THE MODEL STATE STATUTE *

RICHARD F. BABCOCK †
JAN Z. KRASNOWIECKI ‡
DAVID N. MCBRIDE ††

Section 1. PURPOSES. In order that the public health, safety, morals and general welfare be furthered in an era of increasing urbanization and of growing demand for housing of all types and design; to insure that the provisions of Section — of Chapter — [Zoning Enabling Act now in force], which direct the uniform treatment of dwelling type, bulk, density and open space within each zoning district, shall not be applied to the improvement of land by other than lot by lot development in a manner that would distort the objectives of that Chapter—; to encourage innovations in residential development and renewal so that the growing demands for housing may be met by greater variety in type, design and layout of dwellings and by the conservation and more efficient use of open space ancillary to said dwellings; so that greater opportunities for better housing and recreation may extend to all citizens and residents of this State; and in order to encourage a more efficient use of land and of public services, or private services in lieu thereof, and to reflect changes in the technology of land development so that resulting economies may enure to the benefit of those who need homes; and, in aid of these purposes, to provide a procedure which can relate the type, design and layout of residential development to the particular site and the particular demand for housing at the time of development in a manner consistent with the preserva-

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In the text that follows, the reader is cautioned that only such text as appears in bold type pertains to the legislative drafting. The commentary that follows each section of the legislative offering is for clarification, not for incorporation as part of the legislative text.

The asterisks which appear throughout the statute indicate textual change from the original.

† Partner, Ross, Hardies, O'Keefe, Babcock, McDugald & Parsons, Chicago, Illinois.
‡ Professor of Law, University of Pennsylvania.
†† Partner, Ross, Hardies, O'Keefe, Babcock, McDugald & Parsons, Chicago, Illinois.
tion of the property values within established residential areas, and to insure that the increased flexibility of substantive regulations over land development authorized herein is subject to such administrative standards and procedures as shall encourage the disposition of proposals for land development without undue delay, the following powers are granted to all Municipalities.

**Commentary on Section 1**

This section recognizes that to date there has been a requirement or expectation of uniform regulations within each zoning district, sometimes in frustration of the public interest in modern land development programs. This section therefore authorizes deviations from the rigid uniformity so characteristic of traditional interpretation of the zoning power and expressly permits the use of recent planning innovations better to serve those general objectives set forth in the Standard Zoning Enabling Act (U. S. Dept. of Commerce, Revised Edition, 1926). This section makes clear that the state considers traditional objectives of the police power still to be the touchstone of its authority. These flexible constitutional purposes are invoked to meet new demands for housing.

The section further recognizes that, as flexibility of substantive techniques is increased, a greater emphasis must be placed upon detailed procedures to insure that fairness and openness ("due process") in local administration are achieved. This objective is accomplished in later sections of the Act by increased specificity for notice, hearing, judicial review and expedition of administration.

Section 1 does not specify the types of uses which are to be permitted under the amendment. The entire emphasis of this section, however, is upon the development of residential uses. Ancillary or supporting service, commercial and other nonresidential uses may also be permitted as part of the Planned Unit Residential Development. (See Section 3.)

**Section 2. Application of Statute.** The powers granted herein may be exercised by any Municipality which enacts an ordinance that shall:

(a) Refer to this Act;

(b) Include a Statement of Objectives for Planned Unit Residential Development, as herein defined;

(c) Designate the local agency which shall exercise the powers of the Municipal Authority, as herein defined;
(d) Set forth the standards for a Planned Unit Residential Development consistent with the provisions of Section 3 hereof; and

(e) Set forth the procedures pertaining to the application for, hearing on and tentative and final approval of a Planned Unit Residential Development, which shall be consistent with Sections 5 through 9 of this Act.

The enactment of an ordinance pursuant to the powers granted herein, and the enactment of an amendment thereto, shall be in accordance with the procedures required for the adoption of an amendment to a zoning ordinance as provided in Section — of Chapter —.

**Commentary on Section 2**

This section establishes the procedure by which a Municipality may employ the power given it under the Act. (“Municipality” is defined in Section 11.) To do so the Municipality must adopt an ordinance in the manner prescribed for amendments to the zoning ordinance and in compliance with the five enumerated conditions. Some of these conditions are intended to insure that the adopting ordinance complies with the statute, while others [(b) and (d)] are included so that the Municipal Authority, property owners, reviewing courts and others will have a clear insight into the specific objectives of the Municipality in exercising the newly granted powers.

The Model Act does not deal with the issues of extraterritorial regulation by incorporated cities and villages or of joint action by two or more Municipalities. In jurisdictions where cities or villages have authority to plan beyond their boundaries the statute should grant the appropriate power to give tentative approval to land beyond the corporate boundaries with a proviso that final approval shall not be granted until the part outside the boundaries is annexed. In jurisdictions where joint planning is authorized (by adjoining villages, boroughs, or counties) the statute should deal with the circumstance where land in a Planned Unit Residential Development overlaps the boundaries.

The phrases “Statement of Objectives for Planned Unit Residential Development” and “Municipal Authority” are defined in Section 11 and the reasons for their use are set forth in the commentary to that Section.
Section 3. STANDARDS AND CONDITIONS FOR PLANNED UNIT RESIDENTIAL DEVELOPMENT. Every ordinance adopted pursuant to the provisions of this Act shall set forth the standards and conditions by which a proposed Planned Unit Residential Development shall be evaluated. The Municipal Authority may prescribe, from time to time, rules and regulations to supplement the standards and conditions set forth in the ordinance provided (1) said rules and regulations are not inconsistent with said standards and conditions, (2) said rules and regulations are placed of public record, and (3) any amendment or change of said rules and regulations shall not apply to any Plan for which an application for tentative approval has been made prior to the placing of public record of said amendment or change. Said standards and conditions and all supplementary rules and regulations established for a particular Planned Unit Residential Development authorized pursuant to such ordinance shall not be inconsistent with the following provisions:

COMMENTARY ON PREAMBLE TO SECTION 3

The stated standards required by Section 3 are those referred to in Section 2(d *). Section 3 requires that all the standards by which a proposed Planned Unit Residential Development shall be judged must be set forth in the ordinance. Paragraphs (a) through (f), infra,* indicate that by “standards” the drafters do not intend the precise type of preregulation of lot size, yards, height and bulk commonly identified with orthodox zoning ordinances.

The preamble requires that the standards in an ordinance “shall be consistent with” the provisions of this Section 3. In some of the following Paragraphs the word “may” is used in referring to the powers of a municipality. See Paragraph (b) (3). In other instances the word “shall” is employed. Compare the use of “shall” and “may” in Paragraph (a). The drafters intend that where “may” is used the municipality has an option to so act or not to so act. In Paragraph (a) a municipality “may,” but need not, permit all the listed types of residential buildings. In Paragraph (b)(3), a municipality “may,” but is not obliged to, permit deviations, geographic section by geographic section, from the average density established for the entire Planned Unit Residential Development.

