Common Interest Developments – The Decline of the American Neighborhood and the Privatization of Residential Communities

Common interest developments otherwise known as CIDs have evolved into the defacto standard for residential land development throughout many parts of the United States. These days it is not uncommon to see such land development schemes even in rural areas. In many urban areas of America CIDs represent 80% or more of the new residential development taking place.

The homes within these developments are comprised of traditional single-family detached houses and various types of attached housing such as condominiums, cooperatives, townhomes and the like. Although hard statistical data concerning CIDs and the demographics within these developments is somewhat difficult to come by, we can draw certain conclusions by assembling data from various sources.

The *Community Associations Institute* (CAI), an industry trade group formed in the early1970's, claims there are some 23 million individual homes with a combined market value of $4 trillion, within CIDs as of December 2009. By comparing CAI's figure of 23 million homes with *US Census Bureau* data from 2008, which suggests there are approximately 75 million owner-occupied homes in the United States, we can see that roughly one-third of the 75 million owner-occupied homes in America are located within a CID of one sort or another.

The *American Housing Survey* conducted by the *Department of Housing and Urban Development* (HUD) in 2007 indicates there were approximately 8.4 million attached housing units as of the end of 2006 which had originally been built for sale. The HUD survey also confirms that the majority of these attached homes (85% or more) have been built since the late 1970's.

From this collective data we can then surmise the following:

- There are approximately 75 million owner-occupied homes in the U.S.
- 23 million of these are located within a common interest development of one sort or another

- The combined market value of these 23 million homes is approximately $4 trillion as of December 2009
- Approximately 8.4 million, or one-third of these homes, are condominiums or other forms of attached housing
- 80% or more of the attached housing within these developments is less than 35 years old

A Brief History of CIDs-

The modern history of CIDs in the United States is a post WW II phenomenon for the most part. Born out of an urban planning movement which arguably had its roots in 19th Century England, the 20th Century American version of privatized communities was largely a result of the post WW II housing boom which consumed much of the cheap, readily available land surrounding many American cities that was particularly well suited to residential development.

By the early 1960's such land was becoming more and more scarce. The economic pressure on local municipalities to maintain the infrastructure related to this rapidly expanding residential housing base also began to increase. Combined with the need by developers to build developments with much higher density rates, the climate was ripe for cultivating the privately owned and operated, common interest development.

The CID concept was supposed to be simple. Rather than continuing to develop sub-divisions wherein the infrastructure was to become the responsibility of the local city or county government to maintain, these improvements would be privatized. The ownership of infrastructure and other neighborhood improvements, which had historically been constructed by the developer and then dedicated to the local municipal government, would instead be privately owned in perpetuity. Local governments would no longer be encumbered with the administrative or financial burden of managing and maintaining these improvements. Rather they would become the responsibility of the owners who purchased homes within the CID.

Under the CID scheme, these "common areas" would be owned by a non-profit entity created by the developer and subsequently handed over to the property owners after the majority of the homes within the CID had been sold. The owners would then manage these private organizations, or homeowner's associations (HOAs), as they would come to be known.

The financial obligation to support the HOA and the rules by which the organization would be operated would be contractually inherited by the owner upon acceptance of the deed to their property. These contractual obligations, known as "adhesion contracts" would be contained in specific wording which would become known as the "CC&Rs" or Covenants, Conditions & Restrictions. From a legal perspective the owner, upon purchase and acceptance of the deed to their property would be obligated to support the policies of the HOA and to contribute to the financial cost of operations.

These developments, so the argument went, could then be laid out in such a way that the individual homes would occupy much smaller parcels of land. The rationale being that by creating a private community, in which the owners were afforded exclusive access to amenities such as parks, greenspace, swimming pools and the like, there would be less need for large privately owned lots. The homes therefore could be constructed on smaller parcels of land, thereby allowing the developers to increase the density rate of the homes within these CIDs.

Municipal governments welcomed the opportunity to secure the benefits of urban development, in particular the added tax revenues resulting from increased property values and population growth; while reducing the fiscal burden incurred by local government as urban and suburban development expanded. Developers of course, welcomed any maneuver that resulted in lower costs and increased profits; as was the case when density rates were able to be increased, thereby reducing the per unit land cost of the homes within these developments..

