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STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD

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FILE NO. S-1259

**ZONING:**  
Approval of Proposed  
Planned Unit Development

Honorable Thomas J. Difanis  
State's Attorney  
Champaign County  
Court House  
Urbana, Illinois 61801

Dear Mr. Difanis:

This is in response to your letter concerning a municipality's extra-territorial authority over a "planned unit development", hereinafter referred to as a PUD. This PUD is to be located upon a tract of land contiguous to and within 1 1/2 miles of a municipality's corporate limits. You state that the county has adopted a zoning ordinance under which the parcel in question is classified as R-1 (single family). The proposed PUD is permissible as a con-

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ditional use within the area zoned R-1. The municipality has adopted a comprehensive plan for the subject area and has also adopted subdivision regulations which apply to all subdivisions of land into two or more parcels, both within the corporate limits and within the area which is contiguous to and within 1 1/2 miles of the corporate limits.

Reference is made in your letter to an opinion issued by one of my predecessors on April 20, 1954 (1954 Ill. Att'y. Gen. Op. 105) which concluded that the authority of a county to regulate subdivisions in territory outside of cities is superseded by a city's jurisdiction over subdivisions located within 1 1/2 miles of its corporate limits. In light of the unique nature of a PUD in that its concept incorporates subdivision of land with flexible land use, you ask if either the municipality or the county has exclusive jurisdiction to approve the PUD in question. If not, must the plan be approved by the county with respect to zoning and by the municipality with respect to subdivision regulations?

It is my opinion that where a proposed PUD is to be located in the territory contiguous to and within 1 1/2 miles of a municipality, and where the municipality has

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adopted subdivision regulations applicable to such area and the county has adopted a zoning ordinance, the PUD is subject to the county zoning regulations and to the municipality's subdivision regulations. Neither the county nor the municipality has exclusive jurisdiction to approve the PUD with respect to both zoning and subdivision of the tract.

The legal technique of "planned development" combines both zoning and subdivision regulations for the purpose of effecting unified development of large tracts of land. The technique of planned unit development is the development of land as a unit where it is desirable to apply regulations more flexible than those pertaining to other zoning classifications and to provide for diversification in the location of structures and other site qualities. (Millbrae Assn. For Residential Survival v. City of Millbrae (1968), 262 Cal. App. 2d 222; 69 Cal. Rptr. 251.) This technique can be used for any type of single-use development, e.g., residential, commercial or industrial, or for a mixed-use development. A mixed-use PUD is a combination of various land uses physically and functionally consolidated into an inte-

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grated development. This technique ideally requires a departure from the usual subdivision and zoning regulations. Symposium: A Developer's View (1965) 114 U. Pa. L. Rev. 3.

Pursuant to Division 12 of article 11 of the Illinois Municipal Code (Ill. Rev. Stat. 1975, ch. 24, par. 11-12-4 et seq.), a municipality is authorized to adopt a comprehensive plan for the present and future development of the municipality. This plan may be implemented by ordinance establishing reasonable standards of design for subdivisions and establishing reasonable requirements governing 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, size of lots to be used for residential purposes, storm water drainage, water supply and distribution, sanitary sewers, and sewage collection and treatment. These subdivision regulations may apply, as they do in the present instance, to contiguous territory not more than 1 1/2 miles beyond the corporate limits (Ill. Rev. Stat. 1975, ch. 24, par. 11-12-5), and are to be incorporated into the official map which reflects the comprehensive plan. (Ill. Rev. Stat.

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1975, ch. 24, par. 11-12-6.) Whenever a developer seeks to subdivide a tract which lies within the jurisdiction of the municipality, approval must first be secured from the corporate authorities in the form of a determination by such body that the proposed subdivision complies with the subdivision regulations which are incorporated in the official map. Ill. Rev. Stat. 1975, ch. 24, par. 11-12-8.

Section 11-12-12 of the Illinois Municipal Code (Ill. Rev. Stat. 1975, ch. 24, par. 11-12-12) provides in pertinent part:

"No map or plat of any subdivision presented for record affecting land \* \* \* (2) within contiguous territory which is not more than one and one-half miles beyond the corporate limits of an adopting municipality, shall be entitled to record or shall be valid unless the subdivision shown thereon provides for streets, alleys, public ways, ways for public service facilities, storm and flood water run-off channels and basins, and public grounds, in conformity with the applicable requirements of the ordinances including the official map; provided, that a certificate of approval by the corporate authorities, certified by the clerk of the municipality in whose jurisdiction the land is located, \* \* \* shall be sufficient evidence of compliance with this section upon which the Recorder of Deeds may accept the plat for recording."

Such approval is necessary to enable the developer to comply

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with the pertinent provisions of "AN ACT to revise the law in relation to plats" (Ill. Rev. Stat. 1975, ch. 109, par. 1 et seq.). Unless the subdivision of a tract falls within one of the exceptions enumerated in paragraph (b) of section 1 of the Act (Ill. Rev. Stat. 1975, ch. 109, par. 1), whenever the owner of land subdivides it into two or more parts, any of which is less than five acres, he must have it surveyed and a plat thereof made which sets forth all public streets, alleys, ways for public service facilities, parks, playgrounds, school grounds or other public grounds. Pursuant to section 2 of the Act (Ill. Rev. Stat. 1975, ch. 109, par. 2) the plat must be submitted to the municipality's corporate authorities for their approval if the land subdivided is located within contiguous territory which is affected by an official plan. The plat must then be recorded in the recorder's office of the county in which the land is situated.

Besides the physical subdivision of a tract into lots, streets, public areas, etc. per specifications provided by ordinance, there remains the aspect of governmental control over uses to which the parcel in question may be put, i.e., residential, commercial, industrial or a mixture thereof.

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This feature falls within the realm of zoning regulations. Where a county has adopted a zoning ordinance, under "AN ACT in relation to county zoning" (Ill. Rev. Stat. 1975, ch. 34, par. 3151 et seq.), a municipality is precluded from exercising zoning powers beyond its corporate limits (Ill. Rev. Stat. 1975, ch. 24, par. 11-13-1.1). See also City of Canton v. County of Fulton (1973), 11 Ill. App. 3d 171; Village of Mt. Prospect v. County of Cook (1969), 113 Ill. App. 2d 336. The territory contiguous to and within 1 1/2 miles of a municipality's corporate limits is exclusively subject to a county zoning ordinance.

It is quite apparent that land use control over the area located contiguous to and within 1 1/2 miles of a municipality may be divided between the municipality and the county. Where the municipality has adopted a comprehensive plan and accompanying subdivision regulations, it has exclusive jurisdiction over the subdivision of land located within such area. This much was concluded in my above-cited predecessor's opinion. The county, on the other hand, exercises jurisdiction through its zoning ordinance over the uses to which the land may be put. An analysis of the

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pertinent statutes thus indicates that the legislature has not provided for the unique nature of a planned unit development which is located outside a municipality but within 1 1/2 miles of its limits.

I must therefore conclude that the particular PUD in question is subject to municipal approval insofar as it applies to the subdivision of the tract. On the other hand, because, under the county ordinance, a PUD is a conditional use, the developer must apply to the county for a change from the current classification of single family to PUD.

Very truly yours,

A T T O R N E Y   G E N E R A L