The provision for administrative rules and regulations to supplement the standards in the ordinance is intended to recognize that the
inevitable generality of the standards in the ordinance may be subject to the particular convictions of the planning staff on various elements of a Plan. Thus the staff may wish to adopt standards modeled on the FHA Intensity Rating scheme. (FHA Minimum Property Standards for Multifamily Housing. FHA No. 2600, Nov. 1963.) If the staff does so wish, the statute requires that these more detailed additional standards be published so that the Landowner can identify them and be governed accordingly. Here, again, the statute authorizes flexibility in substance but insists upon public disclosure of the local policy.

(a) Permitted Uses. An ordinance adopted pursuant to this Act shall set forth the uses permitted in a Planned Unit Residential Development, which uses may include and shall be limited to (1) dwelling units in detached, semi-detached or multi-storied structures, or any combination thereof; and (2) any nonresidential use, to the extent such nonresidential use is designed and intended to serve the residents of the Planned Unit Residential Development.

An ordinance may establish regulations setting forth the timing of development among the various types of dwellings and may specify whether some or all nonresidential uses are to be built before, after or at the same time as the residential uses.

Commentary on Paragraph (a)

Paragraph (a) provides that the permitted uses are limited to residential uses, i.e., "dwelling units," and such nonresidential uses as are designed and intended to serve the residents of the development. The words "may include" indicate that the ordinance may but need not authorize any variety of dwelling types. The drafters considered for a time expanding the scope of the amendment to include unrestricted commercial developments. It was decided, however, that such an expansion was beyond the main purpose of the Act and might delay its adoption. There is no reason why a particular jurisdiction could not expand the scope of the Act to include planned commercial and industrial developments, but such a modification would require a change of thrust in Section 1. As now drafted, Paragraph (a) would permit those commercial and other nonresidential uses that were intended to serve the residents of the Development and were not intended to attract persons not residing in the Development. While there may be areas for dispute as to the function of particular nonresidential uses, pragmatic judgment in each case is feasible. The fact that "outsiders"
may from time to time make use of the nonresidential facility (e.g., a church or store) does not work to prohibit the particular use.

(b) Residential Density.

(1) An ordinance adopted pursuant to this Act shall establish standards governing the density, or intensity of land use, in a Planned Unit Residential Development.

(2) Said standards shall take into account that the density, or intensity of land use, otherwise allowable on the site under the provisions of a zoning ordinance previously enacted pursuant to Chapter — may not be appropriate for a Planned Unit Residential Development. The standards may vary the density, or intensity of land use, otherwise applicable to the land within the Planned Unit Residential Development in consideration of (a) the amount, location and proposed use of Common Open Space, (b) the location and physical characteristics of the site of the proposed Planned Unit Residential Development, and (c) the location, design and type of dwelling units.

(3) In the case of a Planned Unit Residential Development proposed to be developed over a period of years, such standards may, to encourage the flexibility of housing density, design and type intended by this Act, authorize a deviation in each section to be developed from the density, or intensity of use, established for the entire Planned Unit Residential Development. The ordinance may authorize the Municipal Authority to allow for a greater concentration of density, or intensity of land use, within some section or sections of development, whether it be earlier or later in the development, than within others. The ordinance may require that the approval by the Municipal Authority of a greater concentration of density or intensity of land use for any section to be developed be offset by a smaller concentration in any completed prior stage or by an appropriate reservation of Common Open Space on the remaining land by a grant of easement or by covenant in favor of the Municipality, provided that such reservation shall, as far as practicable, defer the precise location of such Common Open Space until an application for final approval is filed, so that flexibility of development, which is a prime objective of this Act, can be maintained.
Regulations governing the permissible number of people per acre take various forms. Most commonly the technique speaks in number of dwelling units per acre or uses a formula that relates each dwelling unit to a minimum square footage of lot area. This approach is identified by the term "density." More recently, in recognition of the limitations and arbitrariness of the so-called density technique, a broader concept of control has been expressed in the phrase "intensity of use." Unlike the simpler "density" device, this phrase may balance bulk, height, open space and dwelling units to reach a permitted concentration. The best illustration of this technique is the FHA Intensity Rating (FHA Minimum Property Standards for Multi-family Housing. FHA No. 2600, Nov. 1963.)

The use of the term "density" in the balance of this Commentary includes the phrase "intensity of use."

The three subparagraphs of Paragraph (b) require that standards for determining permissible density be stated in the local ordinance; that these standards may differ, and indeed, the Municipality "shall take into account" that density standards for a Planned Unit Residential Development may be expected to differ from density standards under the Municipality's conventional zoning ordinance; and that, in the case of a development over a period of years, nonuniform allocation of densities over the various sections is encouraged, subject to the right of the Municipality to ask for assurance that both the overall density and the quantity of the Common Open Space shall be maintained. Consideration has been given to the possibility that in later sections the Landowner might propose changes in the Plan or that before later sections are started he * might fail financially. The flexibility desired by all parties must be balanced against practical assurance that the public interest shall be protected. Subparagraph (3) recognizes that better site planning may require variation in densities and that the interest of the Municipality is in the maintenance of the aggregate density over the entire site. It is apparent that the statutory criteria for determining density (subparagraph 2) cannot be precise. If they were, we would be back to the most rigid preregulation. The statute only specifies the basis for judgment. The municipal obligation to explain its decision (Section 7) permits the reviewer to determine whether the decision is reasonably related to the statutory guides.

(c) Common Open Space. The standards for a Planned Unit Residential Development established by an ordinance adopted pursuant to this Act shall require that any Common
Open Space resulting from the application of Standards for Density, or intensity of land use, be set aside for the use and benefit of the residents in such Development and shall include provisions by which the amount and location of any Common Open Space shall be determined and its improvement and maintenance for Common Open Space use be secured, subject, however, to the following:

(1) The ordinance may provide that the Municipality may, at any time and from time to time, accept the dedication of land or any interest therein for public use and maintenance, but the ordinance shall not require, as a condition of the approval of a Planned Unit Residential Development, that land proposed to be set aside for Common Open Space be dedicated or made available to public use. The ordinance may require that the Landowner provide for and establish an organization for the ownership and maintenance of any Common Open Space, and that such organization shall not be dissolved nor shall it dispose of any Common Open Space, by sale or otherwise (except to an organization conceived and established to own and maintain the Common Open Space), without first offering to dedicate the same to the Municipality or other government agency.