The CID movement did not gain significant traction throughout the country until the late 1970's and early 1980's; although in certain areas such as Southern California, Florida and Arizona it has been the preferred form of development for almost 50 years. By the early 1990's it was close to being the universally accepted standard for development of residential sub-divisions within the United States; and today some industry sources suggest that 4 out of 5 new homes are constructed within a CID of one sort or another.

And such was the genesis of the trend which has since led to the privatization of residential communities in the United States; to such an extent that 50 years later we find one out of three American homeowners are living within some form of CID.

The Community Associations Institute-

After surviving a rocky beginning, CAI has evolved into the leading public relations and lobbying organization for those businesses and industries which profit from the development of CIDs and the ongoing operation of HOAs throughout the country. Although CAI itself might disagree with that description, the evidence is clear and abundant.

Founded in 1973 with a grant from the *National Association of Homebuilders* (NAHB), CAI was the result of brain-storming by industry leaders and bureaucrats from various established trade groups and government agencies; among them the *Urban Land Institute (ULI)*, the *Federal Housing Administration (FHA),* the *National Association of Realtors (NAR)* and the NAHB.

As acceptance of CIDs was slow to occur throughout the decade of the 1960's industry proponents recognized the need for an organization to promote the idea that CIDs and life among the HOA class was a rewarding lifestyle which would enhance the quality of life among those who accepted this leap of faith. Perhaps equally as concerned with warding off unwanted government intervention in their newborn experiment in land development, CAI was founded by former officials from FHA and NAHB with money initially provided by the NAHB in the form of a $30,000 grant.

According to the folklore of the industry CAI was originally intended to be a public service organization whose goal was to assist HOAs and their membership with issues related to living in this new type of "community." All well and good intentions one would suppose, but given the evolution of the organization since that time, and the end result of almost 40 years of "service" to their HOA constituency, it begs the question of whether CAI ever truly intended to serve the interests of HOAs and their collective membership. To make this case consider the following historical facts:

- After several years one of the initial founders decided to leave the group citing his disillusionment with what he termed the "hijacking" of the organization by attorneys and the HOA management industry
- By the early 1990's the organization had been reorganized as a non-profit trade association under the Internal Revenue Code's chapter 501(c) 3
- To this day CAI is supported primarily by membership fees, sponsorships and donations from industry professionals who serve the estimated 300,000 HOAs in the U.S.
- CAI has continuously and tirelessly promoted only those policies which minimize any form of government regulation, at any level; even when such policies might arguably be considered beneficial to HOAs and their members

Conflict & Bureaucracy -

Owners who purchase homes within CIDs ultimately find they are burdened with what amounts to an additional layer of bureaucracy in their lives in the form of a privately run HOA. They also find themselves burdened with the same ad valorem property tax rates as their counterparts who do not live in HOAs; in spite of the fact that their tax dollars are not being used to maintain the privately owned common areas within their neighborhoods, as they would be within those neighborhoods which are not developed under the CID scheme.

In addition to the financial burden of supporting the HOA bureaucracy, there is the added impost of being subjected to yet another set of rules and regulations by which one must live their life. In the original master plan, CID proponents tried to argue the point that by subjecting themselves to this added layer of regulation and authority over one's life, the owners would ultimately benefit by enjoying increased property values and a better quality of life as a result of choosing to invest and live in a home which was within a CID. Whether this has proven to be the case after 50 years is, at the very least, subject to debate.

Of course wherever money, conflict and bureaucracy raise their collective ugliness attorneys, insurance companies and banks are sure to follow. The HOA industry is certainly no exception.

The Burden of Infrastructure-

The added cost of being solely responsible for the maintenance, repair and replacement costs of neighborhood infrastructure improvements is not something people were paying too much attention to at the outset of the CID development trend 50 years ago. Now that many of these developments are 30 or more years of age, the issue of common area repair and replacement expenses is a very real one; particularly in the case of CIDs with major infrastructure to maintain.

When the common area improvements include roads and bridges the financial burden which is incumbent upon members of an HOA can become staggering over time.