation costs associated. Land readjustment may require the same, but residents are more able to return to the area with specific procedures put in place. Finally, any surplus funds generated by the project are usually returned to the original landowners, but could also be used, in part, for various objectives, such as low-income housing.¹⁵

Some drawbacks to land readjustment are that it may artificially inflate land prices, making access to affordable housing more difficult for low-income families. Government authorities may perpetuate this problem by keeping the number of houses below the amount of demand, in order to recover project costs. Problems with inequities could result as well: the infrastructure of the land readjustment area is financed by the property owners through the land reduction, whereas, other areas receive public funds or subsidies to have the infrastructure in place. Also, a land readjustment area may not be able to recover costs simply on the basis of appreciation of land value.¹⁶

Open-space

Many conservation groups see these antiquated subdivisions as an opportunity to gain open space. Back at the Golden Gate Estates in Florida, 42,000 acres were targeted for purchase in 1985 by the State under its Conservation and Recreational Lands Program. However, the process of trying to find the 17,000 different owners that are located around the world has slowed the purchase of the land. As of 1996, only 18,000 acres were purchased.¹⁷

In California, the Coastal Conservancy acquires scattered lots of antiquated subdivisions along the coast, sets some aside for open space, aggregates others into larger homesites and then sells them. These monies then fund other projects of the organization.¹⁸ The Tahoe Conservancy (in California) purchases lots for conservation purposes using funds acquired by state bond issue approved by voters.¹⁹ In Southern California, the Mountains Restoration Trust in Santa Monica encourages landowners in antiquated subdivisions to contribute easements or to take part in a program that allows the transfer of development rights from a lot designated for retirement to another lot.²⁰

Mixed Solution Examples

The example of Oregon brought about an interesting solution. In a seemingly impossible situation, the planners of the readjustment of the antiquated subdivision near Portland, Oregon came to a solution after years of political debate and several changes in the law. The final solution was that the entire area had two different zones – rural residential (low-density development) and a special woodlot overlay zone.²¹ Enough people wanted to sell their land in order for the project to continue and speculation was not made as to what would have happened had the planners not been able to acquire enough lots. In the rural residential area, four to six lots were combined in order to have adequate space for septic systems. In the woodlot overlay zone, 12 acres (or more) of land were set aside for a woodlot. The individuals on this land are required to meet certain lumber production standards in order to

¹⁵ Schnidman, Frank. "Land Readjustment," *Urban Land*, Feb 88: 2

¹⁶ Schnidman, Frank. "Land Readjustment," *Urban Land*, Feb 88: 3

¹⁷ Salveson, David and Douglas Porter. "The Ungrateful Dead," *Planning*, May 1996, Vol. 62, Issue 5, p8.

¹⁸ Nelson, Arthur C. with J. Richard Recht. "Inducing the Residential Land Market to Grow Timber in an Antiquated Rural Subdivision," *Journal of the American Planning Association*, Autumn 1988, p529.

¹⁹ Salveson, David and Douglas Porter. "The Ungrateful Dead," *Planning*, May 1996, Vol. 62, Issue 5, p8.

²⁰ Salveson, David and Douglas Porter. "The Ungrateful Dead," *Planning*, May 1996, Vol. 62, Issue 5, p8.

²¹ Nelson, Arthur C. with J. Richard Recht. "Inducing the Residential Land Market to Grow Timber in an Antiquated Rural Subdivision," *Journal of the American Planning Association*, Autumn 1988, p533.

continue to live in that area. At the same time, the taxation rate of this land is at the timber-production value, not the more expensive residential rate.²²

In the Florida Keys, several factors contribute to the encouragement of the private sector to replat antiquated subdivisions: a minimum lot size requirement with an option for transfer of development rights and an exemption for affordable housing.²³

In Florida, at the Golden Gate Estates, aside from the purchase of portions by the State, the county downzoned the property in 1974 to require a minimum of 2.25 acres to build a house. As of 1996, three-fourths of the property is still undeveloped.²⁴

Back in Cape Coral, a 130,000 lot subdivision blighted itself and formed a community redevelopment area in 1993 in order to fund major infrastructure improvements.²⁵

In Calvert County, Maryland, farmland was bought up by developers in the 1960's, subdivided into small lots and platted with the small county planning office. Early occupants of the area placed few demands on local services and individual septic systems sufficed for them. Between 1990 and 1996, over 1,700 building permits were issued for new houses in three of the subdivisions in Calvert County.²⁶ The county commission tried to put a moratorium on building while they decided how to solve the problem of inadequate infrastructure. The circuit court overturned the moratorium. Calvert County discussed alternatives, but decided on less drastic measures of imposing various building codes that discouraged development in a disorganized manner.²⁷

Also in Maryland, Anne Arundel County passed an antiquated lots law in 1986 that requires owners of two or more contiguous lots to combine them to meet the minimum lot size requirement.²⁸

Arizona requires antiquated subdivisions that want sewer and water service to establish a special taxing district to fund the improvements. And, in Scottsdale, code enforcement is rigorous and the city offers loans or grants of up to \$20,000 to fund improvements.²⁹

²² Nelson, Arthur C. with J. Richard Recht. "Inducing the Residential Land Market to Grow Timber in an Antiquated Rural Subdivision," *Journal of the American Planning Association*, Autumn 1988, p535.

²³ Nelson, Arthur C. with J. Richard Recht. "Inducing the Residential Land Market to Grow Timber in an Antiquated Rural Subdivision," *Journal of the American Planning Association*, Autumn 1988, p529.

²⁴ Salveson, David and Douglas Porter. "The Ungrateful Dead," *Planning*, May 1996, Vol. 62, Issue 5, p8.

²⁵ Salveson, David and Douglas Porter. "The Ungrateful Dead," *Planning*, May 1996, Vol. 62, Issue 5, p8.

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