(2) In the event that the organization established to own and maintain Common Open Space, or any successor organization, shall at any time after establishment of the Planned Unit Residential Development fail to maintain the Common Open Space in reasonable order and condition in accordance with the Plan, the Municipality may serve written notice upon such organization or upon the residents of the Planned Unit Residential Development setting forth the manner in which the organization has failed to maintain the Common Open Space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within thirty days thereof, and shall state the date and place of a hearing thereon which shall be held within fourteen days of the notice. At such hearing the Municipality may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof are not cured within said thirty days or any extension thereof,
the Municipality, in order to preserve the taxable values of the properties within the Planned Unit Residential Development and to prevent the Common Open Space from becoming a public nuisance, may enter upon said Common Open Space and maintain the same for a period of one year. Said entry and maintenance shall not vest in the public any rights to use the Common Open Space except when the same is voluntarily dedicated to the public by the owners. Before the expiration of said year, the Municipality shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the Common Open Space, call a public hearing upon notice to such organization, or to the residents of the Planned Unit Residential Development, to be held by the Municipal Authority, at which hearing such organization or the residents of the Planned Unit Residential Development shall show cause why such maintenance by the Municipality shall not, at the election of the Municipality, continue for a succeeding year. If the Municipal Authority shall determine that such organization is ready and able to maintain said Common Open Space in reasonable condition, the Municipality shall cease to maintain said Common Open Space at the end of said year. If the Municipal Authority shall determine such organization is not ready and able to maintain said Common Open Space in a reasonable condition, the Municipality may, in its discretion, continue to maintain said Common Open Space during the next succeeding year and subject to a similar hearing and determination, in each year thereafter. The decision of the Municipal Authority in any such case shall constitute a final administrative decision subject to review in accordance with the provisions of Section — of Chapter —. (See Commentary on Section 10.)

(3) The cost of such maintenance by the Municipality shall be assessed ratably against the properties within the Planned Unit Residential Development that have a right of enjoyment of the Common Open Space, and shall become a tax lien on said properties. The Municipality, at the time of entering upon said Common Open Space for the purpose of maintenance, shall file a notice of such lien in the office of , upon the properties affected by such lien within the Planned Unit Residential Development.
Common Open Space is the trademark of the Planned Unit Residential Development, yet its legal status, if one searches the statutes and ordinances, is not clear. Private covenants may resolve rights and duties among residents, but the correlative rights of the Municipality (and limits of those rights) are undefined.

Paragraph (c) deals with Common Open Space and the subparagraphs deal in detail with public dedication, failure of a private organization to maintain properly the Common Open Space, and finally the cost of maintenance. Use of the Common Open Space shall be restricted to the residents of the development.

Subparagraph (c)(1) provides that public dedication of the Common Open Space is not a condition for approval of the Plan. The Municipality is, however, authorized to require the Landowner to establish an organization to own and maintain effectively the Common Open Space. The "Homes Association" is the most familiar term for this management technique.

One of the most articulated fears of the Municipalities over proposals for development that involve Common Open Space is that the beneficial owners will allow the space to deteriorate to the detriment of the entire Municipality. Subparagraph (c)(2) gives the Municipality a means to require the private organization to perform its responsibility. If such organization fails to do so, the Municipality, following notice and hearing, can assume maintenance of the Common Open Space on a year-to-year basis. Such action on the part of the Municipality would not, however, constitute a public “taking” of the Common Open Space, and would not be compensable under the eminent domain statutes; similarly, municipal maintenance under these conditions does not grant the public the right to use the Common Open Space. The municipal decision to assume the maintenance function is a “final administrative decision” and consequently subject to review under the local Administrative Review Act.

The cost of maintenance and manner of assessment by the Municipality is covered in subparagraph (c)(3). The maintenance assessment falls upon those properties “that have a right of enjoyment” of the Common Open Space. In most cases this would mean that the assessment by the Municipality would be limited to residential properties. These public assessments and liens are to be distinguished from the private assessments and liens provided for in the private covenants. The procedure for implementing the public lien must be specified in a manner consistent with the local state’s statutory provisions. Whether
the Municipality has authority to collect such public assessments for maintenance of private property should also be examined under local law. The Act states that the Common Open Space, if not properly maintained, may become a public nuisance and adversely affect taxable values throughout the community. Local ordinances permitting Municipalities to cut weeds and assess the owner have a similar basis.

Under present practice, the covenants that govern assessments by a private organization will expressly subordinate the lien of such assessments to the home mortgages. If a Municipality assumes maintenance under this Section, its assessments do not rest on the covenants but are public assessments entitled to the priority that is accorded to such assessments under state statute. All mortgages are subject to the possibility that the real estate will be assessed for local improvements. This is not regarded as an impairment of the mortgage security because of value conferred by the improvements. It is believed that the same considerations apply to assessments for the maintenance of Common Open Space. In response to these considerations, an amendment to the National Housing Act (PL 88-560), effective September 2, 1964, extends the coverage of FHA insurance to advances made by the lender on account of such maintenance assessments though levied by a private organization. FHA insurance, of course, has always covered public assessments. See, Homes Association Handbook, ULI, Technical Bulletin 50, Section 12.7.

The reference to administrative review in the last sentence of subparagraph (2) assumes there is an Administrative Review Act in the jurisdiction. (See also Section 10 of the Model Act.) If no such Act exists the appropriate provisions of the Model Act must be modified to provide for judicial review in accordance with local law. Administrative Review is particularly suited to the strict local procedure specified in the Model Act.

(d) Minimum Number of Dwelling Units. No ordinance adopted pursuant to the provisions of this Act shall authorize a Planned Unit Residential Development that contains less than __________ dwelling units.

Commentary on Paragraph (d)

Subparagraph (d) requires that the property contain a minimum number of dwelling units to qualify as a Planned Unit Residential Development. The drafters recommend that the statutory minimum be small, say four, five or six units. While most Planned Unit Residential Developments probably will run to 50 or more units, there may be
small "by-passed" areas that can best be treated as a Planned Residential Development but which would not qualify under the minimum land acreages typical of current ordinances that deal with the problem. The language is not intended to imply that such a minimum is a measure of the customary scale of a planned development. In most instances the development will be many times the minimum statutory size. At the same time, some minimum must be established so that the Municipal Authority is not overburdened with proposed "Planned Unit Residential Developments" dealing with small pieces of property that really smack more of the traditional "variance" and are better handled by a variance under the traditional provisions of the zoning ordinance. The Act is silent on a minimum acreage requirement. If the Municipality wants to establish such a floor it may do so. Although such a provision is common to planned development provisions of ordinances that treat of the subject, the drafters believe such a provision has no place in an enabling act. The need for planned developments may be just as great in a one-acre parcel in the urban center as in 500 acres on the periphery of the metropolis.

(e) Public Facilities. The authority granted a Municipality by Chapter — to establish standards for the location, width, course and surfacing of public streets and highways, alleys, ways for public service facilities, curbs, gutters, sidewalks, street lights, parks, playgrounds, school grounds, storm water drainage, water supply and distribution, sanitary sewers and sewage collection and treatment, shall be vested in the Municipal Authority for the purposes of this Act. The standards applicable to a Planned Unit Residential Development may be different than, or modifications of, the standards and requirements otherwise required of subdivisions authorized under an ordinance adopted pursuant to Chapter —, provided however, that an ordinance adopted pursuant to this Act shall set forth the limits and extent of any modifications or changes in such standards and requirements in order that a Landowner shall be able to know the limits and extent of permissible modifications from the standards otherwise applicable to subdivisions. The limits of such modification or change established in an ordinance adopted pursuant to this Act as well as the degree of modification or change within said limits authorized in a particular case by the Municipal Authority shall take into account that the standards and requirements established in an ordinance adopted pursuant to Chapter — may not be appropriate or necessary for land development of the type or design contemplated by this Act.
Subparagraph (e) incorporates the Municipality's authority under the conventional subdivision statute. The list may have to be modified to fit the enabling act of a particular jurisdiction. The purpose is to provide a single administrative procedure for all zoning and subdivision considerations. It is also recognized (and hence authorized) that subdivision standards for a Planned Unit Residential Development probably will differ from standards under the conventional subdivision ordinance. The customary standards in subdivision ordinances assume uniform residential type and density under the orthodox zoning ordinance. Because this Act is a departure from that orthodoxy, it is to be expected that platting standards must also be modified. Nevertheless, the developer should know in advance not only those platting regulations which are subject to modification (e.g., streets) but also, in such cases, the degree of modification to be permitted.

(f) Other Standards and Conditions. An ordinance adopted pursuant to this Act shall set forth the standards and criteria by which the design, bulk and location of buildings shall be evaluated, and all standards and criteria for any feature of a Planned Unit Residential Development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for a Planned Unit Residential Development can be evaluated. All standards in such ordinance shall not unreasonably restrict the ability of the Landowner to relate the Plan to the particular site and to the particular demand for housing existing at the time of development.

Commentary on Paragraph (f)

It is not intended by this or any other Paragraph or section of this Act to require the *precision in preregulation that is the touchstone of most land use regulation today. The paragraph speaks of “standards and criteria,” not “regulations and specifications.” A departure from those traditional detailed regulations does, however, risk such complete reliance on local discretion as to place the developer in worse jeopardy than he faced under the old “rigidity.” Therefore, the local ordinance shall speak to policy and objectives with clarity sufficient to permit a reviewer of a local decision to determine whether that particular decision was consistent with the stated policy.
Section 4. ENFORCEMENT AND MODIFICATION OF PROVISIONS OF THE PLAN. To further the mutual interest of the residents of the Planned Unit Residential Development and of the public in the preservation of the integrity of the Plan, as finally approved, and to insure that modifications, if any, in the Plan shall not impair the reasonable reliance of the said residents upon the provisions of the Plan, nor result in changes that would adversely affect the public interest, the enforcement and modification of the provisions of the Plan as finally approved, whether those are recorded by plat, covenant, easement or otherwise, shall be subject to the following provisions.

(a) Enforcement by the Municipality: The provisions of the Plan relating to (1) the use of land and the use, bulk and location of buildings and structures, (2) the quantity and location of Common Open Space, except as provided in Section 3 hereof, and (3) the intensity of use or the density of residential units, shall run in favor of the Municipality and shall be enforceable in law or in equity by the Municipality, without limitation on any powers of regulation otherwise granted the Municipality by law.

(b) Enforcement by the Residents: All provisions of the Plan shall run in favor of the residents of the Planned Unit Residential Development but only to the extent expressly provided in the Plan and in accordance with the terms of the Plan, and to that extent said provisions, whether recorded by plat, covenant, easement or otherwise, may be enforced at law or equity by said residents acting individually, jointly, or through an organization designated in the Plan to act on their behalf; provided, however, that no provisions of the Plan shall be implied to exist in favor of residents of the Planned Unit Residential Development except as to those portions of the Plan which have been finally approved and have been recorded.

(c) Modification of the Plan by the Municipality: All those provisions of the Plan authorized to be enforced by the Municipality under Paragraph (a) of this Section 4 may be modified, removed or released by the Municipality (except grants or easements relating to the service or equipment of a public utility unless expressly consented to by the public utility), subject to the following conditions:
(1) No such modification, removal or release of the provisions of the Plan by the Municipality shall affect the rights of the residents of the Planned Unit Residential Development to maintain and enforce those provisions, at law or equity, as provided in Paragraph (b) of this Section 4.

(2) No modification, removal or release of the provisions of the Plan by the Municipality shall be permitted except upon a finding by the Municipal Authority, following a public hearing called and held in accordance with the provisions of Section 6 * of this Act, that the same is consistent with the efficient development and preservation of the entire Planned Unit Residential Development, does not adversely affect either the enjoyment of land abutting upon or across a street from the Planned Unit Residential Development or the public interest, and is not granted solely to confer a special benefit upon any person.

(d) Modification by the Residents: Residents of the Planned Unit Residential Development may, to the extent and in the manner expressly authorized by the provisions of the Plan, modify, remove or release their rights to enforce the provisions of the Plan but no such action shall affect the right of the Municipality to enforce the provisions of the Plan in accordance with the provisions of Paragraph (1) of this Section 4.

**Commentary on Section 4**

This section emphasizes that the residents of the development and the public both have a mutual interest in (1) the preservation of the Plan, and in (2) necessary modifications of the Plan. The four paragraphs deal with the delicate balance between the respective rights of the Municipality and the residents to enforce and to modify provisions of the Plan. Indeed, the four paragraphs preserve the venerable relationship between public regulations and private agreements affecting land use. The accepted “double decker” arrangement of private covenants and zoning ordinances is reflected in this section. It should be noted that Paragraph (a) does not include “design” in those provisions enforceable by the Municipality, and in the definition of a Plan in Section 11, “design” is not included. In Section 5 “design” in the sense of architectural style is not one of the items required to be included in the application for tentative approval.

Paragraphs (a) and (b) speak to *enforcement* by Municipality and residents. Paragraph (a) authorizes the Municipality to enforce
all the provisions of the Plan, dealing with substantive matters of use, bulk, design and location of buildings, quantity and location of Common Open Space and density of residential units. These aspects of the Plan are enforceable by the Municipality in its own name, regardless of whether the Plan expressly so authorizes or not. The Municipality's rights are the same as if this were a development under a standard zoning ordinance. Apathy and indulgence of violations of covenants by residents do not foreclose municipal action.

Paragraph (b) provides that residents of any property covered by a finally approved and recorded Plan or portion thereof may act individually, jointly, or through an organization to enforce the provisions of the Plan, but only to the extent such rights are expressly provided in the Plan. This is no less nor more than is extended to residents by traditional covenants. If a developer prefers not to extend such rights to residents, his plan can remain silent. Indifference by the Municipality may be overcome by self-help on the part of the residents. This paragraph, however, denies such residents the right to enforce such provisions as to portions of the Plan which have not been finally approved and recorded, unless the Plan expressly so provides. This provision negates the extension by implication to a subsequent, unrecorded stage, of any express or implied rights which are intended to apply only to finally approved and recorded areas.

Paragraphs (c) and (d) deal with modification. Here again the traditional balance between residents and local government is maintained. Paragraph (c)(1) provides that no municipal modifications shall affect the private rights of the development residents to insist on maintenance of the Plan to the extent the developer gave them the rights. Under traditional zoning, a Municipality might change the zoning of a tract but this would not affect the rights of residents to enforce the prior land use pattern as fixed by private covenants.

Paragraph (c)(2) provides that any modification made by the Municipality shall be made in a manner paralleling the conventional zoning amendment procedure, modified slightly to be consistent with the objectives and provisions of this Act.

Paragraph (d) authorizes modifications by residents in the manner and to the extent such is expressly authorized in the Plan. Here again the traditional relationship between private rights and public regulation is preserved. Residents of a subdivision subject to conventional local ordinances might agree to waive or modify covenants on land use but this action would not prevent the Municipality from insisting that the use as prescribed by ordinance be maintained.
Section 5. APPLICATION FOR TENTATIVE APPROVAL OF PLANNED UNIT RESIDENTIAL DEVELOPMENT. In order to provide an expeditious method for processing a Plan for a Planned Unit Residential Development under the terms of an ordinance adopted pursuant to the powers granted herein, and to avoid the delay and uncertainty which would arise if it were necessary to secure approval, by a multiplicity of local procedures, of a plat of subdivision or resubdivision as well as approval of a change in the zoning regulations otherwise applicable to the property, it is hereby declared to be in the public interest that all procedures with respect to the approval or disapproval of a Plan for a Planned Unit Residential Development and the continuing administration thereof shall be consistent with the following provisions:

(a) An application for tentative approval of the Plan for a Planned Unit Residential Development shall be filed by or on behalf of the Landowner;

(b) The application for tentative approval shall be filed by the Landowner in such form, upon the payment of such a reasonable fee and with such official of the Municipality as shall be designated in the ordinance adopted pursuant to this Act;

(c) All planning, zoning and subdivision matters relating to the platting, use and development of the Planned Unit Residential Development and subsequent modifications of the regulations relating thereto, to the extent such modification is vested in the Municipality, shall be determined and established by the Municipal Authority.

(d) The ordinance shall require only such information in the application as is reasonably necessary to disclose to the Municipal Authority: (1) the location and size of the site and the nature of the Landowner's interest in the land proposed to be developed; (2) the density of land use to be allocated to parts of the site to be developed; (3) the location and size of any Common Open Space and the form of organization proposed to own and maintain any Common Open Space; (4) the use and the approximate height, bulk and location of buildings and other structures; (5) the feasibility of proposals for the disposition of sanitary waste and storm water; (6) the substance of cove-
nants, grants of easements or other restrictions proposed to be imposed upon the use of the land, buildings and structures including proposed easements or grants for public utilities; (7) the provisions for parking of vehicles and the location and width of proposed streets and public ways; (8) the required modifications in the municipal land use regulations otherwise applicable to the subject property; and (9) in the case of Plans which call for development over a period of years, a schedule showing the proposed times within which applications for final approval of all sections of the Planned Unit Residential Development are intended to be filed;

(e) The application for tentative approval of a Planned Unit Residential Development shall include a written statement by the Landowner setting forth the reasons why, in his opinion, a Planned Unit Residential Development would be in the public interest and would be consistent with the municipal Statement of Objectives on Planned Unit Residential Development; and

(f) The application for and tentative and final approval of a Plan for a Planned Unit Residential Development prescribed in this Act shall be in lieu of all other procedures or approvals otherwise required pursuant to [specify the conventional zoning and subdivision statutes].

**Commentary on Section 5**

One of the principal causes of the developer's frustration over local regulation is that local law treats development as though it were a series of separate processes of use and platting requiring separate administrative decisions, frequently by separate bodies. In the case of a planned development, the developer may have to get a clearance on zoning here and an okay on platting there. This section vests decision-making on Planned Unit Residential Development in one administrative agency. There is no reason in the nature of things why this same rational procedure could not be followed in traditional development; but in the case of planned developments the need for such a consolidation is absolutely essential.

The Landowner referred to in Paragraph (a) is defined in Section 11 to embrace a broad spectrum of interested parties from title owner to option holder.

Paragraph (d) is intended to forbid municipal requirements for information which is irrelevant and often costly at a stage when the
developer does not have any official indication of attitude toward his proposal. The detail in the statute operates to limit additional requirements at this early stage. Nothing in the statute prevents informal conferences between developer and staff and no statutory authority is necessary to encourage the use of this ancient, if casual, technique.

There are several reasons for the requirement of Paragraph (e) that the Landowner state why a Planned Unit * Residential Development is in the public interest and is consistent with the municipal objectives. The Landowner will be more likely to make a complete and logical presentation of the Plan at the required public hearing if he has been required to spell out a rationale at the start. The issues—or at least the issues as the developer sees them—will be declared for all to see before the hearing. The required findings (Section 7) by the Municipal Authority may be more responsive to the developer's position. Finally, it is believed that a better record would be available for a reviewing court should litigation result.

Section 6. PUBLIC HEARINGS. (a) Within —— days after the filing of an application pursuant to Section 5, a public hearing on said application shall be held by the Municipal Authority, public notice of which hearing shall be given in the manner prescribed in Section — of Chapter — for hearings on amendments to a zoning ordinance. The chairman, or, in his absence, the acting chairman, of the Municipal Authority may administer oaths and compel the attendance of witnesses. All testimony by witnesses at any hearing shall be given under oath and every party of record at a hearing shall have the right to cross-examine adverse witnesses.

(b) A transcript of the hearing shall be caused to be made by the Municipal Authority, copies of which shall be made available at a cost to any party to the proceedings, and all exhibits accepted in evidence shall be identified and duly preserved, or, if not accepted in evidence, shall be properly identified and the reason for the exclusion clearly noted in the record. Where there is a municipal planning staff the ordinance shall require that a report on the proposed Planned Unit * Residential Development by the staff shall be prepared and filed as a public record not less than five days before the public hearing.

(c) The Municipal Authority may continue the hearing from time to time, and the Municipal Authority may refer the
matter back to the planning staff of the Municipality for a fur-
ther report, a copy of which shall be filed as a public record
without delay, provided, however, that in any event, the public
hearing or hearings shall be concluded within —— days after
the date of the first public hearing, unless the Landowner shall
consent in writing to an extension of the time within which the
hearings shall be concluded.

**COMMENTARY ON SECTION 6**

This section might do no more than adopt the conventional
statutory provisions for the conduct of public hearings on zoning
matters. The procedures are tightened only because the more the
substantive provisions allow flexibility, the greater the need for
stringent controls. Each jurisdiction may choose to expand the notice
provisions. Some jurisdictions require written notice to owners of
neighboring property. Some jurisdictions may wish to make clear
that a neighboring property owner can be a party of record.

Procedural practices of some Municipalities which justifiably pro-
voke developers are dealt with in this section. The hearings, if con-
tinued, must conclude within a specified period of time. Reports by
the planning staff cannot be an undisclosed communication between
staff and the Municipal Authority. Exhibits must be preserved to
insure an adequate record on review. The “fairness and openness”
objectives of this section are equally usable in hearings involving
standard zoning changes.

**Section 7. THE FINDINGS.**

(a) The Municipal Authority shall, within —— days fol-
lowing the conclusion of the public hearing provided for in
Section 6, by written resolution either (1) grant tentative ap-
proval of the Plan as submitted, (2) grant tentative approval
subject to specified conditions not included in the Plan as sub-
mitted, or (3) deny tentative approval to the Plan. Failure of
the Municipal Authority to so act within said period shall be
deemed to be a grant of tentative approval of the Plan as sub-
mitted. In the event tentative approval is granted, other than
by lapse of time, either of the Plan as submitted or of the Plan
with conditions, the Municipal Authority shall, as part of its
resolution, specify the drawings, specifications and form of per-
formance bond that shall accompany an application for final
approval. In the event tentative approval is granted subject to
conditions, the Landowner shall, within —— days after receiving a copy of the written resolution of the Municipal Authority, notify the Municipal Authority of his acceptance of or his refusal to accept all said conditions. In the event the Landowner refuses to accept all said conditions the Municipal Authority shall be deemed to have denied tentative approval of the Plan. In the event the Landowner does not, within said period, notify the Municipal Authority of his acceptance of or his refusal to accept all said conditions, tentative approval of the Plan, with all said conditions, shall stand as granted. Nothing contained herein shall prevent the Municipal Authority and the Landowner from mutually agreeing to a change in such conditions, and the Municipal Authority may, at the request of the Landowner, extend the time during which the Landowner shall notify the Authority of his acceptance or refusal to accept the conditions.

(b) The grant or denial of tentative approval by written resolution shall include not only conclusions but also findings of fact related to the specific proposal and shall set forth the reasons for the grant, with or without conditions, or for the denial, and said resolution shall set forth with particularity in what respects the Plan would or would not be in the public interest including but not limited to findings of fact and conclusions on the following:

(1) In what respects the Plan is or is not consistent with the Statement of Objectives of a Planned Unit Residential Development.

(2) The extent to which the Plan departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk and use, and the reasons why such departures are or are not deemed to be in the public interest;

(3) The purpose, location and amount of the Common Open Space in the Planned Unit Residential Development, the reliability of the proposals for maintenance and conservation of the Common Open Space, and the adequacy or inadequacy of the amount and purpose of the Common Open Space as related to the proposed density and type of residential development;
(4) The physical design of the Plan and the manner in which said design does or does not make adequate provision for public services, provide adequate control over vehicular traffic, and further the amenities of light and air, recreation and visual enjoyment;

(5) The relationship, beneficial or adverse, of the proposed Planned Unit Residential Development to the neighborhood in which it is proposed to be established; and

(6) In the case of a Plan which proposed development over a period of years, the sufficiency of the terms and conditions intended to protect the interests of the public and of the residents of the Planned Unit Residential Development in the integrity of the Plan.

(c) In the event a Plan is granted tentative approval, with or without conditions, the Municipal Authority shall set forth in the written resolution the time within which an application for final approval of the Plan shall be filed or, in the case of a Plan which provides for development over a period of years, the periods of time within which applications for final approval of each part thereof shall be filed. Except upon the written consent of the Landowner, the time so established between grant of tentative approval and an application for final approval shall not be less than ——— months and, in the case of developments over a period of years, the time between applications for final approval of each part of a Plan shall be not less than ——— months.

Commentary on Section 7

The main purpose of this section is to require the Municipal Authority to explain why it approved or disapproved an application for tentative approval. If preregulation (i.e., precise controls) is incompatible with flexibility, then the best method for testing the quality of fairness and equal treatment at the local level is to compel the local authority to explain its decision. Parroting of general statutory language is not sufficient.

Throughout this section, and those which follow, the Act is far more detailed than is customary in enabling legislation. The drafters believe that much of the present disarray of local regulation is due to the gay abandon of local procedure. If it is the wish of developers to have greater flexibility in substantive standards, the only method for insuring against discrimination is detailed and mandatory pro-
procedure. The statutory presumption that failure to decide—either yes or no—constitutes approval has precedent in existing statutes in some states. It should not be a burden to the conscientious Municipality. This section recognizes that approval with conditions is likely to be the most frequent result and the mechanics of such an equivocal posture have to be provided in the statute.

Section 8. STATUS OF PLAN AFTER TENTATIVE APPROVAL.

(a) Within five working days after the adoption of the written resolution provided for in Section 7, it shall be certified by the clerk of the Municipality and shall be filed in his office, and a certified copy shall be mailed to the Landowner. Where tentative approval has been granted, the same shall be noted on the zoning map maintained in the office of the ————————.

(b) Tentative approval of a Plan shall not qualify a plat of the Planned Unit Residential Development for recording nor authorize development or the issuance of any building permits. A Plan which has been given tentative approval as submitted, or which has been given tentative approval with conditions which have been accepted by the Landowner (and provided that the Landowner has not defaulted nor violated any of the conditions of the tentative approval), shall not be modified, revoked or otherwise impaired by action of the Municipality pending an application or applications for final approval, without the consent of the Landowner, provided an application for final approval is filed or, in the case of development over a period of years, provided applications are filed, within the periods of time specified in the resolution granting tentative approval.

(c) In the event that a Plan is given tentative approval and thereafter, but prior to final approval, the Landowner shall elect to abandon part or all of said Plan and shall so notify the Municipal Authority in writing, or in the event the Landowner shall fail to file application or applications for final approval within the required period of time or times, as the case may be, the tentative approval shall be deemed to be revoked and all that portion of the area included in the Plan for which final approval has not been given shall be subject to those local ordinances applicable thereto, as they may be amended from time to time, and the same shall be noted on the zoning map in the office of ———————— and in the records of the clerk of the Municipality.
For the period between tentative approval and final approval the rights and duties of the developer and the Municipality must be delineated. Other property owners should be put on notice by reference to the notation on the official zoning map. The most important consideration to the developer is the assurance that the Municipality will not change its mind pending his request for final approval.

If for some reason the Plan does not go forward to final approval the local regulations otherwise in force continue to be applicable to the subject property. No "rezoning" is necessary because no final action (and no recording) has yet been taken. The Municipality may decide to rezone the balance for a * lower density to offset higher densities in that part of the Planned Unit Residential Development that was developed.

Section 9. APPLICATION FOR FINAL APPROVAL.

(a) An application for final approval may be for all the land included in a Plan or, to the extent set forth in the tentative approval, for a section thereof. Said application shall be made to the official of the Municipality designated by the ordinance and within the time or times specified by the resolution granting tentative approval. The application shall include such drawings, specifications, covenants, easements, conditions and form of performance bond as were set forth by written resolution of the Municipal Authority at the time of tentative approval. A public hearing on an application for final approval of the Plan, or part thereof, shall not be required, provided the Plan, or the part thereof, submitted for final approval, is in substantial compliance with the Plan theretofore given tentative approval.

(b) A Plan submitted for final approval shall be deemed to be insubstantial compliance with the Plan previously given tentative approval provided any modification by the Landowner of the Plan as tentatively approved does not: (1) vary the proposed gross residential density or intensity of use by more than —— per cent; or (2) involve a reduction of the area set aside for Common Open Space nor the substantial relocation of such area; nor (3) increase by more than —— per cent the floor area proposed for nonresidential use; nor (4) increase by more than —— per cent the total ground areas covered by buildings nor involve a substantial change in the height of buildings. A public hearing shall not be held to consider modifications in the loca-
tion and design of streets or facilities for water and for disposal of storm water and sanitary sewerage.

(c) Although a *Plan as submitted for final approval is in substantial compliance with the Plan as tentatively approved, the burden shall nevertheless be upon the Landowner to show the Municipal Authority good cause for any variation between the Plan as tentatively approved and the Plan as submitted for final approval. In the event a public hearing is not required for final approval, and the application for final approval has been filed, together with all drawings, specifications and other documents in support thereof, and as required by the resolution of tentative approval, the Municipality shall, within ——— days of such filing, grant such Plan final approval; provided, however, that, in the event the Plan as submitted contains variations from the Plan given tentative approval but remains in substantial compliance with the Plan as submitted for tentative approval, the Municipal Authority may, after a meeting with the Landowner, refuse to grant final approval and shall, within ——— days from the filing of the application for final approval, so advise the Landowner in writing of said refusal, setting forth in said notice the reasons why one or more of said variations are not in the public interest. In the event of said refusal the Landowner may (1) file his application for final approval without the variations objected to by the Municipal Authority on or before the last day of the time within which he was authorized by the resolution granting tentative approval to file for final approval, or within thirty (30) days from the date he received notice of said refusal, whichever date shall last occur; or (2) treat the refusal as a denial of final approval and so notify the Municipal Authority.

(d) In the event the Plan as submitted for final approval is not in substantial compliance with the Plan as given tentative approval, the Municipal Authority shall, within ——— days of the date the application for final approval is filed, so notify the Landowner in writing, setting forth the particular ways in which the Plan is not in substantial compliance. The Landowner may: (1) treat said notification as a denial of final approval; or (2) refile his Plan in a form which is in substantial compliance with the Plan as tentatively approved; or (3) file a written request with the Municipal Authority that it hold a public hearing on his application for final approval. If the Landowner shall elect either alternative (2) or (3) above he may
refile his Plan or file a request for a public hearing, as the case may be, on or before the last day of the time within which he was authorized by the resolution granting tentative approval to file for final approval, or thirty (30) days from the date he receives notice of said refusal, whichever date shall last occur. Any such public hearing shall be held within —— days after request for the hearing is made by the Landowner, and notice thereof shall be given and the hearings shall be conducted in the manner prescribed in Section 6 of this Act. Within —— days after the conclusion of the hearing, the Municipal Authority shall by resolution either grant final approval to the Plan or deny final approval to the Plan. The grant or denial of final approval of the Plan shall, in cases arising under this Paragraph (d), be in the form and contain the findings required for a resolution on an application for tentative approval set forth in Section 7 of this Act.

(e) In the event the Municipal Authority fails to act, either by grant or denial of final approval of the Plan within the time prescribed, the Landowner may, after —— days’ written notice to the Municipal Authority, file a complaint in the —— Court and, upon showing that the Municipal Authority has failed to act either within the time prescribed, or subsequent to the receipt of the written notice provided for in this Paragraph (e) and that the Landowner has complied with the procedures set forth in this Section 9, the Plan shall be deemed to have been finally approved and the Court shall, upon a summary proceeding, enter an order directing the —— to record the Plan as submitted for final approval without the approval of the Municipal Authority. A Plan so recorded shall have the same force and effect as though that Plan had been given final approval by the Municipal Authority.

(f) A plan, or any part thereof, which has been given final approval by the Municipal Authority shall be so certified without delay by the —— of the Municipality and shall be filed of record forthwith in the Office of ——— before any development shall take place in accordance therewith. Upon the filing of record of the Plan the zoning and subdivision regulations otherwise applicable to the land included in the Plan shall cease to apply thereto. Pending completion within ——— [a reasonable time] of said Planned Unit Residential Development or of that part thereof, as the case may be, that has been finally approved, no modification of the provisions of said Plan,
or part thereof, as finally approved, shall be made nor shall it be impaired by act of the Municipality, except with the consent of the Landowner.

(g) In the event that a Plan, or a section thereof, is given final approval and thereafter the Landowner shall abandon said Plan or the section thereof that has been finally approved, and shall so notify the Municipal Authority in writing; or, in the event the Landowner shall fail to commence and carry out the Planned Unit Residential Development within a reasonable period of time after final approval has been granted, no further development shall take place on the property included in the Plan until after said property is resubdivided and is reclassified by enactment of an amendment to the municipal zoning ordinance in the manner prescribed for such amendments in Section — of Chapter —.

**COMMENTARY ON SECTION 9**

The critical problem this section attempts to resolve is the consequence of change in the Plan between tentative and final approval. The developer is entitled to know what to expect if he does make a substantial change. Neighboring property owners who relied on representations at the public hearings on tentative approval are entitled to know if a substantial change is contemplated at the time of final approval. The Municipality should have some guide to proper action so that it cannot be charged with quibbling in order to avoid a decision on final approval. The practical difficulty arises from unguided efforts of local administrators to distinguish between that change which is substantial and that which is not.

This section does not give the developer the unrestricted right to lower his standards (between tentative and final approval) by the percentages specified. The definition of "substantial compliance" is designed to specify the limits within which the Municipality may permit modification without a further hearing. The burden remains on the developer to show that his variations from the Plan he held out at the tentative approval stage are necessary.

Paragraph (e) gives the developer the right to obtain a court order directing recording of the plat if the Municipality fails to act. This relief does not seem an unreasonable method for handling "non-action." The Municipality can avoid this consequence by a timely denial of final approval. Paragraph (f) protects the developer from unilateral action of the Municipality during the time after final approval and before completion of that part of all of the project which
has received final approval. This paragraph does not intend to deal with rights to modify the Plan after completion of the development. (See Paragraph 3(b) of Section 4.) The paragraph speaks of a reasonable time for completion during which the Municipality cannot repudiate the final approval. Some jurisdictions may desire to fix a definite period of time during which the Landowner is protected. Other jurisdictions may rely on the judicial doctrines of estoppel or "vested rights."

Section 10. JUDICIAL REVIEW.

Any decision of the Municipal Authority under this Act granting or denying tentative or final approval of a Plan or authorizing or refusing to authorize a modification in a Plan shall be deemed to be a final administrative decision and shall be subject to judicial review pursuant to the provisions of the "Administrative Review Act" approved ______________, and all amendments thereto.

COMMENTARY ON SECTION 10

This section of the Act assumes that the state has an Administrative Review Act. In the event that it does not, appropriate provisions for judicial review should be substituted. Because "Municipal Authority" by definition may be the local legislature, this section makes the act of the legislature a "final administrative decision" for the purposes of this Act. In cases such as these, where the local legislature is granting special rights (rather than adopting general laws), such statutory characterization of its action is not unreasonable.

Section 11. DEFINITIONS.

"Common Open Space" is a parcel or parcels of land or an area of water, or a combination of land and water within the site designated for a Planned Unit Residential Development, and designed and intended for the use or enjoyment of residents of the Planned Unit Residential Development. Common Open Space may contain such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of residents of the Planned Unit Residential Development.

COMMENTARY

"Common Open Space" as used here is not designed of itself to control the density of population or intensity of land use. Specific standards for these purposes may be adopted under Section 3. The
term is designed to describe those areas and facilities that may be owned and operated in common by the residents of the Planned Unit Residential Development such as swimming pools, recreation buildings, common parking areas, private roads and streets, as well as open land and water areas, and may include where appropriate and necessary, areas occupied by community services as well as facilities.

"Landowner" shall mean the legal or beneficial owner or owners of all of the land proposed to be included in a Planned Unit Residential Development. The holder of an option or contract to purchase, a lessee having a remaining term of not less than _____ years, or other person having an enforceable proprietary interest in such land, shall be deemed to be a Landowner for the purposes of this Act.

Commentary

"Landowner," by extending to option holders and long-term lessees, recognizes the variety of forms that * deals involving land development can take. The minimum term of a leasehold interest should not be less than twenty years and probably should be longer. In the event of multiple "Landowners" the Municipality can reasonably demand protection against withdrawal by one of the petitioners.

"Municipal Authority" shall mean the Municipality's legislative body, or any committee or commission, designated by it to administer the ordinance adopted pursuant to this Act.

Commentary

"Municipal Authority" gives the Municipality the option to designate the legislature or an appointed body as the agency responsible for administration. This does raise questions as to the power of appointed bodies to act in a manner that might appear to usurp the legislative function. On the other hand, if the local legislature acts as the Municipal Authority, the reviewability of "legislative" acts under Section 10 raises a question about the traditional separation of powers doctrine. In both cases it is believed that the state by this Act has prescribed what is essentially an administrative operation at the local level—whatever agency may be designated—and the state has delineated with unusual care the procedures that must be followed.

"Municipality" shall mean any city, incorporated village, town, borough, and county, regardless of size or class, that has been given the power to adopt a zoning ordinance.*
"Municipality" as defined is likely to be modified by contraction in some jurisdictions.

"Plan" shall mean the provisions for development of a Planned Unit Residential Development, including a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, private streets, ways and parking facilities, common open space and public facilities. The phrase "provisions of the Plan" when used in this Act shall mean the written and graphic materials referred to in this definition.

"Plan" will be both graphic and verbal. It will include the plat and covenants.*

"Planned Unit Residential Development" is an area of land, controlled by a Landowner, to be developed as a single entity for a number of dwelling units, the Plan for which does not correspond in lot size, bulk or type of dwelling, density, lot coverage and required open space to the regulations established in any one residential district created, from time to time, under the provisions of a municipal zoning ordinance enacted pursuant to Section — of Chapter —.

"Planned Unit Residential Development," as defined, is admittedly negative: "which does not correspond." The drafters believe that affirmative definitions purporting to distinguish these developments from the standard building under orthodox zoning tend to rely on fuzzy terms such as "integrated and harmonious units" and "orderly relationship of uses to each other," and "proper orientation," which are meaningless to administrators and probably offensive to reviewing courts. The primary characteristic of a planned development is that it does not fit all the use and bulk categories found in any one residential district in the usual zoning ordinance. If it did, there would be no occasion to make special provisions for a planned development. (The Landowner would simply ask that the property be rezoned to the appropriate zone or district.) Hence, the most obvious definition should be based on that characteristic. To minimize the hazard that this definition would also embrace the garden variety variance for a
side yard or height of a building on a single lot Paragraph (d) of Section 3 requires planned developments to have not less than the minimum number of dwelling units set out in the statute. More important, the entire thrust of the Act, particularly the language of Section 1,* indicates that this law is intended for large-scale development and is not passed to provide a new technique for handling "variances."

"Statement of Objectives for Planned Unit Residential Development" shall be a written statement of the goals of the Municipality with respect to land use for residential purposes, density of population, direction of growth, location and function of streets and other public facilities, and Common Open Space for recreation or visual benefit, or both, and such other factors as the Municipality may find relevant in determining whether a Planned Unit Residential Development shall be authorized.

COMMENTARY

"Statement of Objectives for Planned Unit Residential Development." The most familiar complaint of lawyers, planners and developers against municipal land use regulation is that there is no clear statement of policy by which the validity of a particular proposal can be measured. Zoning administration consists of a series of ad hoc decisions based upon . . . who knows? It is fair to add that this disarranged condition also dismays many local administrators and lay members of local agencies. The resulting danger of unfairness and inscrutable decision-making is at least offset in part in traditional zoning by rigid regulations which provide certainty if they do not always make sense. In the case of the Planned Unit Residential Development the hazard of arbitrariness is present in a degree vastly greater than under orthodox zoning. The drafters believe that the least a Municipality should provide is a statement of its objectives; a plan, if that is a more acceptable term. If this statement does not always provide a meaningful measure of the validity of each proposal, at least it gives the developer a clue in advance to the municipal intentions and it may serve courts and succeeding local administrators with some guide to the intentions of the drafters of the ordinance authorizing Planned Unit Residential Developments. Neither the form nor the scope of such a statement is prescribed by the Act. The general language was deliberate.